II. Progress Made in Implementing the Standards

The achievements of the Global Forum in its first decade of work centred around the development of the standards of transparency and exchange of information for tax purposes and engaging as many countries as possible in the Global Forum process. Over the past 18 months, the progress consists of endorsements of the standards by major financial centres and concrete steps by those financial centres to implement the standards. High standards of transparency and exchange of information are firmly entrenched as fundamental aspects of today's global financial community.

Commitment to the standards of transparency and exchange of information

The most significant progress made since last year's report is in the number of countries that have committed to the OECD's principles of transparency and effective exchange of information for tax purposes. During the first years of its existence the work of the Global Forum was guided by a partnership between OECD countries and other financial centres that were committed to the OECD's principles of transparency and exchange of information. A total of 32 non-OECD jurisdictions had indicated their commitment to these principles by 2002. In 2003, Nauru and Vanuatu made commitments. In 2005, the Global Forum welcomed the endorsement of the standards by Argentina; China; Hong Kong, China; Macao, China; the Russian Federation and South Africa. In 2007, Liberia and the Marshall Islands made commitments.

Over the past year a total of 19 countries have endorsed the standards. This includes OECD members Austria, Belgium, Luxembourg and Switzerland, which have withdrawn their reservations to Article 26 (Exchange of Information) of the OECD Model Tax Convention. Now all 30 OECD countries fully support these standards. In addition, Andorra, Liechtenstein and Monaco have all made commitments to the standards and have provided timelines in which they intend to implement them. As a result, they have been removed from the OECD's list of unco-operative tax havens.

There were also positive developments among the world's other significant financial centres. Singapore endorsed the standards in February 2009 and introduced legislation in June 2009 intended to allow it to implement the standards. Hong Kong, China and Macao, China, which had already endorsed the standards in 2005, each announced that they would make domestic law changes in 2009 to implement the standards. Hong Kong, China introduced legislation to its Legislative Council in July 2009. Costa Rica, Guatemala, Uruguay, Philippines, Malaysia and Brunei have all made similar commitments.

As a member of the G20, India has long been a supporter of the OECD's standards of transparency and exchange of information. India is included for the first time in this year's report, and has confirmed its commitment to these principles in its summary assessment.

Finally, as part of their accession to membership in the OECD Chile, Estonia, Israel and Slovenia are also committed to implementing the standards. The commitment to implement the standards by all OECD member and accession countries, the remaining unco-operative tax havens and a wide range of other significant financial centres marks the establishment of a level playing field in terms of the acceptance of the principles of transparency and exchange of information and is a major accomplishment. The table below depicts the evolution of support for the OECD standards and the Global Forum's work over the past 10 years.

Table II.1 Commitment to the standards

Year	Up to 2000	2001 – 2002	2003	2005	2007	2009
Country	Australia, Bermuda, Canada, Cayman Islands, Cyprus[1], Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Malta, Mexico, Netherlands, Netherlands Antilles, New Zealand, Norway, Poland, Portugal, San Marino, Slovak Republic, Spain, Sweden, Turkey, United Kingdom and United States.	Anguilla, Antigua and Barbuda, Aruba, The Bahamas, Bahrain, Barbados, Belize, British Virgin Islands, Cook Islands, Dominica, Gibraltar, Grenada, Guernsey, Isle of Man, Jersey, Mauritius, Montserrat, Niue, Panama, Samoa, Seychelles, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Turks and Caicos Islands, US Virgin Islands	Nauru and Vanuatu.	Argentina; China; Hong Kong, China; Macao, China; the Russian Federation and South Africa.	Liberia, the Marshall Islands and the United Arab Emirates.	Andorra, Austria, Belgium, Brunei, Chile, Costa Rica, Estonia, Guatemala, India, Israel, Liechtenstein, Luxembourg, Malaysia, Monaco, Philippines, Singapore, Slovenia, Switzerland and Uruguay.
Total	**32**	**58**	**60**	**66**	**69**	**88**

1 - Note by Turkey:
The information in this document with reference to « Cyprus » relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.
- Note by all the European Union member states of the OECD and the European Commission:
The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

With the expansion of support in 2009 all countries surveyed by the Global Forum have now committed to implement the standards of transparency and exchange of information.

Implementing the standards

Countries that have substantially implemented the OECD standard on exchange of information

A country is considered to have substantially implemented the standard of exchange of information for the purposes of this Global Forum assessment if it has in place signed agreements or unilateral mechanisms that provide for exchange of information to standard with at least 12 OECD countries. This benchmark was agreed in October 2008 by the Sub-Group on Level Playing Field Issues as an appropriate dividing line between those countries that are implementing the standards and those that are not and was proposed to the full Global Forum in November 2008. Of the 87 countries surveyed, 41 have reached this benchmark. Since last year's report Bermuda, Cyprus, Guernsey, Jersey, Malta and the Isle of Man have either changed their domestic law or entered into enough agreements to be considered to have substantially implemented the standard.

