

## Automatic Exchange of Tax Information

*Bilateral tax treaties have included provisions for exchanging information on financial transactions and assets of nonresidents for decades. Under most existing agreements and the current OECD model, information is generally only exchanged upon request, and the requesting country must know basic identifying information about a nonresident accountholder in order to make a viable request. Many countries have recognized that this method is inadequate, and the alternative, for countries to collect and automatically exchange such information, has become the emerging international standard.*

2001, OECD Global Forum on Transparency and Exchange of Information for Tax Purposes: Formed in 2001 to produce a model Tax Information Exchange Agreement (released in 2002 and embodying the “on-request” standard) but “restructured” in 2009 to include non-OECD member states, the Global Forum assesses member countries’ adherence to the OECD standard of tax information exchange upon request, both through bilateral treaty language and through effective implementation of information-exchange commitments.<sup>1</sup>

2003, European Union Savings Tax Directive: The Savings Tax Directive, adopted in 2003, is the first major instance of automatic exchange, requiring member states to exchange information about interest earned on savings accounts held by nonresidents (natural persons only, not corporations) in their jurisdiction (or, for jurisdictions insisting on secrecy, withhold tax at an essentially punitive rate—Austria, Belgium, and Luxembourg took this approach).<sup>2</sup> A 2011 directive extended this exchange to employment, insurance, pension, and rental income (as of 2014),<sup>3</sup> and implementation of this directive figures prominently in the European Commission’s 2012 Action Plan on tax fraud and tax evasion.<sup>4</sup>

2009-2010, European Commission Good Governance Reports: The European Commission published a report in 2009 on “Good Governance in Tax Matters” promoting increased cooperation of member states with other countries both inside and outside of the EU.<sup>5</sup> This was followed in 2010 by another report specifically focusing on cooperating with developing countries.<sup>6</sup>

2010, Foreign Account Tax Compliance Act (FATCA) (U.S.): Following significant legal action by the U.S. against UBS and other financial institutions for facilitating U.S. tax evasion, Congress passed FATCA in 2010, which requires all foreign financial institutions with American customers to report U.S. taxpayer information to the Internal Revenue Service (IRS) or face a 30% withholding tax on the institution’s U.S.-source income. Financial institutions are required to begin collecting and reporting

<sup>1</sup> <http://www.oecd.org/tax/transparency/>. See also the Global Forum’s 2012 report to the G20 summarizing its efforts: [http://www.oecd.org/tax/transparency/Tax%20Transparency%202012\\_JM%20MB%20corrections%20final.pdf](http://www.oecd.org/tax/transparency/Tax%20Transparency%202012_JM%20MB%20corrections%20final.pdf), and the OECD Convention on Mutual Administrative Assistance in Tax Matters, drafted in 1988 and opened to non-OECD members in 2011, <http://www.oecd.org/tax/exchange-of-tax-information/conventiononmutualadministrativeassistanceintaxmatters.htm>.

<sup>2</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:157:0038:0048:en:PDF>

<sup>3</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:064:0001:0012:En:PDF>

<sup>4</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0722:FIN:EN:PDF>

<sup>5</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0201:FIN:EN:PDF>

<sup>6</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0163:FIN:EN:PDF>

information in 2014, pursuant to regulations issued in January 2013.<sup>7</sup> To ease the implementation process, the U.S. Treasury is negotiating agreements with numerous jurisdictions' governments (over 50 by their count) for those governments to collect the information themselves and report it to the United States, rather than requiring each foreign financial institution to interact with the IRS.<sup>8</sup> Those agreements come in three different models, with only Model 1 creating a reciprocal automatic exchange of tax information. The necessary Congressional ratification of the FATCA agreements is currently being suspended by one Senator, Rand Paul, who shows no signs of letting the process move forward.

