RESPONDING TO INTERNATIONAL TAX INITIATIVES

Colin Powell

Following the global financial crisis in 2008 there have been a number of international tax initiatives the worldwide application of which has been promoted by the G7/8, the G20, and the OECD. This article explores how, as international finance centres, Guernsey and Jersey have been affected both directly and indirectly. Initially the focus was on jurisdictions' compliance with international standards on exchange of information on request. Subsequently the emphasis shifted to a global standard for the automatic exchange of information. To help fight against tax evasion and maintain revenues, the international community also mounted initiatives to enhance transparency on beneficial ownership and revamp the work on harmful tax practices. A positive aspect of this global approach has been the establishment of a level playing field in assessing compliance in contrast to the past discriminatory approach often adopted towards jurisdictions such as Guernsey and Jersey.

Background

1 International attention was first focused by the OECD on Jersey, Guernsey and other so-called "tax havens" when it produced its report on harmful tax competition in 1998,[1] and published a list of tax havens in its 2000 report "Towards Global Tax Cooperation".[2] This led, in 2002, to Jersey, Guernsey and other centres entering into political commitments to support the OECD tax initiative on transparency and

[1] *Harmful Tax Competition: An Emerging Global Issue* (OECD, 1998). The four key factors to define a "tax haven" were: (i) no or nominal tax on the relevant income; (ii) lack of effective exchange of information; (iii) lack of transparency; (iv) no substantial activities. No or nominal tax is not sufficient in itself to classify a jurisdiction as a tax haven.

[2] Subsequently in 2006 in its report "Tax Cooperation: Towards a Level Playing Field", the OECD stated that the 2000 list should be seen in its historical context and "if a country chooses to use a list of countries derived from the OECD list it should take into account the implementation of the principles of transparency and effective exchange of information in tax matters".

information exchange through the negotiation of tax information exchange agreements to an agreed international standard. However, what gave a real impetus to transparency and information exchange was the financial crisis in 2007/2008.

2 In 2008, G20 announced that lack of transparency was one of the root causes of the global financial crisis[3] and, at the London summit in April 2009, it called for action against non-cooperative jurisdictions, including tax havens, and stated that the era of bank secrecy was over.[4] At the same time, the OECD published a list of countries assessed against the international standard for exchange of tax information[5]. The consequence was that in September 2009 the OECD restructured the Global Forum on Transparency and Exchange of Information for Tax Purposes which set the standard for exchange of information on request (EOIR) and introduced a peer review process for assessing compliance with the standard.

3 However, the USA did not feel EOIR went far enough in tackling tax evasion and sought through the enactment of the Foreign Account Tax Compliance Act 2010 (FATCA) to oblige foreign financial institutions worldwide to perform specified due diligence procedures and to report automatically to the US Internal Revenue Service (IRS) financial account information for all US persons. If this was not done, withholding agents in the US were required to withhold 30% of the gross amount of certain US connected payments made to foreign financial institutions.

4 G8, G20 and a group of five EU Member States (France, Germany, Italy, Spain and the UK) saw this automatic exchange of information (AEOI) as something that should have global application and the OECD was requested to develop a single, global, common reporting standard for AEOI. Separately, the UK took the view that the financial account information that the Crown Dependencies and the Overseas Territories were being required to provide automatically to the USA

[3] G20 Washington Summit—Declaration of the Summit on Financial Markets and the World Economy—15 November 2008.

[4] G20 London Summit—Leaders' Statement 2 April 2009.

[5] On 2 April 2009, the Secretary General of the OECD issued a Progress Report which determined that a jurisdiction that had signed tax information exchange agreements with 12 jurisdictions would be considered to have substantially implemented the internationally agreed tax standard. Both Guernsey and Jersey were in that category.

under FATCA should also be made available automatically to the UK under a broadly parallel intergovernmental agreement.[6]

5 This was all part of a flurry of activity with international organisations and individual jurisdictions, not least the UK, seeking to establish their credentials in respect of a raft of proposals designed to tackle tax evasion, tax avoidance, harmful tax practices and aggressive tax planning to ensure that all taxpayers pay their fair share of taxes.

6 G20, at their summit in St Petersburg in September 2013, produced for the first time a tax annex to the Leader's Declaration.[7] To quote from the first paragraph of that annex—

> "G20 has been at the forefront of efforts to establish a more effective, efficient and fair international tax system since they declared the era of bank secrecy over at the G20 London summit in April 2009. In an increasingly borderless world, strengthening international cooperation in tax matters is essential to ensuring the integrity of national tax systems and maintaining trust in governments."

7 The OECD and G20 have worked hand in hand over the past 5 years and the result has been significant reforms to the international tax system, from eliminating strict banking secrecy, to improved tax transparency through stronger international cooperation and, most recently, addressing the type of tax avoidance which sees multinational companies' profits separated from the underlying economic activity and value creation.[8]

8 The EU has also been a key player. On 6 December 2012, the European Commission presented an Action Plan for a more effective EU response to tax evasion and avoidance.[9] The plan set out a comprehensive set of measures to help Member States protect their tax bases and recapture billions of euros lost through these practices. The Commission has been at the forefront of efforts to bolster the fight

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[6] http://www.gov.je/SiteCollectionDocuments/Tax%20and%20your%20money/LD%20UKJerseyIGA%2020131108.pdf

[7] Tax Annex to the Saint Petersburg G20 Leaders Declaration 5 September 2015; https://www.whitehouse.gov/sites/default/files/image/files/g-20taxannex.pdf

[8] See the outcomes of the G7, G8 and G20 Summits on international tax issues, in particular the Elmau Summit of 7–8 June 2015, the Brisbane Summit of 15–16 November 2014, the St Petersburg Summit of 5–6 September 2013, the Lough Erne Summit of 17–18 June 2013 and the Pittsburgh Summit of 24-25 September 2009.

[9] COM (2012) 0722.

against tax fraud and tax evasion. In particular, the fight against tax evasion and tax fraud ranks high on the 2015 Work programme of the Commission.

9 The Channel Islands have inevitably been involved in this process. First, they have always made it clear that they wished to comply with international standards that have global application and to be recognised as compliant. Therefore, as these standards have developed, so the Channel Islands have been quick to commit to them. Secondly, the UK has wanted to be seen as a leader in the field—this was particularly the case at the G8 summit in 2013 when the UK held the presidency. The UK has not wanted to give other G8/G20 countries the opportunity to ask "how can you expect us to follow your lead when you have not been able to get your own dependent territories to follow you?". Hence the UK has made a succession of requests to the Crown Dependencies and the Overseas Territories to join them in their commitment to a number of international initiatives.