Table II.2 Countries that have substantially implemented the OECD standard on exchange of information

Argentina	Germany	Jersey	Slovak Republic
Australia	Greece	Korea	Slovenia
Bermuda	Guernsey	Malta	South Africa
Canada	Hungary	Mexico	Spain
China	Iceland	Netherlands	Sweden
Cyprus	India	New Zealand	Turkey
Czech Republic	Ireland	Norway	United Kingdom
Denmark	Isle of Man	Poland	United States
Estonia	Israel	Portugal	US Virgin Islands
Finland	Italy	Russian	
France	Japan	Federation	

A number of countries have indicated in the commentary to their summary assessments that their current negotiation schedule should allow them to reach this standard in the near future. These include Aruba, the Cayman Islands and the Netherlands Antilles. Other countries that already have treaty networks, such as Chile, the Philippines, Singapore and Malaysia, will be able to reach the threshold by making appropriate changes to their domestic law to remove impediments to effective exchange of information for tax purposes.

While the threshold of 12 signed agreements is a good indicator of progress which merits recognition, the Global Forum's standards, as hallmarks of a global level playing field, require that all countries aim to have high quality agreements which are effectively implemented with all interested countries. It is for this reason that this year the Global Forum will examine how it can strengthen its peer review process to focus on effective implementation of the transparency and exchange information standards.

The OECD Secretary-General's 2 April progress report

On 2 April 2009, on the occasion of the G20 London Summit, the OECD Secretary-General issued a progress report on the implementation of the international standard on exchange of information in tax matters for the countries that participate in the Global Forum's annual assessment of the legal and administrative framework for transparency and exchange of information.

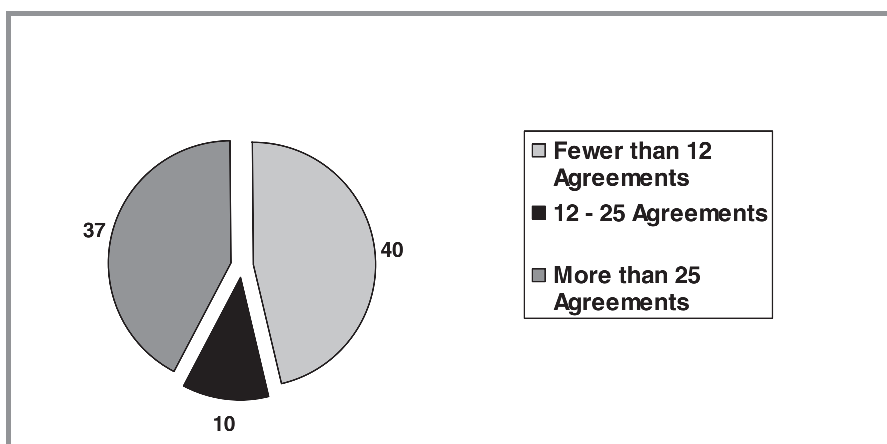
For the purposes of the progress report it was determined that a country that had signed agreements with 12 countries, whether OECD or other countries, would be considered to have "substantially implemented" the standard on exchange of information. This differs from the criteria to be considered to have "substantially implemented" the standard for the purposes of this Global Forum report, which requires that a country have agreements with 12 *OECD* countries. While the progress report is based generally on the work done by the Global Forum, it was prepared by the OECD Secretariat in the context of the G20 Summit, where it seemed appropriate to consider agreements with countries other than OECD members.

As a result, seven countries that currently appear in the progress report as having substantially implemented the standard are not considered to have substantially implemented the OECD standard of exchange of information in this report. These are the following (the figures in brackets indicate the number of agreements each has signed with OECD countries): Bahrain (5); Barbados (2); Belgium (7); Luxembourg (9); Mauritius (4); the Seychelles (1); and the United Arab Emirates (8).

DTCs and TIEAs to OECD standard

Knowing which countries have substantially implemented the OECD standard and which have not does not give a complete picture of all countries' ability to exchange information to the standard. More importantly, the extent of many treaty networks shows that having 12 agreements only places a country in the middle rank of countries. A large number of countries have fewer than 12 agreements in place but a comparably large number of countries have more than 25 agreements in place. Figure II.1 shows the number of countries that have signed more than 25 agreements to OECD standard, between 12 and 25 agreements and those with fewer than 12 agreements.