2012, IRS Nonresident Alien Account Regulations (U.S.): The IRS issued regulations in 2012 requiring U.S. financial institutions to report interest paid on accounts held by nonresident aliens in the United States, designed to enable the U.S. government to better fulfill its obligations under its tax-information-exchange agreements.<sup>9</sup>

2012-2013, G20 and G8 Endorsement: The Group of 20 nations (including developed and emerging economies) expressed support of automatic exchange in the communiqué following the finance ministers meeting in November 2012.<sup>10</sup> The Group of 8 nations (major developed economies) followed with an unequivocal statement in support of establishing automatic exchange as the global standard in the communiqué following the Lough Erne summit in June 2013.<sup>11</sup>

2013, European Automatic Exchange Multilateral Pilot Project (UK-Led): This year, the United Kingdom announced that it was beginning a "pilot project" of fully multilateral automatic exchange with four other European nations (France, Germany, Italy, and Spain) modeled on the Model 1 FATCA agreements countries were negotiating with the U.S.<sup>12</sup> Five more European nations joined shortly thereafter, as did all of the UK's Crown dependencies.<sup>13</sup>

### **Anti-Money-Laundering Law**

*Criminalization of money laundering, or the movement of proceeds of criminal activity through the legitimate financial system, occurred in many countries throughout the 1970s and 1980s, and was internationally standardized through a number of conventions: the Vienna Convention of 1988<sup>14</sup> and the Palermo Convention of 2000.<sup>15</sup> Anti-money-laundering laws were developed at the same time, and generally place a legal responsibility on financial institutions to avoid accepting laundered money through due diligence investigations of their customers and customers' source of funds.*

1989, Financial Action Task Force (FATF): Established in 1989 by the G7, FATF operates out of the OECD's headquarters and has nearly identical membership, with a few additional countries. FATF produces international standards for effective anti-money-laundering and counter-terrorist-financing practices (the "FATF Recommendations") and facilitates evaluations of countries' compliance with

---

<sup>7</sup> <http://www.gpo.gov/fdsys/pkg/FR-2013-01-28/pdf/2013-01025.pdf>

<sup>8</sup> <http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx>

<sup>9</sup> <http://www.gpo.gov/fdsys/pkg/FR-2012-04-19/pdf/2012-9520.pdf>

<sup>10</sup> <http://www.g8.utoronto.ca/g20/2012/2012-121105-finance-en.html>

<sup>11</sup> [http://www.g8.utoronto.ca/summit/2013lougherne/Lough\\_Erne\\_2013\\_G8\\_Leaders\\_Communique\\_2.pdf](http://www.g8.utoronto.ca/summit/2013lougherne/Lough_Erne_2013_G8_Leaders_Communique_2.pdf)

<sup>12</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/208068/g5\\_letter\\_to\\_european\\_commission\\_090413.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/208068/g5_letter_to_european_commission_090413.pdf)

<sup>13</sup> <https://www.gov.uk/government/news/chancellor-welcomes-huge-step-forward-in-global-fight-against-tax-evasion>

<sup>14</sup> <http://www.incb.org/incb/en/precursors/1988-convention.html>

<sup>15</sup> <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>

those standards (“Mutual Evaluation Reports”). In 2012, FATF fully revised its Recommendations,<sup>16</sup> and FATF’s member states renewed its mandate through 2020.<sup>17</sup> In 2013, FATF published a fully revised Methodology for assessing compliance to evaluate the enforcement of AML laws in each country,<sup>18</sup> and the next round of evaluations is due to begin in 2014. FATF standards are promulgated throughout the world via regional groupings called “FATF-Style Regional Bodies” (FSRBs), and non-FATF members are subject to peer reviews as a result of FSRB membership. The World Bank and IMF assist FATF and the FSRBs with the mutual evaluation process.

2002, USA PATRIOT Act (U.S.): Following the September 11<sup>th</sup> attacks, the USA PATRIOT Act was enacted to impose a panoply of antiterrorism initiatives, and included a large chapter of changes to anti-money-laundering laws, intended to disrupt terrorist organizations’ financing.<sup>19</sup> One particularly successful provision prohibited U.S. banks from doing business (even through correspondent accounts) with shell banks (banks with no physical presence in any country and unclear ownership structures), which effectively eliminated shell banks worldwide.

