



Secretary-General
Secrétaire général

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13 March 2009

Dear Minister,

As agreed, further to our meeting yesterday, I am writing to clarify some issues which were discussed.

First, I can confirm that the OECD is not developing new criteria to identify tax havens. There has been no change in the criteria since 1998 and there is currently no discussion about changing these criteria. Jurisdictions meeting the tax haven criteria were identified in 2000 and unco-operative tax havens were listed in 2002. There are three remaining countries classified as unco-operative tax haven. I can also confirm that from an OECD perspective, none of our Members qualify as tax havens under these criteria.

Recently, the OECD secretariat has been requested by some G20 Member countries to provide information on "non cooperative jurisdictions". The OECD secretariat has provided on 5 March 2009 factual information based on the annual assessment prepared for the Global Forum on Taxation (now called Global Forum on Transparency and Exchange of Information). This information, which is in no way new, identifies the extent to which jurisdictions have made progress in the implementation of the standard on exchange of information as developed by the OECD and endorsed by other international bodies (G20, G8, UN Tax Committee of Experts). I informed your Ambassadors last week on this action and on the nature of the material that would be provided to the work of the G20. I also indicated to them, as I confirmed to you yesterday, that the context in which this information is being used is one of hardening attitudes and mounting pressures to act.

As part of the revised assessment process the experts at the OECD's Global Forum and the Committee on Fiscal Affairs considered that a good indicator of progress in this area was whether a jurisdiction had twelve or more agreements that meet the OECD standards. I will, of course, keep you informed of the dialogue with the G20 and provide you with regular updates of the factual information on the number of agreements that have been signed by the different jurisdictions.

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Mr. Luc Frieden
Minister of Justice
Minister of Treasury and the Budget
Luxembourg

Cc : His Excellency, Mr. Georges Santer, Head of the Delegation of Luxembourg to the OECD



Thus, the sole criterion to assess whether a country has made progress in the implementation of the standard is the ability to exchange information in all tax matters without regard to a domestic tax interest requirement or bank secrecy for tax purposes, as provided for in the Model Agreement on Exchange of Information adopted in 2002 and in Article 26 of the OECD Model Tax Convention as updated in 2004. This could be achieved by a formal endorsement and implementation of this standard. From a technical perspective, any revision of double tax treaties or the negotiation of agreements will require a certain amount of time. This is something that we have recognised and we are examining ways to accelerate this process.

Paragraph 5 of Article 26 of the OECD Model Tax Convention provides that bank secrecy cannot be an obstacle to exchange of information for tax purposes. Article 26 also provides for important safeguards in order to protect the confidentiality of taxpayers' information.

The standard requires information exchange on request only. Where information is requested, it must be exchanged only where it is "foreseeably relevant" to the administration or enforcement of the domestic laws of the treaty partner. Countries are not at liberty to engage in "fishing expeditions" or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. In formulating their requests, competent authorities should demonstrate the foreseeable relevance of the requested information. It would, for instance, not be possible for a State to request information randomly on bank accounts held by its residents in banks located in the other State. Also, even when auditing a taxpayer, a tax administration would not request information on a specific taxpayer when no transaction or indication of possible transactions has been identified as involving a nexus with the other state. On the other hand, for example, when a tax administration assesses the tax liability of a specific taxpayer and suspects that this taxpayer has a bank account in the other State, then the competent authority may request information on this specific taxpayer. This could also be the case where a number of taxpayers have been identified, for example, as holding offshore credit cards from banks located in the other state. The requesting State should, however, have pursued all domestic means to access the requested information. For further details, you may wish to consult the commentaries to the Article 26 of the OECD Model Tax Convention and Article 5 of the Model Agreement on Exchange of Information.

Where information is exchanged it is subject to strict confidentiality rules. It is expressly provided in Article 26 that information communicated shall be treated as secret. It can only be used for the purposes provided for in the convention. Sanctions for the violation of such secrecy are governed by administrative and penal laws in all states. Typically, unauthorised disclosure of tax related information received from another country is a criminal offence punishable by a jail sentence.

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As you can see from these explanations, which you can find in the OECD Model Tax Convention commentary, as well as in the OECD Manual on Information exchange, bank secrecy is not incompatible with effective exchange of information for tax purposes. All countries have bank secrecy or confidentiality rules. Meeting the internationally agreed standard on exchange of information requires only limited exceptions to bank secrecy rules and would not undermine the confidence of citizens in the protection of their privacy.

As discussed, we are happy to provide any further elaboration on these issues should you require additional clarification to help your country make progress towards the implementation of the standard on exchange of information.

Yours sincerely,

Angel Gurría