10 The UK has continued to seek to take a leadership role. To quote Prime Minister Cameron in a speech in Singapore in July 2015—

> "When I put tax, trade and transparency at the top of the G8 agenda for the first time back in Lough Erne in Northern Ireland two years ago many thought it would be a flash in the pan. Another one of those communiques with words that don't really mean anything.
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> But today over 90 countries—including Singapore—have agreed to share their tax information automatically by the end of 2018, meaning that more people and companies will pay the tax that is due. At the same time we are also working with the OECD and G20 to finalise an international plan to stop companies from artificially shifting their profits across borders to avoid taxes."[10]

11 What can be said is that the global approach that is now central to these initiatives has been welcomed by the Channel Islands. In the past there was a tendency to focus on so called "tax havens" or "offshore centres" as if they were the sole or main source of the problem. As a result, the Islands often felt they were being discriminated against. Now the world at large is being expected to respond to the initiatives and a critical light is being shone on jurisdictions generally. The OECD still headlines the attack on offshore tax evasion but OECD officials have emphasised that the word "offshore" now has a generic use relating to activities that take place in a jurisdiction other than the

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[10] https://www.gov.uk/government/speeches/tackling-corruption-pm-speech-in-singapore

jurisdiction in which the taxpayer is resident. It is not being used, as previously, to focus specifically on so-called "tax havens".

12 With a global approach, it is believed the Channel Islands' competitive position can be enhanced because of the strength of their current practices, such as the regulation of trust and company service providers, which others are now being expected to emulate.

13 EU Commissioner Moscovici made the following statement in May 2015 on the occasion of the visit to Brussels of the Chief Ministers of Jersey and Guernsey—

> "I very much welcome the active engagement of the Channel Islands in the key initiatives involved in the fight against tax evasion, fraud and abusive tax avoidance in which they are important partners of the EU. Their commitment to the adoption of the Common Reporting Standard on automatic exchange of information, alongside the EU Member States, is particularly positive."

14 Earlier in the year the Secretary General of the OECD also wrote to Jersey saying—"I congratulate you in the leadership demonstrated in supporting as an 'Early Adopter' the rapid implementation of the new common global standards for the automatic exchange of information", a view shared by Pascal Saint-Amans (Director, OECD Centre for Tax Policy and Administration) in thanking Jersey for its excellent work in recent years. Similar sentiments have been expressed for Guernsey.

15 Having set the scene, the key international initiatives are now addressed in more detail. In doing so, the experience of Jersey has been drawn on for the most part, but much if not all that is said will apply equally to Guernsey.

Exchange of information on request (EOIR)

16 The Global Forum on Transparency and Exchange of Information for Tax Purposes ("the Global Forum") is the multilateral framework within which work in the area of transparency and exchange of information for tax purposes has been carried out by both OECD and non-OECD economies since 2000. Since its restructuring in 2009, the Global Forum has become the key international body working on the implementation of the international standards on tax transparency. The Global Forum ensures that these high standards of transparency and exchange of information for tax purposes are in place around the world through its monitoring and peer review activities, technical assistance, peer-to-peer learning and skills support.

17 The Global Forum at the time of writing has 127 members and has delivered more than 150 peer review reports. Overall ratings on implementation have been allocated to 81 jurisdictions, revealing the following results: 21 jurisdictions are "Compliant", 47 jurisdictions are "Largely Compliant", 10 jurisdictions are "Partially Compliant" and 3 jurisdictions are "Non-Compliant". Jersey and Guernsey are rated as "Largely compliant" a rating they share with Germany, Italy, the Netherlands, the United Kingdom and the USA.

18 Guernsey and Jersey both negotiate tax agreements to the international standard such as Tax Information Exchange Agreements (TIEAs) and Double Taxation Agreements (DTAs) under a Letter of Entrustment from the UK Government. While the UK retains ultimate responsibility for the Islands' international relations, through a Framework Agreement signed between each Island and the UK, it is recognised that the Islands have an international identity which is different from that of the UK and that the interests of the UK and the Islands can also differ.[11] For example, the UK interests can be expected to be those of an EU Member State and the interests of the Islands can be expected to reflect the fact that the UK's membership of the EU only extends to the Islands in certain circumstances as set out in Protocol 3 of the UK's Treaty of Accession. However, when treated as a "third country" Jersey and Guernsey seek to meet the requirements of "equivalence" with EU legislation to help ensure that any barriers to EU market access can be overcome. This applies to such matters as anti-money laundering (AML), financial regulation, data protection and the application of sanctions.

19 The Channel Islands' international standing is also reflected in their relationship with the OECD. By a Declaration of 1990, it was confirmed that they are bound by the OECD Convention and are obliged to adopt on the same terms as the Member States the decisions of the OECD, such as the Codes of Liberalisation on Capital Movements and Current Invisible Operations, and the recommendations adopted by the organisation. Thereby the Islands may be considered to be *de facto* members. However, the Declaration states that in a particular case it can be specifically indicated that the obligations do not apply. This was the case in 1998 when the UK decided that the Crown Dependencies and the Overseas Territories should be excluded from the recommendations on harmful tax competition as they applied to the OECD Member States so that they

[11] http://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20InternationalIdentityFramework%2020070502.pdf

could be included in the list of so-called 'tax havens', published in 2000 but long since overtaken, and treated accordingly.

20 Jersey and Guernsey are members of the Global Forum. Jersey is a member of the Forum's Peer Review Group and for three years was one of the vice-chairs of the Group. Jersey is currently a vice-chair of the Forum's AEOI Working Group of which Guernsey is a member. Jersey and Guernsey are also joined through the UK with the Convention on Mutual Administrative Assistance in Tax Matters which provides multilaterally for EOIR, AEOI and spontaneous reporting of tax information.

21 All of the Channel Islands' TIEAs are based on the Model TIEA Agreement developed by the OECD Global Forum Working Group on Effective Exchange of Information. This provides for the same standards as those included in art 26 of the OECD's Model Convention with respect to Taxes on Income and Capital ("the Model Tax Convention"). Both use the standard of "foreseeable relevance" to define the scope of the obligation to provide information. Both require information exchange to the widest possible extent, but do not allow "fishing expeditions", *i.e.* speculative requests for information that have no apparent nexus to an open enquiry or investigation. Both set the same standard of confidentiality using the same terms.

22 The OECD commentary on art 26 of the Model Tax Convention thus serves as commentary to these matters where raised in a TIEA. Regarding the level of confidentiality which is expected to be applied, the commentary on para 2 of art 26 of the Model Tax Convention, which corresponds with art 9 of the Model TIEA, is absolutely clear in this respect—

> "The confidentiality rules of paragraph 2 apply to all types of information received under paragraph 1, including both information provided in a request and information transmitted in response to a request. Hence, the confidentiality rules cover, for instance, competent authority letters, including the letter requesting information. At the same time, it is understood that the requested State can disclose the minimum information contained in a competent authority letter (but not the letter itself) necessary for the requested State to be able to obtain or provide the requested information to the requesting State, without frustrating the efforts of the requesting State. If, however, court proceedings or the like under the domestic laws of the requested State necessitate the disclosure of the competent authority letter itself, the competent authority of the requested State may disclose such a letter unless the requesting State otherwise specifies."