2011, Combating Money Laundering, Terrorist Financing and Counterfeiting Act (U.S.): In 2011, Sens. Chuck Grassley (R-IA) and Dianne Feinstein (D-CA) introduced this bill, which makes numerous amendments to U.S. AML laws.<sup>20</sup> In 2013, the U.S. Senate Caucus on International Narcotics Control, which Sen. Grassley and Sen. Feinstein co-chair, issued a substantial report detailing the extent of money laundering and the drug trafficking it enables, and recommending policy options, including their AML bill and Sen. Levin’s beneficial ownership bill.<sup>21</sup>

2012, U.S. Enforcement Actions: The U.S. has seen a significant number of recent, high-value cases against international banks with respect to violations of the Bank Secrecy Act (which requires financial institutions to maintain AML compliance programs and have AML controls in place) and the Trading With the Enemy Act (Office of Foreign Asset Control violations). Each case has been settled out of court pursuant to a Deferred Prosecution Agreement (DPA), the most high profile of which is the \$1.9 billion fine against HSBC USA and HSBC Holdings assessed in December 2012. Public and Congressional criticism of the U.S. Government’s handling of the HSBC case has resulted in hearings in both the U.S. Senate and the House of Representatives and may lead to relevant legislation being introduced in the 113<sup>th</sup> Congress.

2013, European Union Fourth Anti-Money-Laundering Directive: This year, the European Commission issued a proposal to replace the EU Anti-Money-Laundering Directive (currently in its third incarnation), clarifying the definition of “beneficial ownership” and providing more detail on customer due diligence requirements.<sup>22</sup> The proposals must still be considered by the European Parliament and Council of Ministers.

### **Beneficial Ownership**

*Anonymous shell companies—corporations or other legal entities with no physical assets and hidden owners (often operating through a web of other companies)—have recently gained attention as a method*

<sup>16</sup> [http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF\\_Recommendations.pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf)

<sup>17</sup> <http://www.fatf-gafi.org/media/fatf/documents/FINAL%20FATF%20MANDATE%202012-2020.pdf>

<sup>18</sup> <http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf>

<sup>19</sup> <http://www.gpo.gov/fdsys/pkg/PLAW-107publ56/html/PLAW-107publ56.htm>

<sup>20</sup> <http://www.gpo.gov/fdsys/pkg/BILLS-112s1731is/pdf/BILLS-112s1731is.pdf>

<sup>21</sup> [http://www.feinstein.senate.gov/public/index.cfm/files/serve/?File\\_id=311e974a-feb6-48e6-b302-0769f16185ee](http://www.feinstein.senate.gov/public/index.cfm/files/serve/?File_id=311e974a-feb6-48e6-b302-0769f16185ee)

<sup>22</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0045:FIN:EN:PDF>

*of conducting shady transactions and evading taxes. While some companies implicated in such activities are incorporated in reticent tax haven jurisdictions, many are located in developed countries with putatively strong criminal enforcement regimes. Policy proposals directed at this issue generally revolve around requiring such companies to disclose their “beneficial owners” to government officials.*

2005-Ongoing, U.S. Government Action Plans: The U.S. Government has recognized the importance of beneficial ownership transparency for in numerous non-binding policy statements, for example: the 2005 Money Laundering Threat Assessment,<sup>23</sup> the 2007 National Money Laundering Strategy,<sup>24</sup> the 2011 Strategy to Combat Transnational Crime,<sup>25</sup> and the 2011 Open Government Partnership National Action Plan.<sup>26</sup>

2006, Incorporation Transparency and Law Enforcement Assistance Act (ITLEAA) (U.S): In 2006, the U.S. Senate Permanent Subcommittee on Investigations commissioned a report from the Government Accountability Office on the ease of creating anonymous shell companies in the United States.<sup>27</sup> Sen. Carl Levin (D-MI) subsequently drafted and introduced the ITLEAA in 2008 and reintroduced it in 2009 and 2011 along with various cosponsors (sessions of Congress are two years long, beginning in odd-numbered years, and any legislation not adopted during a session must be reintroduced in the subsequent session to be considered), with companion versions of the bill introduced in the House of Representatives by Rep. Carolyn Maloney (D-NY) and various cosponsors.<sup>28</sup> While the bill has not yet been introduced for this session of Congress, we expect the same sponsors to do so soon.

