A STEP CHANGE IN TAX TRANSPARENCY

OECD REPORT FOR THE G8 SUMMIT
LOUGH ERNE, ENNISKILLEN, JUNE 2013

Delivering a standardised, secure and cost effective model of bilateral automatic exchange for the multilateral context

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BETTER POLICIES FOR BETTER LIVES

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ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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EXECUTIVE SUMMARY

Vast amounts of money are kept offshore and go untaxed to the extent that taxpayers fail to comply with tax obligations in their home jurisdictions. Jurisdictions around the world, small and large, developing and developed, OECD and non-OECD, stand united in calling for further action to address the issues of international tax avoidance and evasion.

And change is taking place. A major breakthrough towards more transparency was accomplished in 2009 with information exchange upon request becoming the international standard and the restructured Global Forum on Exchange of Information and Transparency for Tax Purposes starting to monitor the implementation of the standard through peer reviews.

Now, there is another step change in international tax transparency driven by developments around the globe, including in the United States and Europe, with unprecedented political support for automatic exchange of information. In April 2013 the G20 Finance Ministers and Central Bank Governors endorsed automatic exchange as the expected new standard.

Anticipating these developments and in light of the increase in automatic exchange agreements, the G8 Presidency requested a report from the OECD to analyse how jurisdictions could build on the recent developments to implement automatic exchange in a multilateral context. It invited reflections on specifications for the information to be exchanged, the legal basis for the exchange and consideration of the necessary platform to exchange the information.

This report, prepared under the authority of the OECD Secretary General, responds to that request. It sets out the key success factors for an effective model for automatic exchange, provides relevant background and outlines four concrete steps needed to put such a model into practice: (i) enacting broad framework legislation to facilitate the expansion of a country's network of partner jurisdictions, (ii) selecting (or where necessary entering into) a legal basis for the exchange of information, (iii) adapting the scope of reporting and due diligence requirements and coordinating guidance, and (iv) developing common or compatible IT standards. The report also provides potential timeframes for each of the action items.

The report recognises that offshore tax evasion is a global issue requiring global solutions – otherwise the issue is simply relocated, rather than resolved. With more and more jurisdictions joining the Convention on Mutual Administrative Assistance in Tax Matters there exists a clear legal basis for comprehensive automatic exchange with strict safeguards protecting confidentiality. Bilateral tax treaties also provide such a legal basis and within the European Union, Directives provide a specific legal framework for automatic exchange of information regarding interest income and certain other types of income between its 27 (soon 28) members. This report notes that a global solution also means a global standard to minimise costs for businesses and governments, while at the same time enhancing effectiveness, maintaining confidence in open markets and best serving society at large. A proliferation of inconsistent models is in nobody's interest.

I. Introduction[1]

1.   As the world becomes increasingly globalised it is becoming easier for all taxpayers to make, hold and manage investments through foreign financial institutions, something that not long ago was accessible only to a select few. Vast amounts of money are kept offshore and go untaxed to the extent that taxpayers fail to comply with tax obligations in their home jurisdiction. Offshore tax evasion is a serious problem for jurisdictions all over the world, OECD and non-OECD, small and large, developing and developed. Cooperation between tax administrations is critical in the fight against tax evasion and a key aspect of that cooperation is exchange of information.

2.   The OECD has a long history of working on all forms of exchange of information – on request, spontaneous, and automatic – and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and Article 26 of the OECD Model Tax Convention provide a basis for all forms of information exchange. Over the past few years much progress has been made by the OECD and the Global Forum on Transparency and Exchange of Information for Tax Purposes in improving transparency and exchange of information on request.[2]

3.   More recently, political interest has also focussed on the opportunities provided by automatic exchange of information. On 19 April 2013 the G20 Finance Ministers and Central Bank Governors endorsed automatic exchange as the expected new standard and called upon the OECD to report on progress in developing a new multilateral standard on automatic exchange of information, taking into account country-specific characteristics.[3] The G20 decision followed earlier announcements by a number of European countries of their intention to develop and pilot multilateral tax information exchange based on the Model Intergovernmental Agreement to Improve International Tax Compliance and to Implement FATCA, developed between these countries and the United States (hereafter the "Model 1 IGA"). On 9 April 2013, the Ministers of Finance of France, Germany, Italy, Spain and the UK announced their intention to exchange FATCA-type information amongst themselves in addition to exchanging

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[1]   This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

[2]   One hundred twenty jurisdictions from around the world have committed to the international standard of transparency and exchange of information (EOI) on request and joined the Global Forum; 100 peer review reports have been completed and published; 652 recommendations have been made for jurisdictions to improve their ability to cooperate in tax matters; more than 1100 EOI relationships that provide for the exchange of information in tax matters to the standard have been established; and 68 jurisdictions have already introduced or proposed changes to their laws to implement more than 300 recommendations. More information on the work of the Global Forum can be found on the following link: http://www.oecd.org/tax/transparency.