Figure II.1 Size of treaty networks among countries surveyed



The chart shows that 37 of the countries surveyed have signed more than 25 agreements that provide for exchange of information to OECD standards. Many of these are OECD countries, but this group also includes South Africa, the Russian Federation and China. The countries that have between 12 and 25 agreements are generally in the process of implementing their commitments or have already substantially implemented the standard (*e.g.*, Bermuda, Guernsey, the Isle of Man and Jersey).

The position with respect to the group of countries that have fewer than 12 agreements signed is less homogenous. Among these countries some have not made any indication that their approach has changed or that implementing the standards has become a higher priority. Others have made more concrete progress and are well on the way to implementing the standard (*e.g.*, the British Virgin Islands and the Cayman Islands). The table below shows those countries that have fewer than 12 agreements signed that meet the OECD standards but which have recently made positive steps toward reaching the benchmark.

Table II.3 Recent actions taken to implement the OECD standards by countries with fewer than 12 agreements to OECD standard

Country	Action Taken
Austria	In 2009 signed two DTCs and initialled three others that meet the OECD standard and has introduced legislation that will allow it to exchange information to the OECD standard.
Anguilla	In 2009 signed three TIEAs that meet the OECD standard.
British Virgin Islands	In 2009 signed TIEAs that meet the OECD standard with eight countries.
Cayman Islands	In 2009 signed agreements that meet the OECD standard with 10 countries.
Chile	In April 2009 submitted a bill to Congress which would allow the Tax Authority to access bank information to which it currently does not have access, through a special procedure.
Cook Islands	In 2009 signed a TIEA that meets the OECD standard.
Gibraltar	Signed TIEAs with the United States and Ireland.
Hong Kong, China	Has published draft legislation intended to allow it to exchange information to the OECD standard.
Liechtenstein	Signed a TIEA with the US in December 2008 and in June 2009 introduced a law on mutual cooperation in tax matters with the US. Initialled one TIEA and one DTC with OECD countries in 2009.
Macao, China	Has put forward draft legislation intended to allow it to exchange information to the OECD standard.
Malaysia	Has contacted its treaty partners indicating that it is willing to negotiate protocols to its treaties to include paragraphs 4 and 5 of Article 26 of the OECD Model Tax Convention and has initialled such protocols with 2 countries.
Philippines	Has published draft legislation intended to allow it to exchange information to the OECD standard.
Singapore	Has published draft legislation intended to allow it to exchange information to the OECD standard.
Switzerland	In 2009 initialled DTCs that meet the OECD standard with 12 OECD countries.
Turks and Caicos Islands	In 2009 signed three TIEAs that meet the OECD standard.
Uruguay	In 2009 initialed a DTC that meets the OECD standard with an OECD country.

Some countries have extensive networks of treaties that provide for exchange of information, but which do not meet the OECD standard due to impediments to exchange of information in their domestic law. This includes Chile, Singapore, Malaysia and the Philippines, which are in the process of making the necessary changes to their domestic law. Once these changes come into effect, some of their existing treaties would meet the standard, allowing them to be considered to have substantially implemented the OECD standard.

Overall, the pace of activity and engagement in the process of negotiations has accelerated considerably in the past several months, both for non-OECD as well as OECD countries. These include traditional bilateral negotiations, but also involve multilateral negotiations toward bilateral TIEAs based on the Nordic approach[2]. Multilateral projects based on this model are ongoing in the Caribbean and the Pacific and could lead to 50 or 60 more TIEAs by early 2010. Countries are also investigating the use of multilateral instruments such as the OECD's 2002 Model TIEA. Finally, certain jurisdictions such as the Cayman Islands and St. Kitts and Nevis have adopted unilateral exchange mechanisms that may allow countries that are otherwise unable to undertake bilateral negotiations to put in place exchange of information arrangement with a large number of countries quickly and efficiently. This approach will be examined by the Global Forum, and may prove to be an attractive means of implementation in the future.

The progress of TIEA negotiations

The Global Forum developed the model TIEA as a means of facilitating the implementation of the commitments made by countries to the OECD. The model sets the standard for almost 100 TIEAs signed to date.

From 2000 to 2006 there was comparatively little TIEA activity. Most of the TIEAs signed in this period involved the United States, which already had a long established TIEA program dating back to the mid-1980s. However, in 2007 the negotiation and signing of TIEAs accelerated rapidly. This trend began with the signing of the first Nordic TIEAs by the Isle of Man and other agreements entered into that year by Antigua and Barbuda, Bermuda, Jersey and the Netherlands Antilles. In fact, the 12 TIEAs signed in 2007 were already more than all the TIEAs signed between 2000 and 2006. In 2008, 23 more TIEAs were signed. Already in 2009 (as of 31 July) 53 additional TIEAs have been signed.

