



Guide to
Global Review of
Offshore Jurisdictions

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PREFACE

Appleby Offshore Jurisdictional Update – “Tax Haven” Reviews

The material presented in this Guide, which is to be regularly updated to reflect a constantly changing environment, is intended to assist the reader with an understanding of what is actually taking place, at inter-governmental and at governmental levels, in the major jurisdictions that deal with the offshore world and in the major offshore centres.

The purpose of this Guide is to brief the reader in summary, but also to enable them to access deeper resources and more detailed information. We set out a summary of the current proposals or initiatives affecting the major offshore financial centres, the effects of such proposals or initiatives and the standing of these major offshore centres in the more formalised assessment process that is being undertaken through organisations such as the OECD and the G20.

This is a constantly changing scene and we encourage readers to take expert advice in their own jurisdiction relating to proposed or impending changes to tax laws or the regulatory environment which may affect any business they already have or that they are contemplating establishing in the offshore world.

In broad terms, we believe that offshore centres will continue to survive and will continue to serve the purpose of promoting the efficient deployment of international capital. While none of the offshore centres in which Appleby operates are complacent in their approach to the potential risks to them that may arise out of these developments, the nature of those developments suggest that there will be a continuing future for offshore centres, as long as they comply with internationally accepted standards of transparency and cooperation with the countries from which they derive much of their business.

We would welcome the opportunity to assist the reader with any questions that you may have.

Appleby
August 2009
Peter Bubenzer
Group Managing Partner

OVERVIEW

The OECD and Tax Agreements and Understandings

All countries, whether on or offshore, may choose from a number of different tax agreement formats in order to govern their relationships with other countries on taxation matters. The chosen format will depend upon the purpose of the agreement and can range from double taxation agreements to unilateral or bilateral information exchange agreements. We focus here on the tax information exchange agreements (“**TIEAs**”) promoted by the OECD as the type of agreement countries need to enter into in order to meet the internationally agreed principles of transparency and cooperation for the exchange of tax related information. These principles were developed in 2000 by the OECD, and subsequently endorsed by the G20 and UN (the “**Principles**”). They are currently set out in Article 26 of the OECD Model Convention and the 2002 Model Agreement on Exchange of Information (the “**Model Agreement**”). The key aspects of the Principles are as follows:

- exchange of information on request where it is foreseeably relevant to the administration and enforcement of the domestic laws of a treaty partner;
- no restrictions on exchange caused by bank secrecy or domestic tax interests requirements;
- availability of reliable information, particular accounting, bank and ownership information and powers to obtain it;
- respect for taxpayers’ rights; and
- strict confidentiality of information exchanged.

Although the Principles can be implemented through TIEAs (which are bilateral tax treaties), multilateral agreements or by domestic legislation allowing for the provision of information on a unilateral basis, TIEAs are favoured by most jurisdictions in evidencing their commitment to embrace and implement the Principles.

At the conclusion of the April 2009 G20 summit in London the OECD Secretariat published a progress report on the implementation of the Principles by 84 jurisdictions assessed by the OECD Global Forum on Taxation (the “**Global Forum**”). The report placed each jurisdiction assessed into one of four categories, (i) jurisdictions having substantially implemented the Principles, (ii) jurisdictions having committed but not yet implemented the Principles, (iii) tax havens having committed but not yet implemented the Principles and (iv) jurisdictions that have not committed to the Principles. These were further categorised into three commonly termed categories known as the Black List (i.e. uncooperative jurisdictions), the Grey List (i.e. jurisdictions that have committed to implement the Principles) and the White List (i.e. jurisdictions that have substantially implemented the Principles). The OECD publishes updates on a regular basis, the results of which are incorporated into our jurisdictional tables contained in this guide as at the date of issue.

The OECD has stated that a good indicator of a country’s progress towards substantial implementation of the Principles is whether it has signed 12 or more TIEAs. However, this measure is continually reviewed, so no country can afford to stand still in its efforts to implement the Principles. In September 2009, both the G20 and OECD indicated that their focus had moved from counting the number of signed TIEAs to establishing a system of peer review of the effective implementation by all countries of the provisions of the TIEAs signed.

OECD Progress

As part of the ongoing efforts to police TIEA compliance, the Global Forum formed the Peer Review Group (the “**PRG**”) and the Steering Group. The PRG was established to prepare and develop terms of reference for a robust transparent process to assess how effectively the terms of TIEAs are being implemented by participating jurisdictions.

The work of the PRG is received and reviewed by the Steering Group for deeper analysis and assessment of the effectiveness of each country’s internal systems and procedure for complying with TIEA requests.

It is important to note the appointment of Jersey as a vice-chair of the PRG and Bermuda as a vice-chair of the Steering Group as this evidences the reality that TIEAs and their eventual implementation are to be self-governed and peer

regulated. This echoes the involvement of offshore centres like Bermuda, Cayman Islands, Isle of Man, Mauritius and Seychelles in the creation of the 2002 Model Agreement on Exchange of Information. Bermuda's election by the Global Forum members to host the 2011 OECD Global Forum on Transparency and Exchange of Information for Tax Purposes further illustrates how certain offshore jurisdictions are not only actively involved in helping shape OECD policy and procedure but are being accepted and understood by the nations of the OECD as valuable contributors to the development of international standards of transparency and related regulation.

An important aspect of the reviews carried out by the PRG and Steering Group is how different jurisdictions interpret the terms and provisions of the TIEAs entered into, especially in relation to the scope and meaning of "foreseeable relevance" of information to a request. The OECD provides guidance notes on the interpretation of its Model Agreement, but with each TIEA being individually negotiated and subject to interpretation under the laws of different jurisdictions, it is not surprising that conflicts arise. As an example, German officials have in one instance indicated their belief that the provision of a sort code and account number should suffice for the purposes of submitting an information request, whereas others argue that this does not meet the minimal requirements set out in the Model Agreement.

The Global Forum formally approved the terms of reference ("**Terms of Reference**"), methodology and assessment criteria for the Peer Review process in February 2010 and the first tranche of Peer Reviews involving 18 jurisdictions were launched shortly thereafter. These jurisdictions included Australia, Barbados, Bermuda, Botswana, Canada, Cayman Islands, Denmark, Germany, India, Ireland, Jamaica, Jersey, Mauritius, Monaco, Norway, Panama, Qatar and Trinidad & Tobago.

A Peer Review comprises two phases. Phase 1 involves a review and assessment of the legal and regulatory framework of a jurisdiction against 10 essential elements contained in the Terms of Reference, with determinations being made on which of these elements are in place and recommendations for improvement where necessary. Phase 2 involves a review and assessment of the effective implementation of that framework. Peer Review reports will be published upon adoption by the Global Forum. The first 8 reports were published following the Global Forum meeting held in Singapore on 29 and 30 September 2010 and related to Bermuda, Botswana, Cayman Islands, India, Jamaica, Monaco, Panama and Qatar. With the exception of Botswana and Panama, each of these jurisdictions will now proceed to Phase 2 of the Peer Review. Botswana and Panama are required to implement improvements to their domestic arrangements before they will be permitted to move on to Phase 2 of the Peer Review. It is anticipated that all 91 member countries of the Global Forum, plus others that have been identified by the Global Forum as relevant to its work, will have completed both Phase 1 and Phase 2 of the Peer Review process and their reports published before June 2014.

For an up to date look at where any one country is with regard to its own implementation of the Principles, please click on the name of the country or city below.