[3]   Paragraph 14 of the communiqué states (in part): *"We welcome progress made towards automatic exchange of information which is expected to be the standard and urge all jurisdictions to move towards exchanging information automatically with their treaty partners, as appropriate. We look forward to the OECD working with G20 countries to report back on the progress in developing of a new multilateral standard on automatic exchange of information, taking into account country-specific characteristics. The Global Forum will be in charge of monitoring."*

information with the United States.[4] On 13 April 2013, Belgium, the Czech Republic, the Netherlands, Poland, and Romania also expressed interest in this approach, which by May 14 had already been endorsed by 17 countries,[5] with Mexico and Norway joining the initiative in early June.

4.   Further the United Kingdom recently agreed to automatically exchange information, on the basis of the intergovernmental approaches developed with the United States, with its Crown Dependencies (the Isle of Man, Guernsey and Jersey) and many of its Overseas Territories (Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Gibraltar, Montserrat, and Turks and Caicos Islands). All these jurisdictions have also made commitments to join the pilot project with France, Germany, Italy, Spain and the UK. Also on May 30 the OECD Ministerial called on "…all jurisdictions to move towards automatic exchange of information and to improve the availability, the quality and the accuracy of information on beneficial ownership, in order to effectively act against tax fraud and evasion."

5.   This report responds to a request by the G8 Presidency to analyse how jurisdictions can build on the recent increases in bilateral automatic exchange agreements to efficiently implement automatic exchange of financial account information (hereinafter "financial information") in a multilateral context.[6] It first discusses the key success factors for an effective model for automatic exchange of financial information, as they were identified in recent work conducted at the OECD and summarised in its report on automatic exchange delivered to the G20 in 2012 (part II). It then sets out four concrete steps to put such automatic exchange into practice including possible timeframes for the delivery of each step (part III). The Annex provides background on the recent bilateral agreements based on the Model 1 IGA and how they can be useful in advancing towards a standardised automatic exchange model.

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[4]   They said: "*An important part of the fight against international evasion and fraud is tax transparency. As you know, following the passage of the U.S. Foreign Account Tax Compliance Act we have all been in joint discussions with the U.S. as to the most effective way of concluding intergovernmental agreements to provide for automatic information exchange. These discussions have resulted in a model agreement which minimises burdens on business while ensuring effective and efficient reciprocal exchange of information.*"

[5]   Cf. the Joint Statement of 17 countries on 14 May at ECOFIN.

[6]   This report does not cover EU specific aspects, as they are beyond the scope of the report. The EU participates in OECD meetings and there is close cooperation in many areas including on technical standards. The EU has developed a wealth of expertise in automatic exchange of information between tax administrations as a tool to combat cross-border tax evasion in the direct tax area. The 2003 Savings Directive on interest income provides for detailed rules on collection and exchange of information. The 2011 Directive on Administrative Cooperation obliges member states to automatically exchange information on several other types of income. The EU, closely co-operating with OECD, has also developed standard computerized formats (and related instructions) for member states' tax administrations to automatically exchange information under these two directives. On May 22, the EU Council unanimously agreed to give priority to efforts to extend automatic exchange of information at the EU and global level and welcomed the ongoing efforts made in the G8, G20 and OECD to develop a global standard (Council conclusions 22 May 2013).