23 At the end of August 2015, Jersey had received 384 requests for information from 20 jurisdictions. In a number of cases, the notice calling for the information to be provided, issued by the Jersey Competent Authority, has been the subject of appeal. Initially the Taxation (Exchange of Information with Third Countries) (Jersey) Regulations 2008 provided for an appeal to the Royal Court, a subsequent appeal to the Court of Appeal and a further right of appeal to the Privy Council. However, this gave rise to criticism by requesting jurisdictions of consequential delays in the exchange of information, particularly where those jurisdictions had much more limited appeal provisions. In 2013, this led to France putting Jersey on to a "blacklist" of non-cooperative jurisdictions, and more generally led Global Forum assessors to the conclusion that Jersey was not complying effectively with the international standard. As a result the Regulations were amended in 2013 and appeals were limited to making application for a judicial review and subsequent appeal to the Privy Council. The use of these appeal provisions however is still having the effect of seriously delaying the exchange of information. Furthermore the provisions themselves have been challenged in a long running Norwegian case on the grounds that they are contrary to Human Rights and/or that the initial appeal rights could not be removed by Regulations and should have been dealt with through primary legislation. The judgment of the Royal Court is awaited.

24 Other jurisdictions have been faced with similar problems arising from their appeal provisions. For example, Luxembourg has decided to abolish the appeal process completely and it is no longer possible to appeal the executive decision to exchange the information requested. The only possibility is an appeal against the sanction that is applied for failure to provide the information, which is a general recourse for all administrative sanctions and does not impact upon the exchange of information.

25 One of the issues complained of in a number of jurisdictions is how appellants can present an appeal if they do not have sufficient information about the nature of the request from the requesting jurisdiction. However, the international standard requires that the letter of request is not made available to the taxpayer or the entity holding the information sought. This constraint also applies to what is described as a statement of reasons. The Jersey Regulations initially referred to the need for such a statement to be produced but this was criticised by assessors of Jersey's compliance with the international standard and the Regulations were amended to remove this requirement. Other jurisdictions have faced similar criticism by

assessors. Luxembourg has enacted a new Law on EOI,[12] which provides that only information that is essential to the information holder in order to identify the information that needs to be provided can be disclosed in the injunction letter. The article specifically provides that the letter of request cannot be disclosed. As a consequence of this enactment, Luxembourg has changed its injunction letters which now include (1) the requesting state (for the information holder to identify the legal basis for the request), (2) the elements necessary to identify the requested information including the years for which the information is needed, (3) the deadline to provide the information, (4) the anti-tipping-off requirement, if requested, (5) the sanctions applicable for default to provide the information and (6) a notice informing that no appeal rights are applicable.

26 The international tax information exchange standard can be met through either a Tax Information Exchange Agreement (TIEA) or a Double Tax Agreement (DTA). The advantage of a DTA is that it offers benefits to individuals and the business community through the avoidance of double taxation or reduced rates of withholding tax, in addition to providing for exchange of information to the international standard. However, the majority of jurisdictions with whom Jersey has sought to negotiate an agreement have not been prepared to consider a DTA on the ground that they would derive little, if any, benefit from such an agreement because Jersey is a zero corporate tax jurisdiction.

27 The standard rate of corporate tax of 0% is based on two key principles. One is the EU Code Group on Business Taxation's principle of non-discrimination between resident and non-resident owned companies. The other is the principle of tax neutrality combined with transparency. Jersey's role as an international finance centre can be described as one of acting as a financial entrepôt in facilitating the investment of funds drawn from the world at large into European financial markets. The view is held that the return to the investors should be taxed in their home country, and the business activity generated by the investment in Europe should be taxed in the jurisdiction where that activity takes place. Because Jersey does not have DTAs with the countries involved, there is a need to adopt a tax neutral regime to avoid discouraging these investment flows which contribute to jobs and growth in the EU Member States. The

[12] The Law of 25 November 2014 on organising the procedure for exchange of information on request for tax purposes confirmed changes included in an administrative circular of 31 December 2013. See note by Stibbe BV at https://www.stibbe.com/en/news/2015/march/lux-exchange-of-information-on-request.

Government of Jersey recognises, however, that for tax to be levied where it is properly due, it is necessary for the countries concerned to have accurate tax information. With this in mind, Jersey has given its full support for the transparency principles central to the current G20, OECD and EU tax initiatives.

28 At the time of writing, a total of 37 TIEAs and 10 DTAs have been signed by Jersey, of which 33 TIEAs and 8 DTAs are in force.[13] Almost without exception, the delay in bringing agreements into force is due to the length of time taken by the other parties to the agreements to complete their domestic procedures for the ratification of the agreements. In addition, since June 2014 Jersey has been party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and through this information can be exchanged with over 50 jurisdictions. Some jurisdictions that were negotiating a TIEA with Jersey have now decided to rely on the provisions of the Convention.

29 Africa has been identified as an area with good business opportunities for Jersey as an international finance centre which would also be of benefit to the developing countries. In November 2014, Jersey Finance launched the "Value to Africa" Report[14] which was commissioned to look at the role international financial centers could play in the growth of developing countries. The report, conducted by the independent research organisation, Capital Economics, found that, while Africa is one of the fastest growing regions globally, it needs to invest US$85 trillion in infrastructure by 2040 in order to sustain that growth. This capital cannot be generated locally or through international aid, with the research paper estimating a shortfall of US$11.4 trillion in investment, US$6.1 trillion of which will need to come from outside the continent.

30 These business/investment opportunities will be more easily developed if there is a DTA. Great importance is attached to the DTA which Jersey signed with Rwanda in June 2015[15] as the first such agreement with an African country, and one that will support inward investment into Rwanda and further enhance the existing close economic and political relationships.

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[13] Regular updates are provided on the Jersey Government website http://www.gov.je/TaxesMoney/InternationalTaxAgreements/TIEA/Pages/index.aspx

[14] http://media.jsy.fi/JFL-_LINKS_WITH_AFRICA_21APR-issuu.pdf

[15] All TIEAs and DTAs can be found on the Jersey Government website http://www.gov.je/TaxesMoney/InternationalTaxAgreements/TIEA/Pages/index.aspx

31 Approaches have been made to other African countries to initiate negotiations on entering into similar agreements, and it is hoped that the agreement with Rwanda will encourage such negotiations. It is also intended that, alongside the Double Taxation Agreements (DTA), Bilateral Investment Treaties (BIT) will also be negotiated. Support has also been extended through assistance with asset recovery and through the enactment of legislation on Vulture Funds.[16]

32 The combination of a DTA and a BIT will support inward investment, thereby linking the role of Jersey as an international finance centre with the investment needs of the developing countries. The role that Jersey can play in this respect is also reflected in the presence in the Island of over 20 mining and natural resources companies with interests in Africa.

33 Through the inclusion in the DTAs of provision for automatic exchange of information, further assistance can be given to developing countries in the fight against tax evasion, corruption and other financial crime.

34 What can be said in concluding the section on EOIR is that, whereas some have been critical of EOIR because a jurisdiction has to have sufficient information before it can make a request, EOIR will have an important role to play in the future. This is because, with AEOI, tax authorities will have greater information upon which to base more detailed requests. With AEOI, it is expected therefore that the number of EOIRs will increase significantly.