The G20 Summit and Beyond

The result of the G20 summit in London on 2 April 2009 was the publication of "The Global Plan for Recovery and Reform" (the "**Plan**") which set out the G20's proposed solution to the global crisis as it affected the world at that time. In the Plan the G20 members state that they believe that the only sure foundation for sustainable globalisation and rising prosperity for all is an open world economy based on market principles, effective regulation and strong global institutions. The Plan set out six pledges which the G20 believes will bring the world economy out of recession and prevent a similar crisis from occurring again. They are the following:

1. restore confidence, growth and jobs;
2. repair the financial system to restore lending;
3. strengthen financial regulation to rebuild trust;
4. fund and reform G20 members' international financial institutions;
5. to underpin prosperity and promote global trade and investment and reject protectionism; and
6. build an inclusive, green and sustainable recovery.

The G20 have stated that their principles underlying the Plan are to strengthen transparency and accountability, to enhance sound regulation, promote integrity in financial markets and reinforce international cooperation. They have called for all jurisdictions, both on and offshore, to adhere to international prudential, tax, anti-money laundering and combating the finance of terrorism standards (the “**AML/CFT**” standards), and to drive this they have called upon the applicable bodies to conduct and strengthen objective peer reviews, based on existing processes, including through the Financial Sector Assessment Program (the “**FSAP**”) process. They have also called upon countries to adopt the international standard for information exchange endorsed by them in 2004 and reflected in the UN Model Tax Convention. At the same time the OECD published a list of countries against whom the Global Forum had assessed the international standard for exchange of information. The result was the labelling of various jurisdictions as being on a black, grey or white list in the eyes of the OECD and G20. The G20 welcomed efforts by those jurisdictions committing to meet the international standards, whilst stating their readiness to take action against those that do not commit. Potential countermeasures against non-cooperative jurisdictions (the “**NCJ**”) include the following:

1. increased disclosure requirements of taxpayers and financial institutions to report transactions involving NCJ;
2. withholding taxes in respect of a wide variety of payments;
3. denying deductions in respect of expense payments to payees resident in an NCJ;
4. reviewing tax treaty policy;
5. asking international institutions and regional development banks to review their investment policies; and
6. giving extra weight to the principles of tax transparency and information exchange when designing bilateral aid programs.

The G20 Toronto Summit Declaration published following the G20 summit held on 26 and 27 June 2010 identified four pillars of the G20 reform agenda which build on progress already made since the G20 summit in London in 2009. These four pillars comprise a strong regulatory framework, effective supervision, resolution and addressing systemic institutions and transparent international assessment and peer review. The G20 also pledged to support the Global Forum on Transparency and Exchange of Information for Tax Purposes and recognised that since the G20 summit in London, 500 TIEAs had been entered into globally. However, they also reaffirmed members’ readiness to “use countermeasures against tax havens” without providing any detail as to when and how such measures might be implemented.

In assessing the origins of the current financial crisis the G20 realised that the regulatory supervision of banks in many onshore jurisdictions failed. To prevent this failure from being repeated the G20 agreed to look at banking supervision from a global perspective. Much of what has been proposed and in some cases adopted has been incorporated from the results of the UK Turner Review and European De Larosière report. However, it is important to note from a practical point that, whilst seeking global banking supervision, the G20 is quick to reaffirm the sovereignty of each nation’s regulator to monitor and govern its own financial system.

Although there has been talk of a global focus on what were being termed “regulatory havens”, such talk has not resulted in the same action as has tax information transparency in the same period. The proposals were to collate a black, grey and white list of jurisdictions, similar to those created for tax havens, based upon a comparison of their regulatory standards against international standards promoted by the G20. It was understood that the FSB would set out both positive and negative sanctions for use against non-cooperative jurisdictions. Although we have not seen much progress on this topic, it is likely to remain on the agenda of the G20 and the FSB.

International Financial Centres Forum

In an effort to assist both the onshore and offshore communities, the International Financial Centres (IFC) Forum was recently established by a number of offshore law firms including Appleby. The IFC Forum (www.IFCforum.org) aims to aid in resolving any misconceptions of the activities of IFCs by providing information and resources that address key issues in the following areas:

1. Economic Liquidity, Efficiency and Jobs
2. The Global Financial Crisis
3. Tax Competition
4. Transparency, Regulation and Information Exchange ; and
5. Developing Countries and IFCs

Between them, the IFC Forum member firms provide legal advice on financial transactions in Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Isle of Man, Jersey, Mauritius and the Seychelles.

The United States (the “US”)

In addition to US involvement in and support of the G20 and OECD efforts to bring uniform standards to the global forum of tax information exchange and related regulation so as to provide a means for countries to obtain information relating to activities that assist and promote tax evasion, the US has its own more proactive agenda.

The US government, and the President himself, has said that “tax havens” are undermining the integrity of the US tax system and increase the burden on middle income families. Consequently, the focus in the US has been to crack down on US businesses and individuals who have managed their affairs and estates in such a way as to benefit from current US tax legislation using offshore legal structures. Unfortunately, such legal business and estate management and planning has been attacked in a similar way to tax fraud and tax evasion, whereby people fail to declare truthfully their worldwide taxable income to the Internal Revenue Service (the “**IRS**”), thereby committing offences under US legislation. This mixing of information has led to a public confusion and a general and unwarranted distaste for anything offshore.

A number of US Senators and Congressmen have, as part of this crackdown, sought to introduce new legislation that is intended to make it more difficult and less attractive for US businesses and citizens to do business outside of the US. It is interesting to note that what started as a crackdown on “tax havens” has resulted in an increase in regulation and legislation of global investment in and out of the US and a reduction in the incentives for US companies to invest overseas. The anti-offshore rhetoric may still be used in some US circles but the application of the resultant changes being made to the legal and regulatory framework is global in its effect. Where such legislation has failed to obtain both House of Representatives and Senate approval, the promoters of the "crackdown" legislation have sought to introduce certain of their provisions by way of proposed amendments to more supported and popular bills covering topics like health care and insurance. For example, an amendment was proposed to the Affordable Health Care for America Act (HR 3962), to introduce parts of Senator Levin's anti-tax haven bill, and amendments to tax provisions relating to foreign tax credit were proposed as part of an insurance bill introduced initially by Rep. Richard Neal that related to domestic insurers with foreign parents. The European Insurance and Reinsurance Federation, supported by the European Commission, has criticised the proposed insurance legislation as protectionist, in creating an environment disadvantageous to non-US insurers that would result in a US breach of numerous international agreements.

In and amongst the increasing number of bills being introduced or revised by either the House of Representatives or the Senate is a general but coherent approach to resolving the loss of tax revenue to the IRS. Some of the provisions that have been introduced into legislation or that are being considered include:

- Limitation on foreign tax credits and other current tax incentives for US companies to invest and be more competitive overseas;
- Repealing or tightening of the 80/20 company rules which benefit US companies investing overseas;
- New reporting requirements on defined foreign financial or non-financial institutions and firms that hold or own US investments to declare and identify details of US accounts or US interests in themselves or any group entity or suffer withholding tax on income from such investments; and
- Limitation on domestic insurers with offshore parents receiving tax deductions on reinsurance business channelled to or through parents or foreign owned affiliates.

The United Kingdom (the “UK”)

The UK continues to seek its own remedies to the problems at home arising from and contributing to the global economic crisis. The UK has held a different position to the US in that it is a part of the European Union, a member of the Commonwealth and has responsibility for a number of offshore jurisdictions. Key to the British approach was the commissioning of three separate reviews on the subjects of banking corporate governance, banking regulation and British offshore financial centres.