II. Key features of a standardised multilateral automatic exchange model on financial information

6.   As a general matter, for a model for automatic exchange of financial information to be effective it must be specifically designed with residence jurisdictions' tax compliance in mind rather than be a by-product of domestic reporting. Further, it needs to be standardised so as to benefit the maximum number of residence jurisdictions and financial institutions while recognising that certain issues remain to be decided by local implementation. The advantage of standardisation is process simplification, higher effectiveness and lower costs for all stakeholders concerned. A proliferation of different and inconsistent models would potentially impose significant costs on both government and business to collect the necessary information and operate the different models. It could lead to a fragmentation of standards, which may introduce conflicting requirements, further increasing the costs of compliance and reducing effectiveness. Finally, because tax evasion is a global issue, the model needs to have a global reach so that it addresses the issue of offshore tax evasion and does not merely relocate the problem rather than solving it. It is against this background that the G20 in April called upon the OECD working with G20 countries to develop a multilateral standard and to report progress at the next G20 meeting in July. The Global Forum has been charged with monitoring.

7.   In 2012 the OECD delivered to the G20 the report "*Automatic Exchange of Information: What it is, How it works, Benefits, What remains to be done*",[7] which summarizes the key features of an effective model for automatic exchange. The main success factors for effective automatic exchange are: (1) a common agreement on the scope of reporting and exchange and related due diligence procedures; (2) a legal basis for the domestic reporting and international exchange of information; and (3) common technical solutions.

1. Common agreement on scope of reporting and exchange including related due diligence procedures

8.   An effective model for automatic exchange of information requires an agreement on the scope of the information to be reported by domestic financial institutions and exchanged with residence jurisdictions. This will ensure that the reporting by financial institutions is aligned with the interests of the residence country. It will also increase the quality and predictability of the information that is being exchanged. The result will be significant opportunities for the residence country to enhance compliance and make optimal use of the information (e.g. through automatic matching with domestic compliance information and data analysis).

9.   In order to limit the opportunities for taxpayers to circumvent the model by shifting assets to institutions or investing in products that are not covered by the model a reporting regime requires a broad scope across three dimensions:

- **The scope of financial information reported:** A comprehensive reporting regime would cover different types of investment income including interest, dividends and similar types of income, and also address situations where a taxpayer seeks to hide capital that itself represents income or assets on which tax has been evaded (e.g. by requiring information on account balances).

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[7]   http://www.oecd.org/tax/exchange-of-tax-information/automaticexchangeofinformationreport.htm

- **The scope of accountholders subject to reporting:** A comprehensive reporting regime requires reporting not only with respect to individuals, but should also limit the opportunities for taxpayers to circumvent reporting by using interposed legal entities or arrangements. This means requiring financial institutions to look through shell companies, trusts or similar arrangements, including taxable entities to cover situations where a taxpayer seeks to hide the principal but is willing to pay tax on the income.

- **The scope of financial institutions required to report:** A comprehensive reporting regime would cover not only banks but also other financial institutions such as brokers, collective investment vehicles and insurance companies.

10.   Besides a common agreement on the scope of the information to be collected and exchanged, an effective model of automatic exchange of financial information also requires an agreement on a robust set of **due diligence procedures** to be followed by financial institutions to: (i) identify reportable accounts and (ii) obtain the accountholder identifying information that is required to be reported for such accounts. The due diligence procedures are critical as they help to ensure the quality of the information that is reported and exchanged.

2. Legal basis and confidentiality

11.   A standardised multilateral automatic exchange model requires a **legal basis** for: (i) the domestic reporting obligation and (ii) the exchange of the information. The reporting obligations will typically be included in domestic tax legislation, with due diligence procedures to ensure the quality of the data set out in regulations or guidance. There are different legal bases upon which automatic exchange could take place, and which already exist, including a bilateral treaty with a provision based on Article 26 of the OECD Model Convention or the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. The Nordic Convention also provides such a basis and within the European Union, Directives provide a specific legal framework for automatic exchange on interest income and certain other types of information between its 27 (soon 28) members.

12.   All treaties and exchange of information instruments contain strict provisions that require information exchanged to be kept secret or confidential and limit the persons to whom the information can be disclosed and the purposes for which the information may be used. The OECD recently released a Guide on Confidentiality, "Keeping it Safe"[8] which sets out best practices related to confidentiality and provides practical guidance on how to ensure an adequate level of protection. Before entering into an agreement to exchange information automatically with another country, it is essential that the receiving country has the legal framework and administrative capacity and processes in place to ensure the confidentiality of the information received and that such information is only used for the purposes specified in the instrument.[9]

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[8]   http://www.oecd.org/tax/exchange-of-tax-information/keepingitsafetheoecdguideontheprotectionofconfidentialityofinformationexchangedfortaxpurposes.htm

[9]   Cf. the reference to "*… exchanging information automatically with their treaty partners, as appropriate*" [underlining added]. Paragraph 14, G20 Finance Ministers and Central Bank Governors communiqué, April 19, 2013.

