

*David Spencer*

## **The G20 London Summit on Tax Haven Jurisdictions**

The G20 London Summit issued an Official Communiqué on April 2, 2009, with two annexes: (1) Declaration on Delivering Resources through the International Financial Institutions; and (2) Declaration on Strengthening the Financial System. This Second Declaration includes an important section on Tax Havens and Non-Cooperative Jurisdictions, raising at least four major issues.

### **Standard for Tax Information Exchange**

What is the level of tax information exchange required by the G20? The Official Communiqué refers to the “the international standard for exchange of tax information”. But that standard is based on the OECD Program on Harmful Tax Practices and the OECD Model Tax Information Exchange Agreement, which require only exchange of information upon request – which the OECD considers “effective exchange of information”.

Two problems: first, the OECD’s standard of exchange of information upon request is not an “internationally agreed tax standard”. Second, only the automatic exchange of information is effective.

The EU Directive on the Taxation of Savings adopts the automatic exchange of information about interest income. The EU is trying to expand the scope of that Directive to cover other items of income, and to expand its geographical application. Clearly, the EU does not consider the exchange of tax information, upon request, as the “international standard”.

And the Commission of Experts of the President of the UN General Assembly on Reforms of the International Monetary and Financial System (the “Stiglitz Commission”) in its report of March 19, 2009, recommended an

amendment to Article 26 of the UN Model Double Taxation Convention between Developed and Developing Countries to make the exchange of information automatic.

The Mexican Finance Secretary, Augustin Carstens, formerly Deputy Managing Director of the IMF, has written to U.S. Treasury Secretary Geithner, requesting that the United States and Mexican Government exchange information automatically about interest paid by banks in one country to residents of the other country. “In continuing these efforts, both fiscal and law enforcement, I believe that one of the key elements of information that Mexico and the United States should begin sharing is the one pertaining to interest paid by banks of one country to residents of the other. The [automatic] exchange of information on interest paid by banks will certainly provide us with a powerful tool to detect, prevent and combat tax evasion, money laundering, terrorist financing, drug trafficking and organized crime”.

### **Sanctions/Defensive Measures**

The Official Communiqué and the Second Declaration refer to sanctions against uncooperative jurisdictions, and confirm that the G20 countries agreed “to take action against non-cooperative jurisdictions, including tax havens. We stand ready to deploy sanctions to protect our public finance finances and financial systems. The era of banking secrecy is over.”

The G20 statement that “The era of banking secrecy is over” is an overstatement as the Summit did not adopt the automatic exchange of information.

In the OECD’s seminal 1998 report, “Harmful Tax Competition: An Emerging Global Issue”, and in subsequent OECD

Reports, the OECD had already developed a more comprehensive list of “defensive measures” against uncooperative tax haven jurisdictions for countries to consider. The Summit does not reflect any substantial progress in this regard. Although the Second Declaration states that “we stand ready to take agreed action against those jurisdictions which do not meet international standards in relation to tax transparency”, two questions are: (1) What actions will be agreed to by the G20? (2) Will the G20, in fact, take such agreed upon action?

### **Developing Countries**

The Summit included a significant statement about the involvement of developing countries:

“We are committed to developing proposals, by end 2009, to make it easier for developing countries to secure the benefits of a new cooperative tax environment”.

The OECD Proposals on Harmful Tax Practices had only focused on capital flight from OECD member countries to jurisdictions classified by the OECD as tax havens, and the resulting tax evasion in the OECD, and in effect required those tax haven jurisdictions to enter into tax information exchange agreements with OECD member countries. Those OECD Proposals did not focus on the issue of capital flight from developing countries into: (1) jurisdictions designated by the OECD as tax havens, or (2) OECD financial centres.

The commitment in the Second Declaration to develop proposals before 2010 to focus on the role of developing countries in the “new cooperative tax environment” could be a significant step in combating capital flight from developing countries and the resulting tax evasion and loss of government revenue in developing countries. Stopping capital flight from developing countries to onshore and offshore financial centres would help developing countries comply with the domestic resource mobilization requirements of the Monterrey Consensus.

### **International Financial Institutions**

The Second Declaration refers to the role of international financial institutions – the IMF and

the FSB (the Financial Stability Board [FSB], which is an expanded Financial Stability Forum): “We are also committed to strengthened adherence to international prudential regulatory and supervisory standards. The IMF and the FSB in cooperation with international standard-setters will provide an assessment of implementation by relevant jurisdictions”.

Will the IMF, in exercising its surveillance functions over the international financial architecture, focus on cross-border tax evasion as an element of illicit financial flows, and/or include in the IMF’s Reports on Standards and Codes (ROSCs) whether the respective jurisdiction complies with effective exchange of information? Will the Financial Action Task Force (FATF) focus on international tax cooperation as a method to reduce illicit cross border financial flows? Will tax evasion be considered by FATF and by the IMF as a money laundering offence?

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