Funding the Future

# New OECD report on automatic information exchange: will...

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*The Tax Justice Network posted this press release today and I share it as I endorse what it says:*

Feb 13, 2014 - Today the OECD *presented a major report on a new global standard for countries and tax havens to exchange information with each other, a new tool for fighting the scourge of tax evasion. The report contains many positive elements but falls far short of what the world's citizens desperately need — especially citizens in poorer countries. Notably:*

* *The OECD plan is likely to result in developing countries being excluded because they are expected to provide 'reciprocal' information exchange, even though pretty much all active tax havens are in rich countries, and many developing countries would need to sacrifice scarce resources to set up the arrangements to collect the information to be exchanged.*

* *The OECD standard, while technically useful, contains loopholes that can easily be, and must be, closed.*

* *Freeports, safety deposit boxes and other kinds of storage mechanism are excluded.*

* *There are no sanctions for recalcitrant jurisdictions.*

***Background: from 'on request' to 'automatic' information exchange***

The OECD is the dominant global body setting standards for information exchange. Its current dominant standard of 'upon request' standard for information exchange is woefully inadequate. In April 2013, however, G20 Finance Ministers and Central Bank Governors endorsed a complementary, and far stronger standard that we have long called for: automatic information exchange (AIE). The G8 Presidency ***requested that the OECD write this report about just how the AIE project should work.***

***The climate of world opinion about tolerance for tax evasion has improved dramatically in the past couple of years, but we have seen few serious***

***concrete steps so far. The OECD's new report could be the first big step in putting together the nuts and bolts of real change.***

***The new report: the basics***

The OECD's new 'automatic' standard will not replace the "upon request" standard but will complement it, while trying to address its many limitations. It will also run in parallel with other bilateral or regional practices of AIE, such as the U.S. Foreign Account Tax Compliance Act (FATCA) and the EU Savings Tax Directive (EUSTD.)

The new report recommends two main components: a Competent Authority Agreement (a model agreement to be signed by jurisdictions willing to implement the new global AIE standard among each other); and Common Reporting Standards (CRS) providing minimal common rules to be followed regarding:

* "reporting" (the specific financial account information: name, address, Taxpayer Identification Number, date of birth, account balance, interest, dividends, etc.,) and

* "due diligence" that certain financial institutions must conduct: identifying the residency of individuals, entities and controlling persons of passive non-financial entities, whose information will be reported by financial institutions to the local competent authority, which then "automatically" exchanges it with the foreign competent authority where the reportable persons are resident.

***The positives***

In contrast to the previous "upon request" standard, the new global standard of AIE will not hinge on costly investigations by local authorities or on a deliberate lack of requests from authorities protecting corrupt officials or tax-evading elites. This new platform also has a wider scope: it covers individuals, entities (including foundations and trusts, with special reporting provisions for all-important ***discretionary trusts*****) and persons controlling passive non-financial entities. However, the effectiveness of this broader scope still relies on comprehensive beneficial ownership information in registries of trusts and shell companies. We think these registries must be public.***

***Some problems and solutions***

The rules require 'reciprocity' in information exchange — but this disadvantages poorer countries. (The OECD, a club of rich countries, has a long track record in designing rules to favour its members at the expense of developing countries.)

To understand why reciprocity is a problem, consider first how many wealthy Nigerians are likely to stash assets secretly in Switzerland — then consider how many wealthy Swiss are likely to have locate their secret stashes in Nigeria. Nearly all the active tax havens are located in rich countries, and the flow of illicit money is in one direction only: from poor countries to rich. So it is less relevant for developing countries to hand over all relevant information. If Switzerland really wants reciprocity from Nigeria, it can request this bilaterally through a tax information exchange agreement.

Not only that: if these countries don't have the capacity or resources to set up the structures for collecting the relevant information, then under the 'reciprocity' principle they will be left in the dark. Even if developing countries don't have the capacity to make full use of the data they are provided with, it will still have a powerful deterrent effect.

The more global co-operation there is on AIE, the stronger the system will be. So non-reciprocity provisions should be added, to expand the pool of participants. There is also a need for collective sanctions against those jurisdictions that deliberately decide not to become involved in AIE, as a way to attract illicit financial flows.

It is also essential that we have a multilateral competent authority agreement, which is open for all countries that want to join. The OECD report merely raises this as a possibility: but it should be the rule, rather than the exception. Once again, developing countries are disadvantaged: their often weak bargaining powers mean they may have to yield other concessions elsewhere, to be allowed to join.

Before the ink is dry on the new report, tax advisers will be scheming to find ways to escape it. The OECD must immediately set about plugging the loopholes and addressing other problems, including:

* Trusts and foundations. Although all of the real warm-blooded human participants in a trust will be reported to their respective country of residence, the standard only requires a single settlor to be named, instead of all settlors and contributors of assets to trusts. (It is common practice, for instance, for lawyers to serve as 'nominee' settlors to a trust by initially contributing a token amount, after which the real person behind the trust will put in the larger sums.) The OECD system allows such abuses to continue, and these rules are weaker than what the EUSTD amendments are envisaging. With discretionary foundations, only the "controlling persons" of those legal entities must be identified, which is far too vague to be effective in the international league of tax evasion. As is the case with trusts, information must include all the foundation's participants: founders/contributors, foundation council members, enforcers, and if ascertainable, beneficiaries.

* Safety deposit boxes, ***freeports*** ***and other alternative storage systems are not included.***

* ***Changes in residency. Jurisdictions are increasingly selling their sovereignty to give away 'residencies' to wealthy citizens. These must be tackled to avoid the complete failure of reporting.***

* ***More work needs to be done to find ways to persuade and encourage jurisdictions such as Switzerland, the United Kingdom and the United States — to play fair and join the scheme.***

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