3. Technical and IT aspects

13.   The development of common technical solutions for reporting and exchange of information is a critical element in a standardised exchange system - especially one that will be used by a large number of countries and financial institutions. Standardisation will reduce the overall costs for governments and financial institutions.

14.   First, the **technical reporting formats** must be standardised so that information can be captured, exchanged and processed quickly and efficiently in a cost-effective manner by the receiving jurisdiction.

15.   Second, secure and compatible methods of **transmission and encryption of the data** must be in place.   Many jurisdictions already electronically exchange information on request and do so on the basis of protocols developed by the OECD. The method of transmission generally takes place directly from one country's exchange of information portal to the other country's exchange of information portal (commonly called "point-to-point") or, within the EU, such exchanges take place by way of a secure network (CCN). Nordic countries exchange automatically under the Nordic Convention over a secure network. In addition, the information being exchanged must be encrypted and the encryption and decryption methods must be compatible with the systems in both the sending and the receiving jurisdiction.

III. Making it happen

16.   Key developments are already under way. Five European countries, each an OECD and EU member (France, Germany, Italy, Spain and the United Kingdom), developed with the United States the Model 1 IGA.[10] The Model 1 IGA provides for reporting by financial institutions to their local tax authorities, which then exchange the information on an automatic basis with the residence jurisdiction tax authorities. This approach is consistent with the general architecture of automatic information exchange that is also used in the EU context, for instance for the EU Savings Directive. The Model 1 IGA further contains a commitment to work with interested jurisdictions, the OECD and where appropriate the EU on adapting the terms of the IGA "*to a common model for automatic exchange of information, including the development of reporting and due diligence standards for financial institutions.*"[11] The United States is already in discussions with over 75 jurisdictions and as more bilateral automatic exchange agreements are being signed the Finance Ministers from the same five European countries in a joint letter stated:

> "*We believe that these agreements represent a step change in tax transparency, enabling us to clamp down further on tax evasion. We will be looking to promote these agreements as the*

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[10]   Both the OECD and the European Commission welcomed these developments. Welcoming the agreements in July 2012 OECD Secretary-General Angel Gurría said: "*I warmly welcome the co-operative and multilateral approach on which the model agreement is based. We at the OECD have always stressed the need to combat offshore tax evasion while keeping compliance costs as low as possible. A proliferation of different systems is in nobody's interest. We are happy to redouble our efforts in this area, working closely with interested countries and stakeholders to design global solutions to global problems to the benefit of governments and business around the world*." In February 2012 Mr. Šemeta, EU Commissioner for Taxation said: "*The EU and USA share a strong objective: to tackle trans-border tax evasion and ensure national treasuries can collect what they are due. I am confident that this new development will pave the way to achieve this in a business friendly manner.*"

[11]   Cf. Article 6, paragraph 3 Model I IGA.

new international standard, including through the various international fora, with the ultimate aim of agreeing a multilateral framework."

17.   As discussed in the Annex, the Model 1 IGA contains a number of key features of an effective automatic exchange model. This, along with the fact that governments and financial institutions around the world are already investing to implement it, makes the Model 1 IGA a logical basis on which to build. At the same time account should also be taken of the system and corresponding IT tools used in connection with the EU Savings Directive so as to keep costs to a minimum for governments and financial institutions.

18.   These developments offer an opportunity to move towards a standardised model of automatic exchange of information and avoid the possibility of a fragmentation of standards, which would impose significantly higher costs on financial institutions and governments. Four steps can now be taken (a number of them are already ongoing at the OECD) to implement a standardised multilateral model of automatic exchange:

1. Enact broad framework legislation

19.   Most jurisdictions will need to adopt legislation to implement the Model 1 IGA and in particular the domestic reporting obligations. This presents an opportunity to create in one step a broader framework legislation facilitating the subsequent expansion of a country's network of partner jurisdictions. The framework legislation could allow the executive to expand reporting to accountholders that are residents of other jurisdictions by way of regulation and/or administrative guidance, provided relevant conditions are met.

