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Improving Access to Bank Information for Tax Purposes: The 2003 Progress Report

I. Introduction

In April 2000, the Committee on Fiscal Affairs published a report, *Improving Access to Bank Information for Tax Purposes* (hereafter the 2000 Bank Report). The Committee on Fiscal Affairs has monitored closely progress made in the implementation of the 2000 Bank Report and has undertaken a formal comprehensive review in 2003 of the steps taken by member countries. This report describes progress made with respect to all of the measures set out in the 2000 Bank Report and identifies areas where progress still needs to be made.

One of the important achievements of the 2000 Bank Report was to set out an ideal standard of access to bank information, namely, that "*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 with their treaty partners*".

The 2000 Bank Report also identified a number of measures that countries are encouraged to take to move towards that standard (see Annex I). They can be summarised as follows:

- Prohibition of anonymous accounts.
- Require financial institutions to identify their usual or occasional customers, as well as those persons to whose benefit a bank account is opened or a transaction is carried out.
- Review of any domestic tax interest requirement that prevents the tax authorities from obtaining information for a tax treaty partner, in the context of a specific request, with a view to ensuring that such information can be exchanged by making changes, if necessary, to their laws, regulations and administrative practices.
- 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.

- 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.
- Improve the administrative feasibility and the capability of information systems**.**
- 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 laws in some jurisdictions.
- Encourage non-OECD economies to improve access to bank information for all tax purposes.
- Member countries with dependent or associated territories or which have special responsibilities or taxation prerogatives in respect of other territories were encouraged 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.

Three years after the publication of the 2000 Bank Report, positive developments have occurred in the implementation of the above measures: anonymous accounts can no longer be opened in any OECD country, customer identification requirements have been established in all OECD countries, and there is no longer any OECD country that requires a domestic tax interest to obtain information for a treaty partner. There are, however, key areas where little progress has occurred. A common understanding of tax fraud has not yet been agreed by all 30 member countries and few developments in the area of access to bank information for civil tax purposes have been reported.

II. Prohibition of anonymous accounts achieved

There is no longer any OECD country where anonymous accounts can be opened. Austria, the Czech Republic and Hungary have taken steps to prohibit the use of anonymous accounts. In Austria, the Banking Act was amended on 27 June 2000 to prohibit the opening of anonymous passbooks as of 1 November 2000 and to prohibit the transfer or acquisition of anonymous passbooks for which identification procedures have not come into effect as of 30 June 2002. In November 2001, Hungary prohibited the opening of anonymous accounts as of 1 January 2002 and required holders of existing anonymous accounts to prove their identity when withdrawing or depositing cash. The Czech Republic has also reported that, as of 31 December 2002, anonymous accounts are no longer permitted.

III. Customer identification requirements established

Paragraph 21 a) of the 2000 Bank Report indicates that the Committee would rely on the FATF[1] for ensuring implementation of adequate customer identification requirements. The only country that previously reported not having any legislation establishing requirements on customer identification was Poland. In Poland, the identification requirements were left to individual financial institutions to establish. The Polish Anti-Money Laundering Act of 16 November 2000 established customer identification requirements for individuals and entities with or without legal personality. The Act was amended in November 2002 to make further improvements of customer's identification and in particular of persons carrying out transactions not in their own name.

The FATF has launched a review of its Forty Recommendations and published a Consultation Paper on 30 May 2002. It is clear from this paper that the FATF is considering ways of improving the "know your customer" rules by clarifying the obligations that apply in this area (see paragraphs 29-33 of the Consultation Paper). The FATF published its revised Recommendations in June 2003.

IV. Removal of the domestic tax interest requirement has been achieved

A domestic tax interest requirement can prevent 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. This requirement may be an impediment to the provision of bank information requested by a treaty partner. The 2000 Bank Report encouraged countries to make any necessary changes to address the domestic tax interest requirement by April 2003.

The 2000 Bank Report identified Greece, Ireland (but only to obtain an order for detailed bank account information), Japan, Luxembourg and the United Kingdom as requiring a domestic tax interest to provide bank

1 Financial Action Task Force on Money Laundering

information to a treaty partner (Paragraph 86 and Appendix 1 answers to question 3.5.2.1 of the 2000 Bank Report). Ireland, Luxembourg and the United Kingdom are, however, required by the EU Directive on Mutual Assistance to waive their domestic tax interest requirement for exchange of information with other EU Member States.

