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Organisation de Coopération et de Développement Économiques
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English - Or. English

COUNCIL

Council

**DRAFT DECISION OF THE COUNCIL ESTABLISHING THE GLOBAL FORUM ON
TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES**

(Note by the Secretary-General)

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Background

1. In Mexico on 1 and 2 September 2009, 178 delegates from 70 jurisdictions and international organisations met to discuss progress made in the implementation of international standards of transparency and exchange of information for tax purposes and the restructuring of the OECD Global Forum. This note describes the context in which that meeting took place, reports on the outcome and agreed conclusions reached in Mexico, and invites the Council to decide on the establishment of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

2. In response to a request from the G7 in 1996, the OECD initialised work on harmful tax practices and in 1998 the Council agreed on a recommendation to release a Report¹ and create the Forum on Harmful Tax Practices (FHTP). The work focused on two related issues:

- Harmful Preferential Tax Regimes within the OECD area;
- Tax Havens.

3. Over 60 preferential regimes were identified as potentially harmful. All of these regimes were abolished, modified or found on further examination not to be harmful. The FHTP continues to monitor developments in this area.

4. The work on tax havens was initially carried out exclusively in the FHTP. The goal was to establish objective criteria to identify tax havens, issue a list of tax haven jurisdictions, and then apply countermeasures. A list of tax havens was issued in 2000 that identified 35 jurisdictions as meeting the criteria. Six jurisdictions which made prior commitments to exchange information met the criteria but were not included in the list.

5. Member countries were encouraged by the approach of these six jurisdictions and decided that a more cooperative approach may achieve longer lasting results. A Global Forum was created to engage in a dialogue with the havens on the basis of three regional groups in Asia, the Caribbean and Europe. Preparations for the Global Forum took place in Barbados (2001), and the first meeting took place in the Cayman Islands (2002), the second in Canada (2003), the third in Berlin (2004) and the fourth in Melbourne (2005).

6. The Global Forum issued in 2002 the Model Agreement on Exchange of Information on Tax Matters and in 2005 agreed standards on the availability and reliability of accounting records developed by its Joint Ad Hoc Group on Accounts. These, along with Article 26 of the OECD Model Tax Convention, which was amended in 2006, constitute the OECD standards.

7. The Global Forum was initially made up of 26 OECD countries and those of the 41 jurisdictions identified as tax havens that had committed to implement the standards. Over time, other jurisdictions joined the Global Forum. At its meeting in Melbourne, Australia in 2005 a number of jurisdictions participated in the work and endorsed the standards: Argentina; China; Hong Kong, China; Macao, China; the Russian Federation and South Africa.

8. Aside from the development of the standards described above, the main output of the Global Forum has been the annual assessment of the progress being made towards meeting the standards with the first being published in 2006. The latest update of this report, *Tax Co-operation 2009: Towards a Level Playing Field - 2009 Assessment by the Global Forum on Transparency and Exchange of Information*, was

¹ See *Harmful Tax Competition: An Emerging Global Issue* (OECD, 1998)

released on 31 August 2009 to coincide with the Global Forum meeting in Mexico and covers 87 jurisdictions. This work has always attracted considerable political support from the G7/G8, the G20, the EU and the UN. At the G20 April 2009 London Summit and at the G8 July 2009 L'Aquila Summit, there was a strong call to speed up the negotiation of agreements and the implementation of the standards, proposals to make the Global Forum now inclusive and to put in place a unilateral and robust peer review process.

9. It was in response to these political messages that the CFA decided in July to organise quickly the fifth meeting of the Forum and Mexico kindly offered to host it on the 1-2 September 2009.

Progress made in 2009

10. There has been more progress made since November 2008 than in the past 10 years. All OECD countries have now endorsed the standard and are in the process of up-grading their existing treaties or negotiating new treaties to meet the standards. Almost 70 Tax Information Exchange Agreements (TIEAs) have been signed, 20 in the last month. Hong Kong, China and Singapore have endorsed the standard and have tabled legislation. Macao, China has already passed legislation that will enable it to engage in effective exchange of information. Chile, Costa Rica, Guatemala, Malaysia, Philippines and Uruguay are removing all remaining impediments to exchange of information.

The Mexican Global Forum

11. The Forum brought together 178 participants representing 70 jurisdictions and international organisations. The meeting had three objectives:

- Restructure the Global Forum to expand its membership and ensure its members participate on an equal footing;
- Agree on how to structure an in-depth peer review and quickly implement it; and
- Identify mechanisms to speed-up the negotiation and conclusion of agreements to exchange information and to enable developing countries to benefit from the new more cooperative tax environment.