> ➢ The timing for enacting any legislation will vary by country, but preparation of draft legislation is already advanced in many jurisdictions making it possible in principle to accomplish this step quite quickly and in many instances already during 2013.[12]

20.   The main purpose of such framework legislation would be to allow additional jurisdictions to be added without the requirement to separately amend primary legislation each time a new agreement is entered into. It would thus not need to provide for the detailed reporting and due diligence requirements which could be contained in secondary legislation and/or administrative guidance.

2. Select a legal basis for the exchange of information

21.   Different legal bases for automatic exchanges of information reported under a comprehensive reporting regime (i.e., covering different types of investment income and financial information, applying to individuals and certain entities, and covering a wide range of financial institutions)[13] already exist. While bilateral treaties such as those based on Article 26 of the OECD Model Tax Convention permit such exchanges[14], it may be more efficient to establish automatic exchange relationships through a multilateral information exchange instrument. The Multilateral Convention on Mutual Administrative

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[12]   Not all jurisdictions will require new legislation. In some jurisdictions (e.g. Mexico) existing laws and related powers may already be broad enough, thus requiring only implementing guidance. Other jurisdictions may have already legislated (e.g. the United Kingdom).

[13]   Cf. paragraph 8 above.

[14]   Cf. paragraph 9 of the Commentary on Article 26 of the OECD Model Convention.

Assistance in Tax Matters (Convention)[15], as amended in 2011, is such an instrument. It provides for all possible forms of administrative co-operation between States, contains strict rules on confidentiality and proper use, and permits automatic exchange of information.[16] One of its main advantages is its global reach: more than 60 countries, including all G20 countries, have either signed the Convention or committed to do so[17] with further signatures expected before the September 2013 G20 Summit in St. Petersburg.[18]

22.   Automatic exchanges under the Convention require a separate agreement between the competent authorities of the parties, which can be entered into by two or more parties thus allowing for a single agreement with several parties (with actual automatic exchanges taking place on a bilateral basis). Such an agreement would activate and "operationalise" automatic exchange between the participating countries. It would specify the information to be exchanged and would also deal with practical issues such as the time and format of the exchange.

> A draft model competent authority agreement has already been prepared in connection with ongoing work discussed more fully below and will be discussed at a meeting of OECD and G20 countries in June which also includes a consultation with business. A model agreement could be available as early as the second half of 2013.

23.   Implementing broad framework legislation allowing the executive to expand reporting to include other jurisdictions, coupled with a single or standardised competent authority agreement, would then provide a fast and effective way to implement the automatic exchange model.

24.   Jurisdictions could also rely on their existing bilateral treaties or certain tax information exchange agreements[19] with essentially the same competent authority agreement as that to be used under the Convention, provided they already have a broad enough treaty network and the competent authority agreement is standardised to ensure consistency and retain operability of the model. As an alternative, jurisdictions could enter into a multilateral intergovernmental agreement or multiple intergovernmental agreements that would be international treaties in their own right (coupled with more limited competent authority agreements). However, given the need for separate ratification such an approach would be more time consuming. The Nordic Convention also provides such a basis and within the European Union Directives provide a binding legal framework for automatic exchange on interest income and certain other types of information among its 27 (soon 28) members.

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[15]   The Multilateral Convention was developed jointly by the Council of Europe and the OECD and opened for signature by the member states of both organisations on 25 January 1988. The Convention was amended to respond to the call of the G20 at its April 2009 London Summit to align it to the international standard on exchange and to open it to all countries, in particular to ensure that developing countries could benefit from the new more transparent environment. It was opened for signature on 1st June 2011.

[16]   See Article 6.

[17]   For a list of signatory countries and further information see www.oecd.org/ctp/eoi/mutual

[18]   *"In view of the next G20 Summit, we also strongly encourage all jurisdictions to sign or express interest in signing the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and call on the OECD to report on progress."* See paragraph 14 of 19 April Communiqué of G20 Finance Ministers and Central Bank Governors.

[19]   The OECD Model Tax Information Exchange Agreement (TIEA) does not provide the legal basis for automatic exchange. However, certain individual TIEAs do.

> Given that automatic exchange can be based on a number of existing instruments including bilateral treaties, certain tax information exchange agreements, and the Convention, and given that more and more jurisdictions are joining the Convention a broad legal network for such exchanges already exists and is likely to have grown significantly by the end of 2013.

