



Improving Access to Bank Information for Tax Purposes

TAXATION



OECD



© OECD, 2000.

© Software: 1987-1996, Acrobat is a trademark of ADOBE.

All rights reserved. OECD grants you the right to use one copy of this Program for your personal use only. Unauthorised reproduction, lending, hiring, transmission or distribution of any data or software is prohibited. You must treat the Program and associated materials and any elements thereof like any other copyrighted material.

All requests should be made to:

Head of Publications Service,
OECD Publications Service,
2, rue André-Pascal, 75775 Paris
Cedex 16, France.

Improving Access to Bank Information for Tax Purposes

The Committee on Fiscal Affairs declassified this report on 24 March 2000 in accordance with Council Resolution C(97)64/FINAL and approved its publication.



ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

Pursuant to Article I of the Convention signed in Paris on 14th December 1960, and which came into force on 30th September 1961, the Organisation for Economic Co-operation and Development (OECD) shall promote policies designed:

- to achieve the highest sustainable economic growth and employment and a rising standard of living in Member countries, while maintaining financial stability, and thus to contribute to the development of the world economy;
- to contribute to sound economic expansion in Member as well as non-member countries in the process of economic development; and
- to contribute to the expansion of world trade on a multilateral, non-discriminatory basis in accordance with international obligations.

The original Member countries of the OECD are Austria, Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The following countries became Members subsequently through accession at the dates indicated hereafter: Japan (28th April 1964), Finland (28th January 1969), Australia (7th June 1971), New Zealand (29th May 1973), Mexico (18th May 1994), the Czech Republic (21st December 1995), Hungary (7th May 1996), Poland (22nd November 1996) and Korea (12th December 1996). The Commission of the European Communities takes part in the work of the OECD (Article 13 of the OECD Convention).

Publié en français sous le titre :
AMÉLIORER L'ACCÈS AUX RENSEIGNEMENTS BANCAIRES A DES FINS FISCALES

© OECD 2000

Permission to reproduce a portion of this work for non-commercial purposes or classroom use should be obtained through the Centre français d'exploitation du droit de copie (CFC), 20, rue des Grands-Augustins, 75006 Paris, France, Tel. (33-1) 44 07 47 70, Fax (33-1) 46 34 67 19, for every country except the United States. In the United States permission should be obtained through the Copyright Clearance Center, Customer Service, (508)750-8400, 222 Rosewood Drive, Danvers, MA 01923 USA, or CCC Online: <http://www.copyright.com/>. All other applications for permission to reproduce or translate all or part of this book should be made to OECD Publications, 2, rue André-Pascal, 75775 Paris Cedex 16, France.

PREFACE

This Report was prepared by the Committee on Fiscal Affairs to consider ways to improve international co-operation with respect to the exchange of information in the possession of banks and other financial institutions for tax purposes.

The main aims of the Report are to:

- describe the current positions of Member countries as to access to bank information;
- suggest measures to improve access to bank information for tax purposes.

Though exchange of information between tax authorities may take several forms, this Report focuses on improving exchange of information pursuant to a specific request for information related to a particular taxpayer. The Committee is analysing ways to improve the exchange of information on an automatic basis within the context of its study of the use of withholding and/or exchange of information to enhance the taxation of cross-border interest flows and the Committee will review progress on this work.

The Committee on Fiscal Affairs is of the view that, as noted in paragraph 20 of the Report, ideally all Member countries should permit access to bank information, directly or indirectly, for all tax purposes so that tax authorities can fully discharge their revenue raising responsibilities and engage in effective exchange of information. The vast majority of OECD Members view the measures set out in this Report as a first step, and have already adopted significantly greater measures and believe that all countries should do so. However, some countries are of the view that, while they recognise the interest of tax authorities in improving access to bank information, they would have great difficulty in the present circumstances in achieving the ideal. Therefore OECD Members have agreed unanimously, as part of an on-going dialogue, to proceed at the present time as described in paragraph 21. They have agreed in particular to continue the dialogue on these issues, taking into account that bank

secrecy is widely recognised as playing a legitimate role in protecting the confidentiality of the financial affairs of individuals and legal entities, as well as the larger dialogue being undertaken at the OECD on improving international co-operation in the tax area. They have also agreed to use this Report, whose proposed measures are not in any way binding as is the case with all OECD proposals in the tax area, as a basis for an on-going dialogue.

TABLE OF CONTENTS

<i>Chapter I</i>	Overview and Measures to Improve Access to Bank Information for Tax Purposes	7
	A. Overview	7
	B. Measures to improve access to bank information for tax purposes.....	13
<i>Chapter II</i>	Bank Secrecy - Traditional and New Dimensions	19
	The importance of bank secrecy	19
	The effects of bank secrecy on tax administration and law enforcement	20
	Globalisation and Liberalisation of Financial Markets	22
	Electronic Commerce and Electronic Money	23
	Money Laundering and Tax Crimes	25
<i>Chapter III</i>	Adverse Implications of Lack of Access to Bank Information for Tax Purposes	29
	Adverse Domestic Implications	29
	Adverse International Implications	30
<i>Chapter IV</i>	Country Practices and Evolution: An Executive Summary ..	33
	Legal basis for bank secrecy	33
	Exceptions to bank secrecy	33
	Bank account information requirements	34
	Means of removing funds from accounts	36
	Access to bank information for tax administration purposes	36
	Exchange of information under tax treaties	38
	Other instruments or mechanisms for exchanging bank information for tax purposes	41
	Information reporting by taxpayers.....	42
	Interest income: Use of withholding at source to tax interest payments.....	43
	Trends concerning access to bank information	44
	Proposals to change laws relating to bank secrecy	45
	Conclusions to be drawn from current practices	45
<i>Annex I</i>	Foreign Assets and Liabilities	47

<i>Appendix I</i>	Survey of Country Practices on Access to Bank Information for Tax Purposes	51
	General Information about Bank Secrecy	51
	The Obligation of Banks to Give Information in Matters other than Taxation.....	67
	Access to Bank Information for Tax Administrations	71
	Obligation for Resident Taxpayers to Declare their Bank Accounts Abroad.....	101
	Country Practice with Respect to Exchange of Bank Information with Treaty Partners	103
	Regarding Trends Concerning Access to Bank Information	112

Chapter I

OVERVIEW AND MEASURES TO IMPROVE ACCESS TO BANK INFORMATION FOR TAX PURPOSES

A. Overview

1. Bank secrecy is widely recognised as playing a legitimate role in protecting the confidentiality of the financial affairs of individuals and legal entities. It derives from the concept that the relationship between a banker and his customer obliges the bank to treat all the customer's affairs as confidential. All countries provide, to a greater or lesser extent, the authority and obligation for banks to refuse to disclose customer information to ordinary third parties. Access to such information by ordinary third parties would jeopardise the right to privacy and potentially endanger the commercial and financial well-being of the accountholder.

2. Nevertheless, bank secrecy toward governmental authorities, including tax authorities, may enable taxpayers to hide illegal activities and to escape tax. The effective administration and enforcement of many laws and regulations, including those on taxation, require access to, and analysis of, records of financial transactions. Conditions where financial records and transactions can be concealed from, or access denied to, law enforcement officials may present numerous and obvious opportunities to evade and avoid laws covering matters such as taxation.

3. Governments of all OECD Member countries recognise the importance of permitting governmental authorities access to bank information for certain law enforcement purposes (e.g., money laundering). Governments of all OECD Member countries also provide their tax authorities, directly or indirectly, with the possibility of obtaining access to bank information for at least some tax administration purposes.¹ The recent *Survey of Country Practices*

1. The verification, enforcement and collection of taxpayers' tax liabilities, as well as the investigation and prosecution of tax crimes are the activities undertaken by

on Access to Bank Information for Tax Purposes [Appendix I] which is summarised in Chapter IV, indicates that the scope and means of such access varies from country to country. The majority of Member countries allow tax authorities to obtain bank account information for most tax administration purposes; a small minority limit access to bank information to certain criminal tax matters.

4. Access to bank information can greatly improve the ability of tax authorities to effectively administer the tax laws enacted by their parliaments. In general, OECD Member countries tax income on the basis of the residence principle of taxation, in accordance with the OECD Model Convention's allocation of taxing rights between the residence country and source country. Proper application of the residence principle of taxation requires tax authorities in certain cases to have access to information held by domestic banks, and foreign banks. Information that tax authorities may need to obtain from banks for specific cases includes information about deposits and withdrawals (e.g., to verify whether there is unreported legally or illegally earned income, to determine if a taxpayer has claimed false deductions, to determine whether there are back to back loan transactions or sham transactions, to obtain answers to questions about the origin of funds, to identify bribes and suspicious payments to foreign public officials), signature cards (e.g., to verify the control of a legal entity, to establish links between seemingly unrelated taxpayers), and interest income. Bank information is important to tax authorities with respect to both the verification of taxpayers' tax liabilities and for the collection of tax liabilities.

5. Access to bank account information can take several forms. The vast majority of OECD Member countries are able to obtain information about the account of a specific taxpayer by requesting the information from the bank directly or indirectly through the use of a judicial or administrative process. The tax administrations of some Member countries have the authority, under certain circumstances, to enter the bank premises and obtain directly the necessary bank account information. The tax administrations of other Member countries have direct access to bank information through centralised databases. Other tax administrations may have less direct access and may need to use a formal process (e.g., administrative summons, requirement, court order) to obtain such information. Many tax administrations also receive certain types of information from banks (e.g., amount of interest payments) on an automatic

tax authorities (directly or indirectly through judicial or other authorities) which are referred to generally in this Report as "tax administration purposes" or "tax purposes".

basis, which greatly facilitates domestic tax administration and potentially expands the types of information that may be exchanged with treaty partners on an automatic basis. Such automatic reporting also may benefit taxpayers. In some countries, such reporting allows tax authorities to prepare tax returns for their residents, thereby reducing compliance burdens. The focus of this Report is on access to bank information pursuant to a specific request made by a tax authority, directly or through a judicial or other authority, for information that may be relevant to a specific case. The topic of automatic exchange of bank information will be considered in the context of the study of the use of withholding taxes and/or exchange of information to enhance the taxation of cross-border interest flows.

6. Allowing tax authorities access to bank information through direct or indirect means does not jeopardise the confidentiality of the information. Tax authorities in all OECD countries are subject to very stringent controls on how they use all taxpayer information, including bank information. In addition, all OECD governments have strict rules to protect the confidentiality of tax information, including severe sanctions for breaches of confidentiality. Article 26 of the OECD Model Tax Convention, which forms the basis of most bilateral tax treaty provisions relating to exchange of information, also contains provisions to protect the confidentiality of information exchanged by tax authorities pursuant to tax treaties.

7. Denying tax authorities access to banking information can have adverse consequences domestically and internationally. Domestically, it can impede the tax authorities' ability to determine and collect the right amount of tax. It also can foster tax inequities among taxpayers. Some taxpayers will use technological and financial resources to escape taxes legally due by using financial institutions in jurisdictions that protect banking information from disclosure to tax authorities. This distorts the distribution of the tax burden and may lead to disillusionment with the fairness of the tax system. Lack of access to bank information for tax purposes may result in some types of income escaping all taxation, thus producing inequities among different categories of income. Mobile capital may obtain unjustified advantages as compared to income derived from labour or from immovable property. Further, lack of access to bank information may increase the costs of tax administration and compliance costs for taxpayers. Internationally, lack of adequate access to bank information for tax purposes may obstruct efficient international tax cooperation by curtailing a tax authorities' ability to assist its treaty partners which in turn may lead to unilateral action by the country seeking the bank information. It also may distort capital and financial flows by directing them to countries that restrict tax authority access to bank information.

8. These consequences led the OECD Committee on Fiscal Affairs (hereinafter referred to as “the Committee”) to consider the issue of bank secrecy in the early 1980’s. In 1985, the Committee produced the report, *Taxation and The Abuse of Bank Secrecy* (“the 1985 Report”) which appears in *International Tax Avoidance and Evasion: Four Related Studies* (OECD, 1987). To address the adverse domestic and international consequences noted above, the 1985 Report suggested “increasing where necessary the information available domestically through relaxation of bank secrecy towards tax authorities” by urging tax authorities of countries with limited access to bank information to encourage their governments to relax bank secrecy rules as they apply to tax authorities, using as support for such liberalisation the growing relaxation of these rules in other OECD countries and the recommendations of international organisations such as the Council of Europe.

9. The 1985 Report also suggested that tax authorities make “further use through exchange of information procedures of data obtainable from banks”. The 1985 Report offered three ways for tax authorities to achieve this result: a) adopt the view that the exchange of bank information does not pose special problems; b) exchange information to the maximum extent permitted by Article 26 of the OECD Model Convention; and c) provide information to treaty partners on a unilateral basis in appropriate cases. Not all Member countries were able to agree with the 1985 Report.² Nevertheless, some progress was made in response to this Report, although further improvements are necessary. (See pars. 104-108).

10. The economic, regulatory and technological environment in which tax administrations must now operate is vastly different from the environment extant at the time the 1985 Report was approved. Globalisation, fuelled by the technology revolution of the last decade, has fostered the explosive growth of cross-border transactions. Technological advances, particularly in the area of electronic commerce and banking, have made international banking readily accessible to a wide range of taxpayers, not just large multinationals and wealthy individuals. The elimination of exchange controls by OECD countries and many non-member countries also has facilitated the rapid expansion of cross-border financial transactions. This new era of “banking without borders” has promoted cross-border transactions, presented new opportunities for economic growth and increased living standards world wide, but it also has raised new challenges for tax administrations around the globe.

2. The 1985 Report indicates that Austria, Luxembourg, Portugal and Switzerland could not adhere to the text of the 1985 Report, nor to the suggestions made in paragraphs 22 to 24 of the Report.

11. Globalisation, technology and liberalisation of capital movements are creating vast opportunities for commercial transactions. As noted above, these opportunities also are more readily available to a broader spectrum of the population. More taxpayers than ever before have easier access to ways to escape taxes legally due by taking advantage of the more restrictive bank secrecy jurisdictions. Thus, the potential for abuse created by the lack of access to bank information for tax purposes and the resulting adverse consequences have increased exponentially at the same time that traditional sources of information on these transactions (e.g. exchange controls) have been removed. It has become important for tax authorities to keep abreast of the similarly increased opportunities for illegal activities and new opportunities for taxpayers to escape tax. Tax authorities are concerned that the number of “disappearing taxpayers” (e.g. those whose assets and activities are hidden through layers of entities and in foreign accounts) will grow. The decision by one country to prevent or restrict access to bank information for tax purposes now is much more likely than ever before to adversely affect tax administrations of other countries. For these reasons, tax authorities are more concerned than ever that limitations on access to bank information for tax purposes in other jurisdictions will increasingly:

- undermine their ability to determine and collect the right amount of tax from their taxpayers, both domestic and foreign;
- promote tax inequities between taxpayers that have access to the technology that facilitates non-compliance with the tax laws and those that do not;
- foster the inequity of taxation between mobile capital and income derived from labour and immovable property;
- discourage voluntary tax compliance;
- increase the costs of tax administration and compliance costs for taxpayers;
- distort international flows of capital;
- contribute to unfair tax competition; and
- hamper international co-operation between tax administrations.

12. Tax authorities believe that enhanced international co-operation is necessary if these concerns are to be addressed effectively.

13. It is in this new context that the Committee approved the proposal of its Working Party on Tax Avoidance and Evasion to review the current position

of Member countries on access to bank information for tax purposes and to explore solutions for improving such access. The need to address the issue of access to bank information for tax purposes also has been identified in other contexts. A report on *Globalisation of Financial Markets and the Tax Treatment of Income and Capital* (the 1995 Report) recommended that the Committee explore ways to limit the application of bank secrecy provisions.

14. More recently, the OECD Report, *Harmful Tax Competition: An Emerging Global Issue*, approved by the Council on 9 April 1998,³ recommended that, “in the context of counteracting harmful tax competition, countries should review their laws, regulations and practices which govern access to banking information with a view to removing impediments to the access to such information by tax authorities”.⁴

15. The 1995 Report also recommended that the Committee study the feasibility and technical aspects of how exchange of information or withholding taxes or both can be used to address the specific problem of taxing cross-border interest flows. The Working Party on Tax Avoidance and Evasion, with assistance from the Special Sessions on Innovative Financial Transactions, currently is working on this feasibility study. The European Union has undertaken to address the specific issue of taxation of cross-border interest flows of individuals. The Commission recently proposed Directive COM(98)295/FINAL which, if approved, would require countries to adopt one of two options: to withhold tax on cross-border interest paid to EU resident individuals at a rate of 20 % or to provide information on such interest payments on an automatic basis.

16. Increasingly, governments also have recognised that permitting tax authorities access to bank information for tax purposes has the potential to strengthen other law enforcement programs, for example, by preventing the evasion of anti-money laundering systems. Some criminals attempt to avoid the application of anti-money laundering measures by financial institutions by claiming to be evading taxes, which does not trigger the application of these

3. Luxembourg and Switzerland abstained in the approval of the harmful tax competition report for reasons set forth in Annex II of that report.

4. The EU Code of Conduct for business taxation, which was agreed by EU Ministers on 1 December 1997, does not address the issue of access to bank information for tax purposes but does reflect the change in the international climate with respect to increasing co-operation in tax matters.

systems in many countries. The Financial Action Task Force (FATF) recently took steps to address this issue (see par. 54).⁵

17. The G7 announced in the 8 May 1998 Conclusions of G7 Finance Ministers that they had agreed to enhance the capacity of anti-money laundering systems to deal effectively with tax related crimes. The objectives of this agreement are as follows: 1) to ensure that obligations under anti-money laundering systems to report transactions relating to suspected criminal offences continue to apply even where such transactions are thought to involve tax offences; 2) to permit money laundering authorities to the greatest extent possible to pass information to their tax authorities to support the investigation of tax related crimes; 3) to communicate such information to other jurisdictions in ways which would allow its use by their tax authorities; and 4) to use such information for tax purposes in a way which does not undermine the effectiveness of anti-money laundering systems. The FATF and the Committee decided to expand their respective work programmes to include consideration of the issues raised by the G 7.

18. These recent initiatives reflect the growing interest in encouraging greater access to bank information for tax purposes. The Committee has already taken an important step in promoting access to bank information for tax purposes by requiring that countries seeking accession to the OECD have access to bank information for tax purposes. This Report establishes measures for both new and old Member countries on access to bank information for tax purposes and encourages those countries that have not yet applied such measures to review their laws, regulations and administrative practices with a view to modifying them over time so as to broaden the scope of access that tax authorities have to bank information for tax purposes.

B. Measures to improve access to bank information for tax purposes

19. The problems identified in this Report are global in nature and therefore difficult to address effectively on a unilateral basis. Individual countries have endeavoured to undertake measures to address these problems but thus far have met with limited success. This Report identifies measures which are designed to facilitate direct or indirect access to bank information by tax authorities in the context of a specific request for information. Currently, OECD Member countries have varying degrees of authority and means to

5. The FATF is made up of 24 OECD Member countries, Hong Kong, Singapore, the European Commission and the Gulf Co-operation Council.

obtain and exchange bank information for tax purposes, although most have fairly broad authority to do so.

20. Ideally, all Member countries should permit tax authorities to have access to bank information, directly or indirectly, for all tax purposes so that tax authorities can fully discharge their revenue raising responsibilities and engage in effective exchange of information. Some countries would need to undertake more substantial revisions to their laws or practices than others to achieve this level of access. As a result, incremental steps towards that goal may need to be taken by such countries⁶.

21. The Committee on Fiscal Affairs encourages Member countries to:

- a) undertake the necessary measures to prevent financial institutions from maintaining anonymous accounts and to require the identification of their usual or occasional customers, as well as those persons to whose benefit a bank account is opened or a transaction is carried out. The Committee will rely on the work of the Financial Action Task Force in ensuring the implementation of these measures by Member countries;
- b) re-examine any domestic tax interest requirement that prevents their tax authorities from obtaining and providing to a treaty partner, in the context of a specific request, information they are otherwise able to obtain for domestic tax purposes with a view to ensuring that such information can be exchanged by making changes, if necessary, to their laws, regulations and administrative practices. The Committee suggests that countries take action to implement these measures within three years of the date of approval of this Report;
- c) re-examine policies and practices that do not permit tax authorities to have access to bank information, directly or indirectly, for purposes of exchanging such information in tax cases involving intentional conduct which is subject to criminal tax prosecution, with a view to making changes, if necessary, to their laws, regulations and administrative practices. The Committee acknowledges that implementation of these measures could raise fundamental issues in some countries and suggest that countries initiate a review of their practices with the aim of identifying appropriate

6. Switzerland has a reservation to Article 26 of the OECD Model Tax Convention but, in the context of re-examining its policies as foreseen in paragraph 21, Switzerland would consider excluding from the application of the reservation the measures referred to in sub-paragraphs 21 a), b) and c).

measures for implementation. The Committee will initially review progress in this area at the end of 2002 and thereafter periodically.⁷

The Committee notes the international trend to increase access to bank information for tax purposes. In the light of this trend, the Committee encourages countries to take appropriate initiatives to achieve access for the verification of tax liabilities and other tax administration purposes, with a view to making changes, if necessary, to their laws, regulations and administrative practices. The Committee intends to engage in an on-going discussion, within the constraints set out in the Preface, to promote this trend.

-
7. With respect to assistance provided to other countries in criminal investigations (including criminal tax investigations), some countries generally apply the principle of "double incrimination." That is, before assistance can be provided to a requesting country, it must be established that the conduct being investigated would constitute a crime under the laws of the requested country if it occurred in the requested country. In the tax area, application of this principle will not generally be an impediment to exchange of information for criminal purposes where the definitions of tax crimes are similar. However, where the definitions of tax crimes in the requesting and requested countries are markedly different, it may be impossible in many cases for the requesting country to obtain information that is vital to a criminal tax investigation. Countries may have markedly different definitions of tax crimes which may be perfectly appropriate for that country's domestic tax system. For example, some countries rely heavily on a self-assessment system to administer their taxation laws. In these countries, which depend heavily on the voluntary compliance of individual taxpayers to ensure the fairness and effectiveness of their tax systems, willful failure of a taxpayer accurately to report income will generally be considered a criminal action. Other countries rely more heavily on tax administrators to determine a taxpayer's taxable income and thus may have a more limited definition of tax crimes. Still other countries may not have an income tax system at all, and may therefore have a radically different concept of tax crimes. Thus, where there are marked differences in the definitions of tax crimes, application of a "double incrimination" standard in the tax area can significantly hinder effective exchange of information between treaty partners on criminal tax matters. Accordingly, paragraph 21 c) should be understood to encourage Member countries, in the context of their bilateral tax or mutual assistance treaties, to search for solutions to this issue so that they can in practice exchange bank information. As part of the progress review noted in paragraph 21c), the Committee will review progress in this area in the light of these bilateral experiences.