12. As can be seen from the Summary of Outcomes of the Meeting of the Global Forum on Transparency and Exchange of Information for Tax Purposes held in Mexico on 1-2 September 2009, as set out in the document CTPA/CFA(2009)61, all three objectives were fully achieved. The Forum agreed to invite the Secretary-General to take the actions required to give force to the outcomes from the meeting.

Creating the new Forum

13. It is important to maintain the momentum of the last three months so we can achieve a rapid implementation of the standards. The Secretary-General, in response to the request made in Mexico, has quickly taken the actions required to create the new Forum which would be known as the "Global Forum on Transparency and Exchange of Information for Tax Purposes".

14. This Global Forum is different by nature from other Global Forums set out in the Revised Framework for the OECD Global Forums endorsed by Council on 18 December 2008 [C(2008)208/FINAL]. Henceforth, it is not to be governed by such Framework.

15. Accordingly, the Secretary-General is proposing that this note goes to the Council at its meeting of 17 September. In addition, the OECD Secretariat, which is invited to the G20 Summit in Pittsburgh on 24-25 September, would be able to report on this issue which is on the Summit agenda.

What work remains at the OECD?

16. OECD would maintain its core work on Exchange of Information which focuses on examining the Standards and removing practical impediments to the application of Article 26. Work will also continue on the monitoring of preferential regimes. The CFA also has other projects which are closely linked to the exchange of information:

- The inventory of Aggressive tax schemes and measures to counter them;
- The work on off-shore compliance initiatives;
- Follow-up work on the role of tax intermediaries, particularly in the areas of banking and high net worth individuals;
- Improving tax compliance.

17. It is important to recognise that in response to the G8 and G20 Summits the Forum on Harmful Tax Practices and other CFA subsidiary bodies will intensify their work on defensive measures and speed up the extension and updating of the OECD - Council of Europe Multilateral Convention in Administrative Assistance in Tax Matters.

18. The CFA, in cooperation with DAC, will also intensively work on how developing countries may benefit from this new open environment (DCD and CTPA are developing proposals for a joint CFA-CTPA conference next January).

19. All of this is important since the OECD must in the interest of its Member Countries maintain its core work in the exchange of information and its capacity to interact with and influence developments in the new Forum.

Proposed action

20. In the light of the preceding, the Secretary-General invites the Council to adopt the following draft conclusions:

THE COUNCIL

- a) noted document C(2009)122;
- b) adopted the draft Decision of the Council set out in Annex to document C(2009)122;
- c) noted that an annual budget of approximately 2.9 million euros has been endorsed by the jurisdictions represented in Mexico and that the Secretariat will prepare a programme of work and budget for formal consideration.

ANNEX
DRAFT DECISION OF THE COUNCIL
ESTABLISHING THE GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF
INFORMATION FOR TAX PURPOSES

The Council,

Having regard to the Convention on the Organisation for Economic and Cooperation Development of 14th December 1960 (hereinafter called “the Convention”);

Having regard to the Rules of Procedure of the Organisation;

Having regard to the Financial Regulations of the Organisation;

Having regard to the Recommendation of the Council on Counteracting Harmful Tax Competition adopted on 9 April 1998 [C(98)17],

Having regard to the OECD Model Agreement on Exchange of Information on Tax Matters and article 26 of the OECD and UN Model Tax Conventions;

Having regard to the Summary of Outcomes of the Global Forum on Transparency and Exchange of Information for Tax Purposes held in Mexico on 1-2 September 2009;

Having regard to the note by the Secretary-General concerning the establishment of the Global Forum on Transparency and Exchange of Information for Tax Purposes (hereinafter “the Global Forum”) as a Part II program of the budget of the Organisation [C(2009)122];

DECIDES

The Global Forum is hereby established with the following mandate:

Mission

1. The Global Forum shall ensure a rapid and effective global implementation of the standards of transparency and exchange of information for tax purposes¹ through in depth monitoring and peer review.
2. The whole monitoring and peer review process will be an ongoing exercise. Evaluation reports will be published after adoption by the Global Forum. Jurisdictions will be expected to act on any recommendations in the review and to report back to the Global Forum on actions taken.

Participation

3. The Global Forum membership is open to OECD countries², G20 countries and other jurisdictions covered by the report “Tax Co-operation 2009: towards a level playing field” (see full list in Appendix). All members will participate on an equal footing.

¹ See *Tax Cooperation, Towards a Level Playing field, Assessment by the Global Forum on Taxation*, page 14, Summary of Part II.

² The Commission of the European Community takes part in the work of the Global Forum in accordance with article 13 of the OECD Convention and its Supplementary Protocol No. 1.

4. The Global Forum may invite other jurisdictions to participate in its work with the possibility to become members if they commit to implement the standards and accept to be reviewed.
5. The Global Forum may invite relevant international organisations as observers.