Michael Foot, chairman of the UK office of Promontory Financial Group, published an independent review of British offshore financial centres. The review focused on the long-term opportunities and challenges facing the British Crown Dependencies and Overseas Territories as financial centres. A final report was published on 29 October 2009 which highlighted the issues being discussed, including financial supervision and transparency, taxation in relation to financial stability, sustainability and future competitiveness, financial crisis management and resolution arrangements and international cooperation. The scope of the review extended to Jersey, Guernsey, Isle of Man, Bermuda, Cayman Islands, Gibraltar, Turks & Caicos Islands, British Virgin Islands and Anguilla. The report outlined the important role of Crown Dependencies in funding onshore banks in the UK and recognised the “significant contribution to the liquidity of the UK market”.

Lord Turner, in his capacity as Chairman of the Financial Services Authority (the “FSA”), was tasked with reviewing and making recommendations for the reform of UK and international banking regulation. The Turner Review, published on 18 March 2009, provided a thorough analysis of the causes of the financial crisis and made recommendations for action that its author believed needed to be taken to improve and enhance banking regulation, supervisory practice and international cooperation and coordination. The recommendations extended beyond the national level, in acknowledgement of the fact that the financial system is both global and complex in nature. On a global level, the recommendations spoke to better capitalisation and resilience to liquidity shocks, a regulatory framework that does not amplify the business cycle, effective cross-border supervision and crisis management, identification and control of unregulated activities and effective action to tackle and mitigate the effects of risks to financial stability. A period of discussion on the recommendations closed on 18 June 2009 with a discussions paper and brief published 22 October 2009.

Sir David Walker was tasked with reviewing corporate governance in UK banks and other large financial institutions and making recommendations for improvement. A consultation document was published on 16 July 2009 with a focus on strengthening board oversight through an increase in the role of non-executives in the risk and remuneration process and the encouragement of institutional investors to take a more active role as owners. The consultation process was completed in October 2009 and final recommendations published on 26 November 2009.

The British government also implemented changes to the tax system in an effort to raise revenue to cover the costs of rescue (bail-out) plans and renewed investment projects. With regular avenues of tax income reducing as a result of the economic slowdown, such measures may only go part of the way to fill the ever increasing gaps in the budget. However, of interest to the off-shore world was the introduction of a 50% top rate of personal tax, increased limitations on the ability to declare non-domiciled status for tax purposes and a “one off” tax on bank bonuses, all of which was brought in under

the prior government led by Gordon Brown. With the change in government brought about by the general election held on 6 May 2010 many spectators have been expecting a rapid shift in policy that is more understanding of international financial centres. Although not rapid, a more accommodating approach has certainly begun to develop. On 20 July, HM Treasury established the Office of Tax Simplification (“**OTS**”) and the following day Parliament considered a call for an informed, consistent and balanced debate on the role of offshore centres in the global economy.

The OTS’ objective is to review the UK tax system and identify areas of complexity that can be simplified. This follows with the UK government’s own objective to place the UK as the most competitive country in the G20.

The Parliamentary debate was sponsored by **Mark Field**, conservative MP for the Cities of London and Westminster. Mr Field argued that small international financial centres have endured unwarranted “political attacks and misguided criticism as major governments seek to understand the cause of the global financial crisis”. Mr Field went on to say that current initiatives driven by the OECD, the G20, FATF, the European Union and national governments run the risk of inaccurately blaming international financial centres for recent shortcomings in financial markets and thereby obscuring the real causes of the crisis. This new approach comports well with the results of the Foot Report, which cast considerable doubt on the accuracy and validity of many accusations made against international financial centres. The report went as far as to say that many assumptions were simply untrue, “including the notion that they are key in facilitating large scale tax evasion and that they suck large sums of financial services business away from cities such as London”. Mr Field also cautioned against attacking zero-ten tax regimes, as are currently in place in Jersey and Guernsey. His fear was that such attacks would undermine the sovereignty of independent states to determine their own tax rates whilst granting high taxing countries the right to globalise their high tax rates. Mr Field further stated that the UK Government’s decision to reduce its corporate tax rate was recognition of the need for the UK to remain globally competitive as opposed to criticising tax competition and defending high tax rates.

European Union

The European Union’s Code of Conduct Group has reviewed the zero-ten tax regimes of the UK Crown Dependencies of Jersey and the Isle of Man. Guernsey’s zero-ten regime was understood not to be under review due to a presumption about the introduction of a standard 10% tax rate. The Guernsey Government concluded its own public consultation on a review of the island’s corporate tax review on 27 August 2010, and is now considering ways in which it can adapt and reform its corporate taxation system. The Code of Conduct Group reviews have vaguely concluded that the tax measures used in Jersey and the Isle of Man “give rise to harmful effects” but do not then specify which aspects of those measures are harmful and to what extent they need to be reformed. The understanding is that the zero-ten tax regime does not meet with the spirit of the EU Code of Conduct. There are also attempts to introduce European Legislation on a Common Consolidated Corporate Tax Base, although this has been met with fierce opposition from certain member states.

Gibraltar has also taken steps to change its tax regime to meet with the spirit of the EU Code of Conduct. The British overseas territory recently completed its transformation from what it called a “tax haven” to a mainstream European financial services centre with the publication of an amended and consolidated Income Tax Act. This legislation introduced a reduction on company tax from 22% to 10% and the abolition of the “tax exempt company regime”. It is understood that these changes will become effective from July 2011 onwards.

The Isle of Man has agreed to adopt the principles of the European Union Savings Tax Directive by introducing automatic exchange of information on relevant savings income whilst dropping its withholding tax regime from 1 July 2011.

The European Insurance and Reinsurance Federation has suggested that legislative proposals in the US to protect US based insurers could be in contravention of US World Trade Organisation commitments under the General Agreement on Trade in Services and the US commitment to the G20 to avoid protectionism. The terms of the General Agreement on Trade in Services requires that insurers and re-insurers of other member countries must be treated no less favourably than US suppliers.

BERMUDA (23*** TIEAS signed, 1 OECD compliant DTA signed)

Standards for OECD compliance are to have at least 12 signed TIEAs with either OECD member countries or non-OECD member countries. **Due to the signing with the Netherlands, the OECD upgraded Bermuda's status from the Grey list to the White List on 8 June 2009.** Bermuda has also recently signed with China, and India

	Talking	Commenced Negotiations	Near 'Complete' – Not signed (date to sign)	TIEA Signed	In force
G20 members					
Argentina		✓			
Australia †				10 Nov 2005	20 Sep 2007 ✓
Brazil			(initialled) ✓		
Canada †				14 June 2010 ✓	
China				2 Dec 2010 ✓	
European Union*					
France †				8 Oct 2009 ✓	
Germany †				3 Jul 2009 ✓	
India				7 Oct 2010 ✓	
Indonesia			(initialled) ✓		
Italy †			(initialled) ✓		
Japan †				1 Feb 2010 ✓	
Mexico †				15 Oct 2009 ✓	
Russia					
Saudi Arabia					
South Africa			(initialled) ✓		
South Korea †			(initialled) ✓		
Turkey †					
UK †				4 Dec 2007	10 Nov 2008 ✓
USA †				1988(Amended'99)	2 Dec 1988 ✓
Nordic Council					
Denmark †				16 Apr 2009	25 Dec 2009 ✓
Faroe Islands				16 Apr 2009 ✓	
Finland †				16 Apr 2009	31 Dec 2009 ✓
Greenland				16 Apr 2009 ✓	
Iceland †				16 Apr 2009 ✓	
Norway †				16 Apr 2009 ✓	
Sweden †				16 Apr 2009	25 Dec 2009 ✓
Others					
Aruba				20 Oct 2009 ✓	
Bahrain				DTA 22 Apr 2010 ✓	
Belgium †			(initialled) ✓		
Ireland †				28 Jul 2009	11 May 2010 ✓
New Zealand †				17 Apr 2009	23 Dec 2009 ✓
Netherlands †**				8 Jun 2009	1 Feb 2010 ✓
Portugal †				10 May 2010 ✓	
Spain †			(initialled) ✓		
Curacao***				28 Sept 2009 ✓	
St. Maarten***				28 Sept 2009 ✓	

† OECD Member Countries

* Please note that countries can opt to sign a TIEA with the European Council as a whole or with each European Union state individually (ie, such as the path Switzerland is taking in order to avoid risking delay in the EC's need to obtain an EU-wide mandate).