The Committee will undertake further work on examining the definition of tax fraud in different countries and in moving towards a common understanding of this concept.

22. With regard to the implementation of the above measures through the use of “indirect” access (e.g., judicial process), care should be taken to ensure that the procedures are not so burdensome and time-consuming as to act as impediments to access to bank information. Implementation of the above measures also includes a review of administrative feasibility and the capability of information systems.

23. In taking this work forward, the Committee encourages countries to examine how to develop a voluntary compliance strategy to enable non-compliant taxpayers to declare income and wealth that they have in the past concealed by means of taking advantage of strict bank secrecy jurisdictions.

24. The measures described above do not in any way diminish the importance of bank secrecy as a fundamental requirement of any sound banking system as described in Chapter II of this Report. In connection with these measures, countries should examine their laws, regulations and practices and make modifications if necessary to ensure that taxpayer information obtained from banks is adequately protected from wrongful disclosure or inappropriate use.

25. The Committee will promote the implementation of these measures and appropriate safeguards for access to, and protection of, information obtained from banks in the framework of its contacts with non-member countries and with regional and international organisations. The Committee already has established working relationships with regional tax organisations such as the Centre for Inter-American Tax Administrators (CIAT), the Commonwealth Association of Tax Administrators (CATA), Intra-European Organisation of Tax Administrations (IOTA), the United Nations ad hoc group of experts in international tax matters, as well as co-operative efforts with non-member countries through which it can encourage non-member countries to permit access to bank information for tax administration purposes. The OECD Emerging Market Economies Forum also could continue to be used as a vehicle to promote access to bank information for tax purposes.

26. Member countries that belong to CIAT, IOTA or CATA, or otherwise participate in their activities should work with those organisations to promote access to bank information for tax purposes. Similarly, Member countries should endeavour to stress the importance of access to bank information for tax purposes in their bilateral discussions with non-member countries.

27. The Committee encourages Member countries with dependent or associated territories or which have special responsibilities or taxation prerogatives in respect of other territories, to promote, within the framework of

their constitutional arrangements, the implementation of the above measures in those dependent, associated or other territories in the same time frame.

28. If the measures proposed above are implemented, domestic tax administrations will have improved access to bank information. This, in turn, will mean that tax administrations will be better able to respond to specific requests for information from their treaty partners.

Chapter II

BANK SECRECY - TRADITIONAL AND NEW DIMENSIONS

The importance of bank secrecy

29. Bank secrecy has deep historical and cultural roots in some countries. Bank secrecy is also a fundamental requirement of any sound banking system. Customers would be unlikely to entrust their money and financial affairs to banks if the confidentiality of their dealings with banks could not be ensured. Unauthorised disclosure of such information to, for example, the persons with whom they do business (e.g., creditors, customers) could jeopardise the financial welfare of the clients of a bank. Similarly, unauthorised disclosure of matters of personal finance could also pose a threat. Thus, banks must guarantee a high degree of confidentiality in order to do business. As a consequence, bank secrecy initially arose out of the contractual relationship between the bank and its customer. This protection later was reinforced in many countries by legislation protecting the customer's right to financial privacy.

30. Bank secrecy and the confidence which it brings to a country's banking system can also stimulate the development of an active financial services industry. The banking and financial services sector is lucrative and growing. Bank secrecy is, however, but one factor in the growth of such services. The efficiency of the banking system, prevailing rates of interest and the general political and economic climate also affect decisions about where to seek financial services.

31. Because of the importance of bank secrecy to the stability of a country's banking system, access to bank information by tax authorities should not be unfettered. Lifting of bank secrecy for tax administration purposes should always be coupled with stringent safeguards to ensure that the information is used only for the purposes specified in the law. Such safeguards in OECD Member countries include requiring senior level officials to approve requests to banks for information about a specific accountholder, a judicial or other formal process for obtaining the information, the imposition of severe monetary and /or criminal penalties on officials who misuse or disclose the information, or a combination of these measures. In many countries, the accountholder is notified when the tax administration seeks to obtain information about the accountholder's account. In

addition, OECD Member countries have established stringent procedures to protect the information from unauthorised disclosure once the information has been provided to the tax administration. The adequate protection of taxpayers' rights and the confidentiality of their banking information is particularly important for economies in transition that are attempting to establish sound banking and taxation systems. Protection of the information from unauthorised disclosure is essential to obtaining and maintaining confidence in the banking and taxation systems.

The effects of bank secrecy on tax administration and law enforcement

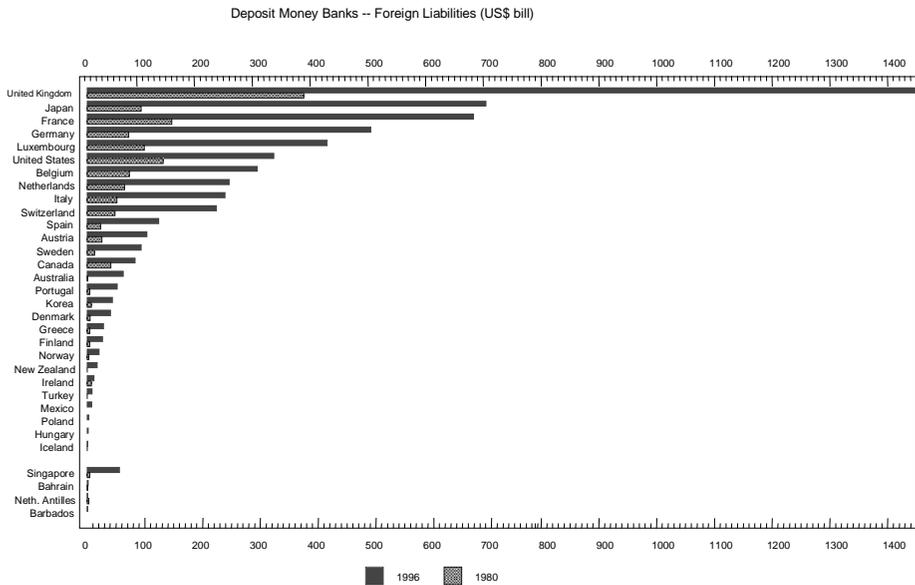
32. Experience has shown over the last 50 years that inadequate access to bank information has been an impediment to tax administration and law enforcement. The scope of non-compliance with the tax laws that is facilitated by lack of access to bank information is difficult to measure precisely because there is insufficient access to the necessary information. The same problem exists in attempting to measure the extent of money laundering. Nevertheless, the FATF estimates that the size of that problem amounts to hundreds of billions of dollars annually⁸. Since many jurisdictions impose tax on both legal and illegal income and the proceeds of criminal activity usually are not reported as income by criminals, it is reasonable to assume that a large portion of laundered funds have escaped taxation in one or more jurisdictions.⁹

33. Another indication of the risk of non-compliance with the tax laws is the substantial growth of foreign assets and liabilities held by banks in OECD Member countries. Virtually all OECD Member countries showed substantial growth in the foreign liabilities held by deposit money banks, as reflected in the following chart, which is based on data compiled by the International Monetary Fund¹⁰(see Annex I for complete data).

8. Financial Action Task Force on Money Laundering Annual Report 1995-1996.

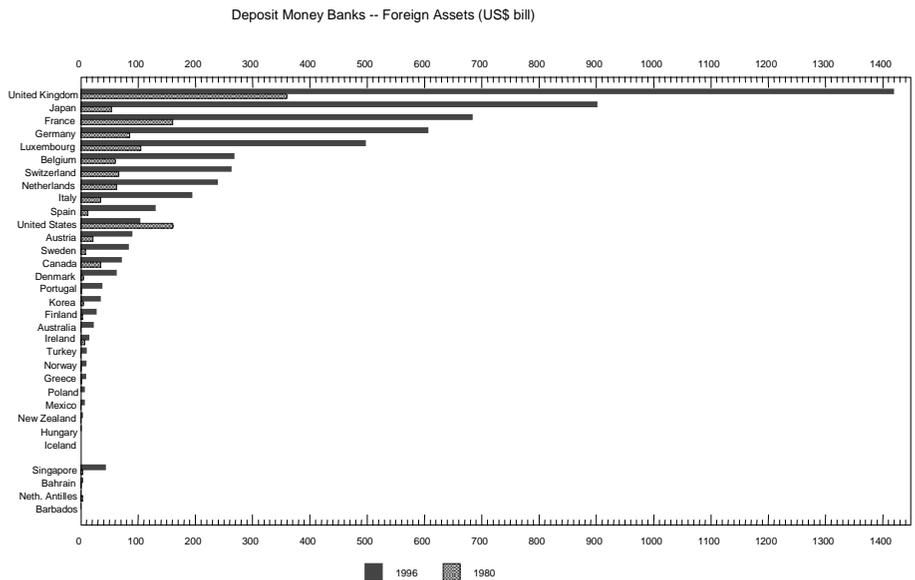
9. Once the proceeds of illegal activity have been successfully laundered into "clean money", they may be taxed as income derived from a different (and legal) activity, though not necessarily by the jurisdiction entitled to tax the profits of the original illegal activity that generated the income. It also is unlikely that the proper amount will be taxed.

10. Data for certain non-member countries was included as a point of comparison. Note also that the IMF includes the UK dependencies in the amounts shown for the United Kingdom.



Source: IMF International Finance Statistics Yearbook, Vol. L. 1997.

34. There has been a similar amount of growth in the foreign assets held by deposit money banks in OECD Member countries, as reflected below.



Source: IMF International Finance Statistics Yearbook, Vol. L. 1997.

35. The growth of both the foreign assets and liabilities held by deposit money banks certainly does not by itself establish that non-compliance with the tax laws through the use of foreign banks is on the rise. However, this growth does demonstrate that the amount of cross-border flows through financial institutions in OECD Member countries is increasing. As a result, tax administrations in OECD Member countries now are more likely to need to have access to information held by foreign banks than in the past in order to administer their taxes effectively.¹¹

Globalisation and Liberalisation of Financial Markets

36. One of the elements that has fuelled globalisation in the last decade has been the liberalisation of financial markets, a trend which the OECD has promoted. This liberalisation was in part a response to the threat to financial markets posed by offshore financial centres. Such financial centres in the 1960's and 1970's were able to attract foreign financial institutions by offering a minimally regulated banking system and minimal taxation at a time when technological advances made them more readily accessible. As capital flows to offshore financial centres threatened to undermine the traditional financial markets, a number of regulatory reforms were undertaken to level the playing field between onshore and offshore banking.¹² Exchange controls were eliminated. Some countries established markets to compete directly with the offshore financial centres. In addition, efforts were made to harmonise the regulation of financial markets on a global basis.¹³

37. The resulting liberalisation and harmonisation of financial markets greatly facilitated the free flow of capital across national borders, which improved the allocation of capital and reduced its cost. Liberalisation also

11. Note that the information in the above charts only reflects foreign assets and liabilities held by deposit money banks. Five countries (Ireland, Mexico, Spain, Sweden, and Switzerland) also have other banking institutions that have foreign assets and liabilities. The total foreign assets and liabilities held by deposit money banks and other banking institutions in these countries is shown in charts that appear in Annex I.

12. "Offshore banking" generally is understood to mean a bank that accepts deposits and/or manages assets denominated in a foreign currency on behalf of persons resident elsewhere.

13. 1995 Report on Globalisation of Financial Markets and the Tax Treatment of Income and Capital.

encouraged the growth of non-bank financial intermediaries (e.g. investment funds, pension funds, insurance firms).

38. Although the liberalisation of financial markets has facilitated economic growth, it also has increased opportunities for non-compliance with the tax laws. Once most of the non-tax barriers to the integration of financial and capital markets had been removed, individuals and legal entities gained access, at little or no cost, to banking systems around the globe through which to conduct both legitimate and illegitimate transactions. This access has made it easier for them to avail themselves of the benefits offered by jurisdictions that limit access to bank information for tax purposes. It also has made it harder for tax administrations to detect non-compliance unless they have adequate exchange of information with the relevant jurisdictions.

39. One of the ways taxpayers typically seek to protect the nature of their transactions is through the use of wire transfers to or from jurisdictions that have more restrictive access to bank information for tax purposes. Although domestic regulations may require banks to obtain information identifying the sender and the recipient of funds transferred by wire, if the funds are sent to or from a jurisdiction that denies tax authorities access to bank information, there is no way to verify the identity of the foreign sender or recipient of the funds. The tax authority usually will be able to verify only the domestic end of the transaction. Without information about both ends of the transaction, it has proven difficult for the tax authority to determine the true nature of the transaction and the character and source of the income. The problems presented by wire transfers pale in comparison to the problems tax administrations will face as electronic banking becomes more widespread because in many cases the tax authorities will not have access to information about either end of the transaction.

Electronic Commerce and Electronic Money

40. Globalisation and liberalisation of financial markets may have paved the way to increased access to cross-border banking, but the significant advances in electronic technology are what have accelerated access to anonymous and instantaneous cross-border banking. Even without the liberalisation of financial markets, the new technologies would have permitted this to occur.

41. One of the newest challenges to tax administration is in the area of electronic payment systems designed to facilitate Internet electronic commerce. These fall into three main types:

- credit and debit cards coupled with security systems such as Secured Encryption Technology (SET);
- stored value cards, including “smart” cards; and
- electronic money, including forms of electronic cash and cheques.

42. These types of systems also can be categorised as accounted or unaccounted systems. Accounted systems have independent audit trails, often use a third party intermediary to complete the transaction and one or all the parties to the transaction can be identified. Unaccounted systems are those which operate like cash; there is no audit trail, no independent intermediary and no identification of the parties to the transaction.

43. Credit and debit card systems usually are accounted systems. However, if taxpayers are able to obtain credit cards from jurisdictions that do not meet the standards established in paragraph 21, tax authorities will be prevented from having access to some or all of the information about the transactions undertaken with these systems.

44. Stored value cards are configured in a number of different formats, some accounted, others unaccounted. As noted above, unaccounted cards present particularly substantial challenges to effective tax administration. Because they effectively operate like cash, but without the constraints of bulk or concerns about security for large amounts, they represent a similar, but greater, challenge than that presented by the current cash economy. This challenge is compounded if the card is issued by a bank in a jurisdiction that restricts access to bank information for tax administration purposes. Accounted stored value cards, like debit and credit cards, also will present difficulties for tax administration if they are issued by banks in jurisdictions that restrict access to bank information for tax administration purposes.

45. Like stored value cards, electronic money also can be issued in accounted and unaccounted forms. As a result, the difficulties that arise with stored value cards will also arise with electronic cash and cheques.

46. These payment systems, particularly when combined with encryption technology, have the potential to further complicate and obfuscate the audit trail needed by tax administrations to administer and enforce the tax laws. The Committee, in the context of its work on electronic commerce, is considering ways to ensure that these payment systems can be developed to assist the growth of electronic commerce without creating new opportunities for taxpayers to escape their tax obligations.

47. It will be of little use to tax administrations if identification and other systems are developed to increase the transparency of electronic commerce (including banking) if bank secrecy or other laws prevent access to such information for tax purposes. Given the significant potential for an increase in cross-border banking through electronic means, restrictive bank secrecy in foreign jurisdictions is likely to pose a more significant barrier to tax administration than in the past.

Money Laundering and Tax Crimes

48. Lack of access to bank information greatly facilitates the success of money laundering schemes which are used to process the proceeds of crimes to disguise their illegal origins. Money laundering techniques also are used to conceal illegally and legally earned taxable income from tax authorities, which act may be a crime in many OECD Member countries, depending on the circumstances. A recently issued report commissioned by the United Nations Office for Drug Control and Crime Prevention discusses the links between money laundering and tax evasion and suggests that the size of the tax evasion problem is some multiple of the amount of the proceeds of all types of crime.¹⁴

49. Money laundering, like criminal tax offences, has been made easier with the technological advances that facilitate the movement of funds across borders and continues to be a problem of serious concern to all countries. All OECD Member countries except Korea (which is waiting for legislative ratification of the anti-money laundering bill proposed by its government) have taken measures to relax bank secrecy or have enacted measures specifically to combat money laundering. Most of these efforts are directed at curbing money laundering connected to non-tax offences, although some of those efforts have had positive spillover effects for tax administration purposes.

50. Many of the advances in this area can be attributed to the work of the FATF. In 1990, the FATF issued a report containing 40 recommendations on actions to be taken to combat money laundering (hereafter referred to as the FATF Recommendations). Notably, none of the recommendations refers to the use of money laundering in connection with tax crimes. In fact, the Recommendations as originally drafted, referred to money laundering only in connection with narcotics trafficking offences. However, in 1996, the FATF extended the money laundering predicate offences beyond narcotics trafficking because its members recognised that non-drug-related money laundering was

14. Financial Havens, Banking Secrecy and Money Laundering, June 8, 1998.

“an important and growing source of illegal wealth entering legitimate financial channels”. Recommendation 4 of the FATF Recommendations now requires countries to extend the definition of the offence of money laundering to non-narcotic “serious crimes.” Countries may thus choose to combat tax crimes by treating tax crimes as serious crimes for purposes of anti-money laundering legislation.

51. Recommendations 10 and 11 of the FATF Recommendations also are beneficial for tax administration purposes. They relate to customer identification and record-keeping rules and provide as follows:

10. Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names: they should be required (by law, by regulations, by agreements between supervisory authorities and financial institutions or by self-regulatory agreements among financial institutions) to identify, on the basis of an official or other reliable identifying document, and record the identity of their clients, either occasional or usual, when establishing business relations or conducting transactions (in particular opening of accounts or passbooks, entering into fiduciary transactions, renting of safe deposit boxes, performing large cash transactions).

In order to fulfil identification requirements concerning legal entities, financial institutions should, when necessary, take measures:

(i) to verify the legal existence and structure of the customer by obtaining either from a public register or from the customer or both, proof of incorporation, including information concerning the customer’s name, legal form, address, directors and provisions regulating the power to bind the entity;

(ii) to verify that any person purporting to act on behalf of the customer is so authorised and identify that person.

11. Financial institutions should take reasonable measures to obtain information about the true identity of the persons on whose behalf an account is opened or a transaction conducted if there are any doubts as to whether these clients or customers are acting on their own behalf, for example, in the case of domiciliary companies (i.e., institutions, corporations, foundations, trusts, etc. that do not conduct any commercial or manufacturing business or any other form of commercial operation in the country where their registered office is located).

52. These recommendations strengthen the requirements that financial institutions must meet regarding customer identification to deter money laundering. They reflect a recognition that access to bank information is of limited value if the necessary information has not been gathered by the bank or if the information is unreliable, particularly as regards the identity of the beneficial owner of an account. The enhancement of the type and reliability of information that financial institutions must maintain to combat money laundering also enhances the information potentially available for other law enforcement purposes if access to that information is permitted by law. As a result, these recommendations represent an important step forward in addressing the difficulties posed to law enforcement officials, including tax administrators, by money laundering and lack of access to bank information.

53. As mentioned in paragraph 17, the G7 agreed to enhance the capacity of anti-money laundering systems to deal effectively with tax related crimes. In this regard, the objectives adopted by the G7 are to ensure that obligations under anti-money laundering systems to report transactions relating to suspected criminal offences continue to apply even where such transactions are thought to involve tax offences (the “tax loophole”) and to permit money laundering authorities to the greatest extent possible to pass information to their tax authorities to support the investigation of tax related crimes and to communicate to other jurisdictions in ways that would allow its use by their tax authorities. The information should be used in a way which does not undermine the effectiveness of anti-money laundering systems.

54. The FATF has already made progress in addressing the “tax loophole” issue by adopting the following text for an interpretive note to Recommendation 15 of the FATF Recommendations: “In implementing Recommendation 15¹⁵, suspicious transactions should be reported by financial institutions regardless of whether they are also thought to involve tax matters. Countries should take into account that, in order to deter financial institutions from reporting a suspicious transaction, money launderers may seek to state, *inter alia*, that their transactions relate to tax matters.” The FATF work plan also includes the following project: “The FATF will, taking into account the work of the OECD’s Committee on Fiscal Affairs, examine the question of the transmission of information by members’ anti-money laundering authorities to their tax administrations.”

15. Recommendation 15 of the FATF Recommendations provides: “If financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the competent authorities.”

55. These recent developments are a strong indication that the international climate has changed with respect to access to bank information for tax purposes. There appears to be a growing recognition of the importance of bank information not only to combat non-tax criminal activity and money laundering but also to combat tax crimes.

Chapter III

ADVERSE IMPLICATIONS OF LACK OF ACCESS TO BANK INFORMATION FOR TAX PURPOSES

Adverse Domestic Implications

56. There are several adverse domestic implications of lack of access to bank information for tax purposes. Lack of access to bank information undermines a tax administration's ability to determine and collect the right amount of tax from their taxpayers. In addition, if taxpayers are able to abuse the protection of bank secrecy to shield income from tax authorities, the intended structure of taxation may be altered. The tax burden may be redistributed so that income from labour and immovable property bears a higher proportion of the tax burden than income from the underground economy, illegal activities or undisclosed income from capital that can be shielded from taxation by lack of access to bank information for tax purposes. It will also promote tax inequities between taxpayers who comply with the tax laws and those that do not. Similarly, the intended level playing field between taxpayers is distorted because compliant taxpayers will have lower after-tax income than those who can hide their income in jurisdictions that protect bank information from disclosure for tax purposes. Further, if lack of access to bank information significantly reduces tax revenues, governments will have to decide whether to reduce the services they provide or incur increased costs as a result of borrowing funds to finance the provision of those services.

57. At the tax administration level, compliance costs will be increased because additional efforts will have to be undertaken to try to uncover the information protected by bank secrecy. These additional efforts divert valuable resources from other tax administration activities, which presents an added strain to tax administrations at a time when most administrations are having to do more with fewer resources.

