

SUB-GROUP ON LEVEL PLAYING FIELD ISSUES

PROPOSALS FOR ACHIEVING A GLOBAL LEVEL PLAYING FIELD

TABLE OF CONTENTS

SUMMARY	2
I. Introduction.....	2
II. Definition of a Global Level Playing Field.....	3
III. A process for achieving a level playing field.....	5
A. Individual Aspects.....	5
B. Bilateral Aspects	6
C. Collective Aspects.....	6
IV. Concluding Remarks	9
<u>ANNEX 1</u> TERMS OF REFERENCE.....	10
<u>ANNEX 2</u> PROPOSED ACTION PLAN FOR ACHIEVING TRANSPARENCY AND EFFECTIVE EXCHANGE IN TAX MATTERS BY 2006.....	12
<u>ANNEX 3</u> OECD SECRETARIAT DRAFT NOTE ON COUNTRY LISTS	13
<u>ANNEX 4</u> DRAFT SUB-GROUP TEMPLATE/QUESTIONNAIRE ON TRANSPARENCY AND EXCHANGE OF INFORMATION.....	28
<u>ANNEX 5</u> PART IV: 2004 PROGRESS REPORT ON THE OECD'S PROJECT ON HARMFUL TAX PRACTICES	48

SUMMARY

This paper setting out the proposals of the Sub-Group for achieving a level playing field is submitted to the Global Forum for discussion. The Sub-Group focuses the attention of the Global Forum in particular on:

- **The definition of the global level playing field concept (paragraph 5)**
- **The process for review of transparency and information exchange practices currently applied by financial centres (paragraphs 18 to 20)**
- **The process for assessment of the convergence of existing practices to the high standards for effective exchange of information and evaluation of the achievement of the global level playing field (paragraphs 21 to 24)**
- **The process for involving significant financial centres that are not Participating Partners in the process for achieving a global level playing field, including bringing them into the Global Forum (paragraphs 25 and 26)**
- **The importance of uniform consequences for failure to implement the standards of transparency and effective exchange of information in connection with the evaluation of the achievement of the global level playing field (paragraph 26).**

I. Introduction

1. At its meeting in Ottawa, Canada in October of 2003, the OECD's Global Forum on Taxation brought together representatives of 40 governments, both OECD and non-OECD, to discuss the issue of a global level playing field in the area of transparency and information exchange in tax matters. At the Ottawa meeting, the Global Forum recognised that while progress has been made towards achieving a level playing field, it also "recognised that a global level playing field does not yet exist and that further progress could and should be made to achieve it, so that all countries¹ can reach the high standards which the participants wish to see achieved." The participants agreed to work intensively to progress the level playing field issue and the

¹ Reference in this document to "countries" should be taken to apply equally to "territories" or "jurisdictions."

broader question of improving the process by which the work can be accomplished. To that end, it set up the Sub-Group on Level Playing Field Issues (“the Sub-Group”).

2. The Sub-Group first developed terms of reference for its work, which were revised to take account of comments received, and the Terms of Reference (Annex 1) guided the Sub-Group in drafting this paper. It then went on to develop proposals for achieving a level playing field. These proposals are discussed in the remainder of this report.

3. In producing this report, the members of the Sub-Group were guided by the objective of the global level playing field: to achieve high standards of transparency and information exchange in a way that is fair, equitable and permits fair competition between all countries, large and small, OECD and non-OECD.

4. All countries, regardless of their tax systems, should meet such standards so that competition takes place on the basis of legitimate commercial considerations rather than on the basis of lack of transparency and lack of effective exchange of information. In particular, it is important to prevent the migration of business to economies that do not engage in transparency and effective exchange of information for tax purposes. The Sub-Group recognises that the achievement of the global level playing field would be frustrated by such a lack of co-operation.

II. Definition of a Global Level Playing Field²

5. The global level playing field concept, features and role can be defined as follows:

A) CONCEPT:

The level playing field is fundamentally about fairness to which all parties in the Global Forum are committed.

In the context of exchange of information achieving a level playing field means the convergence of existing practices to the same high standards for effective exchange of information on both criminal and civil taxation matters within an acceptable timeline for implementation with the aim of achieving equity and fair competition.

B) FEATURES:

Will provide for –

- i) inclusive process*
- ii) mutual benefits through bilateral implementation*
- iii) a consistent and rigorous approach to any failure to implement*

²The discussion in section II relates to Terms of Reference, item 1.

iv) *review and verification mechanisms*

v) *the standard and the timeline.*

C) *ROLE:*

The level playing field serves as a goal.

Achieving a level playing field in respect of exchange of information requires that all jurisdictions, OECD and non-OECD members, should act in a manner consistent with the concept in their bilateral relationships and more broadly.

6. As stated in the Co-Chair's Statement at the Ottawa Global Forum meeting, not all financial centres currently meet the high standards for effective exchange of information on both criminal and civil taxation matters that the Global Forum wishes to see achieved. The term "high standards" refers to the principles of transparency and effective exchange of information accepted by the Participating Partners, which principles are reflected in the 2002 Model Agreement on Information Exchange on Tax Matters.

7. Central to the concept of a global level playing field is that it is fundamentally about fairness. A convergence of existing practices of information exchange to meet high standards would achieve a global level playing field. The convergence of existing practices of information exchange towards these standards thus should be coupled with a process that ensures equity and fair competition which aims to ensure that financial centres that are engaged in meeting the standards of transparency and effective exchange of information are not disadvantaged by countries that are not part of the process and that the latter are not permitted to profit from the promotion of their position of being outside the process.

8. The concept of a global level playing field, in the context of the work of the Global Forum, also includes the notion of *effective* exchange of information. Effective exchange of information depends on the availability of relevant information to government authorities and the quality of that information. The Joint Ad Hoc Group on Accounts (JAHGA) has made significant progress in articulating standards relating to the maintenance of, and access to, reliable books and records. The Ottawa Global Forum noted that the work of the JAHGA will continue and the outcome of that work will inform the standards against which practices will be measured.

9. It would be ideal if all significant financial centres would agree to and implement high standards of information exchange at the same time and in the same manner. However, because information exchange generally is implemented through bilateral agreements there will inevitably be some timing differences in implementation. To ensure that the process of achieving those standards is as fair and equitable as possible, however, the global level playing field concept incorporates the expectation that those standards should be achieved within an acceptable timeline and therefore the process for implementation of those standards should not be open-ended.

10. The global level playing field serves as a continuing goal. In working towards that goal, efforts will need to be made by countries on an integrated individual, bilateral and collective basis both to achieve and to maintain that goal.

III. A process for achieving a level playing field³

11. The convergence referred to in the global level playing field concept means the convergence of timelines and practices and will be achieved through a process that integrates individual, bilateral and collective elements. The combination of these elements ensures that the necessary flexibility is given to the negotiation of bilateral agreements on information exchange while at the same time collectively furthering the objective of a global level playing field through the Global Forum and through the initiatives of individual countries. The remainder of this section discusses these elements in more detail. An Action Plan with timelines is attached (Annex 2). The integration of these elements should have due regard to the objective that the process for achieving a global level playing field should not interfere with or delay the establishment of bilateral mechanisms for effective exchange of information or progress in reaching the standards which the Participating Partners feel should be achieved.⁴

A. Individual Aspects

12. Action at the individual country level is important to achieving a level playing field in the areas of transparency and effective exchange of information in tax matters. Adoption of these principles by all countries is critical to this process. Many countries have already done so. The adoption of the principles may require countries to modify some existing laws and practices to meet the transparency and information exchange standards that Participating Partners wish to see achieved.

13. Action at the individual country level can also play an important role in encouraging other countries that have not yet adopted the principles to do so. Countries should continue to explore what they can do in their individual capacities, consistent with fairness, equity and proportionality, to support the adoption of transparency and exchange of information standards by others. For example, they could consider how they could use other organisations to which they belong, fora in which they participate, and communications with their business communities to encourage the adoption of these practices. This type of action will support the work carried out collectively through the Global Forum.

14. Some countries have expressed concern about the use of “country lists” maintained by individual countries. In particular, concern has been expressed that lists that are based in whole or in part on the 2000 OECD list of tax haven jurisdictions and have not reflected the significant developments since 2000 may frustrate the process for achieving a global level playing field. For example, a list that does not take into account whether a “listed” country has a tax information exchange agreement with the country maintaining the list could provide a disincentive to the listed

³The discussion in section III relates to Terms of Reference items 2 through 8.

⁴See Terms of Reference item 2.

country to consider such an agreement with the country maintaining the list. This does not reflect any judgment by the Sub-Group on the tax or other policies underlying country lists which are based on objective criteria. Attached is a note on country lists (Annex 3).⁵

B. *Bilateral Aspects*

15. The standards that participants wish to see achieved include effective exchange of information on both criminal and civil taxation matters. These standards will generally be implemented through a process of bilateral negotiations. Such a process permits the contracting parties to take account of the totality of their bilateral relations, their respective legal systems and practices, and their mutual economic interests. These considerations may also create differences in the timing of the implementation of information exchange.