[2] In June 2007, Finance Ministers representing the Nordic economies -- Denmark, the Faroe Islands, Finland, Greenland, Iceland, Norway and Sweden -- announced plans to conclude a number of TIEAs within the next few years. The Nordic countries developed a multilateral approach to negotiations to speed up the process. Since October 2007, the Nordic group has signed a total of 42 agreements with Bermuda, the British Virgin Islands, Cayman Islands, Guernsey, the Isle of Man and Jersey.

Figure II.2 TIEAs signed annually 2000-2009

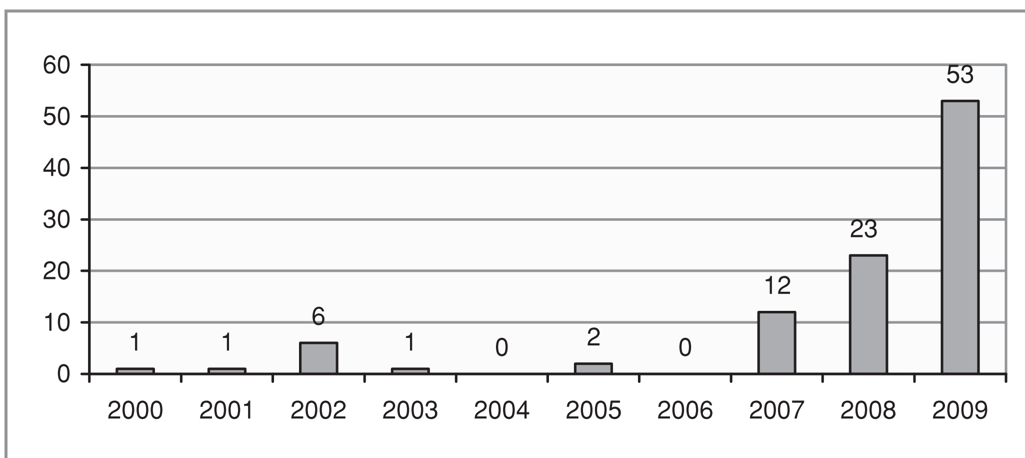
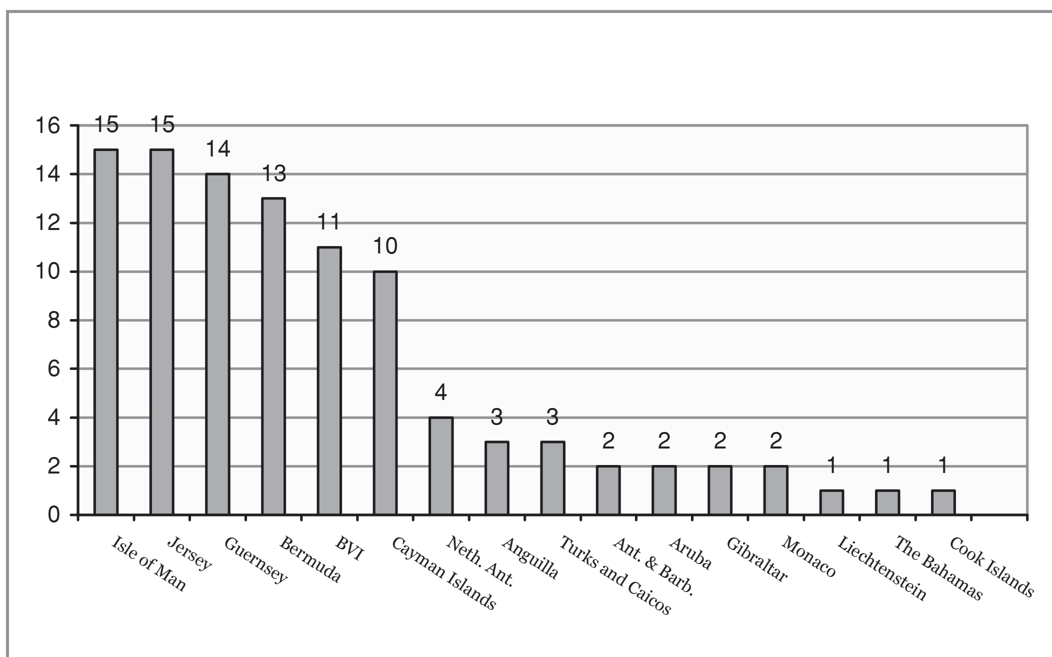


Figure II.3. TIEAs signed by jurisdictions since 2000



As the chart shows, the Isle of Man and Jersey have set the pace by signing TIEAs with 15 countries, including at least 12 OECD member states. In addition, the Isle of Man has agreed DTCs with Belgium and Estonia that provide for exchange of information to the OECD standard. Guernsey and Bermuda have also been very active, and along with the British Virgin Islands and the Cayman Islands (which in addition to its 10 TIEAs has a double taxation arrangement with the UK), these 6 jurisdictions have signed almost 80 TIEAs. All of these countries continue to actively negotiate new agreements with OECD and non-OECD countries.