In 2000, the United Kingdom enacted legislation to permit the introduction of an obligation to invoke statutory information powers on behalf of a contracting state in cases where no liability to its own tax is at issue. Consistent with that legislation, Article 27–2 (exchange of information provision) of the US-UK treaty of 24 July 2001 provides that "if information is requested by a Contracting State in accordance with this article, the other Contracting State shall obtain that information…. notwithstanding that the other State may not, at that time, need such information for the purposes of its own tax".

The United Kingdom has also revised its observation to Article 26 of the OECD Model Tax Convention on this point as follows: "Contrary to the interpretation put forward in paragraphs 14 to 16 above, the United Kingdom takes the view that the Article as drafted does not impose an obligation on it to invoke statutory information powers on behalf of a Contracting State in cases where no liability to its own tax is at issue, since to invoke such powers in these circumstances is in some cases contrary to its law. In order to foster the effective exchange of information, UK legislation has therefore been enacted to permit the introduction of such an obligation into the text of the Article by making appropriate modifications". This revised observation appears in the 2003 Update of the OECD Model Convention published in January 2003.

Luxembourg has reviewed its position and determined that the domestic tax interest requirement will no longer be applied. Luxembourg has determined that the domestic tax interest requirement should not be applied to its tax treaties based on the 1977 OECD Model Tax Convention because Luxembourg did not make an observation or reservation on this point to Article 26 of the 1977 OECD Model Tax Convention. This determination covers all of its tax treaties except for a few older treaties with EU Member States. As stated above, the domestic tax interest requirement has to be waived for exchanges between EU Member States. Moreover, Luxembourg has specifically addressed the domestic tax interest requirement in its treaties with the United States, Canada and Mexico.

Greece has reviewed its position since the approval and publication of the 2000 Bank Report and clarified that it erroneously reported that it had a domestic tax interest requirement and confirms that it does not have such a requirement. Japan has enacted legislation to eliminate the domestic tax interest requirement which became effective 1 April 2003. In Ireland, the Finance Bill passed on 28 March 2003 includes a provision that extends the Revenue's information gathering powers to cover foreign taxes. As a result, Ireland will no longer require a domestic tax interest to be able to obtain information for a treaty partner.

The obligation of a Contracting State to obtain information requested by a treaty partner without regard to whether a domestic tax interest exists has also been clarified as follows in the 2003 update to the OECD Model Tax Convention (paragraph 16 of the Commentary to Article 26): "*This obligation is clearly evidenced by the practices of Member countries which show that, when collecting information requested by a treaty partner, Contracting States often use the special examining or investigative powers provided by their laws for purposes of the application of their domestic taxes even though they do not themselves need the information for applying these taxes.*"

V. Improvements in access to bank information for criminal tax purposes

Footnote 7 of the 2000 Bank Report explains that some countries generally apply the principle of "double incrimination" to provide assistance in criminal investigations (including criminal tax investigations). This principle is generally not an impediment to exchange of information when the definitions of tax crimes are similar in the requesting and requested countries. When these definitions are different, it may be impossible in many cases to exchange information for criminal tax purposes. The 2000 Bank Report identified Luxembourg and Switzerland as countries where a narrow definition of tax fraud combined with the application of the principle of "double incrimination" substantially restricts their ability to exchange information in cases that would constitute criminal tax cases in the vast majority of OECD countries. No change to the double incrimination standard or the definition of tax fraud has been reported by either Luxembourg or Switzerland.

Switzerland has reported that it has undertaken a review of obstacles to exchange of information in accordance with paragraph 21 c), including footnote 7, of the 2000 Bank Report. Switzerland applies both the principle of double incrimination and the principle of speciality. Under the principle of speciality, information obtained by way of judicial assistance can only be used for a criminal investigation or produced as evidence in criminal proceedings concerning an offence for which judicial assistance is authorised under Swiss law. The Federal Council, in recognition of the problem that the principle of speciality raises for foreign tax authorities, decided to pursue the approach offered by footnote 7 to Paragraph 21 of the Report, *i.e.*, to look at bilateral globally balanced solutions in tax treaties that would allow the exchange in practice of bank information for the prevention of tax fraud and the like.