58. Tax administrations and taxpayers can benefit from automatic reporting of information by financial institutions. Automatic reporting of

information by financial institutions can be very useful to tax administrations for the verification of information reported by taxpayers. Automatic reporting also can serve to increase voluntary compliance. If taxpayers know that their banks are required to report income information to the tax authorities, taxpayers will be more likely to file accurate returns regarding this income. In addition, automatic reporting enables tax administrations to implement programs that may benefit taxpayers by reducing their compliance burden. Without access to bank information, none of these benefits can be achieved. Improvements in automatic reporting and exchange of information are being examined in the context of the Committee's study of the use of withholding taxes and/or exchange of information to enhance the taxation of cross-border interest flows.

59. If tax administrations cannot obtain information from banks (whether through specific requests for information or through automatic reporting), taxpayers' compliance costs may be increased and additional reporting requirements may be imposed on taxpayers.

60. Taxpayer confidence in the fairness of the tax system may be undermined as more taxpayers become aware that other taxpayers have successfully escaped their tax obligations by abusing bank secrecy to hide income or the true nature of transactions from tax authorities. Confidence in the fairness of the tax system is essential to encouraging taxpayers to comply voluntarily with the tax laws. As the number grows of taxpayers that feel they are unfairly bearing a greater proportion of the national tax burden, the amount of non-compliance with the tax laws is likely to increase.

61. Finally, some low tax jurisdictions that prohibit access to bank information for tax purposes have found themselves to be financed to a great extent by drug dealers, organised crime and other criminal elements. The influence domestically of such elements may be difficult to control once such a pattern is established and the integrity of the government's authority may be undermined.

Adverse International Implications

62. As was seen in Chapter II, the liberalisation of financial markets and the technological advances in communication systems have increased and facilitated access to foreign banking facilities. Because this access is now available to a wider span of the population, non-compliance with the tax laws at an international level is likely to increase. This results in an increased need for international co-operation. Bank secrecy laws or practices that restrict access to bank information generally prevent the tax authorities of those countries from

providing information to their counterparts in other countries pursuant to bilateral tax treaties or other mutual legal assistance channels. Consequently, international co-operation is hampered.

63. In addition, lack of access to bank information for tax purposes may contribute to the distortion of capital and financial flows that results from harmful tax competition. The OECD report, *Harmful Tax Competition: An Emerging Global Issue*¹⁶, points to lack of effective exchange of information, particularly of bank information, as one key factor among others in identifying harmful tax practices. The question of whether the bank secrecy laws or practices of a particular country contribute to harmful tax competition depends on the permitted level of access to bank information for tax purposes. Lack of access to bank information may result not just from formal secrecy laws but from administrative policies or practices that impede exchange of information.

64. Historically some countries have limited access by tax authorities to bank information to cases involving criminal tax offences such as the intentional use of altered or false documents to escape paying taxes. In such countries, it may have been determined, sometimes for historical reasons, that the interest in protecting the privacy rights of persons through bank secrecy takes precedence over the interest in controlling administrative violations, except in cases of offences subject to criminal prosecution.

65. As noted above, the increase in international transactions and the greater accessibility to financial institutions in foreign jurisdictions afforded by technological advances, has the potential to cause substantial erosion of the tax bases of other countries. As a result, non-compliance with the tax laws at an international level may now pose a greater threat to tax administrations than they did in the past. For this reason, tax authorities have a growing interest in obtaining access to bank information from their treaty partners.

66. The fact that there is an increasing need for access to bank information for tax purposes to prevent adverse consequences domestically and internationally does not diminish the need to protect the confidentiality of bank information from ordinary third parties. Bank secrecy laws and practices continue to serve an important role in protecting the confidentiality of customer's financial transactions as discussed in Chapter II.

16. Luxembourg and Switzerland abstained in the approval of the report for reasons set forth in Annex II of the report.

Chapter IV

COUNTRY PRACTICES AND EVOLUTION: AN EXECUTIVE SUMMARY

67. The previous chapters described recent developments that have increased the need for access to bank information for tax purposes and the adverse consequences that may be caused by the lack of such access. This chapter summarises the current country practices with respect to access to bank information for tax purposes. To the extent that this Chapter summarises these practices, it is based on the results of the *Survey of Country Practices on Access to Bank Information for Tax Purposes* [Appendix I].

Legal basis for bank secrecy

68. As reflected in the 1985 Report, all OECD Member countries protect in some way the confidentiality of information held by financial institutions. The vast majority of OECD Member countries protect this confidentiality through explicit legislative provisions. Other Member countries do so through tradition or administrative practice or through general constitutional or other rules that protect personal freedoms or privacy. Certain countries rely on the common law principle that the confidentiality of bank information stems from the contractual relationship between the bank and customer. The rules of the civil and criminal codes applicable to this contractual relationship may also protect the confidentiality of customer information held by banks.

Exceptions to bank secrecy

Non-tax purposes

69. In general, all Member countries allow access to bank information for various non-tax civil and criminal proceedings, both for domestic and

international purposes.¹⁷ For domestic and international criminal proceedings, all countries oblige banks in at least some instances to provide bank information. In the context of non-tax civil proceedings, all but 3 countries (Germany, Greece, Luxembourg) reported requiring banks to give information for domestic proceedings in at least some instances and all but 4 countries (Germany, Greece, Ireland, Luxembourg) oblige banks to give information for international civil proceedings at least in some instances. In the context of debt collection and bankruptcy, all but 2 countries (Germany, Greece) obligate banks to provide information for domestic debt collection and bankruptcy in some instances, and all but 3 countries (Austria, Germany, Greece) must provide such information for international proceedings in some instances.

70. In addition, all Member countries except Korea (which is waiting for the legislative ratification of the anti-money laundering bill proposed by the Government) and the Netherlands (which does not have legal bank secrecy) have taken measures to relax bank secrecy to combat money laundering. More than half of the OECD Member countries that have taken such measures have some access to this information for tax administration purposes.

Tax purposes

71. As discussed more fully below, most countries permit tax authorities to obtain access to bank information through an exception to the general rule or law that establishes the confidentiality of bank information. In a small number of countries, this access is limited to situations involving criminal proceedings or tax fraud. In Luxembourg, tax authorities do not have direct access to bank information for tax purposes and bank information may only be obtained by judicial authorities in cases of suspected tax fraud.

Bank account information requirements

72. Access to bank information is valuable to tax authorities only if the bank possesses useful and reliable information regarding the identity of its customer and the nature and amounts of financial transactions.

17. The questionnaire asked countries to respond either “yes,” “no” or “in some instances”. It was not apparent from the answers what distinctions each country made between a:”yes” and “in some instances.” Thus, for purposes of this summary, the affirmative responses are grouped together and contrasted with the negative responses.

73. The use of anonymous and numbered accounts may pose a barrier to effective access to bank information for tax administration purposes if the identity of the account holder is not known to the bank.¹⁸ However, the vast majority of OECD Member countries prohibit the use of anonymous and numbered accounts. Anonymous accounts may be opened only in Austria and the Czech Republic and only in certain circumstances. Austria intends to re-examine its legislation concerning anonymous accounts in 2000. At present, anonymous accounts may be opened in Austria but only by its residents and only as savings accounts (bank deposit books). However, banks in Austria generally will know the identity of accountholders of large savings accounts. Austria's foreign exchange regulations require the bank to verify the client's residence status although the law does not specify the means of verification. Further, withdrawals from these accounts are only possible in cash; transfers to other accounts are not permitted. The Czech Republic limits anonymous deposits to an amount equivalent to US\$3700. These deposits cannot be used for business transactions and the trend for the future is to prohibit the opening of new accounts of this type.

74. Numbered accounts may be opened only in Austria, Luxembourg and Switzerland. The identity of the numbered account holder is known by the bank in each of these countries. In Austria, the identity of both resident and non-resident accountholders is known except in the case of anonymous saving deposit books, which may be opened only by residents.

75. With regard to other types of accounts, all Member countries require banks to obtain information to identify the account holder. The level of information and documentation required to open accounts other than anonymous and numbered accounts varies from country to country. In general, most countries require banks to verify the name and address of the client by some type of official documentation (e.g., passport, identity card, driver's license). Most countries that use tax identification numbers (TINs) require the domestic TIN to be provided to open an account but only ten countries (Denmark, Finland, Iceland, Korea, Mexico, Norway, Poland, Portugal, Spain, Sweden) require the customer to provide documentary evidence of the TIN. In April 1998, Turkey joined the group of countries that has the legal power to prohibit by law the opening of a bank account without a TIN. The Ministry of Finance of Turkey intends to use its legal power to require mandatory use of TINs for banking and other financial services in the near future. Australia and New Zealand do not require TINs to be provided but if they are not provided,

18. Similar difficulties arise with bearer bonds.

tax is withheld at the highest marginal rate. Poland requires each bank to establish its own identification and documentation requirements.

76. In general, a bank that does not comply with the information and documentation requirements for opening accounts is subject to penalties, which usually consist of fines or imprisonment of bank officials, or both. In Austria and Switzerland, it may even be possible to revoke the bank's license.

Means of removing funds from accounts

77. In general, there are no restrictions on the means of moving money out of accounts except in Austria. As noted above, Austria restricts withdrawals from anonymous savings accounts to cash withdrawals. It does not permit transfers from such accounts to other accounts. Several countries require reporting of certain types of transfers (e.g., Australia requires the reporting of telegraphic transfers) or transfers over a certain amount (e.g., Italy requires the registration of transactions over 20 million lira).

Access to bank information for tax administration purposes

78. There are several ways in which tax authorities may obtain information from banks. One of the ways is through automatic reporting of certain types of information by banks to the tax administration. Currently, 19 Member countries require automatic reporting by banks. In general, countries require automatic reporting with respect to interest paid to taxpayers and on amounts of tax withheld on interest paid. In addition, some countries require the automatic reporting of the opening and closing of accounts, account balances at year end and interest on loans.

79. Some countries (France, Hungary, Korea, Norway, and Spain) have centralised data banks of certain bank account information. France requires financial institutions managing stocks, bonds or cash to report on a monthly basis the opening, modifications, and closing of accounts of all kinds. This information is stored in a computerised database which is used by the French tax administration for research, control and collection purposes. Korea has a separately designated database within the tax administration's overall database which contains the information reported automatically by banks with respect to their interest payments (i.e., the amount of interest paid, tax withheld on the interest, bank account to which interest accrued, identity of accountholder together with his/her resident registration number or business registration number). This database is utilised mainly for the verification of income tax and

inheritance tax returns. The database in Spain is similar in that it identifies for each taxpayer the bank accounts of which he is the accountholder if there has been withholding at source, income from mobile capital if there has been withholding at source, and information on checks on current accounts received in cash over 500 000 pesetas.

80. One of the most important ways for tax authorities to obtain information from banks is through a specific request to the bank for particular information related to the tax case of a specific taxpayer. All Member countries permit their tax authorities, judicial authorities or public prosecutors to obtain information from banks in cases involving certain criminal tax matters. A vast majority also can obtain information from banks for purposes of verifying the tax liability of a particular taxpayer.

81. Several countries (Australia, Czech Republic, Denmark, Finland, France, Italy, Norway, New Zealand, Spain, and Turkey) can obtain bank information for tax administration purposes without limitation. Other countries may need to use a special procedure to obtain bank information such as a requirement (Canada), an administrative summons (United States) or consent of an independent commissioner (United Kingdom). Others have limitations as to the circumstances under which they can obtain information. For example, Portugal may obtain bank information only if a criminal proceeding is pending or if an enforcement order is issued by a court at the request of the tax administration and also in cases where fiscal benefits are provided through bank accounts (e.g., special treatment of retirement savings).

82. In certain circumstances, the tax authorities of some countries have the power to seize documents from banks or to enter the bank premises to examine the bank records directly. For example, Austria has the power to seize documents if the bank refuses to comply with a valid request for information. Italian tax authorities have direct access to the bank premises for purposes of examining bank records when the bank has not provided the required information or if there are doubts as to the completeness or accuracy of the information provided.

83. Most Member countries can obtain information from a bank about a third person who is not suspected of tax fraud but who has had economic transactions with a specified person suspected of tax fraud. In addition, most Member countries can obtain bank information that belongs to a family member of the person about whom the request is made. More than half of the Member countries can obtain information about the account holder's economic situation, business activities, etc., which the bank has obtained for creditability purposes. All Member countries require banks to reveal whether a named person keeps an

account with it except: Austria, Luxembourg, and Switzerland which require the disclosure in criminal cases; Belgium, which will require the disclosure in exceptional cases, especially where there exists a presumption of the existence or preparation of tax fraud, and Portugal (except in criminal cases where a judge can decree the lifting of bank secrecy).

Exchange of information under tax treaties

84. Exchange of information under tax treaties is governed generally by provisions based on Article 26 of the OECD Model Convention on Income and on Capital. Article 26 requires Contracting States to “exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention.”¹⁹ To protect the information that is exchanged, Article 26 establishes stringent confidentiality requirements and imposes strict limitations on the use of the information. The information received pursuant to Article 26 must be “treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. They may disclose the information in public court proceedings or in judicial decisions.”

85. Further limitations on disclosure of information may be imposed by the requested State pursuant to Article 26, par. 2. Under Article 26, par. 2, a country is not required to: take administrative measures that go beyond its own laws and administrative practices or those of the requesting country; give information that is unobtainable under its laws or normal administrative practices or those of the requesting party; provide information that would disclose a “trade, business, industrial, commercial or professional secret or trade process or information the disclosure of which would be contrary to public policy”.

86. The vast majority of Member countries can obtain information from banks for the purpose of exchange of information under tax treaties.

19. Note that Switzerland has reserved the right to limit the scope of the Article to information necessary for carrying out the provisions of the Convention, and Mexico and the United States have reserved the right to extend the application of this Article to all taxes imposed by a Contracting State, not just taxes covered by the Convention pursuant to Article 2.

Luxembourg's tax authorities do not have the authority to obtain bank information. Of those countries that can obtain bank information for purposes of exchanging information with treaty partners, most can obtain the information in the same way that information is obtained for domestic tax purposes. Some countries -- Greece, Japan, and the United Kingdom -- must have a domestic tax interest in the information sought from the bank in order to be able to request any information from the bank. The United Kingdom, however, does not require a domestic tax interest for purposes of exchanging information with EU countries in accordance with the EU Directive on Mutual Assistance. Ireland requires a domestic tax interest to obtain an order for detailed bank account information but does not require a domestic tax interest to obtain basic bank account information (i.e., account number, name and address of account holder, country of residence of account holder, and signature of account holder). Japan has not rejected any requests for information from any treaty partner on the basis of a lack of a domestic tax interest.

87. Most Member countries do not require exchange of information to relate to a resident of a Contracting State under a tax treaty. However, Hungary, Italy and Poland have such a requirement.

88. Several Member countries (Germany, Hungary, Korea, Luxembourg, Netherlands, Portugal, Sweden, United Kingdom, United States) must notify the taxpayer of an exchange of bank information under certain circumstances. In the United Kingdom, the taxpayer would not be notified where the information is provided routinely by the bank to the tax authority. Some countries lift the notification requirement in cases of tax fraud (Germany, Netherlands, Portugal, Sweden). Hungary prohibits the bank from notifying its client where the request has been made by an investigating authority, the Public Prosecution Office, or the National Security Service if the bank account or transactions concern drug trafficking, terrorism, illegal trade in arms, money laundering, or organised crime. Luxembourg must notify the bank if it intends to give information to a treaty partner. The United States does not have a general obligation to notify the taxpayer of an exchange of information. However, if the tax authorities must issue an administrative summons to obtain the bank account information for the treaty partner, they are obligated to notify the account holder on the issuance of the summons. The obligation to notify the account holder is lifted if a federal court determines that there is reasonable cause to believe that the notification may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records. In general, a taxpayer has the right to appeal the exchange of information in countries that require notification except in Sweden. The taxpayer has no appeal right

concerning a request for bank information in most Member countries. Further, the bank has no right of appeal under domestic law if the bank does not want to comply with a request for information in most Member countries.

89. All Member countries except Luxembourg and Switzerland can obtain bank information for the purpose of exchange of information under tax treaties pursuant to the limitations under Article 26-2 of the OECD Model Tax Convention. Bank information generally is not considered a trade, business, industrial, commercial or professional secret under Article 26-2(c) of the OECD Model Tax Convention (except in Portugal, Switzerland). Provision of bank information to a treaty partner is not limited to a particular stage in a tax case in most countries, nor is it limited to a particular type of case. However, Austria limits its assistance to certain types of penal proceedings. Belgium may lift bank secrecy and exchange information only in cases where there exists a presumption of the existence or preparation of tax fraud. The United Kingdom provides assistance only in the largest and most important cases.

90. All Member countries have means available to enforce requests for bank information if a bank fails to comply with such a request. The most common means available are the ability to impose fines and taking judicial action to compel the bank to comply which in turn may result in the imposition of contempt sanctions or imprisonment.

91. Most Member countries can provide information in a form that would be usable in a treaty partner's courts. The ability to do so depends in large part on the form required by the treaty partner.

92. A number of countries (Australia, Canada, Denmark, Finland, France, Japan, Korea, New Zealand, Norway, Sweden, United Kingdom) automatically exchange bank information with their treaty partners. In some cases, the automatic exchange of information is limited to certain treaty partners based on an agreement (Denmark, France, Korea, Sweden). The automatic exchange of bank information also may depend on reciprocity (Australia, Canada, Denmark, France, Norway, Sweden).

93. Most countries can provide bank information to treaty partners on request. Austria, Belgium, Portugal, and Switzerland can do so in very limited circumstances but Greece and Luxembourg cannot. Some countries restrict their exchange of bank information to countries that can provide the same pieces of information (Denmark, France, Hungary, Ireland, Italy, the Netherlands, Spain). Some will provide such information to treaty partners cooperating under "full reciprocity" (Australia, Austria, France, Italy, Korea, Mexico, Poland, Turkey, United Kingdom (unless there is no domestic interest,

in the case of non-EU countries). Overall reciprocity is a factor used by the United States. Finland, Germany, New Zealand, and Norway do not limit their co-operation in principle, but will take into account the principle of reciprocity on a case by case basis. Iceland will respond to all treaty requests.

94. The countries that can provide treaty partners with bank information in general require basic information (accountholder's name, name of bank) from the treaty partner in order to be able to satisfy the request. Obviously, the more information that is provided about the identity of the accountholder and the bank, the more likely it is that the information can be located and provided to the treaty partner.

95. Most Member countries can provide a treaty partner, pursuant to a specific request, with the amount of interest earned by a taxpayer in the prior year, interest earned over several prior years, the balance of deposits in previous years, and underlying documents held by the bank.

Other instruments or mechanisms for exchanging bank information for tax purposes

96. Member countries have means other than bilateral tax treaties to exchange information for tax purposes. For example, Member States of the European Union have adopted Council Directives 77/799/EEC, 79/1070/EEC and 92/12/EEC (Article 30) which enable them to exchange information within the European Union on direct and indirect tax matters. The joint OECD/Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which has been ratified by 8 countries (Denmark, Finland, Iceland, the Netherlands, Norway, Poland, Sweden, United States) also permits countries to exchange information on direct and indirect tax matters. The Nordic Convention on Mutual Administrative Assistance in Tax Matters allows the Nordic countries to exchange bank and other information for all kinds of taxes except import duties. A number of OECD Member countries have entered into mutual legal assistance treaties among themselves and/or with non-member countries, which for the most part enable the treaty partners to exchange information regarding tax crimes. Many Members also are parties to the Hague Evidence Convention, which provides for the exchange of information regarding civil or administrative tax matters. Many Members also have ratified the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, which extends assistance in tax matters through an Additional Protocol. The Additional Protocol has been ratified by Austria, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Luxembourg (but not yet in force), Netherlands, Norway,

Poland, Portugal, Spain, Sweden, Turkey, and the United Kingdom (signed by Belgium, Switzerland but not yet in effect). The United States, Mexico and Canada enter into various tax information exchange agreements that provide for the exchange of bank and other information for the purpose of administering the taxes of the parties.

97. The EC Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering also provides Member States with the possibility of obtaining bank information for tax purposes. Article 6 of the Directive requires Member States to ensure that credit and financial institutions and their directors and employees co-operate fully with the authorities in charge of combating money laundering. Although Article 6 provides that the information received pursuant to Article 6 should only be used to combat money laundering, it also expressly permits Member States to authorise the use of the information for other purposes. Thus, Member States may provide in their domestic law that such information may also be used for tax purposes. No country reported having changed its law pursuant to this provision. However, a number of OECD Member countries, inside and outside the European Union indicated that they do have some access to banking and other information gathered by other domestic authorities for purposes of combating money laundering.

98. The domestic laws of some countries provide another means for exchanging information. For example, Ireland's Criminal Justice Act of 1994 permits information to be obtained for the purpose of investigating or prosecuting criminal offences, including tax offences, in other countries. The Swiss Federal Law on International Mutual Assistance in criminal matters authorises the provision of mutual judicial assistance in cases of fiscal fraud. The assistance is provided by Swiss judicial authorities after consultation with the federal tax administration. Similarly, under the Criminal Justice (International Co-operation) Act 1990, the United Kingdom has certain powers to respond to requests from judicial authorities of other countries in cases involving investigation into or proceedings against alleged criminal offences, including tax offences. The Act enables requesting countries to obtain evidence from third parties such as banks in connection with fiscal criminal offences. In the United States, a foreign country may seek judicial assistance to obtain bank information pursuant to section 28 U.S.C. 1782.

Information reporting by taxpayers

99. More than half of the Member countries (Belgium, Canada, Denmark, Finland, France, Iceland, Ireland, Italy, Luxembourg, Mexico, Norway, Spain,

Sweden, Switzerland, Turkey, United Kingdom, United States) require taxpayers to inform the tax authorities whether they have foreign bank accounts, usually on the annual income tax return. The duty to report the existence of the foreign account may depend on the amount deposited in the account or whether interest is credited to the account. Denmark and Sweden also require taxpayers to file both a power of attorney with the tax authorities to allow them to examine the foreign bank account and a declaration from the foreign bank that it has agreed to submit an annual report to the tax authorities with information on the interest paid in the prior year and the balance of the account at the end of the year.

100. Most countries do not require taxpayers to report the opening of foreign bank accounts to the Central Bank or other authority (other than the tax administration). Such reporting is required in the Czech Republic, Hungary, Norway, Poland, and Spain.

101. All countries except Poland tax residents on interest income earned on foreign bank accounts. Poland taxes legal persons on such income but exempts interest earned by individuals on foreign and domestic accounts from such taxation.