Progress in eliminating specific impediments to exchange of information

Eliminating the domestic tax interest

When the Global Forum began its work a small number of countries reported being unable to access information for exchange purposes where they did not have any interest in obtaining the information for their own tax purposes. This limitation constitutes a major impediment to exchanging information, particularly where a tax authority receives a request for information in the case of a non-resident earning only foreign-source income. In these circumstances it may be unlikely that a domestic tax interest exists, and tax authorities in the requesting state may be unable to obtain tax information even where a valid exchange of information agreement is in place.

The Model TIEA developed by the Global Forum specifies that the requested state cannot refuse to provide information solely on the grounds that it does not need the information for its own tax purposes. This is also reflected in Article 26 (Exchange of Information) of the OECD and UN Model Tax Conventions.

Today, the domestic tax interest requirement is mostly a thing of the past. In 2007, Cyprus amended its domestic legislation to remove this requirement, leaving only the Philippines; Hong Kong, China; Malaysia; and Singapore as countries that continued to limit their information-gathering powers to these circumstances. However, in 2009 all of these countries announced that they will amend their legislation to do away with the domestic tax interest. Malaysia reports that the official change of policy to include paragraph 4 and 5 of Article 26 in its tax treaties means that the Director General of the Inland Revenue can now widely apply the powers to obtain information already contained in its domestic laws for the purposes of exchanging information in all tax matters under its existing treaties, which contain earlier versions of Article 26. This means that there is no longer a domestic tax interest requirement in Malaysia.

Since each of these countries except Hong Kong, China already have extensive networks of tax treaties (including agreements with at least 12 OECD countries) that allow for exchange of information, appropriate amendments to their domestic law to eliminate all domestic impediments to exchange of information would allow them to be considered to have substantially implemented the OECD standard of exchange of information as soon as these amendments come into force. Singapore and Hong Kong, China have already published draft legislation designed to remove their domestic tax interest requirements.

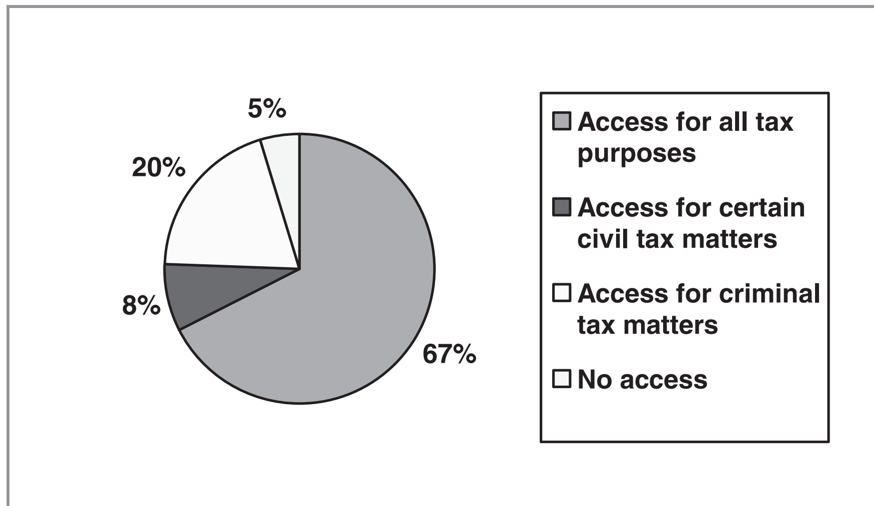
Improvements in access to bank information

Today only a small fraction of countries surveyed by the Global Forum have no access to bank information for any tax information exchange purposes. Indeed, of the 87 countries surveyed, 82 are able to obtain and provide bank information in response to a request for information in criminal tax matters in some or all cases. Fifty-eight countries report no restrictions on access to bank information for exchange purposes. This group now includes Belgium which has no restrictions on access to bank information where its treaties include paragraph 5 of Article 26. A further 7 countries[3] have access to bank information for exchange purposes in certain civil tax matters (in addition to having

[3] Anguilla; Chile; Gibraltar; Hong Kong, China; Malaysia; Montserrat; and Singapore.

access in criminal tax matters in some or all cases) while 17 countries[4] only have access to bank information for the purposes of responding to a request for exchange of information in criminal tax matters. Four countries – Guatemala, Nauru, Panama and the Philippines– continue to be unable to access bank information for any exchange of information purposes. Dominica has not provided any information regarding access to bank information.