16. Individual commitments to transparency and effective information exchange include a reference to 2006 as the implementation date for exchange of information in civil tax matters. In order to achieve a global level playing field, all countries should reflect these principles in their bilateral arrangements and should strive to achieve effective exchange of information and transparency by 2006. Nevertheless, it is recognised that countries may adapt their bilateral arrangements to suit their specific needs and this may entail a departure from the 2006 date where this is in their mutual interest. In fact, due to practical considerations, including the proximity of 2006 and the time required to arrange and conclude bilateral negotiations, a strict application of this date may be unworkable in some cases.

C. *Collective Aspects*

17. In order to ascertain whether progress is being made towards the convergence of existing practices to high standards with the aim of achieving equity and fair competition, the Global Forum should:

- Review the transparency and information exchange practices currently applied by financial centres;
- Assess the convergence of existing practices and evaluate the achievement of a global level playing field; and
- Involve significant financial centres that are not currently Participating Partners.

These items are addressed below.

⁵ See Terms of Reference item 6.

(i) Review the transparency and information exchange practices currently applied by financial centres⁶

18. The Statement of the Co-Chairs of the Ottawa Global Forum meeting notes that an important part of the global level playing field work would be to review the current laws and practices of financial centres and where further progress might be required. This process involves the compilation of information that is relevant to transparency and effective exchange of information for tax purposes. To ensure the fairness and integrity of this process, an agreed methodology and consistent framework for this information gathering exercise would have to be used. This would involve a four step process.

- a) The OECD Secretariat, using an agreed template (Annex 4) would, in conjunction with the countries concerned, collect such information about each Participating Partner as well as significant financial centres that are not Participating Partners. Thus, information would be compiled on all OECD countries, all non-OECD Participating Partners, and all significant financial centres that are outside of these two groups. The Sub-Group felt that the identification and review of significant financial centres should be a dynamic process and that these countries should be invited to participate in the Global Forum.⁷
- b) The OECD Secretariat would transmit for verification to each country under review in the Global Forum the information that the Secretariat had gathered about that country.
- c) Following an opportunity for verification by individual countries, the information compiled about all the countries under review would be made available to the full Global Forum for comments and questions prior to finalisation. In those cases, hopefully few, where verification is not forthcoming, the information collected by the Secretariat would be circulated to the full Global Forum for comments and questions prior to finalisation.
- d) Where factual disagreements regarding the practices of a particular country arise, a small group of Participating Partners would be designated following an agreed process to try to resolve the factual disagreement.

19. The information collected and disseminated would be of a purely factual and objective nature. It would not include any judgments and would not draw any conclusions. The provision of such information would permit every Participating Partner to assess the progress towards meeting the standards of transparency and information exchange and to determine where further progress is required. In addition, this information should be helpful to Participating Partners (particularly those without the resources to compile this information on their own) to assess the positions of other countries for purposes of negotiations on information exchange arrangements.

20. This part of the process should be completed by the end of 2004. Thereafter, each Participating Partner would be responsible for providing to the OECD Secretariat any new

⁶ See Terms of Reference item 3.

⁷ The Sub-Group has initially identified the following countries as examples of significant financial centres that should be included in the process: Andorra, Barbados, Brunei, Costa Rica, Dubai, Guatemala, Hong Kong-China, Liberia, Liechtenstein, Macao-China, Malaysia (Labuan), Marshall Islands, Monaco, Philippines, Singapore, Uruguay.

information regarding developments with respect to transparency and information exchange (e.g., new tax information exchange agreements or income tax treaties, new legislation to improve transparency and exchange of information) and the OECD Secretariat would be responsible for monitoring developments in non-participating countries. This information would be provided to the Participating Partners as it becomes available and the process described above for reviewing the information would be followed.

(ii) Assessment of the convergence of existing practices to the high standards for effective exchange of information and evaluation of the achievement of the global level playing field⁸

21. The information compiled under section (i) above will enable the Participating Partners to assess the degree of convergence that has been achieved. The first assessment would take place in mid 2005.

22. Immediately thereafter, using the factual assessment the Participating Partners would then evaluate the achievement of a global level playing field. This evaluation process would cover all countries included in the process referred to in (i) above. Such an evaluation would take into account all the facts and circumstances. For example, the evaluation necessarily would take into consideration that a country may not have been asked to negotiate an information exchange arrangement, the status of ongoing negotiations, and whether the countries concerned have, for reasons of mutual interest, agreed to implement information exchange on dates other than 2006.

23. The results of the Global Forum's assessment of convergence and its evaluation of the global level playing field situation would be included in a report. The Global Forum could release this report to the public. The publication of the report would serve to call attention to those cases where the transparency and exchange of information standards have not been met.

24. The publication of the report would also serve as public recognition in those cases where the transparency and effective exchange of information standards have been met in whole or in part. Other avenues for providing public recognition to countries that have implemented or are implementing transparency and effective exchange of information before and after 2006 also should be explored.⁹

(iii) Involve significant financial centres that are not currently Participating Partners in the process for achieving a global level playing field, including bringing them into the Global Forum¹⁰

25. The practices of all OECD countries, all non-OECD Participating Partners and all other significant financial centres outside of these two groups influence the achievement of the global level playing field. Because of this, efforts to include all countries not already part of the process are imperative. The inclusive approach is intended to communicate that no country be permitted

⁸ See Terms of Reference item 4.

⁹ See Terms of Reference item 8.

¹⁰ See Terms of Reference item 5.

to profit from being neither a party to the principles nor a part of the process. The Sub-Group recommends that the Global Forum continue to discuss how to engage all relevant countries in this process.

26. The Sub-Group discussed the importance of uniform consequences for failure to implement the standards of transparency and effective exchange of information. In this regard, the Sub-Group made reference to the uniform consequences discussed in Part IV of the 2004 Progress Report on the OECD's Project on Harmful Tax Practices (Annex 5). The Sub-Group recommends that the Global Forum continue to discuss this issue in connection with the evaluation of the achievement of the global level playing field.¹¹

IV. Concluding Remarks

27. The underlying objective of the global level playing field is to facilitate the creation of an environment in which all significant financial centres meet the high standards of transparency and effective exchange of information on both criminal and civil taxation matters. This is vital to ensuring that countries can obtain from other countries the information necessary to enforce their own tax laws, to ensuring that financial centres that meet such standards are not unduly disadvantaged by doing so, and to ensuring that financial centres that meet such high standards are and remain fully integrated into the international financial system and the global community. Any significant financial centre that decides not to adopt high standards of transparency and effective exchange of information must not be permitted to profit from that decision.

28. Individual, bilateral, and collective actions in combination are necessary for the achievement of the common objective of the global level playing field: an international financial system characterised by fair competition, and which is free of the distortions created through lack of transparency and lack of effective exchange of information.

¹¹ See Terms of Reference item 7.

ANNEX 1 TERMS OF REFERENCE

Introduction

The Ottawa Global Forum meeting held on 14-15 October 2003 brought together representatives of 40 governments, both OECD and non-OECD, that are committed to the principles of transparency and effective exchange of information for tax purposes. In pursuit of these principles, the participants agreed to establish a small group to “develop proposals for consideration by the Global Forum for achieving a global level playing field and a process by which this work could be taken forward,” “based on the widely accepted principles of equity and shared responsibility”.

The Global Forum, in its Co-Chairs’ closing statement, also “acknowledged the need to continue the discussion to establish bilateral mechanisms for effective exchange of information and that the level playing field is fundamentally about fairness.” Furthermore, it stated that “ways should be explored to involve significant centres that are not currently participating in the Global Forum process, and that an important part of the process would be to review what standards financial centres currently apply and where further progress might be required.”

Before beginning its work, the sub group has been requested to develop for approval by the Global Forum a “draft terms of reference” listing the issues that would be addressed. In response to this request, the sub group proposes that its work cover the following areas.

Draft Terms of Reference

In light of the recognition by all Participating Partners that in the context of the current OECD initiative a level playing field in the areas of transparency and exchange of information in tax matters does not yet exist, the Sub-Group will work on:

1. Defining the global level playing field concept, features and role, having regard to the need for fair competition and considering the requirement for equity in standards and implementation timelines.
2. Considering a process and timeframe for achieving a global level playing field, having regard that such process should not interfere with or delay the establishment of bilateral mechanisms for effective exchange of information or progress in reaching the high standards which the participants feel should be achieved.

3. Reviewing the standards currently applied by Participating Partners and other financial centres on the issues of transparency and effective exchange of information, having regard to the participants' commitments to the principles underlying the exchange of information standard.
4. Considering a process to evaluate progress towards a global level playing field and the achievement thereof.
5. Considering mechanisms to involve significant financial centres that are not currently Participating Partners in the process for achieving a global level playing field, including bringing them into the Global Forum.
6. Identifying the different categories and functions of existing country lists and the grounds upon which countries place jurisdictions on or remove jurisdictions from such lists.
7. Identifying uniform consequences for failure to implement transparency and effective exchange of information.
8. Considering ways to publicly recognize fulfillment of the transparency and effective exchange of information standards.