** The **Netherlands**† now include Bonaire, St. Eustatius, and Saba; formerly members of the Netherland Antilles, jurisdiction dissolved on 10 October 2010

*** formerly members of the Netherland Antilles. Curacao and St Maarten will share the TIEA entered into with what was previously known as the Netherland Antilles.

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BRITISH VIRGIN ISLANDS (19*** TIEAS signed)

Standards for OECD compliance are to have at least 12 signed TIEAs with either OECD member countries or non-OECD member countries. The British Virgin Islands (BVI) were Grey Listed on the 2 April 2009, OECD Progress Report. Since the G20 Summit, BVI has signed nine further agreements. The ninth signed with **New Zealand**[†] in August 2009 upgraded their status from the “Committed” Grey List into the “Compliant” **White List**, (OECD [Progress Report](#) 14 August 2009). Negotiations continue or have been underway with Argentina, **Austria**[†], Brazil, **Canada**[†], **Germany**[†], **Mexico**[†].

	Talking	Commenced Negotiations	Near 'Complete' – Not signed (date to sign)	TIEA Signed	In force
G20 members					
Argentina		✓			
Australia [†]				27 Oct 2008	✓
Brazil		✓			
Canada [†]		✓			
China				07 Dec 2009 ✓	
European Union*					
France [†]				17 Jun 2009 ✓	
Germany [†]				5 Oct 2010 ✓	
India		✓			
Indonesia					
Italy [†]					
Japan [†]					
Mexico [†]		✓			
Russia					
Saudi Arabia					
South Africa					
South Korea					
Turkey [†]					
UK [†]				29 Oct 2008	12 Apr 2010 ✓
USA [†]				13 Apr 2002	10 Mar 2006 ✓
Nordic Council					
Denmark [†]				19 May 2009 ✓	
Faroe Islands				19 May 2009 ✓	
Finland [†]				19 May 2009 ✓	
Greenland				19 May 2009 ✓	
Iceland [†]				19 May 2009 ✓	
Norway [†]				19 May 2009 ✓	
Sweden [†]				19 May 2009 ✓	
Others					
Aruba				12 Sept 2009 ✓	
Austria [†]		✓			
Ireland [†]				07 Dec 2009 ✓	
Netherlands ^{†**}				11 Sept 2009 ✓	
New Zealand [†]				13 Aug 2009 ✓	
Portugal [†]				5 Oct 2010 ✓	
Curacao***				11 Sept 2009 ✓	
St. Maarten***				11 Sept 2009 ✓	

[†] OECD Member Countries

*Please note that countries can opt to sign a TIEA with the European Council as a whole or with each European Union state individually (ie, such as the path Switzerland is taking in order to avoid risking delay in the EC's need to obtain an EU-wide mandate).

** The **Netherlands**[†] now include Bonaire, St. Eustatius, and Saba; formerly members of the Netherland Antilles, jurisdiction dissolved on 10 October 2010

*** formerly members of the Netherland Antilles. Curacao and St Maarten will share the TIEA entered into with what was previously known as the Netherland Antilles.

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CAYMAN (20*** TIEAS signed, 1 OECD compliant DTA signed)

Standards for OECD compliance are to have at least 12 signed TIEAs with either OECD member countries or non-OECD member countries. The Cayman Islands have signed their eleventh TIEA with **New Zealand**[†], though twelfth agreement in counting their DTA with the UK which is within the standards of the OECD for information exchange. Although Grey Listed in April, Cayman upgraded their status to the **White List** (OECD [Progress Report](#) 14 August 2009).

	Talking	Commenced Negotiations	Near 'Complete' - Not signed (date to sign)	TIEA Signed	In force
G20 members					
Argentina		✓			
Australia [†]				30 Mar 2010 ✓	
Brazil					
Canada [†]				24 Jun 2010 ✓	
China		✓			
European Union*					
France [†]				5 Oct 2009 ✓	
Germany [†]				27 May 2010 ✓	
India		✓			
Indonesia			(initialled) ✓		
Italy [†]			(initialled) ✓		
Japan [†]			(initialled) ✓		
Mexico [†]				28 Aug 2010 ✓	
Russia					
Saudi Arabia					
South Africa		✓			
South Korea		✓			
Turkey [†]					
UK [†] **				16 Jun 2009	DTA 20 Dec 2010 ✓
USA [†]				27 Nov 2001	10 Mar 2006 ✓
Nordic Council					
Denmark [†]				1 Apr 2009	6 Feb 2010 ✓
Faroe Islands				1 Apr 2009 ✓	
Finland [†]				1 Apr 2009	31 Mar 2010 ✓
Greenland				1 Apr 2009 ✓	
Iceland [†]				1 Apr 2009 ✓	
Norway [†]				1 Apr 2009	4 Mar 2010 ✓
Sweden [†]				1 Apr 2009	27 Dec 2009 ✓
Others					
Aruba [†]				20 Apr 2010 ✓	
Belgium [†]		✓			
Czech Republic [†]		✓			
Ireland [†]				23 Jun 2009	9 Jun 2010 ✓
Netherlands [†] **				8 Jul 2009	29 Dec 2009 ✓
New Zealand [†]				14 Aug 2009 ✓	
Portugal [†]				14 May 2010 ✓	
Spain [†]				20 Jan 2011 ✓	
Curacao***				29 Oct 2009 ✓	
St. Maarten***				29 Oct 2009 ✓	

[†] OECD Member Countries

*Please note that countries can opt to sign a TIEA with the European Council as a whole or with each European Union state individually (ie, such as the path Switzerland is taking in order to avoid risking delay in the EC's need to obtain an EU-wide mandate).

** The **Netherlands**[†] now include Bonaire, St. Eustatius, and Saba; formerly members of the Netherland Antilles, jurisdiction dissolved on 10 October 2010

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GUERNSEY (21 TIEAS signed)

Standards for OECD compliance are to have at least 12 signed TIEAs with either OECD member countries or non-OECD member countries. Jersey was **White Listed** on the 2 April 2009, OECD [Progress Report](#), demonstrating substantial implementation of the internationally agreed tax standard. Of the 20 TIEAs signed, 16 are with OECD member countries.