Beginning in 2001, Switzerland initiated negotiations with a number of member countries to revise its double tax conventions. These negotiations are at different stages. On 24 March 2003, the Protocol to the Convention between Germany and Switzerland signed on 12 March 2002 entered into force. It includes a provision which allows access to information, including bank information, in cases of tax fraud which means fraudulent conduct, which is deemed by the laws of both states to be an offense against the tax laws, and is punishable by imprisonment. The states agree that banking confidentiality does not in cases of acts of fraud preclude obtaining documentary evidence from banks, and of forwarding it to the appropriate authorities in the requesting state. The provision of information assumes, however, that there is a direct connection between the fraudulent conduct and the desired official assistance action. An amendment to the Convention between Norway and Switzerland has been initialled to produce an equivalent result. Also, on 24 January 2003, the Swiss and U.S. governments reached a mutual agreement on the application of the provision concerning administrative assistance contained in the current Swiss-US double taxation convention. The Swiss-US double taxation convention provides that the states will exchange information necessary for the proper implementation of the provisions of the convention or to prevent tax fraud or the like in relation to the taxes which are the subject of the convention. The agreement contains a common understanding regarding conduct that constitutes "tax fraud or the like", as well as illustrative descriptions of situations in which fraudulent conduct is assumed (http.dff.admin.ch).

Switzerland considers that these results, which have substantially improved access to bank information for tax purposes in cases of tax fraud, demonstrate that the commitments made by Switzerland in the framework of the Committee’s 2000 Bank Report have been respected. Switzerland also intends to continue to pursue this policy with other member countries interested in counteracting tax fraud and expects these countries to respect their own commitments made at the time of the adoption of the 2000 Bank Report.

A. Common understanding of tax fraud

Footnote 7 of the 2000 Bank Report also provides that 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. The purpose of working towards a common understanding of the concept of tax fraud was to reduce the problems posed by the application of the double incrimination principle to tax crimes. The 2000 Bank Report points out that where countries have similar definitions of tax crimes, the application of the double incrimination principle is less likely to act as a barrier to exchange of information than where the definitions are very different. It was hoped that getting countries with narrow definitions of tax crimes to agree to a common understanding of the concept of tax fraud would improve co-operation in exchange of information regarding criminal tax matters. The following text provides a common understanding of tax fraud reached by examining the common features of member countries' definitions of tax fraud and how they are applied in practice[2]. It was agreed by all OECD member countries except Luxembourg and Switzerland[3]:

An act, attempted act or failure to act by any person that is intended to violate a legal duty concerning the accurate reporting, determination or collection of a tax.

Tax fraud is understood to include, but is not limited to, the following intentional conduct:

- *Failure to comply with legal record-keeping duties (including the preparation or use of false or incomplete records, the non-production of records, the destruction of records and the preparation and or use of forged documents).*
- *Failure to comply with legal information reporting duties (including the failure to file an income tax return or any other official document upon which a tax liability is based).*

2 Austria adheres to the common understanding of tax fraud and wishes to clarify that, in order to lend assistance on the basis of a tax treaty (Article 26), it requires, for procedural reasons, that the request relate to an open criminal investigation (administrative or judicial) in the applicant State. Austria also wishes to clarify that the mere fact that a taxpayer does not pay his tax but has fulfilled his tax filing obligations does not constitute tax fraud.

3 Luxembourg and Switzerland point out that footnote 7 of the 2000 Bank Report is directly related to paragraph 21 c) of the 2000 Bank Report concerning exchange of information in tax cases involving intentional acts subject to criminal prosecution. Luxembourg and Switzerland consider that the common understanding of tax fraud should aim at improving exchange of information for criminal tax purposes in the framework of bilateral tax conventions and mutual assistance conventions. They therefore find that paragraph 19 goes beyond what was referred to in the 2000 Bank Report. According to Luxembourg and Switzerland, countries should try and reach a common denominator in limiting themselves to the definitions found in national criminal tax laws.

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- *The inclusion of false or misleading information (including the omission of information) in an official document that leads to an incorrect reduction in an amount of tax payable.*
- *The arrangement of transactions or entities for the purpose of dishonestly reducing an amount of tax payable.*
- *The organisation of insolvency for the purpose of obstructing the collection of tax.*
- *The deliberate making of incorrect claims to repayments or other entitlements.*
- *The deliberate failure to comply with tax obligations resulting or intended to result in an unlawful reduction of tax revenue.*

B. Expansion of mutual assistance

The additional protocol on tax matters to the European Convention on Mutual Assistance in Criminal Matters, which extends mutual assistance to criminal tax matters, has now been signed by all EU countries. Luxembourg completed in 2000 the ratification process for the entry into force of the additional protocol and the protocol entered into force on 31 December 2000. Belgium deposited its instrument of ratification on 28 February 2002 and the protocol entered into force on 29 May 2002.

The US-Luxembourg Mutual Legal Assistance Treaty also came into force on 1 February 2001. This instrument will enable Luxembourg to exchange information, including information held by banks, for criminal tax matters.