The subgroup on level playing field issues will work with the aim of reporting back to the Global Forum on the above mentioned issues in April 2004.

ANNEX 2
**PROPOSED ACTION PLAN FOR ACHIEVING TRANSPARENCY AND EFFECTIVE
EXCHANGE IN TAX MATTERS BY 2006**

	DATE	ACTION
1.	May / June 2004	Global Forum meets to discuss Sub-Group recommendations
2.	May / June to December 2004	Collect and verify information on transparency and exchange of information
3	Oct / Nov 2004	Complete work of Joint Ad Hoc Group on Accounts
4.	Oct / Nov 2004	Global Forum meeting with non-participating significant financial centres
5.	Mid 2005	First assessment of progress towards achievement of a level playing field. Release of a Global Forum Report
6.	Beginning 2006	Global Forum meets to assess need for and decide further actions

Throughout this period, countries should undertake individual and bilateral actions to achieve a global level playing field by 2006.

ANNEX 3
OECD SECRETARIAT DRAFT NOTE ON COUNTRY LISTS

1. At the Ottawa Global Forum, various countries voiced concern over the use by some countries of country lists to implement certain provisions of their tax law. At the direction of the Sub-Group on Level Playing Field Issues, the OECD Secretariat undertook to identify country lists and, where possible, the criteria that particular countries use for including countries on or removing them from such lists. A chart of country lists is attached as an appendix to this note.¹² This note has as its focus laws, regulations, or administrative pronouncements that currently are in effect, and does not address proposals to introduce or expand the use of lists. The information in this note was compiled based on publicly available information. This note has been drafted by the OECD Secretariat and not by OECD member countries.

2. Country lists are used by Australia, Argentina, Belgium, Brazil, Chile, Hungary, Italy, Greece, Mexico, Peru, New Zealand, Portugal, Spain, the United Kingdom and Venezuela. These lists fall roughly into four categories: (i) controlled foreign company (CFC) lists, (ii) lists that deny benefits on income associated with shares in companies, (iii) lists that disallow deductions with respect to transactions with residents in a listed jurisdiction, and (iv) lists used for other tax purposes.

3. The purposes of country lists and the criteria for placing countries on the lists are discussed below. There is no single approach used in compiling lists: some countries identify those jurisdictions or regimes that fall within the scope of specific legislation; others identify those jurisdictions or regimes that fall outside the scope of the legislation. Two countries – Spain and Mexico – have specific legislation regarding removal from the lists. Spain introduced a new Article 2 into its legislation (Royal Decree 1080/1991 of 5 July 1991, as modified by Royal Decree 116/2003) which states that a jurisdiction will be removed from the list once it enters into an exchange of information agreement with Spain and the agreement enters into force. Removal from the list applies for all purposes for which the list is used. Mexico's income tax law also provides that when Mexico concludes an information exchange agreement with one of the jurisdictions identified in its List of Territories with Preferential Tax Regimes (contained in subparagraph VI of Artículo Transitorio Único of the Income Tax Law), the jurisdiction is no longer considered as having a preferential tax regime. Note also that Mexico's Tax Administration Service also issues a list of jurisdictions not considered as having a Preferential Tax Regime (Annex 10 of Miscellaneous Tax Resolution).

(i) *CFC lists*

¹² The charts attached are derived from the charts submitted by Panama and distributed to the Sub-Group.

4. Many countries have CFC rules. The design and purpose of CFC rules vary widely. In some cases the policy focus is on tax avoidance and in others it represents a broader limitation on the deferral of tax on income realised through foreign subsidiaries to implement the country's policy regarding capital export neutrality. CFC rules typically deny the benefit of deferral on passive income earned through foreign entities that are controlled by domestic taxpayers where such income is subject to no or low taxation. Thus, the rate of tax to which income is subject is a critical element CFC legislation. CFC rules have a much broader focus than harmful tax practices and often apply whether or not a country exchanges information. Most countries do not specifically identify countries subject to the application of their CFC rules. However, Hungary, Italy, Mexico, Portugal, Spain and Venezuela identify jurisdictions or preferential tax regimes within a jurisdiction, that are regarded as low tax and therefore subject to their CFC rules. Australia, the United Kingdom and New Zealand identify those jurisdictions that are not subject to their CFC legislation except with respect to certain specified preferential tax regimes.

5. Australia attributes to resident shareholders their share of certain types of income earned by a CFC unless, in certain cases, the income is comparably taxed offshore or the CFC derives nearly all of its income exclusively from active business activities. Australia identifies two types of jurisdictions for purposes of its legislation: 7 jurisdictions that are generally considered to have tax systems that are closely comparable to Australia's (broad-exemption countries) and 56 that have tax systems that are similar to Australia's but not closely comparable (limited-exemption countries). Only CFCs in broad exemption countries are generally exempt from the CFC rules. The limited exemption countries list is primarily used to provide an exemption for Australian companies for foreign non-portfolio dividends and branch profits from listed countries.

6. In Hungary, various income inclusion rules apply to interests owned in a CFC. A company is a controlled foreign company if it is established in a jurisdiction where there is no corporate income tax liability or the tax rate equivalent to the corporate tax prescribed for the tax year is less than 2/3rds of the rate applicable under the Hungarian Corporate Tax Act (i.e., 10.66%). The CFC provisions do not apply if the company maintains a real economic presence in the country where it is established. The burden of establishing real economic presence falls on the taxpayer if there is no double taxation agreement between Hungary and the country where the company is established. Information Note of the Ministry of Finance 8007/2003 (July 15) identifies 46 jurisdictions in which there is no tax liability or in which the rate of the corporate tax is less than 2/3rds of the rate applicable under the Hungarian Corporate Tax Act. The list is not exhaustive. (See Act LXXXI on Corporate Tax and Dividend Tax.)

7. In Italy, the criteria for inclusion of a country on its CFC list (Ministerial Decree of 21 November 2001) are a level of taxation significantly lower than that applicable in Italy, the lack of effective exchange of information, and other similar criteria. The list contains 64 jurisdictions divided into three sections: (i) jurisdictions regarded as having a privileged regime under all circumstances, (ii) jurisdictions generally considered to have a privileged tax regime but certain activities are excluded, and (iii) jurisdictions that are generally deemed not to have a privileged tax regime but that do have specific offshore legislation or other tax incentives the income from which is subject to the CFC rules.

8. In Mexico, individuals and companies owning shares or similar interests in companies, trusts, or other legal entities that are located in a listed preferential tax regime are required to

report the income of such entity in proportion to their ownership. The income is not included in the taxpayer's total taxable income but taxed separately at a rate of 35%. Mexico's CFC regime applies if an interest is owned in companies, trusts or other similar legal entities situated in any of 92 jurisdictions appearing on its List of Territories with Preferential Tax Regimes, issued 30 September 2002 and contained in subparagraph VI of Artículo Transitorio Único of the Income Tax Law.

9. New Zealand attributes to resident shareholders their share of all of the income of a controlled foreign company (including active income) unless the company is resident in one of 7 designated countries and does not benefit from a specified regime in the country. If a company does benefit from a specified regime, then income from the regime, to the extent attributable to a New Zealand shareholder, is subject to tax in New Zealand (Income Tax Act of 1994, CG7(2) and CG 13(1) and (2)).

10. In Portugal, the CFC rules are applicable if any of the following criteria are met: (i) inclusion in the list approved by Ministerial Order and issued by the Ministry of Finance, (ii) no income taxation identical or similar to Portugal's corporate or individual income tax, or (iii) the amount of tax paid is equal or lower than 60% of the tax that would be payable if such entity were considered to be resident in the Portuguese territory. The list issued by the Ministry of Finance contains 84 jurisdictions.

11. The Spanish CFC provisions apply to income from passive investment held through non-resident entities located in low-tax jurisdictions. A jurisdiction is assumed to be low tax if the effective tax rate is less than 26.25% (75% of the Spanish corporate tax rate). A stricter scheme applies if an entity is located in any of 49 jurisdictions identified in Royal Decree 1080/1991 of 5 July 1991 (as modified by Royal Decree 116/2003), since it is presumed that the corporate tax rate in those countries is less than 26.25%. It is further presumed that all the income is passive and that the annual minimum income of the CFC is equal to 15% of the acquisition cost of the participating interest. The presumption is rebuttable and the presumptions do not apply if the CFC consolidates its accounts with a Spanish resident entity. (See Art. 107.12 of the Corporation Tax Law and Article 92.11 of the Personal Income Tax Law).

12. Under the UK CFC regime, the undistributed profits of a non-resident company may be effectively taxed on the UK resident corporate shareholder if the controlled company is resident in a low-tax jurisdiction. A company is treated as resident in a low-tax country if the company is subject to a level of taxation less than 75% of what it would have paid had it been a UK resident. (Secs. 747 to 756 and Schedules 24, 25 and 26 of the ICTA). Further to the general rule, the UK Inland Revenue has published a list of jurisdictions that are not regarded as low-tax jurisdictions. The list is in two parts: companies resident and carrying on business in the 47 jurisdictions identified in Part I are regarded as meeting the conditions necessary for exclusion from a charge under the CFC legislation (and the low-tax rule therefore effectively is not applied); companies resident and carrying on business in the 28 jurisdictions identified in Part II are also excluded from a charge under the CFC legislation unless the company benefits from a regime identified within the list.