	Talking	Commenced Negotiations	Near 'Complete' – Not signed (date to sign)	TIEA Signed	In force
G20 members					
Argentina					
Australia [†]				7 Oct 2009	27 Jul 2010 ✓
Brazil					
Canada [†]				20 Jan 2011	
China				27 Oct 2010 ✓	
European Union*					
France [†]				24 Mar 2009	4 Oct 2010 ✓
Germany [†]				26 Mar 2008 ✓	
India		✓			
Indonesia					
Italy [†]					
Japan [†]					
Mexico [†]					
Russia					
Saudi Arabia					
South Africa					
South Korea					
Turkey [†]					
UK [†]				20 Jan 2009	27 Nov 2009 ✓
USA [†]				19 Sep 2002	30 Mar 2006 ✓
Nordic Council					
Denmark [†]				28 Oct 2008	6 Jun 2009 ✓
Faroe Islands				28 Oct 2008	21 Aug 2009 ✓
Finland [†]				28 Oct 2008	5 Apr 2009 ✓
Greenland				28 Oct 2008	25 Apr 2009 ✓
Iceland [†]				28 Oct 2008 ✓	
Norway [†]				28 Oct 2008	8 Oct 2009 ✓
Sweden [†]				28 Oct 2008	23 Dec 2009 ✓
Others					
Ireland [†]				26 Mar 2009	10 Jun 2010 ✓
Netherlands ^{†**}				25 Apr 2008	11 Apr 2009 ✓
New Zealand [†]				21 Jul 2009 ✓	
Portugal [†]				9 Jul 2010 ✓	
Greece [†]				8 Oct 2010 ✓	
San Marino				✓	
Romania				20 Jan 2011 ✓	

[†] OECD Member Countries

*Please note that countries can opt to sign a TIEA with the European Council as a whole or with each European Union state individually (ie, such as the path Switzerland is taking in order to avoid risking delay in the EC's need to obtain an EU-wide mandate).

** The **Netherlands**[†] now include Bonaire, St. Eustatius, and Saba; formerly members of the Netherland Antilles, jurisdiction dissolved on 10 October 2010

ISLE OF MAN (18 TIEAS SIGNED, 3 OECD COMPLIANT DTA SIGNED)

Standards for OECD compliance are to have at least 12 signed TIEAs with either OECD member countries or non-OECD member countries. Isle of Man was **White Listed** on the 2 April 2009, OECD [Progress Report](#), demonstrating substantial implementation of the internationally agreed tax standard. Of the 18 agreements signed, 15 are with OECD member countries.

	Talking	Commenced Negotiations	Near 'Complete' - Not signed (date to sign)	TIEA Signed	In force
G20 members					
Argentina					
Australia [†]				29 Jan 2009	5 Jan 2010 ✓
Brazil					
Canada [†]				17 Jan 2011 ✓	
China				26 Oct 2010 ✓	
European Union*					
France [†]				26 Mar 2009	12 Oct 2010 ✓
Germany [†]				2 Mar 2009 ✓	5 Nov 2010 ✓
India		✓			
Indonesia					
Italy [†]		✓			
Japan [†]					
Mexico [†]					
Russia					
Saudi Arabia					
South Africa					
South Korea					
Turkey [†]					
UK [†]				29 Sep 2008	2 Apr 2009 ✓
USA [†]				3 Oct 2002	1 Jan 2004 ✓
Nordic Council					
Denmark [†]				30 Oct 2007	26 Sep 2008 ✓
Faroe Islands				30 Oct 2007	3 Aug 2008 ✓
Finland [†]				30 Oct 2007	14 Jun 2008 ✓
Greenland				30 Oct 2007	11 Apr 2008 ✓
Iceland [†]				30 Oct 2007	28 Dec 2008 ✓
Norway [†]				30 Oct 2007	23 Aug 2008 ✓
Sweden [†]				30 Oct 2007	27 Dec 2008 ✓
Others					
Belgium [†]				DTA 16 Jul 2009 ✓	
Estonia				8 May 2009	DTA 5 Apr 2010 ✓
Ireland [†]				24 Apr 2008	31 Dec 2008 ✓
Malta				DTA 23 Oct 2009	26 Feb 2010 ✓
Netherlands ^{†**}				12 Oct 2005	21 Jul 2006 ✓
New Zealand [†]				27 Jul 2009	27 Jul 2010 ✓
Portugal [†]				9 Jul 2010 ✓	
Spain [†]		✓			

[†] OECD Member Countries

*Please note that countries can opt to sign a TIEA with the European Council as a whole or with each European Union state individually (ie, such as the path Switzerland is taking in order to avoid risking delay in the EC's need to obtain an EU-wide mandate).

** The **Netherlands**[†] now include Bonaire, St. Eustatius, and Saba; formerly members of the Netherland Antilles, jurisdiction dissolved on 10 October 2010

JERSEY (20 TIEAS signed, 1 OECD compliant DTA signed)

Standards for OECD compliance are to have at least 12 signed TIEAs with either OECD member countries or non-OECD member countries. Jersey was **White Listed** on the 2 April 2009, OECD [Progress Report](#), demonstrating substantial implementation of the internationally agreed tax standard. Of the 20 agreements signed, 14 are with OECD member countries.

	Talking	Commenced Negotiations	Near 'Complete' - Not signed (date to sign)	TIEA Signed	In force
G20 members					
Argentina			✓		
Australia [†]				10 Jun 2009	5 Jan 2010 ✓
Brazil		✓	✓		
Canada [†]				12 Jan 2011 ✓	
China				29 Oct 2010 ✓	
European Union*					
France [†]				23 Mar 2009 ✓	
Germany [†]				4 Jul 2008	28 Aug 2009 ✓
India			✓		
Indonesia			(initialled) ✓		
Italy [†]			(initialled) ✓		
Japan [†]			✓		
Mexico [†]				26 Nov 2010 ✓	
Russia		✓			
Saudi Arabia	✓				
South Africa			(initialled) ✓		
South Korea		✓			
Turkey [†]		✓		24 Nov 2010 ✓	
UK [†]				10 Mar 2009	27 Nov 2009 ✓
USA [†]				4 Nov 2002	23 May 2006 ✓
Nordic Council					
Denmark [†]				28 Oct 2008	6 Jun 2009 ✓
Faroe Islands				28 Oct 2008	21 Aug 2009 ✓
Finland [†]				28 Oct 2008	3 Aug 2009 ✓
Greenland				28 Oct 2008	6 June 2009 ✓
Iceland [†]				28 Oct 2008	3 Dec 2009 ✓
Norway [†]				28 Oct 2008	7 Oct 2009 ✓
Sweden [†]				28 Oct 2008	23 Dec 2009 ✓
Others					
Belgium [†]			DTA ✓		
Estonia			DTA ✓		
Ireland [†]				26 Mar 2009	5 May 2010 ✓
Malta				DTA 25 Jan 2010 ✓	DTA 19 July 2010
Netherlands ^{†**}				20 Jun 2007	1 Mar 2008 ✓
New Zealand [†]				27 Jul 2009 ✓	
Portugal [†]				9 Jul 2010 ✓	
Spain [†]			✓		

[†] OECD Member Countries

* Please note that countries can opt to sign a TIEA with the European Council as a whole or with each European Union state individually (ie, such as the path Switzerland is taking in order to avoid risking delay in the EC's need to obtain an EU- wide mandate).

** The **Netherlands**[†] now include Bonaire, St. Eustatius, and Saba; formerly members of the Netherland Antilles, jurisdiction dissolved on 10 October 2010

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MAURITIUS (reached 12 OECD Compliant DTAs, 1 TIEA signed)

Standards for OECD compliance are to have at least 12 signed TIEAs or OECD compliant tax treaties with either OECD member countries or non-OECD member countries. Mauritius was **White Listed** on the 2 April 2009, OECD [Progress Report](#), demonstrating substantial implementation of the internationally agreed tax standard. Mauritius has 1 TIEA, and 34 DTAs based on the OECD Model Tax Convention and contain clauses for the exchange of information. Ten treaties are being negotiated with: Algeria, Burkina Faso, **Canada[†]***, **Czech Republic[†]**, Ghana, **Greece[†]**, **Portugal[†]**, Republic of Iran, Saudi Arabia, and Yemen.