35 The OECD has been asked by the G20 to propose possible tougher incentives and implementation processes to deal with those countries which fail to respect the Global Forum standard on EOIR. All jurisdictions are to be expected to review their existing measures in relation to the lack of the effective EOIR, and explore the possibilities of introducing new measures to incentivise EOIR, with the Global Forum rating as a factor in their application. These proposals have been included in the report of the OECD Secretary General to G20 Finance Ministers for their meeting in Ankara in September 2015.

[16] Debt Relief (Developing Countries) (Jersey) Law 2013.

Automatic exchange of information (AEOI)

36 For many years countries have been engaging in AEOI in order to tackle offshore tax evasion and other forms of non-compliance but there was no single international standard expected to have global application. In 2013, in their St Petersburg Declaration, G20 leaders laid the foundations for further progress in tax transparency: in addition to calling for the completion of the current schedule of the Global Forum's peer reviews and allocation of ratings, they endorsed the OECD proposal for a new global standard for the automatic exchange of information, and mandated the Global Forum to establish a mechanism to monitor its implementation. G20 finance ministers and central bank governors reaffirmed the importance of global tax transparency in their Communiqués of February and September 2014,[17] endorsing the new standard on AEOI, and reiterating the importance of continued progress in meeting the international standards of EOIR and AEOI.

37 With the strong support of G20, the OECD together with G20 countries and in close cooperation with the EU and other stakeholders has produced the Standard for Automatic Exchange of Financial Account Information[18] which builds on the FATCA agreement to maximise efficiency and minimise costs. The Standard consists of—

(1) The Common Reporting Standard (the CRS) that contains the due diligence rules for financial institutions to follow to collect and then report the information that underpin the automatic exchange of information;

(2) The Model Competent Authority Agreement (the CAA) that links the CRS to the legal basis for exchange, specifying the financial information to be exchanged;

(3) The Commentaries that illustrate and interpret the CAA and the CRS.

38 There are three Model CAAs. One is a bilateral and reciprocal model designed to be used in conjunction with a DTA or TIEA, particularly where the Multilateral Convention on Mutual Administrative Assistance in Tax Matters cannot be used as the legal basis. The second is a multilateral CAA that can be used to reduce the

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[17] Sydney Communique 21–23 February 2014 and Cairns Communique 20–21 September 2014.

[18] Released on 21 July 2014, http://www.oecd.org/ctp/exchange-of-tax-information/standard-for-automatic-exchange-of-financial-information-in-tax-matters.htm

costs of signing multiple bilateral agreements (although the actual information exchange would still be on a bilateral basis) and would most often be used in conjunction with the Convention. The third is a non-reciprocal model for use, for example, where a jurisdiction does not have an income tax.

39 In October 2014, in Berlin, 51 jurisdictions, including Jersey and Guernsey, signed a Multilateral Competent Authority Agreement (MCAA) as part of putting the commitment to CRS into action. This Agreement is based on the Multilateral Convention on Mutual Administrative Assistance in Tax Matters which at the time of writing has been signed by 87 jurisdictions,[19] including many developing countries. At the end of May 2015, the number who had signed the MCAA had increased to 61, of which 50 are committed to exchange information in 2017 and 11 are committed to exchange information in 2018. Those committed to exchange information in 2017, known as the "early adopters", include Jersey and Guernsey.

40 Earlier reporting is required under FATCA and the UK IGA. Regulations were made in Jersey in 2014 and guidance issued. First reports under FATCA for the second half of 2014 have been received and will be transmitted to the IRS by September 2015. For the UK IGA, information for 2014 and 2015 does not have to be sent to HMRC until September 2016.

41 The UK is keen to move from the IGA to the CRS. The question is whether the transition should be undertaken when the CRS is introduced by the early adopters on the 1 January 2016 with reporting in 2017, or a year later. This question raises issues surrounding the provision of information to the UK under the IGA at an earlier stage than under the CRS, and the position of some competing jurisdictions such as Switzerland and Singapore who will not be reporting information until 2018. The UK IGA differs from the CRS in that it incorporates an annex providing for an alternative reporting regime for those UK reportable persons who are "resident non-doms". No such provision can be made under the CRS. There is concern that those categorised as "resident non-doms" will relocate their accounts to jurisdictions such as Switzerland if information on their financial accounts does not need to be reported until a year later than would be the case if they retained their account in Jersey.

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[19] Note that this number includes dependent territories such as the Channel Islands which are joined in the Convention not by signing but by the extension of the ratification of the parent country.

42 For the CRS, Regulations have been drafted which will cover the exchange of information with jurisdictions that have signed the MCAA or any other agreement (*e.g.* TIEA or DTA) to which Jersey and another participating jurisdiction is a party providing automatic exchange of information. The Regulations will be supported by guidance which will draw on the CRS Commentaries. The guidance will also refer to the position taken on the various optional provisions which are intended to provide greater flexibility for financial institutions and therefore reduce their costs. There are 15 main areas where the Standard provides options for jurisdictions to implement as suited to their domestic circumstances in order to provide for easier implementation, and reduced burdens, without impacting on the purpose or effectiveness of the CRS. The options to be adopted include not requiring the filing of nil returns, and allowing third party service providers to fulfil the obligations on behalf of the financial institutions.

43 The CRS also provides for jurisdictions to identify financial institutions and financial accounts that present a low risk of being used for tax evasion as Non-Reporting Financial Institutions or Excluded Accounts (*i.e.* non-reportable accounts). It is expected that each jurisdiction will have a single list of low risk financial institutions and a single list of low risk financial accounts with respect to the standard and that these lists will be published. The Global Forum will assess the jurisdiction specific lists, which can be expected to be similar to the equivalent lists compiled for FATCA, to ensure the conditions of the Standard have been met.

44 For those jurisdictions to be covered by the MCAA, the following procedures will need to be followed[20]—

> "1 A Competent Authority must provide, at the time of signature of the Agreement or as soon as possible after the jurisdiction has the necessary laws in place to implement the Common Reporting Standard, a notification to the Co-ordinating Body Secretariat:
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> (a) that its Jurisdiction has the necessary laws in place to implement the Common Reporting Standard and specifying the relevant effective dates with respect to Pre-existing Accounts, New Accounts, and the application or completion of the reporting and due diligence procedures;

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[20] The MCAA can be found on the Jersey Government website http://www.gov.je/TaxesMoney/InternationalTaxAgreements/IGAs/Pages/CommonReportingStandard.aspx

(b) confirming whether the Jurisdiction is to be included the list of non-reciprocal jurisdictions;

(c) specifying one or more methods for data transmission including encryption;

(d) specifying safeguards, if any, for the protection of personal data;

(e) that it has in place adequate measures to ensure the required confidentiality and data safeguards standards are met and attaching the completed confidentiality and data safeguard questionnaire; and

(f) a list of the Jurisdictions of the Competent Authorities with respect to which it intends to have this Agreement in effect, following national legislative procedures (if any).

Competent Authorities must notify the Co-ordinating Body Secretariat, promptly, of any subsequent change to be made to the above-mentioned.

2.1 The Agreement will come into effect between two Competent Authorities on the later of the following dates: (i) the date on which the second of the two Competent Authorities has provided notification to the Co-ordinating Body Secretariat under paragraph 1, including listing the other Competent Authority's Jurisdiction pursuant to subparagraph 1(f), and, if applicable, (ii) the date on which the Convention has entered into force and is in effect for both Jurisdictions.