13. As part of Venezuela's CFC regime, individuals owning shares or otherwise having an interest in entities including trusts and investment funds situated in a low-tax jurisdiction must

report separately in their tax return the income received in proportion to their ownership. A jurisdiction is considered to be low tax if it has a zero tax rate or a tax rate of less than 20%. The tax administration has set out a list of 87 low-tax jurisdictions or zones in an administrative resolution of 28 March 2001.

(ii) Lists that result in the removal of tax benefits otherwise available on income associated with shares

14. Many countries have a mechanism that attempts to eliminate double taxation on intra-group distributions of profits either by exempting the income from inclusion in the tax base (i.e., a “participation exemption”) or by providing for a tax credit. Countries using a participation exemption often deny the benefit of the participation exemption where the profits of the distributing company are not subject to tax or are subject to a very low rate of tax, since in these cases there is no need to employ a mechanism that is intended to relieve double taxation. Generally, where tax is payable at low rate, a credit for tax paid is granted in lieu of the participation exemption.

15. Three countries – Belgium, Italy and Spain – use a list in applying their participation exemptions. Countries identified on these lists are characterized by a low or no income tax rate. Accordingly the country operating the list uses the list to deny the application of a measure to avoid double taxation in cases where no double taxation can arise.

16. In Belgium, the 95% exemption for dividends received from a subsidiary does not apply if a foreign subsidiary is subject to a tax regime which is substantially more advantageous than the Belgian tax regime. This is deemed to be the case if the corporate income tax rate or the actual tax burden of the subsidiary, in the source country is less than 15%. This provision does not apply to dividends received from subsidiaries established in the European Union. The Ministry of Finance published in Royal Decree of 13 February 2003 a list of 51 countries in which the profits of companies are subject to a nominal corporate income tax rate or an actual tax burden of less than 15%.

17. In Italy, the participation exemption, which exempts 60% of the dividends from foreign affiliated companies from taxation, is not available to dividends paid by companies resident in a jurisdiction that is outside the European Union and that is identified as having a privileged tax regime (Article 96(1-bis) of the Income Tax Code). Under Article 76(7-bis) of the Income Tax Code, a country or territory has a privileged tax regime if it levies no income tax or levies an income tax at a rate that is lower than the rate determined by the Ministry of Finance and the Ministry of the Treasury. Ministerial Decree of 23 January 2002 provides a list of 67 jurisdictions with privileged tax regimes. The list is divided into 3 categories: (i) jurisdictions that are regarded as having a privileged tax regime in all circumstances, (ii) jurisdictions generally considered to have a privileged tax regime but certain activities are excluded, and (iii) jurisdictions that are generally deemed not to have a privileged tax regime but that do have specific offshore legislation or other tax incentives that are treated as low tax.

18. In Spain, there are certain limitations applicable to the participation exemption used to avoid international double taxation on income from a permanent establishment or entity established in a listed jurisdiction (Article 21 of the Corporation Tax Law). Further, dividends

and capital gains derived from an entity resident in a listed jurisdiction are not exempt when obtained by a Spanish holding company (Article 117 of the Corporation Tax Law.) The list used for this purpose is the same as that used for purposes of Spain's CFC legislation.

(iii) Lists that disallow deductions, exemptions, credits or other allowances in connection with transactions with residents in a listed jurisdiction

19. Countries sometimes limit deductions, allowances, or credits in certain circumstances where substantiation of the expense, or the circumstances surrounding the expenditure, can be difficult to determine. This policy can be implemented through reversing the normal presumption or burden of proof rules that apply. Italy, Spain, Peru, Portugal and Mexico have lists used for such a purpose. Generally, these lists do not result in an outright denial of the deduction but create a rebuttable presumption on the part of the taxpayer (e.g. special substantiation requirements or a requirement to demonstrate the arm's length nature of the transaction).

20. In Italy, Article 76(7-bis) of the Income Tax Code limits deductions for expenses between an Italian resident (individual or corporate) and a company resident outside the EU and benefiting from a privileged tax regime under Ministerial Decree of 23 January 2002 unless the resident person proves that the non-resident company carries on a real business activity or the relevant transaction has a bona fide business purpose and actually took place.

21. In Mexico, payments made to entities established in a low tax jurisdiction are not deductible, unless the taxpayer proves that such payments have been made according to the arm's length principle.

22. In Peru, only certain expenses are deductible if they are paid to persons that are resident in a zero or low-tax jurisdiction. A Supreme Decree identifies the criteria for determining if a jurisdiction is deemed to be low tax. Under the Decree, a country with an income tax rate of zero or a rate lower than 50% of the tax rate that applies in Peru to the same type of income is considered to be a low-tax jurisdiction provided that it does not exchange information with Peru.

23. Under Article 59 of Portugal's corporate income tax law, resident companies are prohibited from deducting some payments made to non-resident companies and individuals in low-tax jurisdictions unless that resident company can show that the services were real and the amount paid accords with the arm's-length principle. A low tax jurisdiction is one identified in a list or one that either has no corporate or personal income tax or the tax paid is equal to or less than 60% of the applicable general rate in Portugal.

24. Similarly, Spanish corporate tax law disallows the deduction of payments related to services carried out by residents in listed jurisdictions, or made through residents in listed jurisdictions, unless the taxpayer can prove that the expenses are incurred for valid economic reasons. The list used for this purpose is the same as that used for the Spanish CFC legislation.

25. In Greece certain deductions from gross income are disallowed if they relate to transactions with so called offshore companies. The term "offshore company" is defined as a company that has its registered office in a foreign country and which, on the basis of the legislation of that foreign country, conducts activities exclusively in other countries and enjoys a

particularly favourable tax treatment. (Circular Interpretation Letter No 1021764/5.3.2003/pol. 1041) A list, contained in the Circular Interpretation Letter is used as guidance to identify the foreign countries where these factors may be present. Where the rules apply they deny amortization deductions relating to fixed assets purchased from offshore companies and they further deny a range of expenses connected to transactions with offshore companies (e.g. expenses for purchases of goods or for services rendered, amounts paid for royalties or other intellectual property). (Article 5 of Greek Law 3091/2004).

(iv) Other lists

26. Some countries also use country specific lists for other purposes including special information reporting provisions, denial of exemptions from stamp duty or denial of exemption from tax on interest on government bonds paid to non-residents. Such countries include Argentina, Brazil, Chile, Italy, Mexico and Spain.

27. Under Decree 1037/00, published 14 November 2000, Argentina treats a transaction undertaken with persons located in a low or zero tax jurisdiction as a transaction between related parties unless proven otherwise. The decree identifies 87 jurisdictions (or zones) considered to be low or no tax jurisdictions. A country will be excluded from the list if it has an exchange of information agreement in effect with Argentina.

28. In Brazil, under Law 9,430/96, published in the Official Gazette of 30 December 1996, transactions carried out by a resident and a person resident in a country that has no income tax or has an income tax imposed at a rate less than 20% is subject to Brazil's transfer pricing rules even if they are unrelated parties. Further, all amounts paid by Brazilian residents to a beneficiary located in a no or low tax (i.e., less than 20%) jurisdiction are subject to withholding tax at a rate of 25%. Brazil has a list of 44 no or low tax jurisdictions (Normative Instruction 33 of 30 March 2001).

29. On 3 December 2003, Chile published a list of jurisdictions for purposes of complying with Law 19,840, which introduced an offshore company regime. Under the regime, a resident of a listed jurisdiction may not own 10% or more of an offshore company. In addition, under Internal Revenue Service Decision 5412 of 11 December 2000, a foreign investor that is a resident of a listed jurisdiction may not conduct more than US \$500,000 per month in transactions involving shares of corporations listed on a Chilean stock exchange.

30. Italy's Ministerial Decree of 23 January 2002 is also used to deny the availability of certain exemptions from withholding taxes. Furthermore, in Italy the burden of proof on determining resident status depends on whether the individual asserts to have transferred his residence to one of 59 jurisdictions identified as having a low-tax regime as identified in the Decree of the Ministry of Finance of 4 May 1999. In this case there is a rebuttable presumption that the individual is still a resident of Italy. In all other cases no such rebuttable presumption exists and the burden of proof lies with the tax authorities.

31. In Mexico, taxpayers are obliged to file an annual declaration reporting their investments in listed low tax jurisdictions. The taxpayer must attach to the declaration the bank account information relating to the corresponding investments and deposits. Taxpayers that do not file

such a return will not be able to take deductions or amortise losses from those investments. If the taxpayer does not present such a declaration for a period of more than 3 months from the due date, it is a crime.

32. Portugal's list is also applicable to provisions in the tax law that deny application of the exemption in respect of capital gains from the disposal of shares or other corporate rights and securities by residents of a listed jurisdiction, non-application of certain exemptions from stamp duty, and non-application of an exemption for interest on treasury bonds. Furthermore, under legislation introduced in 2002, property held by a company in a country identified on a list is assumed to be receiving a notional rent equal to 1/15th of the tax department value of the property irrespective of whether any rent is actually paid. The deemed rent is taxed at the standard rate of 25 percent.