Mauritius has double tax treaties with the following countries that are currently in force

Barbados	Croatia	Sri Lanka
Cyprus	Germany[†]*	India*
France[†]*	Italy[†]*	Kuwait
Lesotho	Luxembourg	Madagascar
Malaysia	Mozambique	Namibia
Nepal	Oman	Pakistan
China*	Rwanda	Senegal
Seychelles	Singapore	South Africa*
Swaziland	Sweden[†]	Thailand
Uganda	United Kingdom[†]*	Zimbabwe
Belgium	Botswana	Hungary
Tunisia	State of Qatar	Libya

The following countries are awaiting ratification

Bangladesh	Nigeria	Tunisia
Malawi	Zambia	Russia*
Vietnam	Qatar	Australia (TIEA)

[†] OECD Member Countries

* G20 members

SEYCHELLES (reached 12 OECD Compliant DTAs signed, 1 TIEA signed)

Standards for OECD compliance are to have at least 12 signed TIEAs or OECD compliant tax treaties with either OECD member countries or non-OECD member countries. Seychelles was **White Listed** on the April 2, 2009 OECD [Progress Report](#) demonstrating substantial implementation of the internationally agreed tax standard.

	Advanced Negotiations	Near 'Complete' - Not signed (date to sign)	DTA Signed, not ratified	In force
G20 members				
China				17 Jan 2000 ✓
Indonesia				16 May 2000 ✓
Russia	✓			
South Africa				3 Jul 2002 ✓
Others – DTAs				
Bahrain			22 Apr 2010 ✓	
Barbados				28 Feb 2008 ✓
Belgium †			27 Apr 2006 ✓	
Botswana				22 Jun 2005 ✓
Cyprus				2 Nov 2006 ✓
Czech Republic †	✓			
Egypt		✓		
Lesotho	✓			
Malaysia				10 Jul 2006 ✓
Mauritius				22 Jun 2005 ✓
Monaco			✓	
Namibia		✓		
Oman				20 Jan 2004 ✓
Qatar				1 Jan 2008 ✓
Thailand				14 Apr 2006 ✓
Tunisia	✓			
UAE				23 Apr 2007 ✓
Vietnam				7 Jul 2006 ✓
Zambia		✓		
Zimbabwe			6 Aug 2002 ✓	
Netherlands †			4 Aug 2010 TIEA ✓	

The following countries are in early stages of negotiation:

Burundi	India	Israel	Ivory Coast	Jamaica
Kenya	Malta	Morocco	Pakistan	Philippines
Portugal †	Spain †	Turkey †	Uganda	

A letter of request to negotiate has been sent to the following countries:

COMESA/SADC***	Australia †	Bahamas	Brazil	Cuba
Denmark †	France †	Germany †	Greece †	Ireland †
Italy †	Japan †	Korea †	Malawi	Maldives
Mexico †	New Zealand †	Poland †	Saudi Arabia	Singapore
Slovak Republic	South Korea	Sri Lanka	Sweden †	Tanzania
UK †				

† OECD Member Countries

** The **Netherlands**† now include Bonaire, St. Eustatius, and Saba; formerly members of the Netherland Antilles, jurisdiction dissolved on 10 October 2010

*** Common Market for Eastern and Southern Africa (COMESA) and the Southern African Development Community (SADC)

SWITZERLAND (over 20 OECD Compliant DTAs signed)

Standards for OECD compliance are to have at least 12 signed TIEAs or OECD compliant tax treaties with either OECD member countries or non-OECD member countries. Switzerland was grey listed on the 2 April 2009, OECD Progress Report. Since signing a new DTA with Qatar, on 24 September 2009, which marked its 12th OECD standard compliant agreement, Switzerland was **White Listed** by the OECD in its 25 September 2009 Progress Report. Switzerland has signed new agreements with countries such as **Austria**[†], **Denmark**[†], Hong Kong, **Luxembourg**[†], **France**[†], **Japan**[†], Malta, **Norway**[†], **Poland**[†], **the United States**[†], Singapore, **Turkey**[†], and **Qatar** incorporating Article 26. To avoid risking delay in the EC's need to obtain an EU-wide mandate, Switzerland is negotiating with each member state individually. In addition renegotiations of agreements already in place have been on-going.

Switzerland has double tax treaties with

Albania	Iceland [†] ***	Poland [†] ***
Argentina*	India*	Portugal [†]
Armenia	Indonesia*	Romania
Australia [†] *	Iran	Russia*
Austria [†] ***	Ireland [†]	Serbia
Azerbaijan	Israel	Singapore***
Bahamas TIEA	Italy [†] *	Slovakia [†]
Belgium [†]	Ivory Coast	Slovenia
Belarus	Jamaica	South Africa*
Bulgaria	Japan [†] ***	South Korea*
Canada [†] *	Kazakhstan	Spain [†]
Chile	Kirghistan	Sri Lanka
China*	Kuwait	Sweden [†] ***
Czech Republic [†] *	Latvia	Tajikistan
Denmark [†] ***	Lithuania	Thailand
Ecuador	Luxembourg [†] ***	Trinidad & Tobago
Egypt	Malta***	Tunisia
Estonia	Macedonia	Turkmenistan
Faroe Islands ***	Malaysia	Ukraine
Finland [†] ***	Mexico [†] ***	United Kingdom [†] ***
France [†] ***	Moldova	United States [†] ***
Georgia §	Netherlands [†] ** ***	Uruguay***
Germany [†] * ***	New Zealand [†]	Uzbekistan
Ghana	Norway [†] ***	Venezuela
Greece [†]	Pakistan	Vietnam
Hungary	Philippines	Qatar***
Hong Kong***		

[†] OECD Member Countries

* G20 Members

** The **Netherlands**[†] now include Bonaire, St. Eustatius, and Saba; formerly members of the Netherland Antilles, jurisdiction dissolved on 10 October 2010

*** Revised recently to reflect the OECD Article 26 standards.

§ The DTA does not include specific provisions of the OECD standard, though generally applies it

Key Content of the OECD Model TIEA

The key negotiating points for countries in signing TIEAs are the type of information to be exchanged, the timing and route of exchange, the distribution of costs incurred in complying with requests and the protection of individuals and corporate rights under the laws of each jurisdiction. Of note is the provision that neither party may introduce prejudicial or restrictive measures based on harmful tax practices to residents or nationals of the other party. Prejudicial or discriminatory actions include any legislation that may be introduced that places one of the countries in disregard or labels it as a tax haven. The text below is only a snapshot and should not be read on a complete representation of the OECD Model TIEA.

Article 1 Object and Scope of the Agreement

The competent authorities of the Parties shall provide assistance through exchange of information that is relevant to the administration or enforcement of the domestic laws of the Parties concerning taxes covered by this Agreement. Such information shall include information that is relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters.

Article 2 Jurisdiction

Article 3 Taxes covered

Article 4 Definitions

Article 5 Exchange of information upon request

4. Each Party shall ensure that its competent authority, for the purposes of this Agreement, has the authority to obtain and provide upon request:

(a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;

(b) information regarding the ownership of companies, partnerships and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees, beneficiaries and the position in an ownership chain; and in the case of foundations, information on founders, members of the foundation council and beneficiaries and the position in an ownership chain.