Interest income: Use of withholding at source to tax interest payments

102. Some countries consider that withholding tax at source on interest income coupled with a reimbursement system to obtain treaty benefits is a useful mechanism to discourage non-compliance with the taxes due on cross-border interest flows. The withholding tax is intended to encourage non-resident taxpayers to seek reimbursement of the tax withheld. In order to be reimbursed, the non-resident must provide the tax authorities of the source country with a certificate of residence from the tax authorities of the country of residence. In this way, the tax authorities of the country of residence should become informed, directly from the taxpayer, of the income earned in the source country. In such countries' view, such a system does not require the lifting of bank secrecy in the source country. Further, other countries believe that withholding does not effectively address non-compliance with the tax laws of the residence country.

103. The European Commission has issued a proposed Directive that, if approved, would require EU countries to adopt one of two options: to withhold tax on interest paid to EU resident individuals at a rate of 20% or to exchange information automatically on such interest payments. The technical aspects of a "hybrid approach" to taxation of cross border interest flows are being considered by WP8 and the Special Sessions on Innovative Financial Transactions.

Trends concerning access to bank information

For tax purposes

104. Most countries reported changes to their laws and/or administrative rules or practice regarding access to bank information. For the most part, the changes reflected a move towards expansion of access to bank information for tax purposes. For example, Belgium broadened the exception to access to bank information by eliminating the requirement of complicity of tax evasion between the taxpayer and the financial institution. It also broadened its reference to tax fraud to include the preparation of tax fraud. As of 1st April 1995, Finland no longer requires bank information to be necessary for tax purposes; it is enough that it may be needed for tax administration purposes. In addition, the criteria for requesting bank information in Finland have been relaxed. Now only one of the following pieces of information is necessary to request bank information: name of the person, bank account number, entry on the account, or other similar specifying information. Poland greatly expanded its access to bank information for tax purposes in connection with admission to the OECD in 1997 and currently there is virtually no restriction on access to bank information for tax purposes.

105. Some countries enhanced access to bank information by adding information reporting requirements. For example, Canada enacted new reporting requirements for foreign investment assets, including bank accounts for tax years 1998 and subsequent years. France enacted Article L96A LPF, which establishes the obligation for credit institutions to report the date and amount of transfers of funds at the request of the tax administration. Sweden imposed the obligation on banks and others to automatically provide information on interest to the tax authorities.

106. Luxembourg formalised the existing traditional lack of access to bank information in the Regulation of the Grand Duchy of 24 March 1989. On the other hand, the scope of international mutual assistance in judicial matters was extended, under certain conditions to fiscal matters.

Non-tax purposes

107. Most of the changes in access to bank information for non-tax purposes were made to combat money laundering (Austria, Belgium, Canada, Ireland, Italy, Luxembourg, Sweden, Switzerland, United States). See Chapter II for a discussion of the relationship of tax crimes and anti-money laundering programs. Italy also has expanded the judicial authority to fight organised crime.

Proposals to change laws relating to bank secrecy

108. Only Luxembourg, Sweden and Turkey have proposals pending to change the laws or practices with respect to bank secrecy. The Luxembourg government recently proposed changes to access to bank information for purposes of combating money laundering. Sweden's tax administration has proposed that TINs be used by foreign account holders. There is also a proposal in Sweden to allow access to information which can be used in a tax examination of a third person. As of April 1998, the Turkish Ministry of Finance has the power to require the use of TINs for commercial and financial activities. The mandatory use of TINs for financial services, including opening a bank account, will be introduced in the near future. Once that requirement has been established, the Ministry of Finance intends to request automatic reporting from banks and special finance institutions.

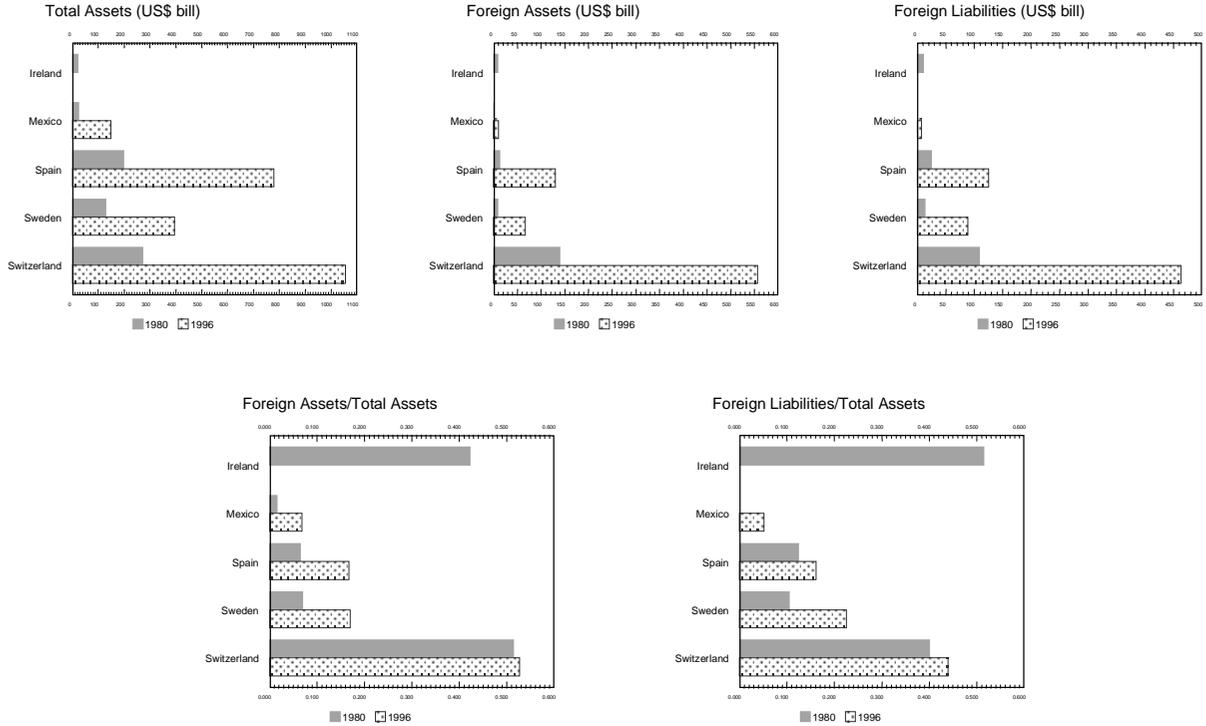
Conclusions to be drawn from current practices

109. The results of the survey reveal that the vast majority of countries have substantial access to bank information for both domestic tax administration purposes and for purposes of exchange of information. However, some important impediments to effective access to bank information for tax purposes continue to exist. First, not all countries allow their tax authorities access to bank information for tax administration purposes, including exchange of information. Second, most, but not all, countries have adequate customer identification requirements for bank customers. Improvements could be made to ensure that accurate and reliable information is obtained and recorded by banks regarding the identity of their customers and in particular about the beneficial owners of bank accounts. Third, a potential barrier to exchange of bank information with treaty partners exists in countries that require a domestic tax interest to obtain and provide bank information to a treaty partner. Fourth, the requirement of reciprocity is also a barrier to exchange of information in some countries. The Committee agrees that at this stage, improvements in each of these areas should be pursued within the context of specific requests for information. The Committee will continue to work on improvements in automatic reporting and automatic exchange of information in connection with the study of the use of withholding taxes and/or exchange of information to enhance the taxation of cross-border interest flows.

Annex I

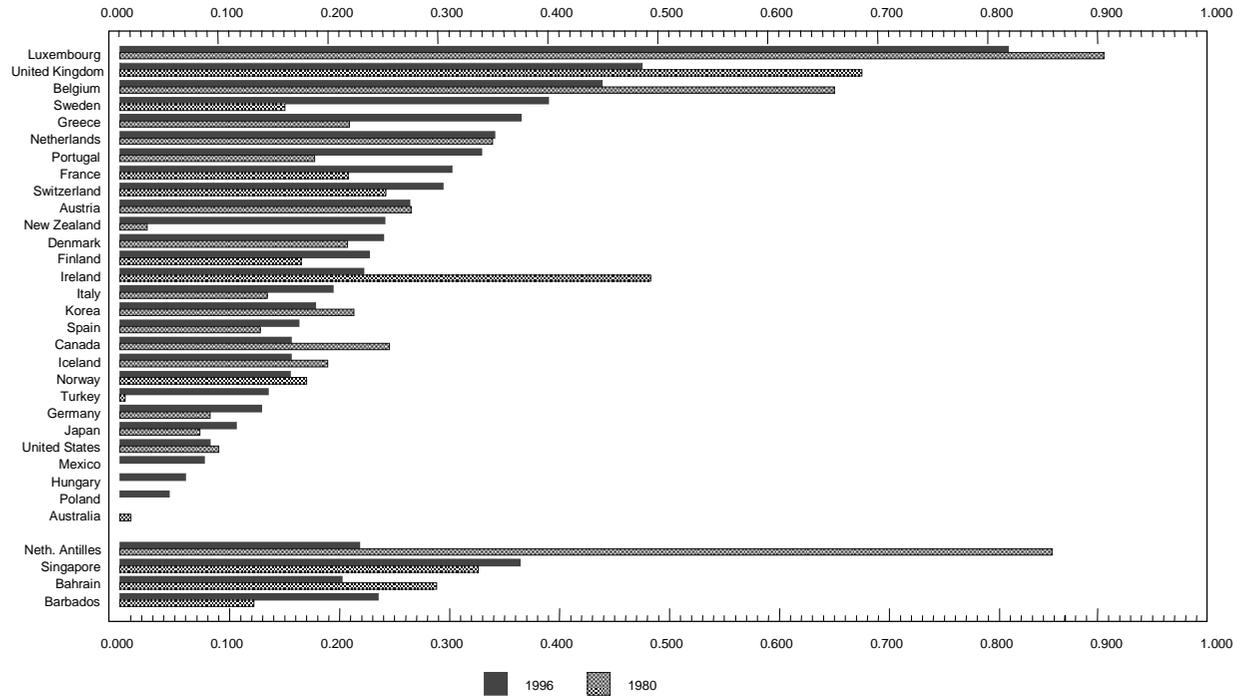
FOREIGN ASSETS AND LIABILITIES

Deposit Money Banks and other Banking Institutions

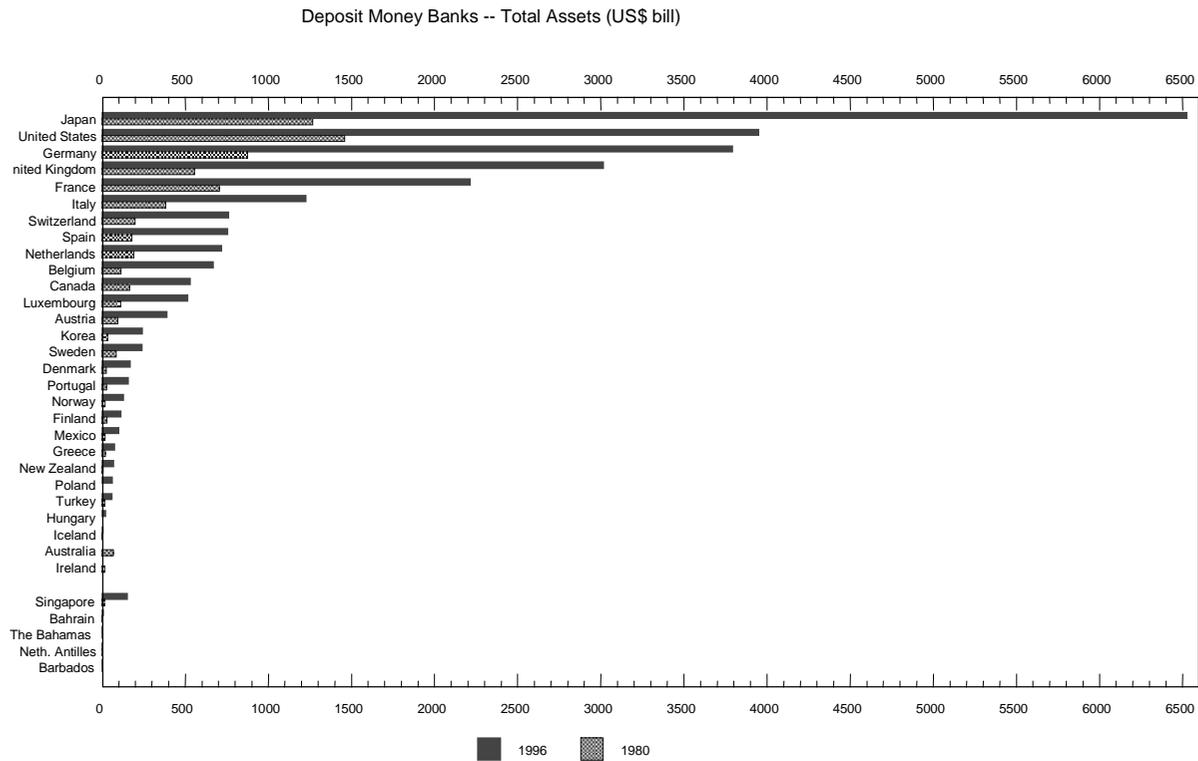


Source: IMF International Finance Statistics Yearbook, Vol. L. 1997.

Deposit Money Banks -- Foreign Liabilities/Total Assets



Source: IMF International Finance Statistics Yearbook, Vol. L. 1997.



Source: IMF International Finance Statistics Yearbook, Vol. L. 1997.

Appendix I

SURVEY OF COUNTRY PRACTICES ON ACCESS TO BANK INFORMATION FOR TAX PURPOSES

(This survey is based on responses to a questionnaire circulated in 1997 to Member countries and the Slovak Republic)

1. General Information about Bank Secrecy

1.1 What is the basis for bank secrecy:

1.1.1 explicit legislative provisions

The vast majority of Member countries has explicit legislative provisions dealing with bank secrecy: **Australia, Austria, Canada** (applies to confidentiality provisions), **Czech Republic, Denmark, Finland, France, Greece, Hungary, Iceland, Korea,¹ Luxembourg, Mexico, New Zealand** (Privacy Act of 1993), **Norway** (separate Acts govern some categories of banks, e.g. the Bank of Norway, commercial banks and savings banks; some of these acts contain explicit secrecy provisions. For non-governmental financial institutions not covered by a separate Act, the general secrecy provision of the Act on financing and financial institutions applies. For governmental financial institutions where their separate acts do not contain a secrecy clause, the general secrecy provisions of §13 of the Administration Act apply), **Poland** (Banking Act contains explicit secrecy provisions and Code of Fiscal Liabilities assures the access to bank information to tax administration; the Code of Administrative Procedure grants the public prosecutor the right to participate in any administrative procedure and to access to bank information), **Portugal, Sweden, Switzerland** (based on civil and commercial law), **Turkey** (Art. 22 of the Banks Act, No. 4389), and the **United States**.

Only **Belgium, Germany, Ireland, Italy, Japan, Netherlands, Spain**, and the **United Kingdom** do not have such legislation.

1. Korean replies to the questionnaire reflect the situation as of 31 December 1997.

The **Slovak Republic** has explicit legislative provisions dealing with bank secrecy.

1.1.2 specific administrative rules

No country reported having specific administrative rules.

1.1.3 tradition or administrative practice

This is the case in **Belgium** (financial institutions are subject to a duty of discretion); **Italy** (bank secrecy is not governed by specific provisions but is based upon tradition and many rules, including those of the constitution, that protect personal freedom, inviolability of residence and secrecy of mail); and **Japan** (bank secrecy is not regulated by law but generally is permitted for three reasons: to support business practices, to fulfil contract terms, and to encourage trust between the bank and its clients). In addition to explicit legislative provisions, **New Zealand's** Code of Banking Practice provides for bank secrecy.

1.1.4 other, please specify.

In common law countries, such as **Canada, Ireland, New Zealand,** and the **United Kingdom,** bank secrecy also may be based on the common law principle that confidentiality stems from the contractual relationship between the bank and customer (*Tournier v. National Provincial and Union Bank of England*). It also is based on the contractual nature of the relationship between the bank and its customer in **Germany** and in the **Netherlands** (the rules of the Dutch criminal and civil code that apply to this contractual relationship ensure the confidentiality of the customer information held by the bank).

France mentioned Article 57 of the Law of 24 January 1984 on the activity and control of credit institutions as another source of bank secrecy. Article 57 establishes professional secrecy for professionals and other employees of credit institutions.

In **Iceland,** bank secrecy might also be based on Act No. 121/1989 on registration and handling on personal data.

In **Spain**, there is no bank secrecy; the law only establishes the scope of, and the procedure by which, information may be requested, paying special attention to the right to individual privacy.

1.2 *If the basis for this bank secrecy differs for taxation matters, what is the basis for bank secrecy in taxation matters*

The basis is found in explicit legislative provisions in **Belgium, Czech Republic, Finland, Germany, Greece, Hungary, Korea, Luxembourg, Mexico, New Zealand, Poland, Sweden, Turkey**, and the **United States**. In **Germany**, the relationship between the bank and its customer is based upon strict confidentiality and the tax law respects this relationship to a certain extent. For example, according to sec. 30 a of the fiscal code, tax authorities must not request information on bank accounts in order to generally verify the correct reporting of interest.

The **Slovak Republic** has explicit legislative provisions.

The basis for bank secrecy may also be found in some kind of administrative rule, tradition or administrative practice.

In common law countries, the common law may require bank secrecy unless disclosure is made under compulsion of the law, if there is a duty to the public to disclose, the interest of the bank requires disclosure, or if the disclosure is made by the express or implied consent of the customer.

1.3 *If the bank information is available to the tax administration through an exception to bank secrecy rules, please provide a copy of the provision of law under which the exception is made*

In **Belgium**, access to bank information by the tax administration depends on the nature of the tax involved. Bank secrecy is the most strict in cases relating to income tax: the administration may not ask banking institutions for information about their clients for income tax purposes unless an audit reveals concrete elements which allow the tax authorities to presume the existence or the preparation of a fiscal fraud mechanism. If these elements exist, the directors of the tax administration can lift bank secrecy to permit the completion of the audit and to determine the amount of tax due from the client. In contrast, when a taxpayer challenges a tax adjustment, the investigative powers of the administration are broader: within the context of that challenge, the inspector may require a banking institution to provide all information known to it that

might be useful for investigating the challenge. With respect to the VAT, the registration, customs and excise duties, there is no need to establish a presumption of fraud to lift bank secrecy but the inspector must request authorisation from the director general of his administration. There is no bank secrecy with respect to estate taxes.

In **Germany**, except for the limitation noted in 1.2 (on access to bank accounts to verify the reporting of interest income), and **Iceland**, the tax authorities have access to bank information in the same way they can approach any other third party to investigate the relevant facts and circumstances of a case.

In **Switzerland**, bank secrecy cannot be asserted as a defence to supplying bank information to the tax administration in the case of a criminal investigation by judicial authorities (article 186 and sq. of the law on direct federal tax). Bank secrecy is only lifted in the case of tax fraud as defined by Swiss law.

In the **United States**, bank secrecy is primarily based on the Right to Financial Privacy Act and the regulations thereunder. State laws also provide bank secrecy but these laws must comply with federal rules. The Right to Financial Privacy Act provides an exception to bank secrecy (12 U.S.C. section 3413(c)) for financial records sought in accordance with the procedures set forth in Title 26 of the U.S. Code (i.e., the Internal Revenue Code). The most commonly used procedure for obtaining financial records from banks for federal tax purposes is the administrative summons procedure contained in section 7609 of the Internal Revenue Code. In addition, 12 U.S.C. section 3413(k) authorises the disclosure of the names and addresses of account-holders to the Treasury Department for purposes of withholding taxes on non-resident aliens. The Right to Financial Privacy Act contains other exceptions (sections 3402, 3403(c) and (d), 3413 and 3414) that are applicable to government authorities in general and these exceptions would also be available for use in appropriate tax matters. These exceptions generally relate to the use of administrative or judicial subpoenas and search warrants.

1.4 *Have measures been taken to relax bank secrecy in order to combat money laundering?*

All Member countries except **Korea** (which is waiting for the legislative ratification of the anti-money laundering bill proposed by the Government) and the **Netherlands** (which has no legal bank secrecy) have taken measures to relax bank secrecy to combat money laundering: **Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy** (Law No.227/90 and Law No. 197/1991, as

integrated by legislative Decree No. 125/1977 and legislative Decree No. 153/97), **Japan, Luxembourg, Mexico, New Zealand, Norway, Poland** (based on the provisions of the Banking Act and The Code of Penal Procedure, the bank is obliged to report some information to the public prosecutor and to collect specific data), **Portugal, Spain, Sweden, Switzerland, Turkey** (Art. 5 of the Money Laundering Act, No. 4208), **United Kingdom**, and the **United States**. Two examples of the measures taken by the **United States** are the requirements for banks to file Suspicious Activity Reports (Reg. section 103.21) for suspicious transactions and Currency Transaction Reports for transactions in currency of more than \$10,000 (Reg. section 103.22).

The **Netherlands** has no legal bank secrecy and therefore has not taken measures to relax legal bank secrecy to combat money laundering. However, in response to the Council Directive on the Prevention of the Use of the Financial System for the Purpose of Money Laundering as well as the Financial Action Task Force Recommendations, the Netherlands has enacted the Law on Disclosure of Unusual Transactions of 1993 which requires that unusual transactions be reported to the Disclosure Office. When this office decides that information is relevant for the prevention or detection of crime, it provides it to the police or public prosecutor.

The **Slovak Republic** also has relaxed bank secrecy to combat money laundering.

1.4.1 Does the tax administration have access to this information?

The tax administration has access to this information in more than half of the Member countries: **Australia; Belgium** (indirectly, i.e., via judicial authorities); **Canada** (usually only available to Revenue Canada if a formal requirement is used); **Czech Republic; Finland** (indirectly; once the police uncover the origin of the money, they ask the tax administration whether the person has had any taxable income); **France; Germany** (see 1.4); **Greece; Iceland; Ireland; Italy** (in the past, monetary transactions and bonds over L. 20 million could be made only through qualified financial brokers, i.e., banks, postal offices, brokers, etc.; all information for transactions over L 20 million must be submitted to the tax administration within the framework of fiscal monitoring. Since June 1997, all such operations may be made without the intermediation of a bank; in all cases the obligations of the banks do not change. A person who imports or exports over 20 million lira must provide the Ufficio Italiano Cambi (UIC) with a declaration which the UIC will transmit to the tax

administration); **Japan**; **Netherlands** (access to reported suspicious transactions permitted within the framework of an ongoing fiscal criminal investigation on tax matters); **New Zealand** (provided there is suspicion of a serious offence); **Poland** according to the provisions of the Code of Fiscal Liabilities, the access of the public prosecutor and several administrative bodies to bank information is guaranteed); **Portugal** (indirectly; once the police uncover the origin of money, they ask the tax administration whether the person has had any taxable income. In addition, the tax authorities have automatic access to housing, tenant, emigrant and retirement savings accounts because they are obliged to verify that no money laundering is occurring through these accounts.); **Switzerland** (on request from the tax authorities in case of tax fraud); **Turkey**; the **United Kingdom** and the **United States**.