33. Spain's list is also used for a number of other purposes. The list is used to deny the exemption from withholding tax applicable to interest paid on public debt, including Spanish government bonds, and bank deposit interest paid on non-resident bank accounts (Art. 14.2 of the Non-Resident Income Tax Law). Certain specific reporting rules also apply to Spanish resident taxpayers that have operations in, make payments to, or collect payments from properties or shares in listed jurisdictions (D A 13 of the Personal Income Tax Law). Dividends from a Spanish holding company that are derived from exempt income are not exempt from withholding tax if paid to a resident in a listed country. The same rule applies to capital gains derived from the sale of share in a Spanish holding company held by a resident in a listed country (Article 118.4 of the Corporation Tax Law). A Spanish resident investor with an interest in a collective investment undertaking resident in a listed jurisdiction is subject to tax on a deemed gain equal to 15% of the acquisition value of the interest unless the taxpayer can demonstrate that that amount is not correct, in which case the investor is taxed on a mark-to-market basis (Article 60, Corporation Tax Law; Article 96, Personal Income Tax Law). The exemption of income derived by an individual resident in Spain from dependent personal services exercised abroad for a non-resident entity or permanent establishment is not applicable if the entity or permanent establishment is situated in a listed jurisdiction (Article 7 (p) of the Personal Income Tax Law). Transactions with an entity that is resident in a listed jurisdiction must be conducted in accordance with the arm's-length principle (Article 17 of the Corporation Income Tax Law). The deduction for investment in non-resident companies is not allowed for a non-resident company that is resident in a listed jurisdiction (Article 23 Corporate Income Tax Law). Payments made to a transparent partnership (entidad en regimen de atribución de rentas) in a listed jurisdiction are subject to withholding taxes at the general rate, regardless of the residency of its partners (Article 39 Non-Resident Income Tax Law).

The OECD Identification of Tax Havens

34. In its 2000 Report, "*Towards Global Tax Co-operation*" the OECD Identified 35 jurisdictions that it found to meet the tax haven criteria of the 1998 Report: (i) no or only nominal taxation, (ii) lack of transparency, (iii) lack of effective exchange of information, and (iv) no substantial activities. As stated in the 2000 Report, the identification is intended to reflect the technical conclusions of the Committee on Fiscal Affairs and is not intended to be used as the basis for defensive measures. The 2000 Report also acknowledged, however, that countries retain the right to apply, or not apply, defensive measures unilaterally to any jurisdiction.

APPENDIX IA: OECD MEMBER COUNTRY LISTS¹³

Country/Territory	BELGIUM Royal Decree 13/02/2003	GREECE Circular Interpretation Letter No. 1021764/5.3.2003 pol.1041	HUNGARY Ministry of Finance Information Note 8007/2003	ITALY ¹⁴ Lista del Ministerio de Economía y Finanzas Decreto 23 Jan 2002	MEXICO Income Tax Law 1996	PORTUGAL Potaria n.º 150/2004	SPAIN Royal Decree 1080/1991 of 5 July as modified by Royal Decree 116/2003 of 31 January
Afghanistan	X						
Albania					X		
American Samoa	X				X	X	
Andorra		X	X	X	X	X	X
Angola				A	X		
Anguilla (OTUK ¹⁵)		X	X	X	X	X	X
Antigua & Barbuda		X	X	A	X	X	X
Aruba ¹⁶		X	X	X	X	X	X
Ascension (OTUK)					X	X	
Azores Islands					X		
Bahamas		X	X	X	X	X	X
Bahrain		X	X	B	X	X	X
Barbados			X	X	X		X
Belize	X	X	X	X	X	X	
Bermuda (OTUK)			X	X	X	X	X
Bolivia						X	
Bosnia Herzegovina	X						
British Virgin Islands (OTUK)	X	X	X	X	X	X	X
Brunei Darussalam				X	X	X	X
Burundi	X						
Campione d' Italia					X		
Cape Verde	X				X		
Cayman Islands (OTUK)			X	X	X	X	X
Central African Republic	X						
Christmas Island					X	X	
Cocos / Keeling Islands					X	X	
Comoros	X						
Cook Islands ¹⁷	X	X	X	X	X	X	X
Costa Rica			X	A	X	X	

¹³ Chart IA contains information regarding jurisdictions to which certain provisions, such as CFC provisions, denial of exemptions or deductions, etc., of the country in the header row may apply. It is derived from a chart provided to the Sub-Group on Level Playing Field Issues by Panama. X indicates a country or jurisdiction that is identified on the list. A denotes a jurisdiction that is listed only in conjunction with a specific preferential tax regime. B denotes that there is a specific regime in a jurisdiction that may be exempt from the application of the provision.

¹⁴ Note that the Secretariat identified three lists for Italy: Ministerial Decree 21 November 2001, which is used for CFC purposes, Decree of the Minister of Finance of 4 May 1999, which is used in determining residence status, and Ministerial Decree 23 January 2002 used for other purposes.

¹⁵ Overseas Territory of the United Kingdom.

¹⁶ The Netherlands, the Netherlands Antilles, and Aruba are the three countries of the Kingdom of the Netherlands.

¹⁷ The Cook Islands is a fully self-governing country in free association with New Zealand.

Country/Territory	BELGIUM Royal Decree 13/02/2003	GREECE Circular Interpretation Letter No. 1021764/5.3.2003 pol.1041	HUNGARY Ministry of Finance Information Note 8007/2003	ITALY ¹⁴ Lista del Ministerio de Economía y Finanzas Decreto 23 Jan 2002	MEXICO Income Tax Law 1996	PORTUGAL Potaria n.º 150/2004	SPAIN Royal Decree 1080/1991 of 5 July as modified by Royal Decree 116/2003 of 31 January
Cuba	X						
Cyprus			X	X	X	X	X
Djibouti				X	X	X	
Dominica	X	X	X	A	X	X	X
Ecuador				A			
Equatorial Guinea	X						
Estonia	X						
Falkland Islands (OTUK)					X	X	X
Fiji						X	X
French Polynesia				X	X	X	
Gambia						X	
Gibraltar (OTUK)	X	X	X	X	X	X	X
Greenland					X		
Grenada	X	X	X	X	X	X	X
Guam					X	X	
Guatemala				X			
Guernsey/Sark/Alderney (DBC ¹⁸)	X	X	X	X	X	X	X
Guinea-Bissau	X						
Guyana					X	X	
Haiti	X						
Honduras					X	X	
Hong Kong			X	X	X	X	X
Iran	X						
Iraq	X						
Isle of Man (DBC)	X	X	X	X	X	X	X
Jamaica				A		X	X
Jersey (DBC)	X	X	X	X	X	X	X
Jordan					X	X	X
Kenya				A			
Kiribati	X			X	X	X	
Republic of Korea	X			A			
Kuwait					X	X	
Labuan					X	X	
Laos	X						
Lebanon				X		X	X
Liberia	X	X	X	X	X	X	X
Liechtenstein	X	X	X	X	X	X	X
Luxembourg						A	A
Macao	X			X	X		X
Madeira					X		
Malaysia			X	X			
Maldives	X	X	X	X	X	X	
Malta			X	A	X		X
Marshall Islands	X	X	X	X	X	X	
Mauritius			X	A	X	X	X
Mayotte	X						
Micronesia	X						
Monaco	X	X	X	B	X	X	X
Montserrat (OTUK)	X	X	X	X	X	X	X
Namibia	X						
Nauru		X	X	X	X	X	X

¹⁸ Dependency of the British Crown.

Country/Territory	BELGIUM Royal Decree 13/02/2003	GREECE Circular Interpretation Letter No. 1021764/5.3.2003 pol.1041	HUNGARY Ministry of Finance Information Note 8007/2003	ITALY ¹⁴ Lista del Ministerio de Economía y Finanzas Decreto 23 Jan 2002	MEXICO Income Tax Law 1996	PORTUGAL Potaria n.º 150/2004	SPAIN Royal Decree 1080/1991 of 5 July as modified by Royal Decree 116/2003 of 31 January
Netherlands Antilles ¹⁹		X	X	X	X	X	X
New Caledonia				X			
Niue ²⁰	X	X	X	X	X	X	
Norfolk Island					X	X	
Northern Marianas Islands						X	X
Oman	X			X	X	X	X
Ostrava					X		
Pacific Islands					X	X	
Palau						X	
Panama	X	X	X	A	X	X	X
Patau					X		
Philippines				X			
Pitcairn Islands (OTUK)					X	X	
Puerto Rico				A	X	X	
Qatar					X	X	
Qeshm Island					X	X	
Saint Helena (OTUK)				X	X	X	
Samoa	X	X	X	X	X	X	
San Marino	X		X		X	X	X
Sao Tome & Principe	X						
Seychelles	X	X	X	X	X	X	X
Singapore			X	B			X
Solomon Islands			X	X	X	X	X
Somalia	X						
Sri Lanka					X		
St. Kitts & Nevis	X	X	X	X	X	X	
St. Lucia	X	X	X	X	X	X	X
St. Pierre & Miquelon	X				X	X	
St. Vincent & Grenadines	X	X	X	X	X	X	X
Svalbard					X	X	
Swaziland					X	X	
Switzerland				A			
Tokelau					X	X	
Tonga		X	X	X	X	X	
Trieste					X		
Trinidad & Tobago					X	X	X
Tristan da Cunha					X	X	
Tunisia					X		
Turks & Caicos (OTUK)		X	X	X	X	X	X
Tuvalu	X			X	X	X	
United Arab Emirates			X	B	X	X	X
Uruguay				A	X	Y	
US Virgin Islands ²¹	X	X	Y	Y	X	Y	X
Uzbekistan	X						
Vanuatu		X	Y	X	X	Y	X
Yemen					X	Y	

¹⁹ The Netherlands, the Netherlands Antilles, and Aruba are the three countries of the Kingdom of the Netherlands.