5. This Agreement does not create an obligation on the Parties to obtain or provide:

(a) ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties;

(b) information relating to a period more than six years prior to the tax period under consideration;

(c) information unless the applicant Party has pursued all means available in its own Party to obtain the information, except those that would give rise to disproportionate difficulties;

(d) information in the possession of or obtainable by a person other than the taxpayer that does not directly relate to the taxpayer. ...

The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party.

9. To ensure a prompt response, the competent authority of the requested Party shall:

(a) confirm receipt of a request in writing to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of deficiencies in the request, if any, within **60 days** of the receipt of the request; and

(b) if the competent authority of the requested Party has been unable to obtain and provide the information within **90 days** of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

Article 6 Tax examinations abroad

Article 7 Possibility of declining a request

3. The provisions of this Agreement shall not impose on a Party the obligation to obtain or provide information which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications:

(a) are communications between a professional legal adviser and a client made in connection with the giving of legal advice to the client;

(b) are communications between a professional legal adviser and a client, professional legal adviser acting for the client and another person, or the client and another person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and

(c) include items enclosed with or referred to in such communications and made:

(i) in connection with the giving of legal advice; or

(ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, when the items are in the possession of a person who is entitled to possession of them.

Article 8 Confidentiality

Article 9 Safeguards

Article 10 Costs

Article 11 No prejudicial or restrictive measures

In the event that a Party has reason to believe that the other Party has introduced prejudicial or restrictive measures based on harmful tax practices to residents or nationals of the other Party, both Parties shall immediately initiate competent authority proceedings to resolve the matter.

Article 12 Mutual Agreement Procedure

Article 13 Entry into Force

Article 14 Termination

APPENDIX II

Learn More: Explanatory notes and links to regulatory bodies

APG www.apgml.org – Asia/Pacific Group on Money Laundering

CFATF www.cfatf.org – Caribbean Financial Action Task Force – a FATF-Style Regional Body (FRSB) currently has membership of 29 States: Anguilla, Antigua & Barbuda, Aruba, Bahamas, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands, Costa Rica, Dominica, Dominican Republic, Guatemala, Grenada, Guyana, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Nicaragua, Panama, St Kitts & St Nevis, St Lucia, St Vincent & the Grenadines, Suriname, Turks & Caicos Islands, Trinidad & Tobago, Venezuela.

EAG www.eurasiangroup.org – Eurasian Group on combating money laundering and financing of terrorism

EPF www.epfltd.org – European Policy Forum – Graham Mather is President and Lord Tugendhat is chairman. The Advisory Council includes on a cross-party basis, prominent members of the House of Lords, leading regulators, distinguished former civil servants and prominent business leaders. EPF has 3 specialised divisions:

1. European Financial Forum www.epfltd.org/EPF.htm
2. European Media Forum www.epfltd.org/EMF.htm
3. Regulatory Best Practice Group www.epfltd.org/RBPG.htm

ESAAMLG www.esaamlg.org – Eastern and South African Anti Money Laundering Group

EUTSD www.ec.europa.eu/index_en.htm – European Union Savings Directive [2003/48/EC](http://www.ec.europa.eu/index_en.htm) (3 June 2003) requires financial institutions to report financial information about non-resident investors so that their income may be taxed in their home EU jurisdiction or have a withholding tax applied. It is essentially a measure to prevent cross-border tax evasion within EU borders and to combat and curtail money-laundering, movement of proceeds from drug-dealing and identify sources of money used to fund terrorism.

The Directive was agreed upon by the EU Finance Ministers on 21 January 2003 and adopted by the Council of Ministers on 3 June 2003. Originally ambitiously scheduled to come into force on 1 January 2004, implementation was delayed until 1 July 2005, after Member States finally agreed on 19 July 2004 that domestic implementation of some of the provisions was unlikely or unduly slow. Generally, OFCs have found the Directive an unpopular measure, due to fears about it stimulating a flight of funds from Europe to jurisdictions (currently) not subject to the Directive, such as Singapore and Hong Kong.

The Directive could only take effect once Switzerland agreed to separate nine bilateral accords under the Schengen Treaty. The country agreed to approve the accords on 19 May 2004. Together with the Schengen negotiations, Switzerland agreed on 19 May 2004 and signed an agreement on 26 October 2004 to adopt the Directive once the EU foreign ministers included in their agreement that Switzerland could maintain and uphold its banking secrecy. Within the agreement Switzerland committed to withholding tax on deposits held by EU residents rather than exchange information on their identities with EU member states, as required under the Directive.

The following countries are Schengen members: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden and Switzerland.

The European Commission has adopted two proposals for new Directives aimed at improving mutual assistance between Member States' tax authorities in the assessment and the recovery of taxes. One of the key elements of the proposals is that Member States would no longer be able to invoke bank secrecy in order to refuse cross border co-operation. The texts of the new proposals are available at: http://ec.europa.eu/taxation_customs/index_en.htm

- [COM\(2009\)29](#) Proposal on improved administrative cooperation in the assessment of taxes is its wider scope, as it covers all taxes except those that are dealt with under specific European Community legislation, eg. VAT and Excise duties.
- [COM\(2009\)28](#) Proposal to improve mutual assistance in the recovery of taxes aims at reinforcing and improving recovery assistance between the Member States. This should help to increase the recovery ratio, which currently only amounts to approximately 5% of the total for which recovery assistance is requested.

Liechtenstein, San Marino and Monaco signed similar agreements on 7 December 2004 and Andorra on 15 November. All are based on the same four elements enshrined in the savings agreement between the EU and Switzerland, referred to above. These elements are:

- **Withholding Tax:** Paying agents in the three countries will be required to withhold tax on interest payments to EU individuals at the same rates as Belgium, Luxembourg and Austria under the Savings Directive – 15% during the first three years (1st July 2005 – 30th June 2008), 20% for the subsequent three years (1st July 2008 – 30th June 2011) and 35% thereafter (1st July 2011). The three countries will share the revenue of the tax withheld, transferring 75 per cent of the revenue to the tax authorities of the individual's Member State of residence.
- **Voluntary disclosure of information:** The retention tax will not be applied if the EU resident taxpayer authorises the

paying agent to disclose information on the interest payment to his tax authorities.

- **Review clause** stating that the Contracting Parties shall consult with each other at least every three years or at the request of either Contracting Party with a view to examining and if necessary improving the technical functioning of the Agreement, taking into account international developments.
- **Exchange of information upon request:** For income covered by the draft Agreement, the three countries will grant exchange of information on request for cases of fraud or comparable misbehaviour.

Each of the three Agreements is accompanied by an appropriate Memorandum of Understanding concerning future co-operation between each of the three countries and the Community and/or EU Member States.

The Directive only applies to individuals, not companies or businesses and it does not apply to investment products such as trusts or structured bonds. Under the Directive, all EU Member States with the exceptions of Austria, Belgium and Luxembourg, will automatically exchange information about cross-border interest payments originating in their territories which are paid AFTER the Directive comes into force. The three exceptions above have agreed to levy a withholding tax instead of automatically exchanging information. The withholding tax will initially be 15% (as at 1 July 2005), rising to 20% from 1 July 2008 and finally 35% from 1 July 2011.