2.2 The Co-ordinating Body Secretariat will maintain a list that will be published on the OECD website of the Competent Authorities that have signed the Agreement and between which Competent Authorities this is an Agreement in effect.

2.3 The Co-ordinating Body Secretariat will publish on the OECD website the information provided by Competent Authorities pursuant to subparagraphs 1(a) and (b). The information provided pursuant to subparagraphs 1(c) through (f) will be made available to other signatories upon request in writing to the Co-ordinating Body Secretariat."

45 A particularly important aspect of the above procedure is the requirement that confidentiality and data safeguards standards have to be shown to be met before any information is exchanged. The Global Forum has initiated a process whereby individual jurisdictions will be independently assessed for their compliance with these standards.

46 The CRS regulations will provide for financial institutions to undertake customer due diligence for all participating jurisdictions (i.e.

all jurisdictions committed to the CRS). However, with which jurisdictions information will be exchanged in 2017 and thereafter will depend on there being a legal basis for such an exchange (i.e. the MCAA or a TIEA/DTA) and the required confidentiality and data standards being in place.

Disclosure facility (DF)

47 The imminent implementation of AEOI is pushing up voluntary disclosures by tax evaders which have already yielded €37 billion of additional revenue in around 25 OECD and G20 countries that have put in place these initiatives. The UK introduced a disclosure facility in 2013 in tandem with the signing of the UK IGA on AEOI. UK residents with financial accounts in the Crown Dependencies were encouraged to disclose their affairs with the promise of a lower penalty than would be faced if tax evasion were subsequently to be discovered by HMRC. The UK Government announced that by the end of 2015 they expected to receive some £250 million in tax from those with accounts in the Crown Dependencies. However, by the end of March 2015, less than £10 million had been realised.

48 In March 2015, the UK Chancellor announced that the existing DF would be withdrawn at the end of the year when it would be replaced by a more general DF applying to all relevant jurisdictions. This new DF will continue until September 2017 when AEOI reports under the CRS will be first made. The general DF will have a higher penalty provision than the existing DF but still less than would be the case if evasion were to be discovered by HMRC on the receipt of information under the CRS AEOI. Under the UK IGA, AEOI reports will be made in September 2016 and so the risks arising from non-disclosure will be faced earlier.

49 For the initial DF, the Government of Jersey agreed to oblige financial intermediaries to notify their customers of the existence of the facility, and to remind them of it within six months of the closure of the facility in September 2016. With the ending of the initial DF, the Regulations will fall away and it will be left to the financial intermediaries to notify customers as they see fit.

Base erosion and profit shifting (BEPS)

50 In February 2013 the OECD published a report entitled *Addressing Base Erosion and Profit Shifting*.[21] OECD Secretary-General Angel Gurría said—

> "These strategies, though technically legal, erode the tax base of many countries and threaten the stability of the international tax system . . . As governments and their citizens are struggling to make ends meet, it is critical that all tax payers—private and corporate—pay their fair amount of taxes and trust the international tax system is transparent. This report is an important step towards ensuring that global tax rules are equitable, and responds to the call that the G-20 has made for the OECD to help provide solutions to the global economic crisis."

51 In September 2014, the OECD presented the first deliverables of the Base Erosion and Profit Shifting Project to G20 finance ministers.[22] These first results, delivered by the 44 countries, including all G20 and OECD members, acting on an equal footing, addressed issues such as tax treaty abuse, hybrid mismatches that result in double non-taxation, spontaneous exchange of tax rulings, requirements for country-by-country reporting by multinationals on key indicators, as well as an agreed approach to the tax challenges of the digital economy transparency.

52 OECD and G20 countries in February 2015 agreed three key elements that will enable implementation of the BEPS Project—

(1) a mandate to launch negotiations on a multilateral instrument to streamline implementation of tax treaty-related BEPS measures;

(2) an implementation package for country-by-country reporting in 2016 and a related government-to-government exchange mechanism to start in 2017; and

(3) criteria to assess whether preferential treatment regimes for intellectual property (patent boxes) are harmful or not.

OECD Secretary-General Angel Gurría said—

> "These are important steps forward, which demonstrate that progress is being made toward a fairer international tax system . . . These decisions signal the unwavering commitment of the

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[21] http://www.oecd.org/tax/oecd-urges-stronger-international-co-operation-on-corporate-tax.htm

[22] https://g20.org/wp-content/uploads/2014/12/Communique-G20-Finance-Ministers-and-Central-Bank-Governors-Cairns.pdf

> international community to put an end to base erosion and profit shifting, in line with the ambitious timeline endorsed by G20 leaders."

53 G20–OECD BEPS Action Plan[23] sets out 15 key elements of international tax rules to be addressed by year-end 2015.[24] The project aims to help governments protect their tax bases and offers increased certainty and predictability to taxpayers, while guarding against new domestic rules that result in double taxation, unwarranted compliance burdens or restrictions to legitimate cross-border activity.

54 The measures together are considered to represent significant progress towards eliminating double non-taxation and are expected to give countries the tools they need to ensure that profits are taxed where economic activities generating the profits are performed and where value is created. However it is recognised that this will not be easily determined when dealing with mutual funds.

55 The implementation of the BEPS Action Plan will require modifications to the existing network of more than 3,000 bilateral tax treaties worldwide. A planned multilateral instrument is intended to offer countries a single tool for updating their networks of tax treaties in a rapid and consistent manner.

56 Another key objective of the BEPS project is to increase transparency through improved transfer pricing documentation standards—including through the use of a country-by-country reporting template[25] that requires multinationals to provide tax administrations with information on revenues, profits, taxes accrued and paid, along with some activity indicators. The new guidance presented to G20 requires country-by-country reporting by multinationals with a turnover above €750 million in their countries of residence, starting in 2016. Tax administrations will begin exchanging the first country-by-country reports in 2017. Countries have emphasised the need to protect tax information confidentiality.

57 The guidance confirms that the primary method for sharing such reports between tax administrations is through automatic exchange of information, pursuant to government-to-government mechanisms such as bilateral tax treaties, the Multilateral Convention on Mutual

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[23] http://www.oecd.org/tax/action-plan-on-base-erosion-and-profit-shifting-9789264202719-en.htm

[24] The OECD will deliver a comprehensive package of measures to counter BEPS at the meeting of G20 Finance Ministers in Lima in October 2015.

[25] http://www.oecd.org/ctp/transfer-pricing/beps-action-13-country-by-country-reporting-implementation-package.pdf

Administrative Assistance in Tax Matters, or Tax Information Exchange Agreements (TIEAs). In certain exceptional cases, secondary methods, including local filing can be used.