The tax administration has no access to this information in **Austria**, **Denmark**, **Hungary**, **Luxembourg**, **Mexico**, **Norway**, **Spain** (but the Commission entrusted with the control and information processing established by the law on measures to prevent money laundering is subject to the general tax information rules), and **Sweden**.

The **Slovak Republic** gives the tax administration access to this information but only to the extent that they would have access to it according to the law and not merely on suspicion of tax evasion.

1.5 *Regarding information provided to the bank when the account is opened and the information that must be maintained by the bank:*

1.5.1 Is it possible to open an anonymous account? An anonymous account is an account which is opened under a code name or an account for which the identity of the holder need not be declared.

It is possible in **Austria** but only by its residents for savings accounts (bank deposit books). However, banks in Austria generally will know the identity of accountholders of large savings accounts. Austria's foreign exchange regulations require the bank to verify the client's residence status although the law does not specify the means of verification. Further, withdrawals from these accounts are only possible in cash; transfers to other accounts are not permitted. Austria intends to re-examine its legislation concerning anonymous accounts in 2000. The **Czech Republic** reported that anonymous deposits are

possible up to an equivalent of \$3700 but these deposits cannot be used for business transactions. These types of accounts are based on pre-1989 provisions and most were opened before 1989. They were opened only by individuals in savings banks. The trend for the future is to not allow the opening of new accounts of this type.

It is not possible in the **Slovak Republic**.

- 1.5.1.1 If anonymous accounts are permitted, please describe any limitations that would apply, e.g. availability only to residents, maximum amount, etc.

See answers to 1.5.1.

- 1.5.2 *If anonymous accounts are permitted, is the identity of the holder of the account always known by the bank?*

The identity of the account holder is not known in **Austria** or the **Czech Republic** (see 1.5.1).

- 1.5.3. *Is it possible to obtain a so-called numbered account? Numbered accounts are accounts for which transactions between the client and the bank are based only upon the number of the account without any reference to the identity of the holder of the account.*

It is only possible in **Austria**, **Luxembourg**, and **Switzerland**. **Turkey** noted that the use of numbered accounts was recently forbidden by a Central Bank Regulation.

It is not possible in the **Slovak Republic**.

- 1.5.3.1 If numbered accounts are permitted, please describe any limitations that would apply, e.g. availability only to residents, maximum amount, etc.

In **Switzerland**, the numbered account only has a security character within the bank and it does not exempt the bank from identifying the customer.

1.5.4. If yes, is the identity of the holder of the account always known by the bank?

In **Austria**, the identity of both resident and non-resident accountholders is known except in the case of anonymous saving deposit books, which may be opened only by residents. In **Luxembourg** and **Switzerland** the identity is known for both residents and non-residents. In **Luxembourg**, with respect to all other transactions, there is an obligation to require the identification of the client for an amount over LUF 500,000 realised in one or more transactions which appear to be linked.

1.5.5 When an account is opened, what identification information (document, tax identification number (TIN), other ID number) must be provided and is this number verified from a document provided? Please specify if there is a difference between resident and non residents.

1.5.5.1 For an anonymous account

In **Austria**, according to Foreign Exchange Regulation 2/91 of the Austrian National Bank (Oesterreichische Nationalbank), banks are obliged to clarify a client's status with regard to foreign exchange regulations (resident or non-resident status) upon entering into business relations. However, banks may choose the appropriate method in order to clarify whether the client has resident status or not. In the **Czech Republic**, no information is required to be provided.

1.5.5.2 For a numbered account

Identification is required by showing a document in **Austria** (official document with photograph, e.g. passport, driver's license, etc.; see also 1.5.5.1), **Luxembourg** (identification of clients by a probative document such as an identity card or passport or similar document), and **Switzerland** (numbered accounts have a security character within the bank and do not exempt the client from identification; an identity card, passport or similar official document must be shown).

1.5.5.3 For accounts other than anonymous and numbered accounts

1.5.5.3.1 Information provided when opening bank accounts

All countries require information to identify the bank account holder with varying degrees of detail: For example, **Australia** (uses a point system whereby different types of identification are worth a different number of points; 100 points are necessary to open account); **Belgium** (name, address; anti-money laundering law of 11 January 1993 requires banks to verify the identity of clients at the commencement of their relationship with a regular client, when a person other than a regular client wishes to conduct a transaction in excess of 10.000 ECU's, whether it's a single transaction or a series of related transactions, and when there is an indication of money laundering even if the amount is less than 10.000 ECU's); **Canada** (name, address and social insurance number required); **Czech Republic** (for natural person: name, address, birth identification number or date of birth, in the case of an alien, also the number of travel document and citizenship; for legal entity: commercial name, place of residence (seat), business identification number and identification of representative who is acting on behalf of this legal entity); **Denmark** (name, address, CPR-No. or S.E. No.; if the owner has neither a CPR-No. nor a S.E. No., he must give his birthday; if the owner gives a foreign address, he must give his native country); **Finland** (sufficient information about the person opening the account, the person entitled to use it and the owner of the account; for individuals, a TIN, for legal persons, an extract from the Trade Register articles of association and a TIN); **Germany** (same information required for residents and non-residents, name and address); **Greece** (identification card required); **Iceland** (name, address and ID number); **Ireland** (identity and current permanent address); **Italy** (for both residents and non-residents, an identifying card and TINs issued by the Italian tax

authorities are required; for companies a TIN issued by the Italian tax authorities and documents describing the features of the company); **Mexico** (for individuals: name, date and place of birth, nationality, Federal TIN, profession and/or activity, address, phone, main professional activity, name of the company, address and telephone; for corporations: corporate name and address, name of the manager or attorney, type of business, Federal TIN, number of the official corporate charter and date of incorporation); **Norway** (name and address plus TIN if a resident); **Poland** (the Banking Act contains no specific provisions on the matter so it depends on general conditions issued independently by each bank); **Portugal** (TIN, identification and documentation to verify the identity of the customer are required); **Sweden** (name and address plus TIN if a resident); **Turkey** (for both residents and non-residents: identity, address, telephone number and a document to verify the identity of the bank account holder); **United States** (for domestic accounts of U.S. and foreign financial institutions: for U.S. citizens and residents, name and address, along with TIN, on a form signed under penalty of perjury, and for foreign persons, name and address in country of permanent residence, on a form signed under penalties of perjury. For foreign branches and subsidiaries of U.S. financial institutions, the information is the same except foreign persons may establish their status through documentary evidence instead of the standard IRS form).

1.5.5.3.2 Document provided when opening bank accounts:

Most countries also require some form of documentation to verify the identity of the bank account holder. For example: **Australia** (the 100 point system in general results in a taxpayer having to provide at least 3 forms of identification); **Austria** (official document with photograph, e.g. passport, driver's license etc.; see also 1.5.5.1); **Belgium** (identity card for nationals, identity card or similar document for non-nationals); **Czech Republic** (for

natural person: passport, identity card; for legal entity: certified excerpt of its registration); **Denmark** (identification papers must be produced to confirm data); **Finland** (document to verify TIN); **France**; **Germany** (identity card or passport); **Greece** (identity card or passport); **Hungary** (certified sample of signature of those having the right of disposal over the account, certificate of registration, TIN, statistical number); **Iceland** (passport, ID card or similar documents); **Ireland** (passport or driving license and a recent household bill); **Italy** (for both residents and non-residents, an identifying card and TINs issued by the Italian tax authorities are required; for companies, a TIN issued by Italian tax authorities and documents describing the features of the company); **Japan**; **Luxembourg**; **Mexico** (for individuals: official ID, energy or water bill as proof of the address given; for corporations: copy of the application for obtaining a Federal TIN or TIN card, telephone or utility contract, copies of the corporate charter and power of attorney who executed the checking account contract); **Netherlands** (for resident or non-resident individual: passport, driving licence, refugee licence or municipal identity card; for a Dutch legal entity: a certified excerpt of its registration with the Chamber of Commerce, written declaration by a notary established in the Netherlands; for a foreign legal entity: a written declaration by a notary established in the Netherlands or in the EU or European Economic area (EEA) or comparable person if legal entity established in EU or EEA. The Minister of Finance is authorised by law to designate cases for which the identification requirements are fulfilled when it is established that the first payment from the client is to be debited from or is to be credited to, an account opened in the customer's name with a bank in the Netherlands or in another country designated by the Minister of Finance); **New Zealand** (the bank has to ensure the clients are whom they claim to be - Section 6 Financial Transactions Reporting Act 1996); **Poland** (depends on the general conditions issued by each bank); **Portugal** (identity card or

passport); **Spain** (identity card); **Sweden** (identity card or passport); **Turkey**; **United Kingdom** (the Law requires “reasonable measures”, nature unspecified, to be taken to establish identification. However, issued guidance, approved by the Bank of England, makes clear that name verification must be carried out, e.g. checking document such as passport and address verification e.g. electoral roll); and the **United States** (documentary evidence is required if the financial institution is required to file a currency transaction report (Reg. section 103.28). Documentary evidence is an option for accounts with foreign branches and subsidiaries of U.S. financial institutions. Documents must establish an individual’s citizenship and residence).

The **Slovak Republic** requires individual residents to provide identity cards and non-resident individuals must provide a passport. Both individual residents and non-residents must provide a sample signature for anyone having signature authority over the account. Entrepreneurs must also provide a TIN. Legal entities must provide a certificate of registration, TIN, a sample of the signature of anyone having signature authority over the account.

1.5.5.3.3 Provision of TIN when opening an account

Almost half of the Member countries require TINs to be provided when an account is opened. This is generally the case in **Canada** (social security number); **Denmark** (CPR-NO or SE-NO.; if the owner has neither CPR-NO. or SE-NO, he must give his birthday); **Finland**; **Hungary**; **Iceland**; **Italy** (both for residents and non-residents, the TIN issued by the Italian tax authorities is required); **Korea** (national registration number for residents, for non-residents, foreigner’s registration number issued by Korean immigration authority or passport number); **Mexico**; **Norway**; **Poland** (only for legal entities); **Portugal**; **Spain**; **Sweden** (TIN is required for residents), **Turkey** (as of April 1998, the legislation gave the power to the Ministry of Finance to require

the TIN for commercial and financial activities but that power has not yet been exercised), and the **United States**. In **Norway**, the TIN is required for residents; for non-residents the bank has to require a special TIN called a D-number). In **Portugal** and **Spain**, a TIN is required both for individuals and legal entities, whether they are residents or non-residents; legal persons must also provide their Tax Identity Code. In the **United States**, a TIN is required for residents. For non-residents, regulations have been issued that require the provision of a U.S. TIN in certain circumstances.

In **Australia** and **New Zealand**, the TIN is not required but if it is not provided, there is a withholding of tax at the highest marginal rate. In **Ireland**, no TIN is required (except for resident companies and pension schemes which are entitled to payment of interest without withholding).

Austria, Germany, Japan, and Switzerland do not use TINs.

In the **Slovak Republic**, TINs are required for resident and non-resident individual entrepreneurs and for legal entities.

1.5.5.3.4 Document provided to verify TIN

Some official document bearing the TIN must be provided in **Denmark** (at the opening of an account the owner must produce identification papers to confirm all the dates), **Finland, Iceland, Korea** (for nationals, identity card or document bearing the national registration number; for foreigners, document bearing foreign registration number issued by immigration authorities or passport); **Mexico** (federal TIN card); **Norway, Poland, Portugal, Spain, Sweden** (identity card).

The **Slovak Republic** also requires an official document to be produced bearing the TIN.

1.5.5.3.5 Any other identification number

In **Hungary**, a statistical number must be provided in addition to a TIN and other documentation.

1.5.6 *Regarding the means of removing funds from an account*

1.5.6.1 Is there a limitation on the means that can be used to remove funds from an account?

For anonymous accounts there is a limitation in **Austria**: withdrawals from savings accounts are only possible in cash and transfers to another account are not permitted. For numbered accounts, there are no limitations in **Austria** and **Switzerland**.

For accounts other than anonymous accounts and numbered accounts, there are generally no limitations in almost all Member countries: **Australia** (but all telegraphic transfers of funds in and out of the country are reported to AUSTRAC), **Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece** (if the transaction exceeds GRD 4 million, the bank is required to indicate the tax identification number of the parties on the documents delivered), **Hungary, Iceland, Ireland, Italy** (but transactions over Lit. 20 million, even if parcelled out in 7 working days, must be registered by banks under the money laundering law), **Japan, Korea, Mexico, Netherlands** (no limitations imposed by law but in practice banks impose limitations to which clients agree by signing a contract for the opening of an account), **New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom**, and the **United States**. There are limitations in **Greece**. In **Luxembourg**, there are no limitations imposed by law but there are limitations as far as the usual banking practice is concerned.

There are no limitations on removal of funds in the **Slovak Republic**.

1.5.6.2 If yes, please describe the limitation, e.g. prohibition on wire transfers, mail withdrawals etc.

In **Austria**, withdrawals from savings accounts are only possible in cash if the deposit book is presented at the bank. It is impossible to transfer money from the savings account (deposit book) to another account. **Greece** requires identification from the client regardless of the amount involved.

1.6 *Please describe how the information and documentation requirements listed are enforced if the bank does not comply.*

In general, a bank that does not comply is subject to penalties. In **Australia**, a range of penalties may apply, depending on the circumstances, to the banks (“cash dealer”) under Sections 18, 28 and 29 of the Financial Transactions Reports (FTR) Act which is administered by the Australian Transaction Reports and Analysis Centre (AUSTRAC). In **Austria**, the most serious penalty may be the revocation of the bank’s license. Other examples of penalties are: **Belgium** (the authorities may publish the decisions and measures they will take and impose administrative fines of 10.000Fb up to a maximum of 50 million Fb for failure to comply with the 11 January 1993 money laundering law); **Canada** (by court order); **Czech Republic** (monetary penalties of up to 2 CZK million may be imposed); **Denmark** (daily fines may be imposed); **Finland** (a request to the Financial Inspection to order the bank to supply the information and documentation requested, subject to a fine); **France** (monetary penalties of 10.000FF to 20.000 FF. for failure to supply the information after a reminder); **Germany** (a bank that does not comply is subject to penalties. However, in a criminal investigation regarding tax fraud, banks are usually required by court order to produce information); **Greece** (fine between 500.000 and 50.000.000 GRD); **Hungary** (see 3.7); **Iceland** (fine may be imposed); **Ireland** (breach of the requirement mentioned in 1.5.5.3.1 is an offence punishable by fine or imprisonment, or both); **Italy** (the most substantial penalties apply to failure to comply with the money laundering law and can reach 25% of the transferred sum); **Japan** (the relevant authorities instruct the bank to comply with their request); **Korea**; **Luxembourg** (fines or imprisonment); **Mexico** (monetary penalties equalling approximately US\$1739 to US\$26,087 adjusted for inflation, and criminal sanctions); **Netherlands** (fine of up to Fl 100.000 and imprisonment of up to four years. The tax administration and the banks have agreed on a Code of Conduct with regard to information requirements. This Code contains a procedure for solving disputes in case of disagreement on a special request for information. If a bank does not comply with the law on the

disclosure of unusual transactions a criminal offence is committed to which sanctions apply. If a bank does not comply with the Identification Act an economic offence is committed); **New Zealand** (failure to verify the identity of clients is a criminal offence); **Norway** (after repeated reminders, monetary penalties can be imposed); **Poland** (according to Article 105 of the Banking Act, the bank bears civil liability for the losses of a client caused as a result of the disclosure of the secret information and its being used for unauthorised purposes. The Committee of Banking Supervision may recall the president, vice-president or other member of the bank's board of management directly responsible for fiscal offences, and fiscal penalties and deprivation of liberty of up to 3 years may also be imposed under Article 171 of the Banking Act on any person obliged to supply bank information who delivers false information or conceals true information); **Portugal** (fine in accordance with Art. 211 b) of D.L. 298/92 of 31 December in the amount of 200.000\$00 up to 200.000.000\$00); **Spain** (an order to comply may be issued and penalties can be imposed by the Central Bank); **Sweden** (administrative penalties may be imposed); **Switzerland** (the sanctions may be criminal, administrative or conventional); **Turkey** (the requirements are regulated by the Undersecretariat of the Treasury, and the banking institutions are audited by sworn bank auditors. Various sanctions and penalties are imposed when these requirements are not fulfilled); the **United Kingdom** (the Bank of England carries out regular checks of systems and controls in place within banks); and the **United States** (financial institutions are subject to audit by the Treasury Department on their compliance with the Treasury Regulations. Title 31 U.S.C. sections 5321 and 5322 provide civil and criminal sanctions for failure to comply with the reporting requirements).

In the **Slovak Republic**, monetary penalties of up to 2 SK million (approximately US\$57,000) may be imposed.

2. The Obligation of Banks to Give Information in Matters Other Than Taxation

2.1 Country	Are banks obliged to give information for Criminal proceedings?						Are banks obliged to give information for Civil Proceedings?						Are banks obliged to give information for Debt collection and bankruptcy?					
	domestic			international			domestic			international			domestic			international		
	y	n	si	y	n	si	y		si	y	n	si	y	n	si	y	n	si
Australia ¹			x			x			x			x	x					x
Austria	x					x			x			x			x			x
Belgium	x					x	x					x	x					x
Canada	x			x			x					x			x			x
Czech Republic ²	x			x			x			x			x			x		
Denmark	x					x	x					x	x			x		
Finland	x			x					x			x	x			x		
France	x			x					x			x			x			x
Germany	x			x				x			x			x				x
Greece			x			x		x			x			x				x
Hungary ³	x			x			x			x			x			x		
Iceland ⁴	x					x	x				x	x	x			x		
Ireland			x			x			x			x			x			x
Italy	x					x			x			x	x					x
Japan	x			x			x			x			x			x		
Korea			x			x			x			x			x			x
Luxembourg	x					x		x			x		x					x
Mexico	x			x			x			x			x			x		
Netherlands	x			x			x			x			x			x		
New Zealand	x			x			x			x			x			x		

2.1	Are banks obliged to give information for Criminal proceedings?				Are banks obliged to give information for Civil Proceedings?				Are banks obliged to give information for Debt collection and bankruptcy?					
Norway	x			x	x				x	x				x
Poland ⁵	x		x					x		x		x		x
Portugal	x		x					x				x		x
Spain	x		x					x				x		x
Sweden	x		x		x		x			x			x	
Switzerland	x		x					x		x			x	
Turkey	x				x	x				x	x			x
United Kingdom			x		x			x					x	x
United States ⁶	x		x		x			x			x		x	
Slovak Republic ⁷	x		x		x			x			x		x	

y: yes - n: no - si: in some instances, see answers to 2.1.2

Notes

1. The obligation has been qualified by legal decisions. The qualifications are that the disclosure is compulsory by law, that there is a duty to the public to disclose, where the interest of the bank requires disclosure, when there is express or implied consent of the customer.
2. For international proceedings, bank information may be obtained under a mutual legal assistance treaty through Czech competent authorities.
3. In Hungary, banks are obliged to give information in international proceedings only through the competent Hungarian authorities.
4. International, under treaties on legal assistance.
5. According to the Banking Act of Poland, the President of the Banking Guarantee Fund, who participates in the banking proceedings.
6. For international proceedings, bank information may be obtained under a mutual legal assistance treaty (criminal cases only), the Hague Evidence Convention (civil cases only), letters rogatory or 28 U.S.C. 1782.
7. Banks are obliged to give information in international proceedings only through the Slovak competent authorities.

2.1.1 If yes, to whom are the banks obliged to give the information?

Banks generally are obliged to give the information to judicial authorities. For example, that is the case in **Belgium, Canada** (only if there is a warrant from a Canadian court or other legal authority), **France, Germany** (in criminal proceedings other than taxation, information will generally be given to the public prosecutor and the order to produce the information will be issued by a court), **Hungary** (to receivers, prosecutors, courts, other government offices as provided by section 51 and only upon written request), **Iceland** (to the courts and public prosecutor; in a civil proceeding to the court if it so decides), **Ireland** (depending on the circumstances, to the court, parties to legal proceedings, the Central Bank of Ireland, the police and other third parties), **Italy** (to judicial authorities as a general rule, to the Prosecutor of the Republic and to the Chief of Police (Questore)), **Japan** (to the police, courts, and prosecutor), **Mexico** (only to a judge and during a judicial proceeding for international purposes, subject to international agreements), **Netherlands** (to the public prosecutor in criminal proceedings, to the court in civil proceedings and to the trustee in bankruptcy), **New Zealand** (police, official assignee, liquidators provided correct documentation submitted, e.g. search warrants), **Norway** (to the courts and the prosecutor, to the counsel only through the court), **Portugal** (banks are obliged to comply with court decisions), **Poland** (courts, prosecutor, Supreme Chamber of Audit, President of Banking Guarantee Fund), **Spain** (to the courts), **Sweden** (to the police), **Turkey, United Kingdom** (to parties to legal proceedings), **United States** (to the person or authority seeking the information, usually pursuant to a summons, subpoena, or a court order).

In the **Slovak Republic**, banks are required to give the information upon request made in writing to a court of justice, for purposes of a civil proceeding; a law enforcement authority for purposes of a criminal prosecution; fiscal and customs authorities for tax or customs proceedings to which the client is a party; a bailiff named by a court to act as agent for a debtor in bankruptcy; and the financial department of the Police Force for official purposes according to the law.

2.1.2 *If the answer to one of the six questions above has been “In some instances”, please specify .*

Austria will provide information for criminal proceedings pursuant to international agreements on judicial assistance or on administrative assistance in criminal tax or customs matters. **Belgium** may provide information for international proceedings (criminal, civil, or debt or bankruptcy proceedings) pursuant to international agreements. In **Canada**, there is an obligation to give information to the legal representative (trustee) of the bankrupt, including a foreign trustee. **Denmark** obliges banks to give information for civil proceedings if decided by the Court. In case of debt collection or bankruptcy, a bank must give information if decided by the Court. In **Finland**, as of 15 March 1997, new legislation provides that banks are obliged to give information to an execution officer if the name of the debtor is known, the information is necessary (indispensable) for the execution and an execution is pending. In case of bankruptcy, the trustee in bankruptcy has access to all information in a similar way as the debtor himself before the bankruptcy.