²⁰ Niue is a fully self-governing country in free association with New Zealand.

²¹ The US Virgin Islands is an External Territory of the United States.

Appendix IB: OECD MEMBER COUNTRY LISTS²²

Country/ Territory	AUSTRALIA Income Tax Regulation 1936 Reg 152J Sch 10	NEW ZEALAND Income Tax Act 1994 Section CG 13 Schedule 3	UNITED KINGDOM Inland Revenue List (Income and Corporation Tax Act 1988 Sec 747)
Argentina			A
Australia	(n.a.)	A	X
Austria			X
Bangladesh			X
Belgium			A
Bolivia			X
Botswana			X
Brazil			X
Brunei			A
Bulgaria			A
Canada	A	A	X
Chile			A
China			X
Colombia			X
Czech Republic			X
Denmark			X
Dominican Republic			X
Egypt			A
Falkland Islands (OTUK ²³)			X
Faroe Islands			A
Fiji			X
Finland			X
France	A		X
Gambia			X
Germany	A	A	X
Ghana			X
Greece			A
Honduras			X
Hungary			X
Iceland			X
India			X
Indonesia			X
Ireland			A
Italy			A
Ivory Coast			X
Japan	A	X	X
Kenya			A
Korea (South)			X
Lesotho			X
Luxembourg			A
Malawi			X
Malaysia			A
Malta			A
Mexico			X
Morocco			A
Netherlands			A
New Zealand	A	(n.a.)	X

²² Chart IB consists of those countries to which the CFC legislation of the country identified in the header row does not apply. X indicates a general exemption from the application of CFC provisions; A indicates that the exemption does not apply if the company benefits from a preferential tax regime identified in the country list.

²³ Overseas Territory of the United Kingdom.

Country/ Territory	AUSTRALIA Income Tax Regulation 1936 Reg 152J Sch 10	NEW ZEALAND Income Tax Act 1994 Section CG 13 Schedule 3	UNITED KINGDOM Inland Revenue List (Income and Corporation Tax Act 1988 Sec 747)
Nigeria			X
Norway		X	X
Pakistan			A
Papua New Guinea			X
Philippines			A
Poland			X
Portugal			A
Puerto Rico			A
Romania			X
Senegal			X
Sierra Leone			X
Singapore			A
Solomon Islands			X
Slovak Republic			X
South Africa			X
Spain			X
Sri Lanka			A
Swaziland			X
Sweden			X
Tanzania			A
Thailand			A
Trinidad and Tobago			X
Tunisia			A
Turkey			A
United Kingdom	A	A	(n.a.)
United States	A	X	A
Zambia			X
Zimbabwe			X

APPENDIX II: NON-OECD COUNTRY LISTS²⁴

Country/Territory	ARGENTINA Decree 1037 14/Nov/2000	BRAZIL SRF Inst.Nor.33 30/11/2001	CHILE Decree 628 24/July/2003	PERU Art. 12 DS 045 16/3/2001	VENEZUELA Resolution. SENIAT 19/3/2001
Albania	X				X
American Samoa	X		X		X
Andorra	X	X	X	X	X
Angola	X				X
Anguilla (OTUK ²⁵)	X	X	X	X	X
Antigua & Barbuda	X	X	X	X	X
Aruba ²⁶	X		X	X	X
Ascension (OTUK)	X				X
Azores Islands	X				
Bahamas	X	X	X	X	X
Bahrain	X	X	X	X	X
Barbados	X	X	X	X	
Belize	X	X		X	X
Bermuda(OTUK)	X	X	X	X	X
Botswana					X
British Virgin Islands (OTUK)	X	X	X	X	X
Brunei Darussalam	X				X
Cameroon					X
Campione d' Italia	X				X
Cape Verde	X				X
Cayman Islands (OTUK)	X	X	X	X	X
Christmas Island	X				X
Cocos/Keeling Islands	X			X	X
Cook Islands ²⁷	X	X	X	X	X
Costa Rica		X			X
Cote d'Ivoire					X
Cyprus	X	X	X	X	X
Djibouti	X	X			X
Dominica	X	X	X	X	X
Dominican Republic					X
El Salvador					X
Falkland Islands (OTUK)					X
French Polynesia	X				X
Gabon					X
Gibraltar (OTUK)	X	X	X	X	X
Greenland	X				X
Grenada	X	X	X	X	X
Guam	X				X
Guatemala					X
Guernsey/Sark/Alderney (DBC ²⁸)	X	X	X	X	X

²⁴ This chart contains information regarding jurisdictions to which certain provisions, such as CFC provisions, denial of exceptions or deductions, etc., of the country in the header row apply. It is derived from a chart provided to the Sub-Group on Level Playing Field Issues by Panama. X indicates that the country or jurisdiction is identified on the list. A denotes a jurisdiction that is listed only in conjunction with a specific preferential tax regime.

²⁵ Overseas Territory of the United Kingdom.

²⁶ The Netherlands, the Netherlands Antilles, and Aruba are the three countries of the Kingdom of the Netherlands.

²⁷ The Cook Islands is a fully self-governing country in free association with New Zealand.

Country/Territory	ARGENTINA Decree 1037 14/Nov/2000	BRAZIL SRF Inst.Nor.33 30/11/2001	CHILE Decree 628 24/July/2003	PERU Art. 12 DS 045 16/3/2001	VENEZUELA Resolution. SENIAT 19/3/2001
Guinea					X
Guyana	X				X
Honduras					X
Hong Kong	X			X	X
Isle of Man (DBC)	X	X	X	X	X
Jamaica					X
Jersey (DBC)	X	X	X	X	X
Jordan	X				X
Kiribati	X				X
Kuwait	X				X
Labuan	X	X		X	X
Lebanon					X
Liberia	X	X	X	X	X
Libya					X
Liechtenstein	X	X	X	X	X
Lithuania					X
Luxembourg	A			X	X
Macao	X				X
Madeira	X	X		X	
Maldives	X			X	X
Malta	X	X	X		X
Marshall Islands	X	X	X	X	X
Mauritius	X	X	X		X
Monaco	X	X	X	X	X
Montserrat (OTUK)	X	X	X	X	X
Morocco					X
Namibia					X
Nauru	X	X	X	X	X
Netherlands Antilles ²⁹	X	X	X	X	
Nicaragua					X
Niue ³⁰	X	X	X	X	X
Norfolk Island	X				X
Oman	X				X
Ostrava	X				X
Pacific Islands	X				X
Panama	X	X	X	X	X
Paraguay					X
Pitcairn Islands (OTUK)	X				X
Puerto Rico	X				X
Qatar	X				X
Qeshm Island	X				X
Saint Helena (OTUK)	X				X
Samoa	X	X		X	X
San Marino	X	X	X		X
Senegal					X
Seychelles	X	X	X	X	X
Solomon Islands	X				X
South Africa					X
Sri Lanka	X				X
St. Kitts & Nevis	X	X	X	X	
St. Lucia	X	X	X	X	
St. Pierre & Miquelon	X				X

²⁸ Dependency of the British Crown.

²⁹ The Netherlands, the Netherlands Antilles, and Aruba are the three countries of the Kingdom of the Netherlands.

³⁰ Niue is a fully self-governing country in free association with New Zealand.

Country/Territory	ARGENTINA Decree 1037 14/Nov/2000	BRAZIL SRF Inst.Nor.33 30/11/2001	CHILE Decree 628 24/July/2003	PERU Art. 12 DS 045 16/3/2001	VENEZUELA Resolution. SENIAT 19/3/2001
St. Vincent & Grenadines	X	X	X	X	X
Svalbard	X				X
Swaziland	X				X
Tokelau	X				X
Tonga	X	X		X	X
Trieste	X				
Trinidad & Tobago	X				
Tristan da Cunha	X				X
Tunisia	X				X
Turk & Caicos (OTUK)	X	X	X	X	X
Tuvalu	X				X
United Arab Emirates	X				X
Uruguay	A				X
US Virgin Islands ³¹	X	X	X	X	X
Vanuatu	X	X	X	X	X
Yemen	X				X
Zaire					X
Zimbabwe					X

³¹ The US Virgin Islands is an External Territory of the United States.