58 The Government of Jersey is fully supportive of the OECD BEPS programme and is ensuring that it remains fully informed on the progress in implementing the Actions making up that programme. However, as Jersey has relatively few DTAs, it is not used for profit shifting and transfer pricing in the way and to the extent experienced by other jurisdictions. The Actions considered to have the most relevance for Jersey are—

2014 Deliverables

Action 5: Counter Harmful Tax Practices More Effectively, Taking Into Account Transparency and Substance

Action 13: Re-examine Transfer Pricing Documentation (with particular reference to country by country reporting)

Action 15: Develop a Multilateral Instrument

2015 Deliverables

Action 4: Limit Base Erosion via Interest Deductions and Other Financial Payments

Action 7: Prevent the Artificial Avoidance of PE Status

Action 11: Establish Methodologies to Collect and Analyse Data on BEPS and the Actions to Address It

Action 12: Require Taxpayers to Disclose their Aggressive Tax Planning Arrangements

59 What legislation Jersey will be required to enact in order to participate in the BEPS programme will become clearer with the implementation of the Actions by the OECD Member States. Of particular interest is Action 5 which committed the OECD Forum on Harmful Tax Practices to—

> "Revamp the work on harmful tax practices with a priority on improving transparency, including compulsory spontaneous exchange of rulings related to preferential regimes, and on requiring substantial activity for any preferential regime".

Action 5 explicitly recognises the need to involve third countries to ensure a level playing field.

60 The OECD has made it clear, however, that the work on harmful tax practices is not intended to promote the harmonisation of income taxes or tax structures generally within or outside the OECD, nor is it

about dictating to any country what should be the appropriate level of tax rates. Rather it is said that the work is about reducing the distortive influence of taxation on the location of mobile financial and service activities, thereby encouraging an environment in which free and fair tax competition can take place.

Beneficial ownership

61 In June 2013, in concert with the G8, Jersey published an Action Plan to prevent the misuse of legal persons and legal arrangements.[26] That Action Plan included a commitment to—

> "Undertake a general review of corporate transparency, having regard for the development of international standards and their global application, starting with the publication of a pre-consultation paper before the end of 2013."

62 Underlying the consideration being given to these matters is a declared commitment on the part of the Government of Jersey to comply with the current Financial Action Task Force (FATF) standards.[27] Of particular relevance are the FATF recommendations on enhancing the transparency of legal persons and legal arrangements (Recs 24 and 25). Also to be recognised is that Jersey's Action Plan on improving the transparency of beneficial ownership is but one part of a comprehensive programme of support for related international initiatives.

63 FATF Guidance on the implementation of the FATF Recommendations on Transparency and Beneficial Ownership of Legal Persons (Rec 24) and Legal Arrangements (Rec 25) was published in October 2014.[28] The fundamental requirement of FATF Rec 24 is that countries should ensure that there is adequate, accurate, and timely information available on the beneficial ownership of all legal persons, and that the authorities can access this information in a timely manner. The FATF recognises that information that relates to beneficial ownership of corporate vehicles can be found in a number of different places including company registries, financial institutions,

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[26] http://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20Jersey%20Action%20Plan%20To%20Prevent%20The%20Misuse%20Of%20Legal%20Persons%20And%20Legal%20Arrangements%2020130618%20AM.pdf

[27] http://www.fatf-gafi.org/topics/fatfrecommendations/documents/fatf-recommendations.html

[28] http://www.fatf-gafi.org/documents/documents/transparency-and-beneficial-ownership.html

designated non-financial businesses and professions ("DNFBPs"), the legal person itself and other national authorities such as tax authorities or stock exchange commissions. Countries may choose the mechanisms they rely on to ensure the availability of beneficial ownership information on companies. The focus is not on being prescriptive about what mechanisms might be used. Rather the focus is on whether the mechanism(s) used serve the purpose of ready access by law enforcement and tax authorities to adequate, accurate and timely information.

64 G20 following their summit in Brisbane in November 2014 published High Level Principles on Beneficial Ownership Transparency. G20 is committed to leading by example by endorsing a set of core principles on the transparency of beneficial ownership of legal persons. These principles build on existing international instruments and standards, and allow sufficient flexibility for different constitutional and legal frameworks. These principles are as follows—

(1) Countries should have a definition of "beneficial owner" that captures the natural person(s) who ultimately owns or controls the legal person or legal arrangement.

(2) Countries should assess the existing and emerging risks associated with different types of legal persons and arrangements, which should be addressed from a domestic and international perspective.

    (a) Appropriate information on the results of the risk assessments should be shared with competent authorities, financial institutions, DNFBPs and, as appropriate, other jurisdictions.

    (b) Effective and proportionate measures should be taken to mitigate the risks identified.

    (c) Countries should identify high-risk sectors, and enhanced due diligence could be appropriately considered for such sectors.

(3) Countries should ensure that legal persons maintain beneficial ownership information onshore and that information is adequate, accurate, and current.

(4) Countries should ensure that competent authorities (including law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) have timely access to adequate, accurate and current information regarding the beneficial ownership of legal persons. Countries could implement this, for example, through central registries of beneficial ownership of legal persons or other appropriate mechanisms.

(5) Countries should ensure that trustees of express trusts maintain adequate, accurate and current beneficial ownership information, including information of settlors, the protector (if any), trustees and beneficiaries. These measures should also apply to other legal arrangements with a structure or function similar to express trusts.

(6) Countries should ensure that competent authorities (including law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) have timely access to adequate, accurate and current information regarding the beneficial ownership of legal arrangements.

(7) Countries should require financial institutions and DNFBPs, including trust and company service providers, to identify and take reasonable measures, including taking into account country risks, to verify the beneficial ownership of their customers.

  (a) Countries should consider facilitating access to beneficial ownership information by financial institutions and DNFBPs.

  (b) Countries should ensure effective supervision of these obligations, including the establishment and enforcement of effective, proportionate and dissuasive sanctions for non-compliance.

(8) Countries should ensure that their national authorities cooperate effectively domestically and internationally. Countries should also ensure that their competent authorities participate in information exchange on beneficial ownership with international counterparts in a timely and effective manner.

(9) Countries should support G20 efforts to combat tax evasion by ensuring that beneficial ownership information is accessible to their tax authorities and can be exchanged with relevant international counterparts in a timely and effective manner.

(10) Countries should address the misuse of legal persons and legal arrangements which may obstruct transparency, including—

  (a) prohibiting the ongoing use of bearer shares and the creation of new bearer shares, or taking other effective measures to ensure that bearer shares and bearer share warrants are not misused; and

  (b) taking effective measures to ensure that legal persons which allow nominee shareholders or nominee directors are not misused.

65 G20 is committed to leading by example in implementing these agreed principles. As a next step, each G20 country commits to take

concrete action and to share in writing steps to be taken to implement these principles and improve the effectiveness of their legal, regulatory and institutional frameworks with respect to beneficial ownership transparency.

66 The EU has incorporated beneficial ownership information requirements into the 4th AML Directive[29] which Member States have two years to translate into domestic law. Under the relationship the Channel Islands have with the EU there is no obligation on the Islands to adopt the 4th AML Directive. However should they wish to adopt the EU approach to safeguard market access it is to be noted that the Directive does not include an obligation to have a public register of beneficial ownership of companies. There is a central register requirement which Jersey already meets.