In **France**, banks are required to provide information in certain civil cases. When the bank is a party to a civil judicial proceeding, bank secrecy is maintained in principle and in practice. Bank secrecy is lifted in the limited circumstances where the bank is not a party to the proceedings and the proceedings are matrimonial proceedings or for the recovery of credit.

In **Greece**, the tribunal, in pronouncing a judgment for cause, is authorised to permit the banks to furnish information for a judicial inquiry and for purposes of punishing certain criminal offenses. Greece also applies the European Convention on Mutual Judicial Assistance of 13 December 1957.

In **Italy**, judicial authorities have a general power to access bank information only in criminal proceedings; in civil proceedings there are limitations. In the international context, the essential requisite is the existence of a bilateral agreement on mutual assistance in a judicial matter. The acquisition of such information by judicial authorities must not be contrary to internal law. **Korea** requires banks to provide information where the information is requested pursuant to a court order or warrant issued by a judge.

In **Luxembourg**, in the international context, information will be provided in criminal proceedings pursuant to the European

Convention on Mutual Assistance in criminal matters or if there is a bilateral treaty on assistance in criminal matters.

In **Norway**, in criminal and civil cases, the judge will consider individually whether the requested information is relevant to the case and if the importance of the information is such that general secrecy should be lifted and an obligation to provide the information imposed. In general, an obligation to supply information to courts must be expected. In international cases, the same obligation will exist if provided under the tax treaty. The same applies to enforcement and bankruptcy cases in courts. Other than enforcement by courts, there is no obligation for banks to supply information. When secrecy is lifted, the court room will be closed to the public and the court will order those present to keep the information secret. In **Poland**, the court can obtain information for a criminal, fiscal or alimony suit, or a suit on pension or division of joint property in case of divorce.

In **Portugal**, the bankruptcy court or its agents have access to the debtor's account balance. In **Spain**, in civil proceedings there is an obligation to supply the information required by the judicial authority. Defendants may assert the right of non-self incrimination. Debt collection and bankruptcy proceedings are not specifically contemplated in Spanish law and are conducted as civil or criminal proceedings, as the case may be. **Switzerland** requires banks to provide information in domestic civil estate proceedings when requested by the heirs. For international civil proceedings banks are obliged to disclose information only pursuant to a convention or to legal heirs. In **Turkey**, in the international context, information will be provided in criminal proceedings if there is a treaty on mutual assistance in criminal matters with the requesting country, and in civil proceedings if a treaty on mutual assistance on judicial matters exists. In Ireland and the **United Kingdom**, information will be provided in accordance with the directions of the court, or other legal requirements.

3. Access to Bank Information for Tax Administrations

3.1 *Automatic reporting from banks*

Most Member countries require banks to “automatically” report information to tax authorities: **Australia, Canada, Denmark, Finland, France, Greece, Hungary, Ireland, Italy, Japan, Korea, Netherlands** (according to Code of Conduct), **Portugal, New Zealand, Norway, Spain, Sweden, United**

Kingdom, and the **United States**. The specific information required to be reported automatically by banks in each of these countries is identified in 3.1.1.

Banks are *not* required to do so in **Austria, Belgium, Czech Republic, Germany, Iceland, Luxembourg, Mexico, Poland** (income from bank accounts is not subject to taxation), **Portugal, Switzerland**, and **Turkey** (the Ministry of Finance has the legal power to request automatic reporting and intends to use this power in the future).

The **Slovak Republic** requires automatic reporting by banks.

3.1.1 *Types of information automatically reported by banks to tax authorities*

	Opening / closing of accounts	Interest paid and to whom it is paid	Account balance at year end	Other
Australia		X		
Belgium				X ¹
Canada		(in most instances)		where tax withheld must be reported
Denmark	X	X	X	X ²
Finland		X ³		X
France	X	X		must report all income from capital
Greece	X			X
Hungary⁴	X			
Ireland		X ⁵		
Italy				X ⁶
Japan		X		
Korea		X		tax withheld from interest paid
Netherlands		paid to residents		
New Zealand		X		

	Opening / closing of accounts	Interest paid and to whom it is paid	Account balance at year end	Other
Norway		interest accrued at year end	X	interest on loans
Portugal				use of household savings for other purpose
Spain		X		X ⁷
Sweden		X	X	interest on loans
United Kingdom		X ⁸		
United States		X ⁹		X ¹⁰
Slovak Republic	X			account number, name and address of account holder

1. Where banks have to withhold tax on income from capital, they have to declare the type of income, the taxable income and the justification of the tax exemption if any. The identity of the beneficiary must not, however, be provided to the tax administration.
2. Where information on interest paid by a taxpayer to the bank and the debt claim on which the interest is paid, information on transfer of bonds and securities has to be reported.
3. The following types of interest must be reported by banks: interest paid by the client to the bank and the balance of the capital at the end of the year; interest paid on deposits that are not subject to the withholding tax on interest income; and if interest is paid to a non-resident, the tax administration gets annual reports which are then sent for control purposes to foreign countries by the tax administration.
4. Banks are required to report to the tax administration the date an account is opened, the account number, name and address of the account holder within 15 days of the opening of the account.
5. Except when deposit interest retention tax has been deducted or where paid to a non-resident person on foot of a statutory declaration by the person to that effect (which must be retained for Revenue inspection).
6. Banks must transmit to the Ministry of Finance RAD Models concerning withholding taxes on dividends paid to non-residents when the bank acted as a broker in the transaction. All information relevant to transactions to and from abroad concerning money, securities and bonds over £ 20 million.
7. Any income paid by banks or from any foreign securities when these institutions have received them in deposit or to operate them as account managers. The reporting requirements also cover: the issue subscription and transfer of securities including public debt, the transfer of mortgage securities in which credit institutions intervene.
8. Except where individuals have made a declaration that they are not ordinarily resident in the United Kingdom and request that the information should not be passed to the Inland Revenue.
9. For U.S. persons who are not exempt recipients and non-resident aliens who are residents of Canada. Banks also required to report certain other types of interest paid to U.S. persons.
10. Suspicious transaction reports and currency transaction reports.

3.1.2 *Does the tax administration have a centralised data bank of bank accounts?*

Only **France, Hungary, Korea, Norway, and Spain** have such centralised data banks. **France** requires financial institutions managing stocks, bonds or cash to report on a monthly basis the opening, modifications, and closing of accounts of all kinds. This information is stored in a computerised database which is used by the French tax administration for research, control and collection purposes. **Korea** has a separately designated database within the tax administration's overall database which contains the information reported automatically by banks with respect to their interest payments (i.e., the amount of interest paid, tax withheld on the interest, bank account to which interest accrued, identity of accountholder together with his/her resident registration number or business registration number). This database is utilised mainly for the verification of income tax and inheritance tax returns. The database in **Spain** is similar in that it identifies for each taxpayer the bank accounts of which he is the accountholder if there has been withholding at source, income from mobile capital if there has been withholding at source, and information on checks on current accounts received in cash over 500 000 pesetas.

3.2 *Information provided upon request*

Domestic tax authorities have access to information about accounts *without limitations* in **Australia, Czech Republic, Denmark, Finland, France, Italy, Norway, New Zealand, Spain, and Turkey**. Most countries have some form of limitation but the range of limitations is quite broad.

Domestic tax authorities have access to information about accounts *with limitations* in **Austria** (only if there are criminal proceedings or if the taxpayer consents); **Belgium** (audit must show concrete elements which allow the tax authorities to presume the existence or the preparation of a fiscal fraud mechanism); **Canada; Germany; Greece** (when a taxpayer's file is being verified, the tax controller, within the framework of his authority, after receiving a concurring opinion from the Finance Inspector, has the right to ask for all information, including banking information, necessary to accomplish his task); **Iceland; Ireland; Hungary; Japan; Korea; Mexico; Netherlands** (the information must be relevant to levy Netherlands taxes or is requested by a tax treaty partner for the application of the treaty or the treaty partner's tax legislation); **New Zealand; Poland** (in the circumstances described in the Code of Fiscal Liabilities); **Portugal** (unless a criminal proceeding is pending or upon an enforcement order issued by the Court at the request of the tax administration); **Sweden; Switzerland** (in the case of judicial inquiries);

United Kingdom; and the **United States** (if the following Powell case standards of good faith are met: (1) bona fide investigation; (2) the information summoned is relevant to the investigation; (3) that all the required administrative steps have been followed; (4) that the summoned information is not already in the possession of the tax authority. The Powell standards have been liberally construed by U.S. courts and as a result banks routinely comply with IRS summons without requiring judicial enforcement).

The tax authorities of **Luxembourg** do not have direct access to bank information.

The **Slovak Republic** has access to information without limitation but the request must be made in writing.

- for a specified person without limitations

This is the case in **Australia, Canada, Czech Republic, Denmark, Finland, France, Greece, Iceland, Italy, Mexico, New Zealand, Norway, Poland, Spain, Sweden, Turkey,** and the **United States** (subject to requirements noted above) but not in **Austria, Belgium, Germany, Hungary, Ireland, Japan, Korea, Luxembourg, Netherlands, Portugal, Switzerland** and **United Kingdom.**

- for a specified person suspected of tax fraud

This is the case in **Australia, Austria** (subject to requirements noted above), **Belgium** (under certain conditions), **Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Mexico, Netherlands, New Zealand, Norway, Poland, Spain, Sweden, Switzerland, Turkey, United Kingdom** and the **United States** (subject to the requirements noted above), but not in **Luxembourg** (only indirect access to bank information by judicial authorities), or **Portugal**, (unless a criminal proceeding is pending and upon an enforcement order issued by the Court at the request of the tax administration).

- which belong to a specified third person not himself suspected of tax fraud but who has had economic transactions with a specified person suspected of tax fraud

This is the case in **Australia, Austria** (subject to requirements noted above), **Canada, Czech Republic, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Korea, Mexico, Netherlands, New Zealand, Norway, Poland, Spain, Turkey, United Kingdom,** and the **United States** (subject to

requirements noted above) but not in **Belgium, Greece, Hungary, Luxembourg, Portugal**, (unless a criminal proceeding is pending or upon an enforcement order issued by the Court at the request of the tax administration), **Sweden, and Switzerland**.

- which belong to a family member of the person concerned by the request

This is the case in **Australia, Canada, Czech Republic, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Korea, Mexico, Netherlands, New Zealand, Norway, Turkey, United Kingdom**, and the **United States** (subject to the requirements noted above), but not in **Austria, Belgium, Greece, Hungary, Luxembourg, Poland, Portugal**, (unless a criminal proceeding is pending or upon an enforcement order issued by the Court at the request of the tax administration), **Spain, Sweden, and Switzerland**.

- Please specify any other limitations or conditions that have to be met (e.g. what degree of precision is required from the tax administration in order for the bank to identify the bank account holder, the bank account: the name of the bank account holder, the name of the bank, the number of the account, the address of the branch where the account is held etc.).

Austria: the name of the client is usually sufficient; for anonymous accounts, the account number has to be specified.

Belgium: where a presumption of organisation or preparation of income tax fraud is found, access to bank information is possible provided there is an exact identification of the financial institution and of the client, and with prior joint approval of the Director General of the tax administration, the General Administrator of Taxes, and the Deputy General Administrator of Taxes. With respect to VAT, the presumption of tax fraud is not necessary for lifting bank secrecy but the inspector must request authorisation from the director general of his administration. In the case of an administrative appeal concerning an income tax adjustment, the tax official examining the appeal can access bank information of financial institutions that are creditors or debtors of the taxpayer if the taxpayer refuses to provide the information. The taxpayer can object to the financial institution providing the information if he considers that this information is not relevant for the examination of the appeal.

Canada: specific information can be obtained under the authority of a requirement. It should be preferable to have the address of the branch where the customer has a bank account.

Czech Republic: the name of the bank account holder and the name of the bank must be provided.

Finland: the request must include the name of the person, bank account number, entry on the account or other similar specifying criteria, the information may be needed for the taxation or appeal of a taxpayer, the information is included in the documents which are held by the bank or known to the bank and the information is not such that a person would be entitled to refuse to testify in court (but information that has an impact on taxation and which concerns the economic status of a person must always be given).

France: generally the identification of the account must be provided.

Germany: no particular requirements must be met. However, a bank will need sufficient information to locate the account.

Greece: the person must be identified by name and identity card.

Hungary: the client, bank account, categories of data requested and purpose of the request must be provided.

Iceland: the name of the client.

Ireland: In order to serve a notice on a financial institution requesting the financial institution to furnish information, an authorised officer must have reasonable grounds to believe that the financial institution is likely to have relevant information and the requirements contained in the notice must, in the reasonable opinion of the authorised officer, be relevant to the person's liability to any of the taxes or duties under the care and management of the Revenue Commissioners. (S906A TCA 1997). In other circumstances, e.g., where the identity of the taxpayer is unknown, information may be requested from the financial institution with the consent of an Appeal Commissioner (S907 TCA 1997) or by order of the High Court (Section 908 TCA 1997). In relation to deposits held by non-residents, in order to avoid the application of withholding tax, a non-resident is required to make a statutory declaration to the effect that they are the beneficial owner of the account and identify their country of residence. These declarations are available to the Revenue Commissioners.

Italy: when the tax administration requests a bank to provide a copy of the statement of account relevant to the audited customer, the bank has at least 60 days to answer. After the copy of the statement of account is received, the tax administration can request additional information about the account if necessary by sending a questionnaire to the bank.

Korea: a written request must be sent to the concerned office of the financial institution stating the personal data of the concerned party, the purpose for which the information will be used and contents of the information requested.

Netherlands: for individuals, the tax administration must first check other possible information sources, including the client himself before requesting the information from the bank. It has to provide the name, address, and date of birth of the bank account holder (in some cases he can be identified with the number of the account only).

New Zealand: the class of person or individual taxpayer must be identified.

Portugal: bank information may only be obtained if there is a criminal proceeding or if an enforcement order is issued by a court at the request of the tax administration and also in cases where fiscal benefits are provided through bank accounts (e.g., special treatment of retirement savings).

Spain: the information must be of fiscal significance and may be used only for tax purposes. The request has to be authorised by the General Director or Territorial Delegates when it relates to current account activity, savings and fixed deposits, debt and credit accounts, and other active and passive operations. Accounts, operations investigated, taxpayers affected and timing have to be specified.

Sweden: the TIN or personal identification number, number of registration for legal entities, and the name and address of the bank account holder have to be provided.

Turkey: information can be requested about persons who fit a given definition (e.g. persons who obtained interest income over a certain amount).

United Kingdom: the tax authorities need the name of the bank branch and probable account holders. In addition, the documents sought must be known to exist. The provisions of Section 20 Taxes Management Act must be complied with. In particular, the consent of an independent commissioner must be obtained, who must be satisfied that the documents are relevant to the enquiries.

United States: there are no special requirements that must be met. However, the bank will need sufficient information to locate the account.

3.3 *If the bank has special information about the economic situation, business activities, etc., of a client, which has been obtained for creditability purposes:*

3.3.1 *It is possible for the domestic tax authorities to obtain this information*

More than half of the Member countries can obtain this information: **Australia, Canada, Czech Republic, Denmark, Finland, France, Greece, Germany** (if the information is relevant, tax authorities will ask the taxpayer to provide it and if he does not comply, the information can be obtained from the bank), **Iceland** (if relevant for an investigation), **Ireland, Japan, Korea, Mexico, New Zealand, Norway, Poland, Turkey, United Kingdom**, and the **United States**.

This information may also be obtained by the tax administrators of the **Slovak Republic**.

It is *not* possible for the domestic tax authorities to obtain this information in **Austria** (except for criminal proceedings or if the taxpayer consents or for general and usual information about the economic situation of the client provided that he does not object to disclosure of such information), **Belgium** (except in exceptional cases), **Hungary, Italy** (not in general but the bank and postal service could be required to provide the administration with a copy of a statement of account specifying every transaction and all third party securities under Article 32 of DPR. No. 600/1973), **Luxembourg, Netherlands** (except in the case of suspicion of fraud if the information is necessary for the levying of the tax), **Portugal, Spain** (in general, although there is a general obligation to provide to the tax administration any data, information or background related to tax matters derived from economic, professional or financial relations with third parties), **Sweden**, and **Switzerland**.

3.3.2 This kind of information *cannot be given* to foreign tax administrations in **Hungary, Italy, Luxembourg, Portugal, Spain** (subject to tax treaty obligations and limits), **Sweden**, and **Switzerland**.

This kind of information *can be given* to foreign tax administrations in **Australia**, (if a proper treaty request is made), **Austria** (if access to this information is possible and according to the provisions of a tax treaty), **Belgium** (if access to this information is possible), **Canada**,

Czech Republic (under a bilateral tax treaty), **Denmark, Finland, France, Germany** (if the information can be obtained for domestic tax purposes, it can also be given to a foreign tax administration pursuant to a tax treaty), **Greece, Iceland, Ireland, Japan** (subject to treaty obligations and limits), **Korea, Mexico, Netherlands** (only in case of suspicion of fraud if the information is necessary to tax), **New Zealand, Norway** (under treaty), **Poland** (under bilateral tax treaty), **Turkey** (subject to treaty obligations and limits), **United Kingdom**, and the **United States**.

The **Slovak Republic** may also give this information to foreign tax authorities only in the context of full reciprocity.

3.4 *Is a bank obliged to reveal whether a named person keeps an account with it?*

A bank is *obliged to reveal* whether a named person keeps an account with it in all countries except **Austria** (except if penal proceedings are pending or if taxpayer consents), **Belgium** (except in exceptional cases), **Luxembourg** (except in criminal cases), **Portugal** (except in criminal cases where a judge can decree the lifting of bank secrecy), and **Switzerland** (except in criminal cases).

A bank must also reveal such information in the **Slovak Republic**.

For questions 3.2, 3.3. and 3.4. please specify if there are limitations for the banks to give the information. Limitations could be that the holder of the account is non-resident; the information is only given after a decision by a court; etc.

There are *no limitations* in **Greece** with respect to non-residents and there is no need for a judicial decision.

There *are limitations* in **Belgium** (see comments on 3.2), **Canada** (a formal requirement is needed under the Income Tax Act, as all answers are on the basis that either the information is obtained under the authority to inspect or on the issuance of a requirement); **Ireland** (the limitations set out in 3.2 apply to the responses in paragraphs 3.3 and 3.4), **Poland** (according to the Banking Act, upon request of the persons listed in the Act), **Switzerland**, and **United Kingdom**. In the **United States**, if a summons is challenged, a court proceeding is needed to enforce the summons but the summons will be enforced unless the person can show the Powell standards described in 3.2 have not been met.

3.5 *Can information from banks be obtained for the purpose of exchange of information under tax treaties?*

Most countries can obtain information from banks for the purpose of exchange of information. **Portugal** can obtain some information for exchange of information purposes (statistical information or information which would be legally in possession of the tax administration, such as the benefits granted for housing purposes through banking accounts). In **Luxembourg**, tax authorities do not have the authority to obtain bank information for tax purposes.

3.5.1 *Bank information can be obtained in the same way as information obtained for domestic tax purposes in the vast majority of Member countries:*

Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Japan, Korea, Mexico, Netherlands (on the basis of reciprocity), **New Zealand, Norway, Poland, Portugal, Spain, Sweden, Turkey**, and the **United States** but not in **Ireland, Switzerland** and the **United Kingdom**.

The **Slovak Republic** can obtain information in the same way that it obtains information for domestic tax purposes.

3.5.1.1 If not, please describe any difference

In **Switzerland**, only international judicial assistance as provided in the Federal Law of International Mutual Assistance in Criminal Matters (EIMP) permits the lifting of bank secrecy. On a unilateral basis, subject to reciprocity, Switzerland offers to all countries mutual assistance in criminal matters, including in the case of fiscal fraud in accordance with article 3.3 of the EIMP. For **Ireland** and the **United Kingdom**, see the answer under 3.5.2.1. In Ireland, if the account holder has made a non-resident declaration in order to claim exemption from Irish deposit interest retention tax, Ireland can exchange this information, which will include the name of the deposit taker, account number, name, address, signature and country of residence of the beneficial owner.

3.5.2 *Bank information can be obtained for the purpose of exchange of information for a legitimate tax purpose under tax treaties without constraints in*

Germany, Hungary, Iceland, New Zealand, Mexico, Norway, Poland, Turkey, but subject to constraints in the **Netherlands** (some treaties entered into prior to 1977, such as those with Belgium, Luxembourg, Austria, and Germany, do not require the parties to exchange bank information. The Netherlands is, however, willing to exchange bank information on request under these treaties on the basis of reciprocity pursuant to its authority under the EU-Directive on mutual assistance).

Bank information can be obtained for the purpose of exchange of information for a legitimate tax purpose under tax treaties without constraints in the **Slovak Republic**. Some treaties, such as those with Austria and Germany do not require the parties to exchange bank information but Slovakia is willing to exchange information under these treaties on the basis of reciprocity.

3.5.2.1 Requirement of a domestic tax interest?

There is no requirement of a domestic tax interest in **Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Hungary, Iceland, Korea, Mexico, Netherlands, Norway, Poland, Spain, Sweden, Turkey**, and the **United States**.

There is one in **Greece, Ireland** (evidence of the ownership of an account can, however, be provided in most cases-see 3.5.1.1 above), **Japan, Luxembourg**, and the **United Kingdom** (except in relation to EU countries under the EU Directive on Mutual Assistance).

There is no such requirement in the **Slovak Republic**.

3.5.2.1.1 If yes please explain what qualifies as a domestic tax interest.

In **Japan**, information cannot be obtained from banks where no tax liability to Japan is at issue. As a practical matter, Japan has never denied a request for information on this basis. In **Ireland** and the

United Kingdom there is a domestic tax interest if the income in question would prima facie be liable to Irish or United Kingdom tax, respectively.

3.5.2.1.2 If yes please explain whether the requirement for a “domestic tax interest” is imposed as a matter of domestic law or treaty policy?

In **Japan**, the requirement is imposed by domestic law. In **Ireland**, where there exists a domestic tax interest requirement, this is imposed by domestic law. In the **United Kingdom**, the requirement is imposed by domestic law but does not apply in relation to EU countries.