Figure II.4 Access to bank information for tax purposes



While on the surface the situation today is very similar to what was reported in 2006, one of the very positive developments since last year's report is that many of the commitments discussed above have also included specific undertakings to change countries' domestic laws to allow them to effectively implement the standards. The table II.4 shows the countries with limited access to bank information for exchange purposes which have given definite indications of their plans – or have already taken action – to bring their legal framework into line with international standards.

[4] Andorra; Austria; Belize; Cook Islands; Liechtenstein; Luxembourg; Macao, China; Niue; Samoa; San Marino; Saint Kitts and Nevis; Saint Lucia; Saint Vincent and the Grenadines; Switzerland; Turks and Caicos Islands; Uruguay and Vanuatu.

Table II.4 Actions taken to improve access to bank information

Country	Current access	Timeline	Proposed Action
Andorra	Criminal tax matters	November 2009	Domestic legislation amendment
Austria	Criminal tax matters	-	DTC conclusion (already signed two DTCs and initialled three others that meet OECD standard) + domestic legislation amendment
Chile	Certain civil tax matters	2009	Domestic legislation amendment (submitted a bill to Congress in April 2009)
Guatemala	No access	December 2009	Domestic legislation amendment
Hong Kong, China*	Certain civil tax matters	June 2009	Domestic legislation amendment – draft published in June 2009
Liechtenstein	Criminal tax matters	December 31, 2009 (under its TIEA with the US)	Introduced in June 2009 a law on mutual cooperation in tax matters with the US
Luxembourg	Criminal tax matters	-	Update existing DTCs to include current Article 26 (already signed 14 agreements that meet the OECD standard)
Macao, China	Criminal tax matters	December 2009	Domestic legislation amendment
Malaysia*	Certain civil tax matters	December 2009	Domestic legislation amendment
Philippines*	No access	December 2009	Domestic legislation amendment – draft published in June 2009
San Marino	Criminal tax matters	September 2009	Domestic legislation amendment
Singapore*	Certain civil tax matters	June 2009	Domestic legislation amendment – draft published in June 2009
Switzerland	Criminal tax matters	-	DTC conclusion (already initialled 12 agreements that meet the OECD standard)
Uruguay	Criminal tax matters	December 2009	DTC conclusion (initialled one DTC)

* See above, *Eliminating the domestic tax interest.*

This table shows that strict bank secrecy for tax information exchange purposes is, like the domestic tax interest, becoming a thing of the past. The Global Forum should be able to report next year that restrictions on access to bank information have been mostly eliminated, particularly among the larger financial centres. Nevertheless, certain countries with limits on access to bank information have not reported any developments on this issue, including Belize, Nauru, Panama, Saint Vincent and the Grenadines and Vanuatu. These countries, which committed to implement the standards in 2002 or 2003, must become more engaged and the Global Forum must ensure that these countries understand what they need to do to implement the standards and that the opportunities to put exchange mechanisms in place, either bilaterally, multilaterally or otherwise are available.

Bearer securities

Many countries permit the issuance of bearer securities either in the form of bearer shares or bearer debt. Very generally, a bearer security is one in which the legal rights attaching to the instrument belong to the person in physical possession of the instrument itself. This is distinct from a "registered" security, which requires that legal ownership is based not on physical possession of the instrument but on entry in a ledger or other record of ownership. Of the countries surveyed, 36 permit the issuance of both bearer shares and bearer debt, 10 countries allow only the issuance of bearer shares and 20 countries permit the issuance of bearer debt. Seventeen countries do not permit the issuance of bearer securities.

However, the fact that such instruments are in bearer form does not preclude the identification of the owners where appropriate mechanisms are in place. Such mechanisms include arrangements whereby bearer shares may not be issued unless they are subject to custodial arrangements with a recognised custodian or other similar arrangements to immobilise such shares. A number of countries permit the issuance of bearer shares or debt but at the same time require persons holding the securities to be identified in a register. In some cases, persons must notify the company of acquisitions or disposals of any form of interest in the shares of the company that brings their shareholding above or below a particular percentage of the issued share capital.