The bill would require every state to collect information on the beneficial owner(s) of corporations and LLCs at the time they are formed, and make the information available to law enforcement authorities (Rep. Maloney’s version of the bill would require the U.S. Treasury to collect this information unless the states chose to do so). The bill does not require or prevent the information from being made publicly available and includes a number of exemptions for companies unlikely to be used for criminal activity.<sup>29</sup>

2012, FinCEN Customer Due Diligence Rulemaking (U.S.): The Financial Crimes Enforcement Network (FinCEN), a department of the U.S. Treasury and the U.S. financial intelligence unit, announced in 2012 that it intend to propose regulations requiring banks to collect and verify information on the beneficial owner(s) of their accounts as part of routine customer due diligence (CDD).<sup>30</sup> After an extensive comment period, FinCEN has yet to publish its proposed rules. This proposal followed non-binding guidance that FinCEN and other U.S. bank regulators issued in 2010 suggesting that banks’ CDD programs only need to be “reasonably designed” to determine the beneficial owner of accounts.<sup>31</sup>

2012, FSB Legal Entity Identifier (LEI) Project: Under a mandate from the G20 issued in 2012, the Financial Stability Board began developing a system to assign uniform numerical identifiers to legal

---

<sup>23</sup> <http://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/mlta.pdf>

<sup>24</sup> [http://www.fincen.gov/news\\_room/rp/files/nmls\\_2007.pdf](http://www.fincen.gov/news_room/rp/files/nmls_2007.pdf)

<sup>25</sup> [http://www.whitehouse.gov/sites/default/files/Strategy\\_to\\_Combat\\_Transnational\\_Organized\\_Crime\\_July\\_2011.pdf](http://www.whitehouse.gov/sites/default/files/Strategy_to_Combat_Transnational_Organized_Crime_July_2011.pdf)

<sup>26</sup> [http://www.whitehouse.gov/sites/default/files/us\\_national\\_action\\_plan\\_final\\_2.pdf](http://www.whitehouse.gov/sites/default/files/us_national_action_plan_final_2.pdf). See also the 2013 Self-Assessment: [http://www.opengovpartnership.org/sites/www.opengovpartnership.org/files/ogp\\_selfassessment\\_march2013.pdf](http://www.opengovpartnership.org/sites/www.opengovpartnership.org/files/ogp_selfassessment_march2013.pdf)

<sup>27</sup> <http://www.levin.senate.gov/imo/media/doc/supporting/2006/GAOreport.companyformation.GAO-06-376.pdf>

<sup>28</sup> The 2011 versions of the bill are available here: <http://www.gpo.gov/fdsys/pkg/BILLS-112s1483is/pdf/BILLS-112s1483is.pdf> (Senate), and here: <http://www.gpo.gov/fdsys/pkg/BILLS-112hr3416ih/pdf/BILLS-112hr3416ih.pdf> (House).

<sup>29</sup> The 2011 Senate version of the bill is summarized well here: <http://www.levin.senate.gov/newsroom/press/release/levin-grassley-introduce-bill-to-combat-us-corporations-with-hidden-owners/>

<sup>30</sup> <http://www.gpo.gov/fdsys/pkg/FR-2012-03-05/pdf/2012-5187.pdf>

<sup>31</sup> [http://www.fincen.gov/statutes\\_regs/guidance/pdf/fin-2010-g001.pdf](http://www.fincen.gov/statutes_regs/guidance/pdf/fin-2010-g001.pdf)

entities worldwide. Implementation of the system is expected sometime this year and is intended to eventually be used to collect beneficial ownership information on registered entities.<sup>32</sup>

2013, G8 Lough Erne Summit: Prior to the Lough Erne summit, Prime Minister David Cameron of the United Kingdom (who presided over the G8) expressed his support for maintaining central, public registries of beneficial ownership and hope that the G8 would commit to central registries at the summit. While the summit did not lead to such a commitment, the G8 countries did agree that beneficial ownership is an important policy prerogative and commit to producing action plans for making beneficial ownership information available to law enforcement and tax authorities in their country.<sup>33</sup>

### **Bribery and Corruption**

*Following a rash of international bribery scandals in the early 1970s, the first legislative blow against bribery was struck with the passage of the Foreign Corrupt Practices Act in the U.S. in 1976. As many other countries adopted similar legislation, anti-bribery law was internationalized through the OECD Anti-Bribery Convention in 1997<sup>34</sup> and the UN Convention on Corruption in 2003.<sup>35</sup>*