C. Improved access for criminal tax purposes at the domestic level

As noted in the 2000 Bank Report, the vast majority of OECD countries already have extensive access to banking information for both civil and criminal purposes. The following paragraph summarises developments in Poland to improve such access.

After relaxation of bank secrecy for tax purposes in 1996, further relaxation was introduced for other purposes by the banking law of Poland in 2001, 2002 and 2003. Article 105 of the Banking Law stipulates that a bank shall be obliged to provide information to other banks and to other institutions authorised by law to grant credit about debts and about bank account turnover and balances to the extent to which such information is necessary in connection with granting credits, money loans, bank guarantees and with foreign exchange operations and also in connection with consolidation of financial statements, at the request of (13 bodies) including:

- A court or a prosecutor in connection with a criminal proceeding or fiscal penal proceedings pending against the holder of an account being a natural person or in connection with an application for legal assistance made by a foreign country entitled to request the provision of information covered by bank secrecy under an international agreement ratified by the Republic of Poland (this amendment entered into force on 4 February 2001); the Police, if it is necessary for the effective prevention or detection of crime, for determining the perpetrators thereof and obtaining the evidence (this amendment entered into force on 19 October 2001).
- A court executive officer in connection with pending execution proceedings (this amendment entered into force on 01 January 2002).
- Issuers of electronic means of payment not being banks (this amendment will enter into force on 21 Oct 2003).

VI. Improvement of access for civil tax purposes

The 2000 Bank Report indicates that the vast majority of OECD countries can obtain access to banking information for civil tax purposes. Several countries (Austria, Belgium, Greece, Luxembourg, Portugal and Switzerland) reported in 2000 that they had little or no access to such information for civil tax purposes (Appendix 1 answers to questions 3.2 and 3.4 of the 2000 Bank Report). The following paragraphs summarise the progress reported on this issue since the publication of the 2000 Bank Report.

Portugal has extended its access to bank information. Access is now possible where the taxpayers do not provide it themselves, whenever the existing documents support the accounting records of a firm and when fiscal benefits are involved, where the Tax Administration does not have the possibility to directly verify the determination of the taxable income, where the declared income is under average, where there are indications of a tax crime and to verify the granting of fiscal benefits or the use of public funds.

The scope of the United Kingdom's "automatic" information powers in relation to interest payments and receipts has been significantly extended by the Finance Act 2000, for interest paid or received with effect from the tax year 2001-2002. Previously individuals who were not ordinarily resident in the UK for tax purposes could elect for details of interest paid to them by bank and building societies (as well as interest distributions from UK collective investment vehicles) to be withheld from "automatic" information returns made to the Inland Revenue. Now the Inland Revenue is able to require institutions to extend the information returns they make to cover interest (and interest distributions) paid to individuals ordinarily resident in other countries. The new information powers will also apply to other forms of savings income including income from bonds and from foreign dividends. For 2001/2002 the Inland Revenue will receive information for 31 countries.

Poland amended its Code of Tax Liabilities in September 2002 to empower the tax inspectors to request directly from a bank supplementary information if the evidence presented by the taxpayer in the course of tax proceedings is doubtful.

Greece has clarified that legislation adopted in 1992 provides for access to bank information for civil tax purposes. The difficulties they reported in 2000 related to the bureaucratic procedures that caused delays in obtaining information.

No developments in the area of access to bank information for civil tax purposes have been reported by Austria, Belgium, Luxembourg or Switzerland.

VII. Progress in taking measures to improve the administrative feasibility and the capability of information systems.

The OECD Council has recommended the use of the 1997 OECD Standard Magnetic Format for automatic exchange of information which is widely used for automatic exchange of information [C(1997)29/FINAL]. Further work has been undertaken concerning the ongoing development of systems and procedures to facilitate the electronic exchange of tax information, which may also be used for bank information, between OECD members without compromising data integrity and security.

Following the 1997 OECD Recommendation to use Tax Identification Numbers (TIN) in an international context [C(1997)29/FINAL], Sweden passed legislation in May 2002 making it mandatory for financial institutions in Sweden to require their non-resident clients to provide their residence country TIN. As of 2005, Swedish financial institutions will have to report the residence country TIN in the income statement of non-residents sent to Swedish tax authorities. Use of TINs will improve and speed up the matching of the information.

VIII. Developing 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 laws

Paragraph 28 of the 2000 Bank Report and the discussions in the Committee showed that to assist members in making progress in this area, it would be helpful to develop voluntary compliance strategies. Since the publication of the 2000 Bank Report a number of countries have put in place such strategies.