Table II.5. Mechanisms to identify the holders of bearer securities

Countries that allow issuance of bearer debt	Number of countries that have mechanisms in place to identify holder	Mechanisms in place*			
		Immobilisation	Investigative powers	Anti-money laundering rules	Book entry or other reporting rules
56	**47**	**6**	**11**	**10**	**36**
Countries that allow issuance of bearer shares	Number of countries that have mechanisms in place to identify holder	Mechanisms in place*			
		Immobilisation	Investigative powers	Anti-money laundering rules	Book entry or other reporting rules
46	**41**	**16**	**2**	**8**	**21**

* The total of the mechanisms in place does not necessarily equal the number of countries that have such mechanisms, as some countries report multiple mechanisms.

As the table shows, of the 56 countries that permit the issuance of bearer debt, 47 countries report the existence of mechanisms to identify the holder of such debt. Similarly, 41 out of 46 countries that allow the issuance of bearer shares also have mechanisms to identify the owner of such shares. The table also shows that most countries employ a book entry or other reporting mechanism for these purposes. For example, owners of bearer shares may have to report their shareholding when it exceeds a certain percentage, or holders of debt may have to be identified for the purposes of applying a withholding tax or for information reporting purposes. In many cases,

countries require that bearer instruments be immobilised, that is held by an approved custodian. The key issue remains in respect of those countries that do not have mechanisms in place, which may represent a serious obstacle to full and effective exchange of information. Nauru and Guatemala allow the issuance of both bearer shares and debt, but have no mechanisms in place to identify the holders of such securities. Anguilla and the Marshall Islands have no mechanisms to identify the holders of bearer shares. Costa Rica; Macao, China; the Russian Federation; Uruguay; and Vanuatu do not have mechanisms to identify the holders of bearer debt.

A number of countries have moved recently to restrict the issuance of bearer securities or to put in place more stringent mechanisms for identifying their holders. For example, South Africa has passed legislation that will no longer permit the issuance of bearer shares beginning in 2010. Last year the United States reported that bearer shares could no longer be issued following the introduction of legislation in Nevada and Wyoming. Samoa now requires that bearer shares be immobilised.

As long as countries continue to allow the issuance of bearer securities, the Global Forum will have to monitor carefully the mechanisms that exist to identify the holders of these instruments and, more importantly, how well these mechanisms work in response to requests for information.

Availability of ownership and identity information

The countries surveyed generally report wide availability of ownership and identity information for companies, partnerships, trusts and foundations. In the case of companies, virtually all countries reported that information on the legal owner of the company was held either by the governmental authority or by the company itself, or, in the case of bearer shares, mechanisms existed to identify the legal owner (see above, *Bearer Securities*). Only Montserrat reported having a form of company in respect of which information concerning the legal ownership was not required to be held by the governmental authority or the company. Greece and Grenada did not provide enough information on this issue to assess the availability of ownership information in their country. It should also be noted that Niue, while it continues to be included in the country tables, has eliminated its offshore sector and dissolved all of its international business companies.

About a third of the countries surveyed report that the company or the governmental authority is also required to maintain information concerning the beneficial owner of shares in certain cases. However, these circumstances vary widely, and may only apply to certain regulated companies, specific types of entities, only to initial shareholders or only to shareholders reaching a certain equity percentage in the company. In addition, service providers are required to identify the legal, and often the beneficial, owner of their corporate clients under anti-money laundering legislation. However, these requirements vary from country to country. Some countries only apply anti-money laundering requirements to financial institutions; others extend these requirements to a wide variety of corporate and trust service providers.

Of the 56 countries that have domestic trust laws, only 6 – Brunei; Guatemala; Hong Kong, China; Liechtenstein; Montserrat; and Saint Vincent and the Grenadines – report that neither the governmental authority nor the trustee is required to maintain information on the identity of both the settlors and the beneficiaries. In Montserrat and Liechtenstein anti-money laundering rules require service providers to hold this information. Some

countries – New Zealand, Singapore, the United States and the US Virgin Islands – report that this information is only maintained where required for tax purposes. However, in each of these countries, anti-money laundering rules also require service providers to hold this information.

In the case of partnerships, only Anguilla, the British Virgin Islands and the Seychelles reported that neither the governmental authority nor the partnership was required to maintain identity information regarding the partners. In the case of the British Virgin Islands and the Seychelles, the information-gathering powers in these countries all entitle the authorities to obtain information that is not required to be kept in both civil and criminal tax matters. Therefore, where the partnerships have this information it can be obtained by the authorities. For Anguilla, these information-gathering powers only extend to criminal tax matters. Moreover, anti-money laundering due diligence requirements apply in each of these countries.