1999, OECD Working Group on Bribery: Established after the ratification of the OECD Anti-Bribery Convention, the Working Group monitors and reports annually on the implementation and (more recently) enforcement of the Convention's provisions.<sup>36</sup>

2008, Stolen Asset Recovery (StAR) Initiative: The UN Office of Drugs and Crime and the World Bank together launched the StAR initiative in November 2008 to support "international efforts to end safe havens for corrupt funds," and to "work with developing countries and financial centers to prevent the laundering of the proceeds of corruption and to facilitate more systematic and timely return of stolen assets."<sup>37</sup> The StAR Initiative consistently underscores the problem of anonymous shell companies worldwide and the need for greater cooperation in bank regulation and money laundering enforcement through its many publications.

2010, UK Bribery Act: Passed in 2010, the Bribery Act was largely hailed as the most stringent anticorruption law worldwide, banning UK persons from engaging in bribery throughout the public and private sectors with no exceptions, extending well beyond the requirements of the OECD and UN conventions.<sup>38</sup> After significant industry pressure, the UK Government issued Guidance in 2011 intended to further clarified the extent of the law.<sup>39</sup> This Guidance was heavily criticized by civil society organizations as a weakening of the new Act.

---

<sup>32</sup> <http://www.leiroc.org/index.htm>

<sup>33</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/207644/Common\\_Principles.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207644/Common_Principles.pdf). See also the U.K. Action Plan, <https://www.gov.uk/government/publications/uk-action-plan-to-prevent-misuse-of-companies-and-legal-arrangements>, and U.S. Action Plan, <http://www.whitehouse.gov/the-press-office/2013/06/18/united-states-g-8-action-plan-transparency-company-ownership-and-control>.

<sup>34</sup> <http://www.oecd.org/daf/anti-bribery/anti-briberyconvention/>

<sup>35</sup> <http://www.unodc.org/unodc/en/treaties/CAC/index.html>

<sup>36</sup> <http://www.oecd.org/tax/crime/oecdworkinggrouponbribery-annualreport.htm>

<sup>37</sup> <http://star.worldbank.org/star/about-us/our-vision>

<sup>38</sup> <http://www.legislation.gov.uk/ukpga/2010/23/contents/enacted>

<sup>39</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/181762/bribery-act-2010-guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181762/bribery-act-2010-guidance.pdf)



## Country-by-Country Reporting

*Country-by-country reporting targets the ambiguity of multinational corporations' books, which often fail to effectively represent where assets are located and profits earned, instead shifting income through tax havens and transfer pricing gimmicks. Country-by-country reporting would require such companies to report income and other financial indicators for each country in which they operate, enabling tax authorities and the public to hold them accountable. This concept initially targeted the extractive industries (oil, gas, and mining), but current proposals would extend it to all multinational corporations.*

1999, Publish What You Pay (PWYP): PWYP is an international organization advocating for resource transparency in developing countries.<sup>40</sup> The coalition's United States arm is largely responsible for Section 1504, the strong implementing regulations adopted by the Securities and Exchange Commission, and the ongoing fight against a lawsuit challenging the law.<sup>41</sup>

2002, Extractive Industries Transparency Initiative (EITI): Founded in 2002 by the UK Government under Tony Blair, EITI is a worldwide multilateral movement towards a standard of resource transparency, with public reporting by both governments and extractive companies of payments made and received.<sup>42</sup> Following the passage of Section 1504 in the U.S., the international PWYP coalition successfully lobbied EITI to include beneficial ownership disclosure in the standards, albeit only insofar as to "strongly encourage" countries to make beneficial ownership of legal entities transparent.

2010, Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) Section 1504: In 2010, Congress passed the Dodd-Frank Act, Section 1504 of which requires oil, gas, and mining companies in the United States to report payments to governments on a country-by-country and project-by-project basis, and in 2012, the U.S. Securities and Exchange Commission promulgated strong rules implementing the law.<sup>43</sup> Industry lobby groups The American Petroleum Institute, The U.S. Chamber of Commerce, the Independent Petroleum Association of America and the National Foreign Trade Council are currently challenging the law and its implementing rules in court.