3. Adapt the scope of the reporting and due diligence requirements and coordinate guidance to ensure consistency and reduce cost

25.   Developing a standardised model for automatic exchange can draw on the Model 1 IGA[20], with amendments required to support a standardised multilateral model that addresses the needs of all participating jurisdictions and remains administrable for both financial institutions and participating jurisdictions. These changes include simplifying the rules by removing U.S. specificities that are not needed or feasible for a multilateral approach, dealing with any different effective dates from those used for the Model 1 IGA itself and building on what already exists for instance in the EU context and in the area of anti-money laundering standards.[21] Work in this area started at the OECD in 2012 and is progressing rapidly. OECD and G20 countries discussed draft proposals at their last meeting in March 2013 and the next meeting is scheduled for June. For the purposes of illustration, examples of areas where such changes are needed include:

- **Thresholds***:* The Model 1 IGA provides a threshold amount below which an account does not have to be reported but also allows financial institutions to report all accounts without applying a threshold. Thresholds may reduce the burden for some financial institutions and certain types of accounts (or even eliminate any reporting obligation), but also add complexity, especially in a multilateral context. For a multilateral model, removing such thresholds could be a possible simplification. The EU Savings Directive, for instance, has no such threshold amounts.

- **Exceptions to reportable accountholders***:* With respect to individual accountholders the Model 1 IGA covers both residents and citizens of the United States. As most jurisdictions only tax residents not citizens, the multilateral model would only need to cover residents. With respect to entities, the Model 1 IGA covers all types of U.S. entities but specifically excludes 12 categories of low risk/generally compliant entities which are defined by reference to U.S. legislation. Such an approach in a multilateral context, where every country would specify a list of different exceptions by reference to domestic law, may be difficult for financial institutions to operate and may also be difficult to legislate domestically. A simplified approach needs to be developed.

- **Due diligence procedures**: The due diligence procedures required by the Model 1 IGA could generally be used with certain modifications to remove U.S. specificities, such as reliance on U.S. forms and the removal of identification requirements associated with citizenship. Inspiration could also be taken from the due diligence procedures included in the EU Savings Directive. Due diligence procedures may also have potential synergies in helping ensure that source taxation rules are properly applied.

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[20]   The U.S. also developed another model intergovernmental agreement (the "Model 2 IGA") which provides for direct disclosure of account information from the financial institutions to the U.S. IRS. The Model 2 IGA seems less compelling as a template for a multilateral standard for automatic exchange as it requires that all financial institutions set up individual communication lines with multiple residence jurisdictions.

[21]   The Model 1 IGA already refers to the FATF Recommendations, both for purposes of identifying the financial institutions required to report and for certain aspects of the customer due diligence procedures.

- **Exceptions to reporting financial institutions:** The Model 1 IGA provides for certain categories of financial institutions that are explicitly excluded from the reporting obligations. Some of these exclusions may be inappropriate or unworkable in a multilateral context.[22]

26.   At a more detailed level, common guidance will also need to be developed to ensure consistency and standardisation of the reporting and due diligence requirements introduced by jurisdictions in their domestic rules. Given that implementation will be based on domestic law, it is important to ensure consistency in implementation across jurisdictions to avoid creating unnecessary costs and complexity for financial institutions in particular those with operations in more than one country resulting from different interpretations in different jurisdictions. This will require common guidance which is a logical outcome of the OECD work described above.

➤ Building on ongoing work, detailed guidance is being advanced with possible finalisation during the first half of 2014.

4. Develop common or compatible IT standards

a) The reporting format

27.   A standard format for the exchange of information is essential to ensure the model remains effective and administrable. The OECD has brought together its member countries, the EU, and representatives of the business community to assist in the development of a reporting format ("schema") for implementing FATCA which is based on STF[23] and incorporates many elements of FISC 153.[24] It is expected that this will be flexible enough to be used for reporting and exchange under a multilateral exchange model, subject to minor amendments.

b) Compatible transmission methods and agreed levels of encryption

28.   Already a number of jurisdictions have experience in exchanging tax information through electronic means and using agreed encryption standards.[25] In its effort to prepare for FATCA implementation, the United States is working to develop a secure data exchange process that intends to allow jurisdictions to exchange data securely based on agreed encryption protocols and software compatibility solutions. This process could potentially be used by interested jurisdictions not only for exchange but also for data collection. Thus there should be no reason to believe that what exists and what is being developed should not be susceptible to support automatic exchanges.