Foundations can be established in 40 of the 87 countries reviewed. Foundations are often highly regulated and applicable laws require that detailed information be submitted to governmental authorities, including information on the purpose of the foundation, the identity of the founders and the identity of members of the foundation council (and any other persons with the authority to represent the foundation). The obligations may arise under a number of laws including commercial laws (in particular where the foundation carries on a trade or business), tax laws (either because the foundation is subject to tax or has tax-related information reporting obligations) or supervisory laws. Extensive information may also be held by the foundation itself. Finally, anti-money laundering laws may require persons that provide services to a foundation (*e.g.* a bank managing the assets of a foundation or a notary assisting in the creation of a foundation) to exercise their customer identification requirements. Furthermore, in some countries, some or all members of the foundation council may themselves be covered by anti-money laundering rules. As a result, they are required to keep information on the identity of founders and the origin of the foundation assets.

Availability of accounting information – implementing the JAHGA standards

Of the countries surveyed, 48, or more than half, require accounting records to be maintained to JAHGA standards for all entities. These are as follows:

Table II.6. Countries that require accounting records to be maintained to JAHGA standards for all entities

Andorra	Finland	New Zealand
Argentina	Germany	Niue
Aruba	Gibraltar	Norway
Australia	Greece	Netherlands Antilles
Austria	Guernsey	Poland
Barbados	Hong Kong, China	Portugal
Belgium	Hungary	San Marino
Bermuda	Iceland	Singapore
Canada	India	Slovak Republic
Cayman Islands	Ireland	Slovenia
Chile	Italy	South Africa
China	Japan	Spain
Cyprus	Jersey	St. Kitts and Nevis
Czech Republic	Macao, China	Sweden
Denmark	Mexico	Switzerland
Estonia	Monaco	Turkey

Of the remaining countries the inadequacies in record-keeping requirements are mainly of two types: record retention periods of less than five years and insufficient standards for international business companies and other international entities. Fifteen countries[5] report that records must be kept for fewer than five years for some or all of the entities covered. These can be minor failings, where the retention period is nonetheless three or four years, and where it may be longer depending on the circumstances, since tax law, common law or other general fiduciary obligations, or anti-money laundering rules may have independent requirements. In other cases, there is simply no retention period specified, calling into question the obligation to maintain records in the first place. On the other hand, a number of countries report record-keeping retention periods of 5 years or more (in accordance with the JAHGA standards) on the basis of anti-money laundering law. While this may be adequate, it is not clear in all cases that the records to which this requirement applies are the same that must be maintained under the JAHGA standards as they are for anti-money laundering purposes.

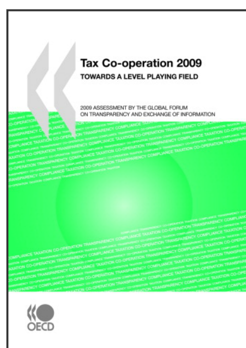
A significant problem appears to exist concerning international or offshore entities (such as international business companies, international trusts, or in some cases any entity that does not conduct business domestically), since 11 countries[6] report deficiencies in the obligation of such entities to maintain accounting records. In some cases, IBCs need only maintain records where they are engaged in a regulated activity (*e.g.* banking or insurance). In Mauritius and Samoa, international companies are only required to

[5] Bahrain, Costa Rica, Isle of Man, Israel, Liechtenstein, Marshall Islands, Saint Lucia, Seychelles, Philippines, Russian Federation, United Arab Emirates, Uruguay, United Kingdom, United States, US Virgin Islands.

[6] Anguilla, Belize, British Virgin Islands, Cook Islands, Mauritius, Panama, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Seychelles and Vanuatu.

maintain the records that the directors consider necessary and desirable. Samoa has indicated that this policy is currently under review. In a number of countries there is also a problem with the record retention period applicable to international companies.

A more minor issue concerns the record-keeping requirements imposed on foundations. A number of countries report that foundations are only required to maintain records if engaged in a commercial undertaking or meet a certain economic threshold. Other countries have specified that while foundations have no record-keeping obligations, these entities may only be maintained for a public purpose. While it is clear that the primary interest in information concerning foundations relates to private foundations that engage in some form of economic or financial activity, there may nonetheless be good reasons to require all foundations to maintain records. For example, a country may not consider the passive holding of shares as a "commercial" undertaking, although such a shareholding may well have relevance for a foreign tax authority. Similarly, a foundation may be established for what is ostensibly a public purpose, but used illegitimately for private ends. If no records have been maintained with respect to such an entity, this may frustrate the enforcement and administration of tax laws.



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