2011, Stop Tax Haven Abuse Act: In 2011, Sen. Levin drafted and included a provision in his Stop Tax Haven Abuse Act requiring country-by-country reporting of basic financial indicators for all large U.S. corporations, with a companion version introduced in the House by Rep. Lloyd Doggett (D-TX) and over 70 cosponsors.<sup>44</sup> The bill, which had been introduced previously in 2007 and 2009 without the country-by-country provision, also includes a number of other amendments to the U.S. tax code that close loopholes incentivizing movement of profits offshore. While the bill has not yet been introduced for the 113th session of Congress, Sen. Levin has included all of its provisions in a larger tax bill of his, the Cut Unjustified Tax Loopholes Act.<sup>45</sup>

2012, IMF Revenue Transparency: The IMF is currently revising its "Code of Good Practices on Fiscal Transparency" and "Guide to Resource Revenue Transparency," which lay out principles for developing countries to ensure funds from IMF loans and resource-extraction licenses are properly tracked and put to good use. The IMF is strongly considering including recommendations that countries adopt beneficial

---

<sup>40</sup> <http://www.publishwhatyoupay.org/>

<sup>41</sup> <http://www.pwypusa.org/>

<sup>42</sup> <http://eiti.org/eiti>

<sup>43</sup> <http://www.sec.gov/spotlight/dodd-frank/speccorpdisclosure.shtml>

<sup>44</sup> The 2011 versions of the bill are here: <http://www.gpo.gov/fdsys/pkg/BILLS-112s1346is/pdf/BILLS-112s1346is.pdf> (Senate), and here: <http://www.gpo.gov/fdsys/pkg/BILLS-112hr2669ih/pdf/BILLS-112hr2669ih.pdf> (House).

<sup>45</sup> <http://www.gpo.gov/fdsys/pkg/BILLS-113s268is/pdf/BILLS-113s268is.pdf>

ownership disclosure and project-by-project financial disclosure (similar to Dodd-Frank Sec. 1504) in the revised Guide.<sup>46</sup>

2013, European Council Declaration: Finally, the European Council (the heads of government for all EU member states that sets big-picture policy goals for the EU) declared at a summit earlier this year that the EU should pursue legislation extending country-by-country reporting to *all* large EU companies.<sup>47</sup>

2013, EU Capital Reserves Directive: In 2013, the European Union adopted the Capital Reserves Directive, which includes a provision requiring banks to report profits, tax payments, turnover, and number of employees for each country in which they operate.<sup>48</sup>

2013, Transparency and Accountability Directives: Also in 2013, the European Union adopted amendments to the Transparency and Accountability Directives, which include provisions similar to Section 1504, requiring all large, privately held oil, gas, mining, and timber companies headquartered in the EU and all such extractive industry companies listed on an exchange in an EU country to report their payments to all governments on a country-by-country and project-by-project basis.<sup>49</sup>

2013, French Government Public Statements: French President Francois Hollande stated in April 2012 that he was in favor of country by country reporting by all listed companies. In June 2013, the French National Assembly adopted legislation requiring full country by country reporting for all large French companies, as soon as the European Union adopted similar legislation.

### **Tax, Transfer Pricing, and Profit Shifting**

*In the wake of globalization, the ability of multinational corporations to shift profits and avoid taxes has had detrimental effects worldwide, but it has particularly affected developing countries by depriving governments of much-needed revenue for infrastructure and human capital investment. Developed countries and international organizations have recently begun focusing on this issue, offering policy proposals that account for the interests of developing countries as well as their own.*

2004, UN Committee of Experts on International Cooperation in Tax Matters: Formalized from an ad hoc working group in 2004, the Committee operates largely as a global counterpart to the OECD Center for Tax Policy, having designed and maintaining a similar Model Tax Convention and recently completing a Practical Transfer Pricing Manual for Developing Countries.<sup>50</sup> It is important to note that the body is more of a working group and cannot take any binding decisions on behalf of the UN.

2008, International Tax Compact (Germany): Founded in 2008 by the German Government, the International Tax Compact studies and promotes links between developed and developing countries' tax administrations.<sup>51</sup>

2010, OECD Task Force on Tax and Development: In 2010, the OECD launched this task force, which meets annually to join government, business, and civil society representatives in studying policy

---

<sup>46</sup> <http://www.imf.org/external/np/exr/facts/fiscal.htm>

<sup>47</sup> [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/en/ec/137197.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/137197.pdf)

<sup>48</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2013-114> (see Art. 86a).