3.5.2.2 Requirement that the information relate to a resident of a Contracting State under the treaties?

There is *no* such requirement in **Australia, Austria, Belgium, Canada, Czech Republic** (unless treaty limits it), **Denmark, Finland, France**, (most tax treaties do not limit exchanges on the basis of residency), **Germany, Greece** (but it depends on the formulation of the relevant article), **Iceland, Ireland, Japan, Korea, Mexico, Netherlands, New Zealand, Norway, Spain** (under the provisions established by each tax treaty), **Sweden, Turkey, United Kingdom**, and the **United States**.

There is no such requirement in the **Slovak Republic**.

There is a residence requirement in **Hungary, Italy and Poland**.

If yes, please explain your position

In **Poland**, Article 49d§1 item 6 of the Laws on tax liabilities requires exchanges to conform to terms of tax treaties. In **Italy**, the information must relate to a resident of a Contracting State because fiscal residence is the essential condition for using the results of an inquiry for tax purposes.

3.5.2.3 Is there a requirement under domestic law to notify the taxpayer?

There is such a requirement in **Germany** (for resident taxpayers in cases of exchange of information upon request and for spontaneous exchanges), **Hungary, Korea, Luxembourg, Netherlands, Portugal, Spain, Sweden, Switzerland, United Kingdom**, and the **United States**. There is no such requirement in **Italy** but the banks generally inform the customer when a request for information has been made by the tax administration.

If yes, please explain the notification requirement (please just refer to your answer to the 1990 questionnaire on updating and extending the guide to competent authorities on exchange of information if the law is the same)

In the countries concerned, notification applies in cases of exchanges on request and to spontaneous exchange in some countries. This obligation is lifted in the case of tax fraud in **Germany, Portugal** and **Sweden**. In **Hungary**, a bank is prohibited from notifying the client where the request has been made by the investigating authority, the Public Prosecution Office, the body authorised to use intelligence service tools and collect secret information, the National Security Service subject to authorisation for individual cases and where the request has been made in writing by the investigation authority, Public Prosecution Office, or the National Security Service if the bank account or transaction concerns drug trafficking, terrorism, illegal trade in arms, money laundering, organised crime. In **Korea**, under Article 47 of the Presidential Enforcement Decree to the Law for Co-ordination of International Tax Affairs, tax authorities are required to notify the taxpayer or its proxy before giving the information to the requesting treaty partner. In the **Netherlands**, notification is required in case of exchange of information (spontaneous and on request). If there is a suspicion of fraud or other urgent reason, the notification may be delayed. There is no notification required in the case of automatic exchange of bank interest information under bilateral arrangements. These arrangements are

published in “het Staatsblad” the Official Gazette in the Netherlands. In **Portugal**, notification is required except in some fraud cases (to avoid destruction of evidence, etc.). In **Spain**, the legal proceedings to obtain information for tax purposes include the requirement to send a notice to the taxpayer concerned that the competent General Director or Territorial Delegate has authorised a request to the bank; this requirement applies only in those cases (mainly those involving detailed account movements) where the said authorisation is necessary. In the **United Kingdom**, under Section 20 Taxes Management Act, reasons must be given, and a copy of the notice sent to the taxpayer (unless the independent commissioner directs otherwise). The taxpayer would not be notified where the information is provided routinely by the bank to the tax authority. In the **United States**, with certain exceptions, the account holder and any other person who is identified by the description of the records set forth in the summons must be notified in accordance with section 7609 of the Internal Revenue Code.

There is no notification requirement in the **Slovak Republic**.

3.5.2.4 Is there a domestic right of appeal available to the taxpayer?

In general, there is a possibility to appeal the decision to exchange information in all countries with notification requirements but not in **Sweden**. There is no such right concerning a request for bank information in **Australia, Austria, Belgium, Czech Republic, France, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Mexico, New Zealand, Norway, Poland, Spain, Sweden, Turkey, and United Kingdom** but there is one in **Finland, Germany, Luxembourg, Mexico, Netherlands, Switzerland, and the United States**.

There is no right to appeal in the **Slovak Republic**.

If yes, please explain the taxpayer's right of appeal (nb : some countries understood appeal right only in connection with notification rights).

Canada: the customer could appeal to the court.

Finland: the right of appeal is the general rule with certain exceptions provided by law. This right requires that the taxpayer be aware of the request (banks may inform their clients but the tax administration does not). In practice, there have been no appeals.

Germany: the taxpayer has the right to object to the decision to make information available to foreign tax administrations. If the tax authorities come to the conclusion that the objection has no substance, the taxpayer may appeal to the tax court to initiate a temporary injunction. If both the lower tax court as well as the Federal Tax Court reject the taxpayer's appeal (which they have done in several cases), the information will be exchanged.

Luxembourg: the right of appeal exists to control the legality of the action taken.

Mexico: the taxpayer may appeal only if a constitutional right is violated.

Netherlands: the taxpayer has 6 weeks to lodge an appeal with the tax administration and then can further appeal to the court within 3 weeks to suspend the exchange.

Switzerland: According to the rules of the cantonal penal procedures, the taxpayer is a party to the procedure and may assert his rights.

United States: the account holder and any other person given notice of the summons has the right to appeal.

- 3.5.2.5 The bank has no right of appeal under domestic law if the bank does not want to comply with the request to provide information in **Australia, Belgium, Czech Republic,**

France, Greece, Hungary, Iceland, Ireland, Japan, Korea, Mexico, New Zealand (no right of appeal if the request is made in respect of a named taxpayer but there is a right of appeal if the request is made in respect of a class of taxpayers), **Netherlands, Norway, Poland, Sweden, Turkey, and United Kingdom** (but may appeal against penalty for non-compliance or seek judicial review in courts). The bank has a right of appeal in **Austria, Canada, Denmark, Finland, Germany, Luxembourg, Sweden, Spain, Switzerland, and the United States.**

In the **Slovak Republic**, the bank has no right to appeal a request to provide information for tax purposes.

If yes, please explain the bank's appeal rights

Australia: a bank could not simply refuse to supply information without good reason or it would run the risk of prosecution (see answer to 3.7). However, it could appeal against the ATO's request for information to the Administrative Appeals Tribunal or a Court.

Austria: only by lodging an appeal of the imposition of a fine for non-compliance with a request for bank information.

Canada: the bank may appeal to the courts.

Denmark: a bank can appeal to the ordinary courts.

Finland: banks have very often used their right of appeal.

Germany: a bank can, as any other third party, appeal a request. An appeal will finally be decided by the tax court/Federal Tax Court.

Italy: a bank may oppose a request only if the request does not meet the formal requirements.

Luxembourg: the right to appeal is intended to control the legality of the action taken.

Spain: there is a general right of appeal of administrative action for reasons specified in the law (which include both matters of fact and right).

Switzerland: According to the rules of the cantonal penal procedures, the bank is also a party to the procedure and may assert its rights.

United States: the bank cannot commence a proceeding to quash. The person entitled to notice (usually the accountholder) can. If the accountholder does so, the bank can intervene and later appeal; also the bank may precipitate a challenge to the summons by not complying with it and defending against government enforcement action with a subsequent right of appeal.

3.5.3 *Subject to the limitations under Article 26-2 of the OECD Model Convention*

Bank information can be obtained for the purpose of exchange of information under tax treaties subject to the limitations under Article 26-2 of the OECD Model Convention in most Member countries: **Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland** (see answer under 3.5.2.1), **Italy, Japan, Korea, Mexico, Netherlands, New Zealand, Poland, Spain, Sweden, Turkey, United Kingdom** (see answer under 3.5.2.1), and the **United States**. It cannot be obtained for such purposes in **Luxembourg and Switzerland**.

In the **Slovak Republic**, bank information also can be obtained for purposes of exchange of information under tax treaties, subject to the limitations under Article 26-2 of the OECD Model Convention.

3.5.3.1 Bank information is not considered a trade, business, industrial, commercial or professional secret under Article 26(2)(c) of the OECD Model Tax Convention in most Member countries: **Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Mexico, Netherlands, New Zealand, Norway, Poland,**

Spain, Sweden, Turkey, United Kingdom, and the United States.

It is considered a trade, business, industrial, commercial or professional secret under Article 26(2)(c) of the OECD Model Tax Convention in **Portugal and Switzerland.**

If “yes”, please explain your position on this point (based on replies provided)

In **Portugal**, bank secrecy is viewed as a professional secret essential for the exercise of any economic banking activity. For **Switzerland**, see 1.1.1.

In the **Slovak Republic**, it depends on the scope of information. Amounts are generally available but details of projects or economic situation may be considered secret.

- 3.5.3.2 Provision of bank information to a treaty partner is not limited to a particular stage in a tax case in *most* Member countries: **Australia, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece** (but it must be related to tax administration), **Hungary, Iceland, Ireland, Italy, Japan, Korea, Netherlands, New Zealand, Norway, Poland, Spain, Sweden, Turkey, United Kingdom, and the United States.**

It is limited to a particular stage in a case in **Austria** (to penal proceedings initiated already in the applicant state according to the conditions mentioned in 3.2, 3.3 and 3.4) and **Switzerland** (to criminal proceedings), in **Mexico** (the information request must be made during the course of an on-going investigation).

It is not limited to a particular stage of an investigation in the **Slovak Republic.**

- 3.5.3.3 Is your willingness [clarification: “willingness” was intended to refer to the willingness as reflected in legislation and administrative practice] to provide

bank information limited to a particular type of tax case (e.g. civil versus criminal tax offence, refusal by the taxpayer to co-operate)?

The willingness to provide bank information is not limited to a particular type of tax case in most OECD countries: **Australia, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Mexico, Netherlands** (but the way in which the information is obtained may be different: in criminal tax investigations, the information is requested directly from the bank; in other cases the information must be requested first from the bank account holder, who is obligated to request it from the bank if he does not have the information. If the information is still not provided to the tax administration, then the tax administration will request it from the bank), **New Zealand, Norway, Poland, Spain, Sweden, Turkey,** and the **United States**. It is limited in **Austria, Belgium, Switzerland,** and the **United Kingdom**.

If “yes”, please explain your position on this point

For **Austria**, see 3.5.3.2. **Belgium** may lift bank secrecy and exchange information only in cases where there exists a presumption (based on concrete elements) of the existence or preparation of a mechanism of tax fraud. Under its tax treaties, **Switzerland** exchanges information for the correct application of the treaty except for information that is covered by bank secrecy. Only international judicial assistance as provided in the Federal Law of International Mutual Assistance in Criminal Matters (EIMP) permits the lifting of bank secrecy. On a unilateral basis, subject to reciprocity, Switzerland offers to all countries mutual assistance in criminal matters, including in the case of fiscal fraud in accordance with article 3.3 of the EIMP. The **United Kingdom** provides assistance only in the largest and most important cases.

In the **Slovak Republic**, the willingness to provide bank information is not limited to a particular stage in a tax case.

3.5.3.4 *Can you provide bank information in a form that would be usable in your treaty partner's courts?*

Some countries *cannot* provide bank information in a form that would be usable in their treaty partner's courts: **Italy, New Zealand, and Switzerland.**

The majority of countries can: **Australia, Canada** (best effort to accommodate needs, depends on foreign laws), **Czech Republic, Denmark and Finland** (depending on the form the treaty partner wants), **France** (a bank statement is admissible in court), **Greece** (there is no law relating to this), **Hungary, Iceland, Ireland** (within the limits of the information available); **Germany** (yes, in principle but it depends on the law of the treaty partner), **Japan** (depending on the form the treaty partner wants), **Korea** (depending on the form the treaty partner wants), **Mexico** (as long as the information is to be used only for tax purposes), **Netherlands, New Zealand** (subject to admissibility of evidence in courts of treaty partner), **Norway, Poland** (depends on the form and the scope of the information required), **Portugal** (depending on the form required by the foreign court), **Sweden** (subject to limitations in Conventions), **Spain, Turkey, United Kingdom** (depends what is meant by "usable form"), and the **United States.**

Subject to treaty limitations, the **Slovak Republic** can provide information in a form that would be admissible in its treaty partner's courts.

3.5.4 *Subject to other treaty limitations?*

The provision of bank information to a treaty partner is not subject to other tax treaty limitations in **Australia, Belgium, Canada, Czech Republic, Denmark, Finland, Germany, Hungary, Iceland, Ireland, Korea, New Zealand, Norway, and Sweden.**

Other treaty limitations apply in **Austria** (if limited exchange provision), **France** (limited to residents in some treaties or if treaty limits exchange to application of the treaty), **Greece** (it depends on the particular treaty), **Italy** (reciprocity requirement), **Japan** (individual treaty limitations), **Mexico** (if limited exchange provisions), **Netherlands** (see 3.5.2), **Poland** (bank information became available in 1997), **Spain**, (only those listed under Article 26 of the OECD Model Convention), **Turkey**, **United Kingdom**, and the **United States** (U.S. Model would provide information on all taxes, not just taxes under the treaty, however, some treaties limit exchange solely to covered taxes).

It is not subject to other treaty limitations in the **Slovak Republic** unless the exchange provision of a particular treaty is limited.

3.6 *Are domestic tax authorities subject to special constraints for passing information they have received from banks to foreign tax authorities?*

All domestic tax authorities must abide by the terms of their tax treaties and exchange of information agreements to provide bank information to foreign tax authorities but they are not subject to special constraints in most countries: **Austria**, **Belgium**, **Canada**, **Czech Republic**, **Denmark**, **Finland**, **France**, **Germany**, **Hungary**, **Iceland**, **Ireland**, **Japan**, **Korea**, **Mexico**, **New Zealand**, **Norway**, **Poland**, **Spain** (on the basis of reciprocity), **United Kingdom**, and the **United States**.

Would the following answers change if you assume that the exchange would occur pursuant to the terms of a treaty? They are in **Australia** (DTA), **Greece**, **Italy** (tax authorities must observe reciprocity and privacy requirements), **Luxembourg** (information obtained illegally cannot be transmitted), **Netherlands** (if there are no obligations according to EU Directives and other international agreements, the limitations of Article 26-2 apply; the information flow between countries should be based on reciprocity), **Poland** (on condition that the legal provisions in force in the country concerned harmonise the use of the information in accordance with tax treaties), **Portugal**, **Sweden** (normal secrecy rules apply regarding personal, business interests), **Switzerland** (only in the case of judicial assistance), and **Turkey** (only if a tax treaty makes possible such exchange of information and subject to the limitations of the tax treaty, i.e., used only for tax purposes, for taxes covered by the treaty. If these conditions are satisfied, the information can be presented to courts for civil and criminal tax offences by the treaty partner's tax authorities.).

Tax authorities in the **Slovak Republic** are not subject to special constraints.

3.7 *What administrative or juridical powers, if any, does the tax administration have to enforce a request for bank information if the bank refuses to comply with such a request?*

The tax administrations of **Hungary** and **Luxembourg** have no powers to make a bank comply but the bank supervisors in **Hungary** will commence an examination of the bank to determine whether the refusal to provide the information was well-founded. If not well-founded, the bank supervisor will impose a fine on the bank.

Countries that have powers to make banks comply generally have the same powers in both domestic and international matters.

Australia: the Commissioner can prosecute a bank that does not cooperate. The tax authority under section 264 of the ITAA (1936) can force a person to give evidence under oath either in writing or in person for purposes of the ITAA.

Austria: fines, seizure of documents, or revocation of license (as a measure of last resort) may be imposed.

Belgium: when the conditions for lifting bank secrecy are met, the bank is obligated to furnish the information permitting the taxation of the client. If the bank fails to comply with its obligations, the normal sanctions apply: administrative sanctions (fines) or criminal sanctions (if the violation is committed with the intent to defraud or to harm).

Canada: it is possible to go to court to make the bank comply.

Czech Republic: fines may be imposed under Article 37 of the Tax Administration Act.

Denmark: fines may be imposed.

Finland: If the bank refuses to comply with a request, the tax administration has the authority to order the bank to comply with the request under penalty of a fine; if the bank still doesn't comply, the tax administration is entitled to order payment of a conditionally imposed fine.

France: fines may be imposed for the failure to comply with the right of communication to obtain information (article 1740-1 of the CGI provides in the case of a refusal a penalty of 10.000F increased to 20.000F for failure to comply within the 30 days of notice of a delay).

Germany: an ordinary juridical procedure is available which has to be initiated by the bank. If the bank, without appealing the request, has refused to comply, multiple monetary penalties (Erzwingungsgeld) are available to make the bank comply.

Iceland: it is possible to go to court to make the bank comply.

Ireland: See 3.

Italy: fines may be imposed by the tax administration; furthermore, the tax authority may have direct access to the bank premises to control the necessary data when the bank has not provided the required information or if there are doubts as to the completeness or accuracy of the information provided.

Japan: If the request were made in relation to an ordinary tax examination, there is an administrative power for obtaining such bank information. If the request were made in relation to a criminal tax investigation, the tax administration could enforce it with a search warrant, which would be issued by a court upon the tax authorities' application. However, even in ordinary tax examination requests, the banks are usually co-operative.

Korea: If the request were made in relation to an ordinary tax examination, there is no judicial or administrative power. If the request were made in relation to a criminal tax investigation, the tax administration could enforce it with a search warrant, which would be issued by a court upon the tax authorities' application. However, even in ordinary tax examination requests, the banks are usually co-operative.

Mexico: Monetary penalties or criminal sanctions can be imposed.

Netherlands: there is a legal obligation to supply information to the tax administration. Non-compliance with a request constitutes an offence.

New Zealand: prosecution for failure to furnish information. Section 17A of the Tax Administration Act 1994.

Norway: The Norwegian Assessment Act gives the Tax Directorate (among other specified departments) a right to impose daily consecutive enforcement

finer on anyone (including banks) who does not fulfil a statutory obligation to provide information to the tax authorities (including bank information).

Poland: According to the provisions of par. 4 of Article 171 of the Banking Act, any person who, being obliged to supply the information on the bank and its customers, delivers false information or conceals it, shall be liable to a pecuniary penalty and to a penalty of imprisonment for up to 3 years.

Portugal: the tax authority may in both cases request the court to order the bank to provide the information.

Spain: refusal to comply with a request is a tax infringement.

Sweden: may impose administrative penalties.

Turkey: the tax administration can initiate an audit to get the information. The tax administration may request banks to give information and/or show their books and records by order of court.

United Kingdom: monetary penalties may be imposed.

United States: bank information is sought generally through an administrative summons. If the bank refuses to comply, the United States can seek enforcement of the summons in court.

Slovak Republic: fines may be imposed by the tax administration.

3.8 *Are there any penalties (fines, contempt sanctions etc.) imposed on banks that do not comply with a request for bank information?*

There are no such penalties in **Hungary** (see 3.7) or **Korea**, but penalties can be imposed in **Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Mexico, Netherlands, New Zealand, Norway** (criminal offence to supply incomplete or incorrect information for physical persons as well as banks), **Poland, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom**, and the **United States**.

The penalties are generally monetary penalties with imprisonment possible in some countries.

Austria: fines, seizure of documents, revocation of license as measure of last resort.

Belgium: administrative fines of 2.000 to 50.000Fb or criminal sanctions (if the violation is committed with the intent to defraud or to harm).

Canada: fines ranging from \$1,000 to \$25,000, with possible imprisonment of up to 12 months.

Germany: see 3.7.

Iceland: Failure to comply with a request for information from the tax authorities can be an infringement of the Income Tax Act and as such subject to monetary penalties or imprisonment.

Ireland: The failure to supply information required by an authorised officer is IR£ 15,000 and IR£ 2,000 for each day the failure continues (see under S906A or S907 TCA 1997).

Italy: According to law No. 413 of December 30, 1991, Article 18, par. 1: 1) if the transmitted documents are not true or are incomplete, a monetary penalty of Lit. 3.000.000 to Lit. 30.000.000 is imposed; 2) if documents are not transmitted, a monetary penalty of Lit. 3.000.000 to 30.000.000 is imposed. These amounts may be reduced by half if the delay relevant to the due date indicated in the request (usually fixed at 60 days) is not more than 15 days. In addition to monetary penalties, the tax administration could authorise its officers to have access to banks' and firms' premises to obtain the necessary information.

Japan: fine up to 200,000 yen or imprisonment up to one year.

Mexico: from amounts equalling approximately US\$8,696 up to US\$173,913 indexed quarterly based on the inflation rate.

Netherlands: fine up to F1 100.000 and imprisonment of up to 4 years.

New Zealand: same penalties that may be imposed under Section 112 of the District Courts Act of 1947.

Norway: fines or imprisonment of up to 2 years (in case of a substantial violation of the obligation to provide bank information to the tax authorities. The sanction would usually apply to the Chairman of the Board).

Poland: According to Article 171, item 4 of the Banking Act a fine of unspecified amount or penalty of imprisonment for up to 3 years may be imposed if the bank does not comply with a request for bank information.

Spain: fines from PTAs 1000 to 200 000 per item of omitted, false or incomplete information limited to 3% of the bank's turnover of the preceding civil year.

Sweden: administrative penalties.

Turkey: TL 300.000.000 in 2000. The administrative fine will be doubled for the second instance.

United Kingdom: up to £300 and, for continued failure to provide the information, daily penalties of up to £60.

United States: contempt sanctions would apply (e.g., fines, imprisonment).

Slovak Republic: fines up to 2 million SK (approximately US\$57,000).

3.9 *Please describe any other procedure or type of international agreement (e.g. mutual legal assistance treaties) under which bank information is available and answer each of the questions under 3.5, 3.6 and 3.7 as to the scope of the exchange, the powers of the authorities and penalties on banks for failure to comply. For example, Member States of the European Union have adopted Council Directives 77/799/EEC, 79/1070/EEC and 92/12/EEC (Article 30) which enable them to exchange information within the European Union on direct and indirect tax matters. Many Members also are parties to the Hague Evidence Convention, which provides for the exchange of information regarding civil or administrative tax matters.*

Austria: Mutual assistance treaties in criminal matters (e.g., the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, which extends assistance in tax matters through an Additional Protocol), treaties on judicial assistance.

Belgium: For criminal matters, Belgium has concluded the following agreements: The European Convention for Judicial Assistance in Criminal Matters of April 20, 1959 (entered into force in Belgium on 11/11/75) and the Additional Protocol to this Convention (signed by Belgium on 11/08/78 but not

yet in effect); The Extradition and Judicial Assistance Treaty in Criminal Matters signed on 27 June 1962 between Belgium, Luxembourg and the Netherlands; The Schengen Convention of 19 June 1990 (art. 48-69); various bilateral conventions on judicial assistance.