ANNEX 4
**DRAFT SUB-GROUP TEMPLATE/QUESTIONNAIRE ON TRANSPARENCY AND
EXCHANGE OF INFORMATION**

This template/questionnaire consists of three parts. Part A discusses general questions relating to exchange of information for tax purposes, Part B deals specifically with obtaining and exchanging bank information, and Part C relates to transparency. Accounting information has so far only been addressed in connection with companies and not with respect to other entities or arrangements. At its meeting in 2002 in the Cayman Islands, the Joint Ad Hoc Group on Accounts (“JAGHA”) tentatively agreed certain principles that should apply to companies and these basic principles are reflected in the template/questionnaire, but the questions provided are not meant to prejudge the outcome of the JAHGA work. Because there are still outstanding issues with respect to the accounting standards applicable to entities other than companies, there are currently no sections on accounting information with respect to those entities. These sections will be added, and the company section modified if necessary, when the JAHGA work is completed.

DRAFT TEMPLATE/QUESTIONNAIRE ON TRANSPARENCY AND EXCHANGE OF INFORMATION

A. EXCHANGE OF INFORMATION

Double Taxation Conventions and Tax Information Exchange Arrangements

1.1 Please provide lists of all of the countries with which you have exchange of information arrangements either as part of a) a double taxation convention, or b) a tax information exchange agreement (TIEA). Please include both bilateral agreements and multilateral agreements to which you may be a party.

If appropriate, and at your discretion, you may indicate the number of exchange of information arrangements currently under negotiation and the status thereof, or the absence of any request for negotiation of such an arrangement.

1.2 Please identify those double taxation conventions and TIEA's that provide for exchange of information in all tax matters for purposes of the administration or enforcement of domestic income tax laws.

1.3 Please identify those double taxation conventions and TIEA's that provide for exchange of information of information for the purposes of other taxes such as indirect taxes or inheritance and gift taxes.

1.4 Please identify those double taxation conventions or TIEA's where exchange of information is limited to criminal tax matters.

1.5 Does the principle of dual criminality apply to the exchange of information in tax matters (in other words, is your jurisdiction unable to obtain and provide information in criminal tax matters unless the conduct being investigated would constitute a crime under the laws of your jurisdiction if such conduct occurred in your jurisdiction)?

If your answer differs depending on the particular information exchange arrangement in place with a particular foreign jurisdiction please provide relevant details in your answer.

1.6 If a dual criminality standard applies for exchange of information for tax purposes, please describe the standard of criminality that applies.

1.7 Please identify those double taxation conventions or TIEAs (if any) under which your jurisdiction could not provide any or all of the following information in response to a valid request.

- (a) beneficial ownership information,
- (b) bank information,

- (c) accounting records, or
- (d) transactional information

The purpose of this question is to identify those cases where, because of the terms of a particular treaty or because of the interaction between a treaty and domestic law (e.g. constitutional law, data protection law) or domestic administrative practices, the information listed cannot be provided. An inability to exchange information for valid reasons should not be taken into account. Valid reasons for declining a request are set out in the 2002 Model Agreement on Exchange of Information in Tax Matters (the "Model Agreement) and would include that the request for information is not sufficiently specific (i.e., constitutes a fishing expedition), that the requesting jurisdiction would not be able to obtain the information under its own laws, that providing the information requested would violate the attorney-client privilege, would disclose a trade or business secret, would be contrary to public policy (ordre public), or would be used to enforce a provision of the tax law of the requesting jurisdiction that is discriminatory. For example, if your jurisdiction could legally provide bank information but is unwilling to do so because a particular requesting state cannot obtain bank information under its own legislation, the double tax convention or TIEA should not be identified, as this justification is reflected in the Model Agreement. However, if your jurisdiction cannot exchange bank information under particular conventions or TIEAs in response to a request for exchange of such information for civil tax purposes because of internal provisions concerning bank secrecy for tax purposes, such conventions or TIEAs should be identified under the bank information heading.

1.8 Please identify those double taxation conventions (if any) that restrict exchange of information to questions of the application of the convention and as a result do not permit exchange of information for the purposes of enforcing the domestic tax laws of the convention partner.

1.9 Please identify those double tax conventions or TIEAs (if any) under which your competent authority³² may obtain and provide information even though the information may not be needed by your own tax authorities for their own tax purposes.

Mutual Legal Assistance Treaties

1.10 Please identify mutual legal assistance treaties (MLAT), whether bilateral or multilateral, to which your jurisdiction is a party that provide for exchange of information in tax matters. Please also identify with respect to each MLAT: (1) whether all criminal fiscal matters are covered; (2) the standard used to determine criminality; (3) the stage of an investigation in which assistance may be sought; and (4) by whom assistance may be sought (e.g., a court or administrative official).

³² The competent authority is that person who has under your law the authority to exchange information pursuant to a double tax convention or TIEA. In those jurisdictions with an income tax system, this person will generally be the tax authority.

Domestic Law Provisions

1.11 Please identify any domestic laws that permit the provision of information to a foreign authority in relation to a tax matter, the circumstances under which these laws can be invoked and any limitations that apply.

Examples of domestic law provisions could include “all crimes” money laundering legislation or other criminal justice provisions that allow for assistance to be given to another jurisdiction’s authorities in criminal tax matters. Some countries also have domestic rules that allow them to exchange information in civil tax matters subject to certain conditions and safeguards.

Confidentiality

1.12 Please describe the confidentiality protections (if any) that are provided for information received by your jurisdiction’s authorities under any information exchange mechanism. Please describe any situations where your jurisdiction’s confidentiality rules differ materially from the confidentiality standards contained in Article 26 of the OECD Model Convention and Article 8 of the Model Agreement.

B. OBTAINING AND EXCHANGING BANK INFORMATION FOR TAX PURPOSES**1. Bank Secrecy Legal Framework**

1.1 Please describe your jurisdiction’s general rules for protecting the secrecy or confidentiality of information held by banks or other financial institutions.

Where your jurisdiction has statutory confidentiality provisions, please supply references to the relevant legislation,

1.2 Does your jurisdiction have any specific provisions relating to information held by banks or other financial institutions where information is sought for tax purposes? If so, please describe and supply references to the relevant legislation.

2. Obtaining Bank Information for Tax Purposes

2.1 Are there any limitations on the ability of your jurisdiction’s competent authority to obtain, directly or indirectly, information held by a bank or other financial institution for either civil or criminal tax purposes in response to a specific request for such information?

Please note that all forms of limitations including those resulting from the application of domestic law or administrative practice should be mentioned.

2.2 If there are any such limitations in your jurisdiction, please indicate if any of the following apply:

(a) Information can only be obtained if it relates to criminal tax matters as defined under the laws of the requesting jurisdiction.

(b) Information can only be obtained if it relates to criminal tax matters as defined under the laws of your jurisdiction, in which case please describe the standard for tax crimes in your jurisdiction.

If your answer is the same as that given in connection with question 1.6, it is sufficient to include a cross-reference.

(c) Information can only be obtained if the enquiry is already at an advanced stage (e.g., where criminal proceedings have commenced).

(d) Limitations other than the above apply, in which case please describe the limitations (e.g., unable to obtain bank information in any circumstances).

2.3 Where bank information can be obtained, either in some cases or in all cases, please state what degree of specificity is required from the authorities in the requesting state in order for your competent authority to obtain the information (e.g., name of bank, address of branch, name of account holder, number of account, etc.).

2.4 Please provide a brief description of your powers to obtain bank information. In particular is it necessary to invoke special procedures, whether administrative, judicial or otherwise, to obtain access to information held by a bank or other financial institution or is the authority to obtain such information part of your authorities' routine administrative powers? If special procedures are required to be invoked, please provide a short description.

Special procedures would include cases where a court order is required or where the consent of some other authority must first be obtained before information can be requested. You should also explain which of your authorities can obtain this information and if it is not your competent authority, explain the conditions under which such information can be passed on to your competent authority.

2.5 What administrative or judicial powers do your authorities have to enforce a request for bank information if the bank refuses to comply with such a request?