<sup>49</sup> [http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2011/0307\(COD\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2011/0307(COD))

<sup>50</sup> <http://www.un.org/esa/ffd/tax/>

<sup>51</sup> <http://www.taxcompact.net/about-itc/background.html>

solutions addressing the link between illicit flows, tax revenue, and development.<sup>52</sup> Specifically, the Task Force considers capacity building for transfer pricing administration, tax information exchange, and country-by-country reporting.<sup>53</sup>

2012-2013, Permanent Subcommittee on Investigations (PSI) Hearings (U.S.): In 2012 and 2013, the Senate Permanent Subcommittee on Investigations (chaired by Sen. Levin) held multiple hearings into multinational entities' transfer pricing and other tax avoidance schemes. The subcommittee heard testimony from executives of Microsoft, Hewlett-Packard, and Apple, as well as lawyers and accountants involved in creating such schemes. In particular, the recent hearing examining Apple's practices led to significant media discussions in the U.S. and elsewhere on these issues.<sup>54</sup>

2012, G20 Los Cabos Declaration: As noted above, the Group of 20 nations in 2012 committed to working towards automatic exchange of information and beneficial ownership transparency for legal entities.<sup>55</sup> The G20 also oversees the Financial Action Task Force, Financial Stability Board, and commissioned the OECD BEPS report.

2013, OECD Base Erosion and Profit Shifting (BEPS) Project: In 2013, at the request of the G20, the OECD released a landmark report on the base erosion and profit shifting—gaps in international tax policy that allow multinational entities to artificially re-attribute income so as to avoid taxation—issues facing developed and developing countries.<sup>56</sup> The report commits the OECD to developing a detailed work plan to address transfer pricing, tax information exchange, and other BEPS-related policy issues.

2013, G8 Lough Erne Summit: In 2013, under a UK presidency, the G8 specifically focused on illicit financial flows, or, Prime Minister David Cameron declared, an agenda of “tax, trade, and transparency.”<sup>57</sup> While perhaps not fully meeting public expectations set by Cameron's optimistic rhetoric, the resulting summit and communiqué contained significant agreements on automatic exchange of tax information, beneficial ownership, and country-by-country reporting.<sup>58</sup>

### **Illicit Financial Flows Research/Discourse**

*In addition to work on specific issue areas, the general issue of illicit financial flows has inspired a great deal of recent research and civil society work across the globe. In particular, the effects of IFFs on developing countries have been a subject of attention for international development organizations.*

2008-Ongoing, Norwegian Government: Norway has been at the forefront of the fight against IFFs for quite some time. In 2008, a Norwegian agency established the Task Force on the Development Impact of Illicit Financial Flows to study the extent and policy implications of IFFs.<sup>59</sup> In 2009, a Norwegian Government Commission produced an extensive report on tax havens' effect on developing countries.<sup>60</sup>

---

<sup>52</sup> <http://www.oecd.org/ctp/harmful/44493096.pdf>

<sup>53</sup> <http://www.oecd.org/tax/tax-global/taxanddevelopment.htm>. See, in particular, the 2012 announcement of the OECD's “Tax Inspectors Without Borders” project, <http://www.oecd.org/ctp/tax-global/taxinspectorswithoutbordershome.htm>.

<sup>54</sup> <http://www.hsgac.senate.gov/subcommittees/investigations/hearings/offshore-profit-shifting-and-the-us-tax-code-part-2>

<sup>55</sup> <http://www.g8.utoronto.ca/g20/2012/2012-0619-loscabos.pdf>

<sup>56</sup> <http://www.oecd.org/tax/beps.htm>

<sup>57</sup> <https://www.gov.uk/government/topical-events/g8-2013>

<sup>58</sup> [http://www.g8.utoronto.ca/summit/2013lougherne/Lough\\_Erne\\_2013\\_G8\\_Leaders\\_Communique\\_2.pdf](http://www.g8.utoronto.ca/summit/2013lougherne/Lough_Erne_2013_G8_Leaders_Communique_2.pdf)