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[22]   For instance, the exclusion of local foreign financial institutions (FFIs) seems to be of limited relevance outside of the FATCA context: one of the conditions provides that where those FFIs identify an account of a non-resident U.S. specified person, they need to report such accounts as if they were a reporting FFI. Translated for a common reporting standard, this condition would mean that a local FFI would be required to report all accounts held by non-resident account holders, which makes the exclusion meaningless.

[23]   STF (Standard Transmission Format) is a standard format for automatic exchange of tax information which was developed by the OECD and uses XML language.
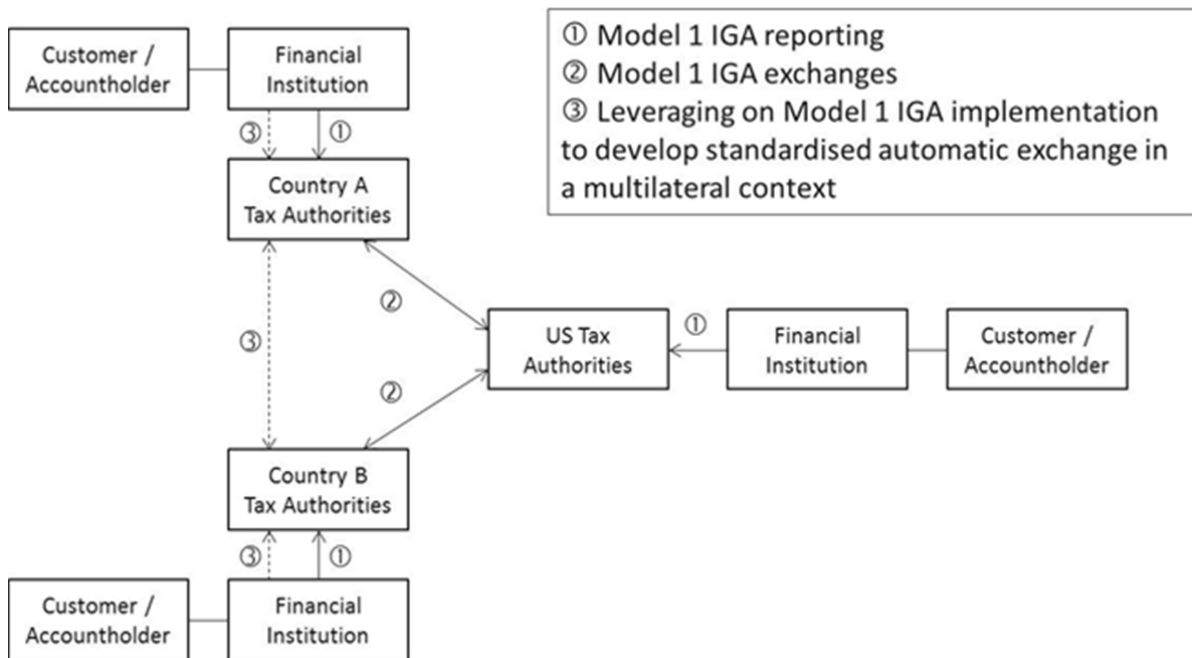
[24]   FISC 153 is the standard that is used for the EU Savings Directive.

[25]   EU countries exchange information under the Savings Directive mainly through email file transmissions over a secure network (CCN) maintained by the European Commission, Nordic countries exchange automatically under the Nordic Convention over a secure network and other countries exchange electronically using encrypted e-mails.

➢ The reporting schema and a first version of the related instructions could be finalised within the second half of 2013. Secure transmission systems either already exist or, where they do not, can be established by interested jurisdictions, based on ongoing work in time for the first transmission of information.

29.   The diagram below illustrates the potential for developing a standardised automatic exchange model building on the Model 1 IGA and recent bilateral agreements. The lines marked by the numbers 1 and 2 show the flow of information required under a Model 1 IGA. In both cases (to the United States and from the United States to countries A and B respectively) the customer/accountholder provides information to the financial institution which is then reported by the financial institution to the tax authorities in their country of residence. The tax authorities in countries A and B then automatically exchange the information with the tax authority in the United States and the United States automatically exchanges with the tax authorities in countries A and B, respectively. The line marked by number 3 shows the possibility of leveraging on implementation of the Model 1 IGA to allow countries to exchange similar information with other countries.