67 The EU Directive provides for access to the central register by law enforcement authorities in the jurisdiction concerned. There is no provision for cross border access. It is also unclear whether tax authorities have access on the grounds that data protection laws would preclude access to information for tax purposes where that information had been collected for AML purposes. The conditions of access are also unclear. That is, whether direct access to a central register is required and would be acceptable, or whether access on request with speedy response times would be considered adequate.

68 Reference is made in the Directive to access by those who have a legitimate interest in the information but it is understood that the decision on who is considered to have such an interest will be left to individual jurisdictions. Access to information can be restricted to those who satisfy data protection rules which is likely to limit the number of jurisdictions from which valid information requests can be received. Access can also be denied if it is thought that the beneficial owners thereby will be exposed to personal risk.

69 The EU Directive calls for a central register only of companies incorporated in a Member State. If companies administered in a Member State are incorporated in another jurisdiction that is not meeting the requirements of the Directive and is not obliged to do so (*e.g.* Delaware), the requirements of the Directive will not apply to those companies.

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[29] Directive 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (OJL L141/73) http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2015_141_R_0003&from=EN

70 The Directive also refers to the position on the beneficial ownership of trusts. Member States shall require that trustees of any express trust governed under their law obtain and hold adequate, accurate, information on beneficial ownership regarding the trust. This information shall include the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising effective control over the trust, to be accessed in a timely manner to competent authorities and FIUs. This is currently the position in Jersey, in that law enforcement and tax authorities can obtain from Jersey based trustees information on the beneficial ownership of trusts if a request is made in accordance with the provisions of the relevant statutes.

71 The Directive calls for a central register only in respect of trusts governed by a jurisdiction's law that generate tax consequences. First, this means any trust governed by the law of another jurisdiction is not covered. Secondly, although it is not stated, it is reasonable to assume that when reference is made to "tax consequences" this is referring only to domestic tax. Indeed it would seem impractical to do otherwise, for those holding the information could not be expected to have knowledge of the tax consequences in every jurisdiction.

72 The Jersey finance industry has been consulted by the Government of Jersey on the way forward and that consultation has been completed but it is considered that, in analysing the results, drawing conclusions and producing a report, the following matters need to be fully addressed several of which remain outstanding—

(1) further clarification is required of the UK Government's proposal that in the UK there should be established a publicly accessible central register of the individuals who ultimately own and control UK companies—the company's beneficial owners or "people with significant control". Following the Royal Assent to the primary legislation (the Small Business, Enterprise and Employment Act) on 26 March 2015, there is still secondary legislation awaited which will deal with such matters as the exemptions from full disclosure for those considered to be at risk of personal attack. It is understood that the secondary legislation will be put out for consultation before the Regulations are presented to Parliament and made;

(2) as further information is forthcoming comparisons will be better able to be drawn between the UK proposals and the approach adopted by Jersey. For example, the UK proposal only encompasses companies incorporated in the UK. As a result, unless there is a global approach with all countries implementing a public register, it would be easy for criminals to form companies in another jurisdiction (*e.g.* a Delaware LLC) and

administer them in the UK without any registration required. The Jersey Central Register of beneficial ownership also only includes companies incorporated in Jersey, but companies formed elsewhere that are administered in the Island are covered through the licensing and regulation of the Trust and Company Service Providers (TCSPs) from whom beneficial ownership information is obtainable. The World Bank in its report "The Puppet Masters" refers favourably to the Jersey Model;

(3) consideration of the UK proposals has also awaited information on whether and to what extent the UK Government intended to follow Jersey in exercising effective regulatory oversight of TCSPs who incorporate and/or administer UK companies and administer foreign companies;

(4) there has been a need to assess the relative value of the UK proposals where there is no statutory obligation placed on the Company to validate/verify the information provided to it by the ultimate beneficial owners or controllers concerned. The Company Registry is also not expected to validate/verify the information received from the company, unlike the role performed by the Jersey Registry. The UK Government is to rely on the public to provide the validation. There are real doubts that this will be seen as meeting the FATF Recommendation requirement of adequate, accurate and timely information for law enforcement authorities;

(5) the impact of the global adoption of the new common reporting standard for AEOI which will provide for quality information on beneficial ownership to be made available automatically between jurisdictions that sign up to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and the Multilateral Competent Authority Agreement, which information would then give those jurisdictions a basis for asking for further information on request;

(6) further consideration of the ongoing work of the OECD on what will best suit the information needs of developing countries;

(7) the need to have regard for how the relevant articles on beneficial ownership in the EU 4th AML Directive are to be interpreted by the Member States, and what would be required for equivalence to be satisfied;

(8) the need to have regard for the steps to be taken by G20 reflected in the High Level Principles on Beneficial Ownership Transparency adopted in November 2014 on which G20 countries have stated they will lead by example;

73 In addressing these matters comfort has been taken from the fact that, as matters currently stand, Jersey's current central register of beneficial ownership information (collected at the time of company incorporation and subject to independent validation by the Registry), supported by the regulation and supervision of trust and company service providers (TCSPs), puts Jersey ahead of most if not all other jurisdictions (and independently recognised as such) in meeting what is seen by the international standard setters as the prime objective. That is, being in a position to provide law enforcement and tax authorities, when requested to do so, with the accurate, adequate and up-to-date information required for the successful fight against tax evasion, money laundering and corruption.

European Union (EU)

74 Cooperation with the EU on tax initiatives goes back to 2003 when the Islands voluntarily committed to the EU's Code of Conduct on Business Taxation. The Guernsey and Jersey corporate tax regimes have both been assessed by the Code peer review process (most recently in Jersey in 2011, and in Guernsey in 2012). The rollback measures to remove the harmful elements identified by the Group were speedily implemented to ensure continuing compliance with the Code. In this regard it is worth noting that the EU Commission includes in the definition of good tax governance by third countries in tax matters, as set out in its Recommendation of 6 December 2012 to Member States,[30] the international standards set by the Global Forum and compliance with the principles of the EU's Code of Conduct, both of which the Channel Islands satisfy.

75 The Code is essentially a political commitment by Member States to work together to eliminate harmful tax competition in the Single Market. Since it was established in 1997, around 400 tax regimes have been examined under the Code and over 100 harmful tax regimes have been abolished.

76 However, in recent years, the Code has been considered by some to have become less effective in tackling harmful tax regimes. This is partly because the criteria in the Code are no longer adequate to assess certain modern and complex tax regimes, and partly because the Code of Conduct Group lacks a strong enough mandate to act decisively against such regimes.

77 The Commission announced in March 2015 that it is to work with Member States to see how the Code of Conduct can be improved and

[30] COM (2012) 0351.

the Group made more effective. In a draft report the EP TAXE Committee[31] has called for the Code Group to be strengthened and for the criteria set in the Code to be updated and broadened, in order to cover new forms of harmful tax practices, including in third countries.

78 Guernsey and Jersey also voluntarily entered into automatic information exchange and bilateral withholding tax arrangements respectively with all 28 Member States under the EU Savings Directive (EUSD). The withholding or retention tax arrangements applied from July 2005. Guernsey has applied mandatory automatic information exchange under the EUSD since 1 July 2011 and Jersey since 1 January 2015.