Canada: Bank information may be provided, for offenses against tax statutes that carry a criminal sanction, to treaty and non-treaty requests under mutual assistance and other domestic legislation.

Czech Republic: the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, which extends assistance in tax matters through an Additional Protocol.

Denmark: The Nordic Convention on Mutual Administrative Assistance in Tax Matters allows the Nordic countries to exchange bank and other information for all kinds of taxes except import duties; the joint OECD/Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters, the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, which extends assistance in tax matters through an Additional Protocol.

Finland: The Nordic Convention on Mutual Administrative Assistance in Tax Matters; joint OECD/Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters, the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, which extends assistance in tax matters through an Additional Protocol.

France: the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, which extends assistance in tax matters through an Additional Protocol.

Germany: If exchange of information is not covered by a tax treaty, the information may be obtained under other instruments such as bilateral or multilateral conventions dealing with co-operation in criminal matters. If certain requirements are met, bank information may also be obtained under the provisions of the fiscal code.

Greece: the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, which extends assistance in tax matters through an Additional Protocol.

Iceland: Bank information may be available under the Nordic Convention on Administrative Assistance in Tax Matters or the OECD/Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters,

or the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, which extends assistance in tax matters through an Additional Protocol.

Ireland: In addition to treaty-based exchanges of information, there are provisions of the Criminal Justice Act of 1994 for obtaining information for the purposes of investigating or prosecuting criminal offences, including fiscal offences, in other countries. Ireland has also ratified the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, which extends assistance in tax matters through an Additional Protocol.

Italy: the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, which extends assistance in tax matters through an Additional Protocol

Japan: Banks are obliged to give information if a search warrant is issued by a court for international assistance under criminal assistance treaties.

Korea: Banks are obliged to give information if a search warrant is issued by a judge upon a public prosecutor's request under criminal assistance treaties.

Luxembourg: the additional Protocol on tax matters to the European Convention on Mutual Assistance in criminal matters was ratified by Luxembourg on 27 August 1997. However, the final acts for the Protocol's entry into force have not yet occurred.

Netherlands: Bank information may be available under the European Convention for Judicial Assistance in Criminal Matters of 20 April 1959, the Extradition and Judicial Assistance Treaty in Criminal Matters signed on 27 June 1962, between Belgium, Luxembourg, and the Netherlands, the Schengen Convention of 19 June 1960, the OECD/Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

Norway: The Nordic Convention on Mutual Administrative Assistance in Tax Matters; joint OECD/Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters; the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, which extends assistance in tax matters through an Additional Protocol..

Poland: Bank Information may be available under the OECD/Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters or the European Convention on Mutual Assistance in Criminal Matters

of 20 April 1959, which extends assistance in tax matters through an Additional Protocol.

Portugal: the Central Bank may supply information to third countries under co-operation agreements or in case of non-compliance with Community Directives; Portugal has ratified the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, which extends assistance in tax matters through an Additional Protocol.

Spain: EC Directive on Mutual Assistance, the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, which extends assistance in tax matters through an Additional Protocol.

Sweden: Bank information may be available under the Nordic Convention on Administrative Assistance in Tax Matters or the OECD/Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters, or the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, which extends assistance in tax matters through an Additional Protocol.

Switzerland: Pursuant to the Federal Law on International Mutual Assistance in Criminal Matters, mutual judicial assistance is given by Switzerland in cases of fiscal fraud. This assistance is provided by the Swiss judicial authorities after consultation with the federal tax administration. Bank secrecy may not be used by banks as a defence to providing information under these procedures.

Turkey: the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, which extends assistance in tax matters through an Additional Protocol.

United Kingdom: Under the Criminal Justice (International Co-operation) Act 1990, the United Kingdom has certain powers to respond to requests from judicial authorities of other countries in cases involving investigation into or proceedings against alleged criminal offences, including fiscal offences. They generally only apply where the UK has formal mutual legal assistance agreements with a requesting country. Assistance may include service of documents, taking evidence before UK courts and providing witnesses for court appearances. The Act enables requesting countries to obtain evidence from third parties such as banks in connection with fiscal criminal offences. No obligation on Inland Revenue to provide information about tax affairs of particular individuals. The UK has ratified the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, which extends assistance in tax matters through an Additional Protocol.

United States: Bank information may be available under the OECD/Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters, treaties for mutual assistance in criminal matters, the Hague Evidence Convention, tax information exchange agreements, or by filing a legal action under 28 U.S.C section 1782.

Slovak Republic: Mutual assistance treaties in civil and criminal matters.

4. **Obligation for Resident Taxpayers to Declare their Bank Accounts Abroad**

4.1 *Are taxpayers under the obligation to declare every year their bank accounts held abroad?*

Taxpayers are *not* obliged to declare their foreign bank accounts in **Australia, Austria, Czech Republic, Germany, Greece, Hungary, Ireland** (only required to report the year of the opening of the account), **Italy** (but must report on tax return generally, all monetary transactions to and from abroad -but only referring to non-EU States - bonds and moveable property over £ 20 million, as well as all investments abroad over £ 20 million unless the investments abroad have been subjected to a withholding tax in Italy or if the same investments are non-taxable, etc.), **Japan, Korea, Netherlands, New Zealand, Poland, Portugal,** and the **United Kingdom.**

They are under the obligation to declare bank accounts held abroad in almost half of the Member countries: **Belgium** (as of tax year 1997), **Canada**, (if foreign investment property including bank accounts exceeds \$100 000; the requirement to provide information with respect to foreign banks has been delayed from the first reporting date of 1998 and subsequent taxation years), **Denmark** and **Sweden** (the taxpayer also has to file a power of attorney with the tax authorities to allow them to examine the foreign bank account and a declaration from the foreign bank that it has agreed to submit an annual report to the tax authorities without further request with information on interest paid in the previous year and the balance of the account at the end of the previous year), **Finland** (there is an obligation to report foreign source income), **France, Iceland, Luxembourg, Mexico** (reporting is mandatory only for investments in low tax jurisdictions), **Norway, Spain** (there is an obligation to report foreign source income and file a capital tax return that lists all assets if wealth superior to PTAs 17 million), **Sweden, Switzerland** (on the tax return for each fiscal period), **Turkey** (if interest is earned, the bank account and interest must be included in the income tax return), **United Kingdom** (but only where interest is credited), and the **United States** (if more than \$10,000).

There is no such obligation in the **Slovak Republic** because taxpayers are not allowed to have foreign bank accounts.

4.2 *If yes, what is the penalty for failing to do so?*

Generally, monetary penalties may be imposed and sometimes imprisonment.

Belgium (tax penalty from 10% up to 200% of the tax due on unreported income plus a fine of 2000 to 50 000 BF per offence. In case of fraudulent intent, criminal sanctions may apply (8 days to 2 years imprisonment and/or a fine from 10 000 to 500 000 BF which may be cumulative with administrative sanctions), **Canada** (penalties range from \$100 to 5% of the total cost of the foreign property), **Denmark** (fines), **Finland** (administrative fines, judicial fines, imprisonment of up to 4 years), **France** (assumption that funds transiting on the foreign accounts are taxable income unless the taxpayer proves otherwise. A penalty for bad faith of 40% of the undeclared amount is also applied), **Iceland, Mexico** (failure to comply is subject to a criminal sanction of 3 months to 3 years imprisonment), **Poland** (monetary penalties), **Portugal** (in the case of underreporting, a fine would be imposed), **Spain** (the same fines applicable, in general, to those who fail to report taxable income or wealth; fines are normally a variable percentage of the unpaid debt), **Sweden, Switzerland** (in the case of underreporting, a fine would be imposed), **United Kingdom** (penalty up to 100% of tax on interest under-declared), **Turkey, United States** (civil or criminal penalties may be imposed, depending on facts of case).

4.3 *Are taxpayers under the obligation to report/inform the Central Bank or any other authority (outside the tax administration) of the opening of bank accounts abroad?*

Such an obligation does not exist in most Member countries: **Australia, Austria** (For statistical purposes, however, any non-cash cross border transaction has to be reported to the Oesterreichische Nationalbank, i.e., Central Bank. For transactions exceeding ATS 50,000, the reason for the payment must be indicated. Tax authorities, however, may not obtain this information), **Belgium, Canada, Denmark, Finland** (but transfer of money over 50000 Finnish marks (US\$ 10 000) must be reported to the Central Bank for statistical purposes and the tax authorities may obtain this information), **France, Germany, Greece, Iceland, Ireland, Italy, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Portugal, Sweden, Switzerland, Turkey, United Kingdom, and United States.**

On the other hand, there is such an obligation in the **Czech Republic** (with exceptions provided in foreign exchange act), **Hungary**, **Norway** (opening of a bank account for business transactions has to be reported to the Bank of Norway; reporting of private bank accounts is only mandatory if the turnover or the monthly balance exceed NOK 5 million), **Poland** (in the Foreign Exchange Control Act), and **Spain**.

There is no such obligation in the **Slovak Republic**.

If yes, does the tax administration have access to this information?

The tax administration has access to this information in the **Czech Republic**, **Norway**, **Poland** (according to the principles of bank secrecy), and **Spain** but not in **Hungary** or **Japan**.

4.4 Country practices with respect to the reporting and taxation of interest earned on foreign bank accounts

All Member countries tax interest earned by residents except **Poland**. Poland does not tax interest earned by individuals but does tax interest earned by legal persons.

5. Country Practice with Respect to Exchange of Bank Information with Treaty Partners

5.1 Does your country exchange bank information automatically with treaty partners?

The following countries do not automatically exchange bank information with treaty partners: **Austria**, **Belgium**, **Czech Republic**, **Germany** (no automatic reporting from banks required, therefore no information to automatically exchange), **Greece**, **Hungary**, **Iceland**, **Ireland**, **Italy**, **Luxembourg**, **Mexico**, **Netherlands** (not yet), **Poland**, **Portugal**, **Spain** (seldom supplies bank information automatically), **Switzerland**, **Turkey** and the **United States** (except with Canada).

The following countries reported they do: **Australia**, **Canada**, **Denmark**, **Finland**, **France**, **Japan**, **Korea** (non-resident interest payments), **New Zealand**, **Norway**, **Sweden**, and **United Kingdom** (interest details).

The **Slovak Republic** does not automatically exchange information with its treaty partners.

5.1.1 If yes is it with:

5.1.1.1 A limited number of countries based on an agreement?

This is the case for **France, Korea, and Sweden.**

5.1.1.2 A limited number of countries based on reciprocity?

This is the case for **Australia, Canada, Denmark, France, Norway** (for countries outside the Nordic area), and **Sweden.**

There are no limitations in **Finland** and **New Zealand.**

5.2 Is your country in a position to supply bank information to treaty partners on request?

Most countries can provide bank information on request: **Australia, Austria** (subject to limitations), **Canada, Czech Republic, Denmark, Finland, France, Germany, Hungary, Iceland, Ireland** (subject to limitations - see 3.5.1.1 above), **Italy, Japan, Korea, Mexico, Netherlands, New Zealand, Norway, Poland, Sweden, Spain, Turkey, United Kingdom** (see answer under 5.2.1.3), and the **United States.**

The following countries cannot: **Belgium** (except cases mentioned in 3.2), **Greece, Luxembourg, Portugal, and Switzerland.**

The **Slovak Republic** can provide information to treaty partners on request.

5.2.1 If yes, is it with :

5.2.1.1 A limited number of countries based on an agreement?

This is the case of the **Czech Republic.**

5.2.1.2 Only treaty partners who can produce the same pieces of information?

This is the case of **Denmark, France, Hungary, Ireland, Italy, the Netherlands, and Spain.**

5.2.1.3 Only treaty partners co-operating under “full reciprocity”?

This is the case of **Australia, Austria, France, Italy, Korea, Mexico, Poland, Spain, Turkey, and United Kingdom** (unless there is no United Kingdom domestic tax interest, in the case of non-EU countries). *Overall* reciprocity is a factor used by the **United States** to determine whether to provide such information.

The **Slovak Republic** requires full reciprocity.

There are no limitations in **Finland, Germany** (unless the particular treaty limits the exchange), **Iceland** (all requests from treaty partners must be answered positively), **New Zealand** (all treaty partners), **Norway** (the practice is that all requests from treaty partners must be answered positively including requests for bank information).

5.3 *If yes, what does the applicant state have to provide?*

	name of bank	bank address	name of account holder	account number	other
Australia	X	X	X		
Austria	if possible	if possible	if possible	if possible	Information confirming undertaking of criminal proceedings
Canada	X	X	X	X	if possible, the address of branch where customer has the account
Czech Republic	X		X		
Denmark	X		X		
Finland	X		X		name of account holder or account number, see 3.2
France	X	X	X	X	date of birth; only account holder's name is mandatory
Hungary			X	X	

	name of bank	bank address	name of account holder	account number	other
Germany					no special requirement but without name of bank and accountholder, it is unlikely that the information can be located
Iceland	if possible		X		ID number or other identification
Ireland	X	X	X		
Italy	if possible	if possible	if possible	if possible	statement that information to be used only for tax purposes, its confidentiality protected and reason for request
Japan	X	X	X	X	
Korea	X	X	X	X	usage of the information
Mexico	or branch number and city	X	X	X	copy of supporting documentation, if available
Netherlands	X	X	X (may be possible to identify account holder by account number)	X	
New Zealand	X		X		

	name of bank	bank address	name of account holder	account number	other
Norway	X		X	X (if none, full address abroad)	
Poland	X	X	X	X	
Spain	X	X	X	X	X
Sweden	X	X	X		personal identity number
Turkey	X	X	X	advisable, not mandatory	
United Kingdom	X	X	X		detailed report on investigation and why information is needed
United States					no specific, information required but the more information provided, the more likely IRS can obtain information
Slovak Republic	X	X	X or account number	X or name of account holder	

5.4 *If yes, what bank information can you provide on request?*

	interest earned year before	interest earned during several years	balance of deposits previous year	balance of deposits several years	underlying documents
Australia	X	X	X	X	X
Austria	X	X	X	X	X
Canada	X	X	X	X	X
Czech Republic	X	X	X	X	
Denmark	X	X	X	X	X
Finland	X	X	X	X	X
France	X	X	X	X	X
Hungary	X	X	X	X	
Germany	X	X	X	X	X
Iceland	X	X	X	X	X

	interest earned year before	interest earned during several years	balance of deposits previous year	balance of deposits several years	underlying documents
Ireland					
Italy	X	X	X	X	X
Japan	X	X	X	X	X
Korea	X	X	X	X	
Mexico	X	X	X	X	X
Netherlands	X	X	X	X	X
New Zealand	X	X	X	X	X
Norway	X	X	X	X	X
Poland	X				
Spain	X	X	X	X	X
Sweden	X	X	X	X	X
Turkey	X	X	X	X	X

	interest earned year before	interest earned during several years	balance of deposits previous year	balance of deposits several years	underlying documents
United Kingdom	X	X	X	X	X
United States	X	X	X	X	X
Slovak Republic	X	X	X	X	X

Austria: all can be provided in principle but subject to the general limitations on access to bank information.

Canada and United States: can provide whatever the bank keeps.

Netherlands: all the financial information that can be obtained for domestic tax purposes.

Norway: the provision of underlying documents may cause a heavy burden on the bank and should be requested only in exceptional cases.

Poland: all the information can be provided as of 01-01-97.

Ireland: information contained in the non-resident declaration (name of deposit taker, account number, name, country of residence and signature of account holder).

5.5 *If you can get bank information for some treaty partners and not others with similar tax treaty provisions on exchange of information, please explain why*

The following countries responded that it depends on reciprocity: **Australia, Denmark, Ireland, Italy** (full reciprocity), **Mexico** (full reciprocity), **Spain**, and **United Kingdom** (or agreement).

6. Regarding Trends Concerning Access to Bank Information

6.1 *Have your laws and/or administrative rules or practice regarding access to bank information changed since the last questionnaire?*

The following countries reported no changes since the last questionnaire:

Czech Republic, Denmark, Greece, Japan, Mexico, Norway, Portugal, United Kingdom (but a trend is to increase the ability to assist authorities in other countries).

The following countries reported changes:

Australia, Austria, Belgium, Canada, Finland, France, Germany, Hungary, Ireland, Italy, Korea, Luxembourg, Netherlands, New Zealand, Poland, Spain, Sweden, Switzerland, Turkey, and the United States.

6.2 *If yes, please describe these changes*

Luxembourg: Regulation of the Grand-Duchy of 24 March 1989.

a) Regarding access by tax administrations

Australia: Privacy Act but no impact on access.

Belgium: the exception to access to bank information has been broadened as of tax year 1997. The requirement of complicity of tax evasion between the taxpayer and the financial institution has been lifted. Moreover, the new law refers not only to the existence of tax fraud but also to the preparation of tax fraud.

Canada: Proceeds of Crime (Money Laundering) Act and Regulations, Bank Act revision 1991, new reporting requirements for foreign investment assets including bank accounts, applicable to tax years 1998 and subsequent years.

Finland: the new legislation which entered into force on 1st April 1995, gives better access to bank information. The information is no longer required to be necessary for tax purposes (it is enough that it may be needed). The criteria for making a request have been improved. One of the following is enough (name of the person, bank account number, entry on the account, or other similar specifying criteria).

France : Article L96A LPF obligation for credit institutions to report date and amount of transfer of funds abroad at the request of the tax administration.

Germany: the administrative practice of respecting the special relationship between a bank and its customer up to a certain degree became law in 1990 (sec. 30 a of the fiscal code). In addition, there is draft legislation that would give tax authorities access to information gathered under the money laundering act as soon as a person has been suspected of a crime.

Hungary: Access to bank information was expanded for tax and non-tax purposes. The goal of this expanded access was to promote efficiency in combating tax fraud and other actions prosecuted under the laws.

Iceland: no changes regarding access by tax administrations.

Ireland: Under the provisions of section 207 Finance Act 1999, additional powers were granted to Revenue relating to access to information held by financial institutions. Two new powers were granted (section 906A TCA 19997 - access by order of a Circuit or District Court Judge) and two existing powers of access via the Appeal Commissioners and the High Court were amended.

Italy: The tax administration's power of access to bank information has been generalised and increased; at present it is not necessary to obtain judicial authorisation to access bank premises to obtain further information (where insufficient information was previously provided by the bank).

Officers of the tax administration have access to bank premises and post offices when authorised by the Regional Director of Inland Revenue, as concerns the offices of Inland Revenue Department; the Commanding Officer of the competent districts as concerns the Guardia di Finanza; and the Director of Central Service of Tax Inspectors (SECIT) as concerns inquiries of particular importance which are carried out by this service.

Korea: Enlargement of cases where bank information can be requested. Before 1982, it could be requested when the taxpayer fell into arrears or when tax inspectors investigated inheritance taxes. Since 1982, it can be requested when it is needed for inquiries or investigations pursuant to the provisions of a tax law (Article 4(1) 3 of the Emergency Presidential Order on Real Name Financial Transaction and Protection of Confidentiality).

Luxembourg: Article 178 bis of the general law on taxes.

Netherlands: in 1984 the Code of Good Conduct was concluded between the tax administration and banks in which the tax administration and the banks made further agreements with regard to the law-based obligation the banks have to disclose information concerning their clients. According to the Code, all banks will provide the tax administration with interest records with information on interest received by individuals and companies during a year, whereas the tax administration must make a prudent use of its controlling competencies (when possible) with regard to banks and clients in general. This means that the tax administration must first check other sources of information, including the client himself, before it turns to a request to the bank with its information request. The Code includes the possibility of obtaining information for treaty partners for the purpose of exchange of information under tax treaties. The Code was renewed in 1995 but no significant changes were made.

New Zealand: section 17A of the Tax Administration Act.

Poland: on 29 August 1997, a new Banking Act was enacted which broadens the access to bank information by non-fiscal entities. The Code of Fiscal Liabilities mentioned above confirms the existence since 1.01.97 of access to bank information by the tax authorities. Both Acts entered into force in 1998.

Spain: the laws have specified the conditions to obtain information and have specified the contents of the data which can be required. Spanish courts have construed these rules concerning tax information as a right of the administration and a taxpayer's duty in order to apply a tax system designed to attend the general interest. A general limitation is always considered: the need to respect the right to privacy when asking for or delivering sensitive data.

Sweden: obligation for banks and others to automatically provide the tax authorities with information concerning interest.

Switzerland: The federal law on international assistance in criminal matters of 20 March 1981 provides international judicial assistance in the case of tax fraud.

Turkey: As of April 1998, the Ministry of Finance has the power to require the use of TINs for commercial and financial activities. The mandatory use of TINs for financial services, including opening a bank account, will be introduced in the near future.

United States: Additional reporting requirements, i.e., suspicious transaction reports, for financial institutions. This information would be available for tax and non-tax purposes.

b) Regarding access for non-tax purposes

Changes generally have been enacted to counter money laundering (**Austria, Belgium, Canada, Iceland, Ireland, Italy, Luxembourg, Sweden, and United States**). In **Italy**, the judicial authority's power has been increased overall to fight money laundering and organised crime. **Switzerland** enacted articles 305 bis and 305 ter of the Swiss Penal Code which entered into force on 1 August 1990. They penalise money laundering as well as failure to monitor financial transactions. In the case of money laundering, bank secrecy may not be used as a defence to disclosure of information. **Luxembourg** enacted article 41 of the law of 5 April 1993 relating to the financial sector. In **Hungary**, access to bank information was expanded to promote efficiency in combating other actions prosecuted under the laws.

6.3 *Are there proposals or plans to change your laws and/or administrative rules or practices regarding access to bank information?*

The following countries reported there are no such proposals at the present time:

Australia, Austria, Belgium, Czech Republic, Denmark, France, Finland, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Switzerland, United Kingdom, the United States.

Canada reported that there are proposed changes but that they will not affect access to bank information. **Sweden** and **Turkey** also reported proposed changes.

6.4 *If yes, please describe these changes*

Luxembourg: the Luxembourg Government has recently made new proposals regarding access to bank information for non-tax purposes to counter money laundering.

Sweden: the tax administration has proposed that TINs be used by foreign account holders. There is also a proposal to allow access to information which can be used in a tax examination of a third person.

Turkey: the mandatory use of TINs will be required for financial services in the future. After that, the Ministry of Finance intends to request automatic reporting from banks and special finance institutions.

OECD PUBLICATIONS, 2, rue André-Pascal, 75775 PARIS CEDEX 16
PRINTED IN FRANCE
(23 2000 03 1 P) ISBN 92-64-17649-7 – No. 51173 2000