All relevant Member States' dependent or associated territories (the Channel Islands, the Isle of Man and the dependent or associated territories in the Caribbean) will provide for the same measures as those of the Directive, ie, they will apply domestically a system of information reporting or, during the transitional period of the Directive, levy a withholding tax on the same terms as Belgium, Luxembourg or Austria (see above). With the consent of the Council High Level Group which was set up to co-ordinate work on the "Tax Package", these territories have established model agreements which will form the basis for bilateral agreements between them and each of the Member States. There is a view that because BVI and Cayman "positively engaged" with the Directive early on and now have equivalent measures in place, they are competitively better placed than Bermuda, and the Bahamas. For example, all non Cayman and BVI funds are deemed to be non-UCITS equivalent (with some minor exceptions) and therefore outside the Directive's scope. Currently (August 2005), both Bermuda, and Bahamas based funds are caught by the Directive and recent estimates indicate that Bermuda, has already lost (at August 2005) some 100 funds because of the imminent threat posed by the Directive. There may be a slight undercount here as funds do not have to notify the BMA if they migrate to an approved jurisdiction.

Bermuda was not initially covered by the Feira Conclusion (signed by the European Council in Santa Maria da Feira on 19

and 20 June 2000) and which (per para above) applied to all Britain's OTs *except* Bermuda. In December 2005, after discussions with the Swiss tax authorities concerning the application of Swiss home country rules on Bermuda domiciled non-retail funds, the Government of Bermuda amended the Bermuda Monetary Authority (Collective Investment Scheme Classification) Regulations 1998 (the "Regulations"). The amendment provided that funds which are exempted from the Regulations would be deemed to be "out of scope" for purposes of the Savings Directive under the Swiss guidelines on the grounds that they are not subject to regulation in Bermuda.

FATF www.fatf-gafi.org – Financial Action Task Force – emphasis on Anti-Money Laundering and jurisdictions under this initiative are deemed “non-cooperative” only if they are very deficient and prohibit or seriously impair international cooperation. It is not a formal international organisation but a task force composed of member governments who agree to fund the FATF on temporary basis with specific goals and projects (a "mandate").

FSB www.financialstabilityboard.org – Financial Stability Board – see FSF: as of May 2009, the FSF changed its name to the Financial Stability Board (FSB). Members of the FSB include FSF member jurisdictions plus the rest of the G20, Spain and the European Commission.

FSF www.fsforum.org – Financial Stability Forum (now FSB) – A group of financial regulators established by the G7 countries after the Asian crisis in 1997/1998 to study methods of reducing global financial volatility. On 30 May 2000 it released a report which placed 25 of the world's leading OFCs into 3 groups representing differing levels of threat to global financial stability. These FSF Groups are ranked by the quality of financial regulation and categorised by inclusion as follows:

1. cooperative, high quality of supervision, largely adhere to international standards
2. have procedures for supervision and cooperation, but actual performance falls below international standards leaving room for substantial improvement
3. low quality of supervision and/or un-cooperative with onshore supervisors and with little or no attempt to adhere to international standards.

- **G7** = Canada, France, Germany, Italy, Japan, United Kingdom, United States.
- **G20** = G8 + Argentina, Australia, Brazil, India, Indonesia, Korea, Mexico, Saudi Arabia, South Africa and Turkey.
- **FSB** = May 2009 Press Release by FSF changed FSF's formal name to the Financial Stability Board (FSB). The current members of the FSB include FSF member jurisdictions plus the rest of the G20, Spain and the European Commission.

The G20 are further committed to strengthening adherence to international prudential regulatory and supervisory standards.

The IMF and FSB will be monitoring the implementation of these standards by each jurisdiction whilst the FSB is being called to develop measures to promote adherence and cooperation amongst jurisdictions.

The G20 also agreed that FATF should revise and reinvigorate the AML/CFT compliance review process for each jurisdiction. It is expected that the FSB and FATF will report on the progress of adoption by jurisdictions to the G20 at the next G20 Finance Ministers and Central Bank Governors' meeting.

With powers being extended to the IMF and other global bodies and an endorsement of the principle of macro-prudential regulation being espoused it is now up to each nation's financial authorities to work together to ensure measures are implemented locally, regionally and globally.

GAFISUD www.gafisud.org – Financial Action Task Force on Money Laundering in South America

GIABA www.giaba.org – Inter -Governmental Action Group against Money Laundering in West Africa

IMF www.imf.org – International Monetary Fund – Historically, the IMF focus was more on the world of offshore banking and largely took over the work of the FSF. The IMF was asked to give highest priority to jurisdictions in the Group II category in assessing their adherence to international standards and reviews jurisdictions by way of progressively more detailed and rigorous assessments, carried out in 3 stages or modular assessments.

The IMF began a joint program with the World bank called the Financial Sector Assessment Program (FSAP) May 1999 to address potential vulnerabilities in the global financial system by obtaining comprehensive information on the status of financial regulation and supervision in the assessed jurisdictions, as well as substantial understanding of their arrangements for AML (anti-money laundering) and combating the finance of terrorism (CFM). The overall effectiveness of the whole OFC Assessment Program was reviewed by the IMF Executive Board in November 2003 and favourably assessed in retrospect. The details and focus of the Next Steps in the Assessment Program are outlined in IMF Public Information Notice (PIN) No. 03/138, dated 24 Nov 2003 (obtainable from the IMF website above). The key elements moving forward, are: regular monitoring by the IMF of OFC supervisory and regulatory systems and activities and improving their transparency; enhancing technical assistance for them; and more collaboration with standard setters and supervisory bodies in order to strengthen standards and information exchange.

IOSCO www.iosco.org International Organisation of Securities Commissions

MENAFATF www.menafatf.org – Middle East and North Africa Financial Action Task Force

MONEYVAL www.coe.int/moneyval – Committee of Experts on the Evaluation of Anti-Money Laundering Measures (formerly PC-R-EV until 2002) established in 1997.

NORDEN www.norden.org – **Nordic Council** is the official co-operation in the Nordic region

OECD www.oecd.org – Organisation for Economic Co-operation and Development – Emphasis on taxes: The organisation carries out repeatedly an assessment of the legal and administrative framework for transparency and exchange of information; in particular the commitment to transparency and exchange of tax information under the umbrella of eliminating so-called “Harmful Tax Practices” and identifying so-called “uncooperative countries or territories (tax havens)”. **Note:** “The United Kingdom has confirmed that it will remain responsible for any international obligations arising from any international fiscal treaties, agreements or commitments which affect its Overseas Territories or Crown Dependencies within the framework of this OECD initiative, including any that may be necessary to fulfil commitments entered into by those Overseas Territories or Crown Dependencies”. (OECD 2001 Progress Report on Harmful Tax Practices at page 8).

As part of the assessment, 84 countries were surveyed by the Global Forum. These countries included the 30 OECD members, participants and observers in the OECD Committee on Fiscal Affairs, countries identified as tax havens and other financial centres not classified as tax havens. The OECD set out four key factors for identifying tax havens in its 1998 report “Harmful Tax Competition: An Emerging Global Issue”, including (i) no or nominal tax on relevant income, (ii) lack of effective exchange of information, (iii) lack of transparency, and (iv) no substantial activities. Over 40 countries were first identified as tax havens under this criteria in 2000 and since then have been further split into three categories known as the Black List (uncooperative tax havens), the Grey List (tax havens that have committed to implement the Principles) and the White List (tax havens that have substantially implemented the Principles).

OGBS www.ogbs.net – Offshore Group of Banking Supervisors – related to the FATF scrutiny, it requires a clear political commitment from members to implement the FATF's Forty Recommendations.

For further information, we invite you to contact the Appleby personnel who provided you with a copy of this publication.

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