On 25 September 2001, the Italian Government passed a "tax shield" programme in respect of offshore capital and assets held by Italian resident individuals. The tax shield programme provided for two procedures: 1) the repatriation to Italy of the assets held abroad or 2) the reporting of the assets held abroad, without need for repatriation. The tax shield programme required a payment equal to 2.5% of the assets regularised (as an alternative to the payment of the 2.5%, the taxpayer could subscribe special State bonds for an amount equal to 12% of the total amount regularised). It also required the filing of a special "confidential" return, to be filed with an Italian bank or other financial intermediary, disclosing the assets to be regularised. The tax shield programme lasted from November 2001 to 15 May 2002 and resulted in €54 billion returning to Italy without being subjected to criminal tax sanctions (all criminal sanctions not having a fiscal nature, and above all money laundering sanctions, remained applicable). At the end of 2002, a new edition of the “tax shield” programme was adopted in the Financial Act for 2003. It provides that individual income from activities abroad and received by December 31st 2001, for which repatriation or regularization has been requested, would be taxed at a 2.5% rate, if the corresponding return was made no later than May 16th, 2003, and at a 4% rate if the return was made afterwards, but not later than June 30th, 2003. Similar provisions have been adopted also for commercial partnerships or corporations.

At its November meeting, the ECOFIN also asked the European Commission to explore the possibility of using tax amnesties to help countries to change their laws and regulations with a view to obtaining better access to banking information.

The US Internal Revenue Service announced on 11 December 2002 that they have revised and updated a key practice that assists agency investigators in determining whether a case is recommended for criminal prosecution. Specifically, a taxpayer’s timely, voluntary disclosure of a substantial unreported tax liability has long been an important factor in deciding whether the taxpayer’s case should ultimately be referred for

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criminal prosecution. The practice has been modernised to allow more taxpayers to voluntarily comply with their obligations and to reduce the uncertainty over what constitutes a "timely" disclosure. A series of examples illustrate the new standards of timeliness and should help eliminate confusion over when a voluntary disclosure will be viewed as timely. For example, general publicity regarding enforcement and compliance efforts will not bar a taxpayer from making a voluntary disclosure. As before, the practice requires the taxpayer to make good faith arrangements with the IRS to pay in full the tax, interest, and any applicable penalties as determined by the IRS. This disclosure practice does not apply to those with income from illegal sources. The revised practice continues to be a matter of internal IRS use and creates no substantive or procedural rights. As in the past, it is provided solely for the guidance of IRS personnel. A voluntary disclosure will not automatically guarantee immunity from prosecution.

On 16 December 2002, German Chancellor Gerhard Schroeder announced plans to levy a 25 per cent withholding tax on bank savings, as well as a tax amnesty plan aimed at reclaiming more than €100 billion in funds held abroad. On 18 June 2003, the Federal Government proposed draft legislation which offers taxpayers a "bridge to tax honesty". The "bridge" will be offered under the following conditions:

- The taxpayer must disclose after 31 December 2003 but before 1 January 2005 the total amount of all income subject to tax that has not been reported after 1992 and before 2002.
- The taxpayer must pay within 10 days after disclosure 25% of the disclosed amount. If the unreported income is disclosed after 31 December 2004 but before 1 April 2005, the amount to be paid is 35%.

If income tax has been evaded, the amount to be paid is calculated on the basis of 60% of the unreported gross income and 60% of all expenses which have improperly been deducted from taxable income. Similar rules apply if trade tax, VAT, inheritance and gift tax have been evaded. These other taxes will also be deemed paid.

The disclosure of the unreported income will neither lead to punishment nor to the levy of any monetary penalty or interest. Notwithstanding the special incentives under the draft bill, there is generally no punishment if the taxpayer reports income he was supposed to report before the tax authorities actually uncover the offence. The additional tax to be collected has been estimated as to amount up to €5 billion.