79 The revised Savings Tax Directive, adopted in March 2014, widened the scope of information that Member States would automatically exchange on savings income. While this was an important transparency measure, its scope was limited to savings-related income. In December 2014, Member States adopted a revision of the Administrative Cooperation Directive, which was much wider in scope than the Savings Directive. The revised Administrative Cooperation Directive would ensure that Member States automatically exchange the full spectrum of financial information from 2017. It reflects, in EU law, the new OECD/G20 global standard for the automatic exchange of information.

80 Provisions previously contained in the EU Savings Tax Directive are now entirely covered by the more ambitious Administrative Cooperation Directive. Therefore, in order to avoid duplication and overlapping EU legislation in this field, the Commission is proposing to repeal the Savings Tax Directive. This will ensure a simpler and streamlined legislative framework for businesses and tax administrations.

81 Under transitional arrangements, the Savings Directive will continue to be operational until the end of 2015 to be replaced by Council Directive 2014/107/EU as from 1 January 2016. As Austria has been allowed to start applying Council Directive 2014/107/EU up to one year later than other Member States, special transitional arrangements, taking account of this derogation, will apply to Austria. Provided the proposal to repeal is adopted by the Council, the amendment to the Savings Directive, which had been adopted by the Council in March 2014 will not have to be transposed by Member States.

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[31] Draft Report of the Special Committee of the European Parliament on Tax Rulings and Other Measures similar in Nature or Effect (2015/2066(INI)).

82 In March 2015, the Commission announced a proposal that would oblige Member States to exchange information automatically on their tax rulings. This means that tax authorities would have to share a pre-defined set of information on all of their advance cross-border tax rulings with all other Member States. They would do this on a quarterly basis and following a standard format. Recipient Member States would then be allowed to request more detailed information on a particular tax ruling if they believe that it is relevant to their own taxation rules.

83 In an EU Fact Sheet on combatting corporate tax avoidance issued in March 2015, it is stated—

> "The proposal covers all advance cross border tax rulings and all advance pricing arrangements which Member States issue to companies and entities . . . Purely domestic tax rulings are exempt."

Given the nature of the Channel Islands tax structure, it is expected that there would be very few, if any, tax rulings that would be covered by the EU proposal if the Islands were to volunteer to participate.

84 Continuing their "good neighbour policy" the Channel Islands have agreed to reflect the repeal of the EUSD by suspending the bilateral Savings Agreements to the same timetable and subject to the same transitional provisions. Action on this awaits the formal adoption of the repeal of the EUSD by the EU.

85 The Islands intend to begin the automatic exchange of information with the Member States to a 2017 timetable (other than with Austria which will be a year later) covering financial accounts existing at the end of 2015 and new accounts opened from 1 January 2016. Subject to agreement the legal gateway for the exchange will be the Multilateral Convention on Mutual Administrative Assistance in Tax Matters together with the Multilateral Competent Authority Agreement.

86 Of potential concern for the future relationship between the Channel Islands and the EU, bearing on market access, is the wish of some to include effective rates of taxation among the criteria for defining fair tax competition. Some indication of the potential measures that might be taken against those territories categorised as tax havens is to be found in the draft report of the TAXE Committee. However, it is suggested that, if there is proper recognition of the Channel Islands' record of compliance with the international standards of transparency and information exchange and the principles of tax neutrality, there should be no question of their being so categorised, given also the continued clear recognition within the EU that the setting of tax rates is a matter of national sovereignty.

87 Some EU Member States include within their tax legislation a list of third country jurisdictions with regard to whom the Member State applies predefined tax measures or tax policies (*e.g.* a higher rate of withholding tax or enhanced due diligence procedures by financial institutions). These so called "national blacklists" are based on assorted criteria—in some cases linked to rates of taxation and in other cases to non-cooperation (itself defined in different ways—most commonly linked to the existence of a TIEA or similar exchange of information instrument).

88 The Commission, in its Recommendation to Member States of December 2012, defined good governance in tax matters by third countries in relation to adherence to international standards of transparency and cooperation, and the absence of harmful tax measures as set out in the EU's Code of Conduct. The Commission recommended that Member States should remove jurisdictions from their national blacklists which meet these good governance standards.

89 With the combination of EOIR, support for AEOI as an "early adopter" of the CRS, and general support for international tax initiatives and the EU principles of good governance, it is considered that there are no good grounds for the Channel Islands' inclusion in any blacklists of non-cooperative jurisdictions. The Islands are actively working with those Member States that still include them on their national list to achieve de-listing. This applies also to tax based listings where as noted in the section on EOIR above the combination of tax neutrality, transparency and automatic information exchange is considered to meet the requirements of fair competition.

90 On 17 June 2015, as part of its Action Plan on corporate taxation, the European Commission published a consolidated list of third country jurisdictions based on data supplied by Member States on their national blacklists. The Commission chose to include in this consolidated list those jurisdictions which appeared on 10 or more national lists. Guernsey was included erroneously because its inclusion depended on the blacklisting of Sark by Poland being wrongly attributed to Guernsey. The Commission also chose to give the consolidated list the label "non-cooperative tax jurisdictions" despite the fact that, as noted above, in many cases these national blacklists are based on criteria other than cooperation and despite the Commission's own recommendation to Member States of December 2012 about what constituted tax good governance.

91 Both Guernsey and Jersey fully shared the widespread criticism of the Commission's methodology and welcomed the Commission's subsequent relabelling of the list to make clear that it is not a blacklist of non-cooperative jurisdictions and that it should not be considered nor used as such.

Conclusion

92 This review of international tax initiatives will have shown the extent to which the Channel Islands are faced with some far reaching developments, many of which will impose a significant burden on financial institutions. However these developments and the costs incurred are being faced worldwide and there is no reason why the Islands' relative competitive position should be adversely affected. Indeed, because of a greater need in their case to get international recognition of compliance with international standards, in order to avoid discriminatory action being taken against them, the Islands are in a much stronger position in relation to the action now being called for than many other jurisdictions. What the Islands have also found is that compliance with the international standards is not detrimental to business development. There is therefore no reason to expect that continued compliance with the international initiatives to which this article has referred need adversely affect the Islands' continued success as international finance centres.

From 1969 to 1999 Colin Powell CBE was Adviser to the States of Jersey on the Island's economic development, including as an international finance centre. From 1981 to 2011 he held the position of Chairman of the Group of International Finance Centre Supervisors (formerly the Offshore Group of Banking Supervisors), and in that capacity participated in and contributed to the work of the Financial Action Task Force and the Basel Committee on Banking Supervision.

From 1999 to September 2009 he held the position of Chairman of the Jersey Financial Services Commission, the body responsible for the regulation of all financial services in Jersey. He is currently Adviser on international affairs to the Chief Minister, and in this capacity is engaged in negotiating tax information exchange agreements.

He represents Jersey on the Global Forum on Transparency and Exchange of Information for Tax Purposes. From 2009 until the end of 2013 he was a vice-chair of the Global Forum Peer Review Group. While remaining a member of that Group he is now a vice-chair of the Global Forum's Working Group on Automatic Exchange of Information.