30.   Jurisdictions that are making changes to domestic law, including adopting due diligence rules for financial institutions, for purposes of implementing a Model 1 IGA will have an interest in leveraging such changes to use them to establish automatic exchange relationships with respect to accountholders from certain other jurisdictions that themselves are introducing similar rules. Further, financial institutions around the world are currently making significant investments to comply with FATCA. Aligning a multilateral model with the Model 1 IGA will allow financial institutions to leverage on this investment

and reduce their compliance cost. At the same time such a model also needs to take into account what exists and has already been developed for instance in the OECD and the EU contexts.

31.   Further, the Model 1 IGA has a number of the key features of an effective automatic exchange model discussed above, therefore making it a key development for standardised automatic exchange globally.

32.   First, it contains detailed rules that provide for a reporting regime with a comprehensive scope:

- It covers a wide range of financial institutions (including not only banks, brokers and custodians but also certain insurance companies, trusts and collective investment vehicles, including hedge funds and private equity funds).

- It provides for reporting on a very broad range of financial information including account balance, gross amount of interest/dividends/other income and proceeds from sale or redemption of property in a custodial account, and income from certain insurance contracts.

- It requires reporting in respect of individuals and entities with an additional requirement that financial institutions look behind certain entities to determine the beneficial owners, which limits the opportunities for circumventing the model by interposing shell companies, trusts, foundations or other corporate vehicles, whether taxable or not.

33.   Second, it includes a number of features to ensure the information that is exchanged meets certain quality standards and can be effectively used by the residence jurisdiction including:

- The requirement to capture taxpayer identification numbers (TINs) of accountholders where they exist.[26]

- Detailed due diligence procedures to be followed by financial institutions in order to identify reportable accountholders. These procedures often rely on know-your-customer rules followed by financial institutions under applicable anti-money laundering rules, which increases their effectiveness and reduces costs.

34.   Third, it relies on relationships and processes that already exist – financial institutions reporting to their domestic tax authorities and one tax authority exchanging information with another tax authority – and that have proven to work. Finally, it is designed for global application.

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[26]   In 1997 the OECD Council issued a recommendation on the use of tax payer identification numbers in the international context; see:
http://search.oecd.org/officialdocuments/displaydocumentpdf/?doclanguage=en&cote=c(97)29/final

Vast amounts of money are kept offshore and go untaxed to the extent that taxpayers fail to comply with tax obligations in their home jurisdictions. Jurisdictions around the world, small and large, developing and developed, OECD and non-OECD, stand united in calling for further action to address the issues of international tax avoidance and evasion. Co-operation between tax administrations is critical in the fight against tax evasion and a key aspect of that cooperation is exchange of information.

The OECD has been a driving force in fostering such co-operation and has a long history of developing standards on all forms of exchange of information – on request, spontaneous, and automatic – and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and Article 26 of the OECD Model Tax Convention provide a basis for all forms of information exchange.

A major breakthrough towards more transparency was accomplished in 2009 with information exchange upon request becoming the international standard and the restructured Global Forum on Exchange of Information and Transparency for Tax Purposes starting to monitor the implementation of the standard through in-depth peer reviews.

Now, there is another step change in international tax transparency driven by developments around the globe, including in the United States and Europe, with unprecedented political support for automatic exchange of information. In April 2013 the G20 Finance Ministers and Central Bank Governors endorsed automatic exchange as the expected new standard.

Anticipating these developments and in light of the increase in automatic exchange agreements, the G8 Presidency requested a report from the OECD to analyse how jurisdictions could build on the recent developments to implement automatic exchange in a multilateral context.

This report responds to that request. It first discusses the key success factors for an effective model for automatic exchange of financial information, as they were identified in recent work conducted at the OECD and summarised in its report on automatic exchange delivered to the G20 in 2012. It then sets out four concrete steps to put such automatic exchange into practice including possible timeframes for the delivery of each step. The Annex provides background on the recent bilateral agreements based on the Model 1 IGA and how they can be useful in advancing towards a standardised automatic exchange model.