Governance

6. The Plenary of the Global Forum is the decision making body of the Global Forum. The Global Forum may adopt its rules of procedure.
7. The Plenary is assisted by:
 - a Steering Group which will prepare and guide the Global Forum future work ;
 - a Peer Review Group (PRG) which will develop the methodology and detailed terms of reference for a robust, transparent and accelerated peer review process. The PRG will also carry out such peer reviews ;
 - any other body it may deem appropriate to establish.
8. The Plenary shall appoint the Chair and Vice Chairs of the Global Forum, who are also Chair and Vice Chairs of the Steering Group, the Chair and Vice Chairs of the PRG, who are also members of the Steering Group, and the other members of the Steering Group and the Peer Review Group.
9. The Global Forum will operate by consensus. However, as far as peer reviews are concerned, no one jurisdiction can block the adoption or publication of a review. Nevertheless, every effort should be made to arrive at a consensus and the views of the reviewed jurisdiction will be fully noted.
10. The Global Forum will be served by a dedicated self standing secretariat based in the Organisation's Centre for Tax Policy and Administration so as to benefit from the Organisation's experience in this area. Notwithstanding the provisions of Staff regulation 7 b) and the related instruction 107/1, the Secretary-General of the OECD shall be authorised to appoint, as OECD officials, nationals from any member of the Global Forum as long as they are located in the secretariat serving the Global Forum.

Budget

11. The expenditures of the program shall be charged against the appropriations authorised under a Part II chapter of the budget of the Organisation.
12. The budget of the Global Forum shall be financed by its members to the amount agreed between them.
13. The scale of contributions shall be the following:
 - a yearly fee of 15,000 euros for each member; such fee will be subject to an automatic annual increase equal to the annual increase in the OECD Budget;

- the remaining funding to be allocated in accordance with Annex II of document BC(2009)3³. In order not to overburden the smallest jurisdictions, only those with a GNP above 35 billion USD will contribute to this part of the budget.
14. In order to allow members to contribute stable amounts to the Global Forum over successive years, appropriations, for which no commitment has been entered into before the end of the financial year for which they were appropriated, shall be automatically carried forward to the budget for the ensuing year by decision of the Secretary General, notwithstanding the provisions of the Financial Regulations of the Organisation.

Evaluation

15. An evaluation exercise of the Global forum will be conducted prior to the end of the mandate period.

Duration

16. The Global Forum is established until 31 December 2012.
17. The Global Forum on Transparency and Exchange of Information presently under direction of Council as part of its external relations activity is abolished as of the date of adoption of the present Decision.

³ Annex II of BC(2009)3 contains the revised 2004 Principles and rules for determining the scales of contributions by Member other than part I of the budget of the Organisation.

Appendix
List of Potential Members of the Global Forum

| | | | |
|-------------------------|------------------|------------------------|----------------------------------|
| Andorra | Denmark | Liechtenstein | Seychelles |
| Anguilla* | Dominica | Luxembourg | Singapore |
| Antigua and Barbuda | Estonia | Macao, China | Slovak Republic |
| Argentina | Finland | Malaysia | Slovenia |
| Aruba** | France | Malta | Spain |
| Australia | Germany | Marshall Islands | Saint Kitts and Nevis |
| Austria | Gibraltar* | Mauritius | Saint Lucia |
| The Bahamas | Greece | Mexico | Saint Vincent and the Grenadines |
| Bahrain, Kingdom of | Grenada | Monaco | South Africa |
| Barbados | Guatemala | Montserrat* | Sweden |
| Belize | Guernsey**** | Nauru | Switzerland |
| Belgium | Hong Kong, China | Netherlands** | Turkey |
| Bermuda* | Hungary | Netherlands Antilles** | Turks and Caicos Islands* |
| Brazil | Iceland | New Zealand | United Arab Emirates |
| British Virgin Islands* | India | Niue | United Kingdom |
| Brunei | Indonesia | Norway | United States |
| Canada | Ireland | Panama | U. S. Virgin Islands***** |
| Cayman Islands* | Isle of Man**** | Philippines | Uruguay |
| Chile | Israel | Poland | Vanuatu |
| China | Italy | Portugal | |
| Cook Islands | Japan | Russian Federation | |
| Costa Rica | Jersey**** | Samoa | |
| Cyprus*** | Korea | San Marino | |
| Czech Republic | Liberia | Saudi Arabia | |

* Overseas Territory of the United Kingdom

** The Netherlands, the Netherlands Antilles and Aruba are the three countries of the Kingdom of the Netherlands

*** 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.

**** Dependency of the British Crown

***** External Territory of the United States