<sup>59</sup> [http://www.leadinggroup.org/IMG/pdf\\_Final\\_report\\_Task\\_Force\\_EN.pdf](http://www.leadinggroup.org/IMG/pdf_Final_report_Task_Force_EN.pdf)

<sup>60</sup> [http://www.regjeringen.no/pages/2223780/pdfs/nou200920090019000en\\_pdfs.pdf](http://www.regjeringen.no/pages/2223780/pdfs/nou200920090019000en_pdfs.pdf)



In 2011, the Norwegian Agency for Development (NORAD) established the “Tax for Development” program to contribute to improving developing countries’ tax administrations.<sup>61</sup>

2009, Financial Transparency Coalition (FTC): Launched in 2009, the FTC, formerly known as the Task Force on Financial Integrity and Economic Development, is a unique coalition of civil society organizations, governments, and economists providing research and policy recommendations to crack down on illicit financial flows.<sup>62</sup> The FTC Coordinating Committee includes two civil society coalitions working on these issues in their own right, Tax Justice Network and Eurodad.

2011, Financial Accountability and Corporate Transparency (FACT) Coalition (U.S.): Founded in 2011, the FACT Coalition is a group of more than thirty organizations representing over eighteen million people, advocating in the United States on money laundering, beneficial ownership, and corporate tax policy.<sup>63</sup> Currently, FACT is primarily advocating for the ITLEAA and Stop Tax Haven Abuse Acts.

2011, United Nations Res. 66/177: In 2011, the UN General Assembly adopted a resolution to strengthen international cooperation in combating IFFs, urging all Member States to adopt relevant conventions (UNCAC, Convention on Transnational Organized Crime) and implement relevant standards (FATF).<sup>64</sup>

2011, Oslo Dialogue (OECD): In 2011, the OECD launched the “Oslo Dialogue,” designed to increase cooperation between authorities in numerous countries in approaching financial crimes, tax evasion, and illicit flows.<sup>65</sup> In 2012, the OECD convened the Dialogue again to discuss its work thus far and next steps.<sup>66</sup>

2012, IF Campaign (U.K.): Inaugurated in 2012, the IF Campaign (short for “Enough Food for Everyone IF...”) is a coalition of over 100 CSOs in the UK fighting hunger through resources presently available—one of the campaign’s main planks is increasing developing countries’ tax revenue by addressing tax dodging, and another cites “corporate transparency” as a goal.<sup>67</sup>

2012, UN Economic Commission for Africa (UNECA), High-Level Panel on Illicit Financial Flows: In 2012, UNECA convened a task force specifically to develop strategies for combating tax evasion and money laundering in Africa.<sup>68</sup>

2012, High-Level Panel on the Post-2015 Development Agenda: In 2012, the UN convened a task force to set the development agenda for after the deadline of the Millennium Development Goals in 2015, which ultimately included a commitment to lowering making illicit financial flows, including tax evasion and money laundering, below a certain, yet-to-be-determined level.<sup>69</sup>

---

<sup>61</sup> <http://www.norad.no/en/thematic-areas/macro-economics-and-public-administration/tax-for-development>. See also <http://www.cmi.no/publications/file/4569-implementing-the-illicit-financial-flows-agenda.pdf> for examples of specific implementations of assistance projects by the UK, German, and Norwegian development agencies.

<sup>62</sup> <http://www.financialtransparency.org/about/overview/>

<sup>63</sup> <http://fact.gfintegrity.org/>

<sup>64</sup> [http://www.un.org/ga/search/view\\_doc.asp?symbol=%20A/RES/66/177](http://www.un.org/ga/search/view_doc.asp?symbol=%20A/RES/66/177)

<sup>65</sup> <http://www.oecd.org/ctp/crime/47425987.pdf>

<sup>66</sup> <http://www.oecd.org/ctp/crime/Outcomes.pdf>

<sup>67</sup> <http://enoughfoodif.org/issues>

<sup>68</sup> <http://uneca.africa-devnet.org/content/illicit-financial-flows-africa>; see also <http://www.uneca.org/media-centre/stories/former-president-mbeki-chair-high-level-talks-illicit-financial-flows>.

<sup>69</sup> <http://www.un.org/sg/management/beyond2015.shtml>