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IX. Encouragement of non-OECD economies to improve access to bank information for all tax purposes

The 2000 Bank Report and the measures identified therein were addressed not only to member countries but also to non-OECD economies (NOEs). The Committee's objective was to encourage better access to banking information for all tax authorities. Considerable progress has been made in this respect. The OECD has held several seminars on exchange of information and access to bank information since the publication of the 2000 Bank Report: in Brazil (attended by 11 NOES and jointly organised with the Inter-American Center of Tax Administrations (CIAT), in China and in Budapest (attended by 14 NOES) in 2001, and in Chonan (Korea) in November 2002. Others are scheduled in Russia and Africa. These topics were also discussed at the Conference on Counteracting Capital Flight organised in Russia in 2000. Under Russian law, the Ministry of Taxation only has access to business bank accounts and the Federal Tax Police has access to both business accounts and personal accounts if there is a suspicion of tax crime in Russia. The Ministry of Taxation has however reported that the Federal Tax Police was dissolved by the President on 11 March 2003. In Russia there is an automatic reporting by financial institutions to the tax administration of transactions by physical persons equal to or higher than US$10,000. It is possible to open numbered accounts in Russia but the account holder must provide his identity and TIN number to the bank. Russia can provide bank information to satisfy a request from a tax treaty partner. The Russian Model Agreement on Cooperation and Mutual Assistance specifically requires exchange of bank information. The idea of a tax amnesty to repatriate Russian capital invested abroad has also become very popular, with ministers and the president making proposals for the creation of favourable conditions for the return of capital. Debates on the repatriation of capital through a tax amnesty have been held in Russia for many years now, but until recently, they were mostly of a hypothetical nature. Things are beginning to change since the International Bank for Reconstruction and Development in Moscow published a report on the situation of the Russian economy where it is said that Russian GDP growth is directly linked to the repatriation of fugitive capital.

A joint OECD/IOTA[4] roundtable on Access to Financial Information was held in Budapest in April 2002 with representatives of both tax and financial authorities and private sector banking representatives from OECD and IOTA countries to develop a better understanding between financial and tax experts on the information needs of tax authorities and the

4 IOTA: Intra European Organisation of Tax Administrations.

confidentiality needs of the banking sector. Prior to the meeting, participants were asked to complete a questionnaire on their access to bank information based on the questionnaire used by the OECD in preparation of the 2000 Bank Report. Albania, Bulgaria, Croatia, Latvia, Macedonia, Moldova, Estonia, Romania and Slovenia have indicated that they can obtain bank information to satisfy a request for information from a tax treaty partner. The meeting was used to encourage countries to review their current laws and practices on access to bank information for tax purposes with a view to allowing access for both civil and criminal tax purposes.

Progress is being made in non-OECD economies and in dependent and overseas territories

In January 2001, Brazil granted federal, state, and local tax authorities access to financial information for tax purposes if there is an administrative procedure or a tax audit in progress and the examination is deemed indispensable by the tax authority. A new Tax Anti-Avoidance Law enacted in June 2001 in Chile amends the tax code, whereby the Chilean revenue authorities may obtain information from banks and financial institutions, concerning credits and guarantees of taxpayers from 1 January 2002. On 3 April 2003, the tax administrations of Argentina, Spain and Mexico formally agreed to undertake specific actions regarding the exchange of information and mutual assistance, based on the CIAT Model for the Exchange of Information. The CIAT Model expressly provides that the laws or practices of the requested State shall not affect the powers of its competent authority to obtain and disclose to the requesting state, information held by financial entities, nominees or persons acting in an agency or fiduciary capacity.

In response to the Harmful Tax Practices project, 32 jurisdictions have made political commitments to engage in effective exchange of information for criminal tax matters for tax periods starting from 1 January 2004 and for civil tax matters for tax periods starting from 2006. Of the 32 jurisdictions, the following are dependencies or overseas territories of OECD member States: Anguilla, Aruba, Bermuda, British Virgin Islands, Cayman Islands, Gibraltar, Guernsey, Isle of Man, Jersey, Montserrat, Netherlands Antilles, Turks and Caicos, and the U.S. Virgin Islands.

A number of the committed jurisdictions have already negotiated or are in the process of negotiating Tax Information Exchange Agreements (TIEAS) based on the Model Agreement on Exchange of Information in Tax Matters, which requires access to bank information for both civil and criminal tax purposes and which was developed by the OECD's Global Forum Working Group on Effective Exchange of Information which included representatives from several OECD countries and several committed jurisdictions. Since 2000, the United States has signed TIEAS with Antigua and Barbuda, The Bahamas, the British Virgin Islands, the Cayman Islands, Guernsey, Isle of Man, Jersey and the Netherlands Antilles. Other OECD members such as Germany, Ireland, the Netherlands and Spain are in the process of negotiating similar agreements with the committed jurisdictions.

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Annex I

Excerpt from the 2000 OECD Report: *Improving Access 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 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 countries.[6]

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

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)."

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

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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 21c) 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."

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.

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.

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