C. TRANSPARENCY
1. Companies
<p>Background</p> <p>1.1 Does your company law provide for the creation of different types of companies? If so, please identify the different types of companies.</p> <p>1.2. Please indicate whether there are any special laws relating to ownership or accounting information that apply only to one or more special classes of companies, such as holding companies, companies with non-resident shareholders (e.g. international business companies) or to companies that do not carry on business activities in your jurisdiction.</p> <p><i>The term company means any entity that is treated as a body corporate irrespective of whether this treatment is followed for tax purposes. For example, in some countries a limited liability partnership is a corporate body;. for tax purposes, however, it would be treated as a partnership. In deciding how to categorize such entities for the purposes of the questionnaire, if the law under which they are organized treats them as a body corporate they should be treated as companies.</i></p>
a) Ownership Information
<p>Ownership Information Held by Government Authorities</p> <p>1.3 Are companies formed under your jurisdiction's law required to be registered with your authorities? If so, please indicate with which authority they are required to register and what type of information is required to be disclosed regarding ownership of the company (e.g., is there a requirement to disclose the legal owners of the company or the ultimate owners where there is a chain of ownership), whether changes in ownership are required to be disclosed and what sanctions are for non-compliance?</p> <p><i>Please note that registration includes the obligation to register with your tax authorities. If your law provides for the creation of different types of companies and the information reporting requirements differ materially depending on the type of company, please indicate what the requirements are for each type of company. Similarly if registration with a number of different authorities is required, please indicate what the reporting requirements are with regard to ownership information in each case.</i></p> <p>1.4 Are companies formed under the laws of another jurisdiction that carry on activities (including investment activities) in or from your jurisdiction required to be registered with your authorities? If so, please identify the relevant authority and indicate what, if any, information is required to be disclosed regarding the owners of the company, (e.g., is there a requirement to disclose the legal owners of the company or the ultimate owners where there is a chain of ownership), whether changes in ownership are required to be disclosed, and what the sanctions for non-compliance are.</p>

Ownership Information Held by Intermediaries

1.5 In the case of nominee ownership, what information is a nominee required to know regarding the identity of the person on whose behalf the shares are held a) at the time of incorporation, and b) at all times thereafter, including each time the beneficial ownership changes? For example, is the nominee required to know the ultimate owner of the shares or merely the next legal owner in the chain of ownership?

Nominee shareholdings occur where the legal owner of an interest in a company is not the beneficial owner of the interest.

1.6 Can anyone establish a company in your jurisdiction or must an intermediary such as a company formation agent, lawyer or notary be used?

If the requirements differ depending on the type of company involved, please describe the requirements in each case.

1.7 Are there specific laws or regulations that regulate company service providers in your jurisdiction? If so, what information are such service providers required to have regarding ownership of the company, (e.g., is there a requirement to know the legal owners of the company or the ultimate owners where there is a chain of ownership), is there a requirement to disclose changes in ownership to the company service provider and are there sanctions for non-compliance?

For purposes of this questionnaire, the term “company service provider” includes any person that holds itself out as available for the creation or administration of companies, including acting as a director or company officer (e.g., company secretary). If your jurisdiction’s definition of the term company service provider is narrower please say to whom your regulations apply.

1.8 Are there any other laws or regulations (other than laws or regulations applicable to company service providers) that require certain persons providing services to a company to identify the legal and beneficial owners of a company in some or all cases? If so, please specify what these requirements are and what the sanctions for non-compliance are.

For example, company service providers as such may not be regulated in your jurisdiction but some service providers, such as lawyer or auditors, may be subject to anti-money laundering legislation that requires identification of beneficial owners.

Ownership Information Held by Companies, Their Directors and Officers

1.9 What information regarding the ownership of a company formed in your jurisdiction is the company required to have (e.g., is it required to know who the legal owners of its shares are or who the ultimate owners are where there is a chain of ownership) a) in the case of publicly traded companies, and b) all other companies and what are the sanctions for non-compliance? Is such information, if any, required to be maintained by the company in a shareholders’ or members’ register or similar record?

If your law provides for the creation of different types of companies and the information requirements differ depending on the type of company, please indicate what the requirements are for each type of company if there are material differences. For example, in some countries the legal and beneficial owners of public and private companies may be required to notify the company of their interest in the company only if such interest exceeds a certain threshold.

1.10 Are companies formed under the laws of your jurisdiction required to have one or more resident directors or other officers and if so what, if any, information are they required to have regarding the ownership of the company?

Please refer to the commentary on paragraph 1.9 above in replying to this question. Please note that your answer may overlap with your answer to 1.7 if, for instance, a company service provider acts as a director of the company.

Ownership Information Held by Other Persons

1.11 Are there any other persons that under your laws are required to have ownership information on companies? If so, please describe.

Ownership Documentation Requirements

1.12 Where in any of the above cases there is an obligation on any person or governmental authority to have ownership information, for how long is such information required to be kept? Please also state whether the document retention period is affected by possible subsequent events (e.g. liquidation of the company or termination of the business relationship).

1.13. Where ownership information is required to be kept, is the information required to be kept within your jurisdiction?

b) Accounting Information

Accounting Information Held by Companies

1.14 Is there an obligation on companies formed in your jurisdiction to keep accounting records? If so, please specify whether this obligation arises under your jurisdiction's company law, tax law or other law.

If your law provides for different types of companies and record keeping requirements differ materially depending on the type of company, please indicate what the requirements are for each type. Similarly if companies are subject to multiple obligations to keep records, for example under company law and tax law this should be stated.

1.15 If accounting records must be kept by companies formed in your jurisdiction, please explain the nature of the records that are required to be kept. In particular is there a requirement in all cases that records should:

- a) correctly explain the company's transactions,
- b) enable the company's financial position to be determined with reasonable accuracy at any time,
- c) allow financial statements to be prepared,
- d) include underlying documentation such as invoices, contracts, etc.?

It is sufficient in responding to this question to provide general commentary on your jurisdiction's record keeping requirements provided these meet the standards referred to in a) to d) above. Such requirements may arise under your jurisdiction's company law, tax law or other law, in which case you should identify the relevant legislation. If more onerous requirements are imposed on certain types of regulated companies, such as banks, these do not need to be described. However, if record keeping requirements differ for different types of companies and the requirements for particular types of companies are more limited than those referred to in a) to d) above, these should be described.

1.16 Is there an obligation on companies formed in your jurisdiction to:

- a) prepare financial statements,
- b) file financial statements with a government authority,
- c) file an annual income tax return,
- d) have their financial statements audited?

The Joint Ad Hoc Group on Accounts has not yet come to a conclusion regarding the necessity to have financial statements or to the mechanisms to ensure their reliability. This question may need to be modified once the JAHGA complete s its work.

The term "financial statements" should comprise; a statement recording the assets and liabilities of a company at a point in time and a statement or statements recording the receipts, payments and other transactions undertaken by the company together with such notes as may be necessary to give a reasonable understanding of the statements referred to above. If requirements differ for different types of companies, or if they differ depending on the circumstances please explain the requirements in each case. For example companies formed in your jurisdiction may be required to submit an income tax return only if they are in receipt of income sourced within your jurisdiction in which case the circumstances in which an income tax return is required to be made should be explained.

Accounting Information Held by Intermediaries

1.17 If corporate service providers are regulated in your jurisdiction, are there obligations on them to keep accounting records for their clients' affairs? If so, please describe these obligations.

Accounting Documentation Requirements

1.18 What is the minimum retention period for which accounting records are required to be kept by –

- a) companies formed in your jurisdiction, and
- b) corporate service providers operating in your jurisdiction?

Please also state whether the documentation retention period is affected by possible subsequent events (e.g., liquidation of the company or termination of a business relationship.)

Different types of companies may be subject to different requirements in this regard. Companies may also be subject to multiple obligations, e.g., one for company law and another for tax law. Any distinctions between different types of companies should be highlighted and if there are multiple obligations these should be identified.

1.19 What is the retention period for which financial statements are required to be kept in your jurisdiction?

1.20 Where accounting information is required to be kept by companies or corporate service providers, is it required to be kept within your jurisdiction?

2. Obtaining Ownership and Accounting Information on Companies

2.1 Do your laws (company law or otherwise) contain confidentiality or secrecy provisions that prohibit or restrict the disclosure of legal, beneficial ownership, or accounting information to your authorities for purposes of exchange of information under a double taxation convention, TIEA or mutual legal assistance provisions? If so, please identify the classes of companies to which such provisions apply, and explain the circumstances in which these restrictions operate.

For example, a prohibition would apply if your jurisdiction's legislation prevented a company, or person connected with the company such as an employee or company service provider, from disclosing ownership information that was sought for the purpose of responding to a specific request for exchange of information for tax purposes.

2.2 If your corporate law allows for the issuance of bearer shares what, if any, mechanisms are available to your authorities to establish the identity of the owners of such shares for the purpose of responding to a request for exchange of information for tax purposes?

Examples could include bearer shares that are required to be held by designated custodians in your jurisdiction or that can only be issued under limited circumstances. If your jurisdiction's laws in this respect have changed recently, please also explain how your laws deal with shares issued prior to such changes.

2.3 Where ownership or accounting information is required to be kept in the cases described above (i.e., by (i) government authorities, (ii) nominees, (iii) regulated corporate service providers, other service providers, (iv) the company itself, (v) resident directors or other officers, (vi) or any other persons required to have such information), please indicate whether your competent authority has powers to obtain the information from such person or governmental authority for the purpose of responding to a specific request for exchange of information in tax matters and, if so, under what conditions.

In responding please specify whether your competent authority can obtain the information directly or whether your competent authority has to rely on another governmental authority (e.g., a court) to obtain the information.

2.4 For the purpose of responding to a request for exchange of information in tax matters, what powers, if any, do your authorities have to obtain ownership and accounting information from a person not required to have such information (i.e., persons not described in paragraph 2.3.) but that are in possession or control of the information?

2.5 Please describe how your jurisdiction's competent authority would go about obtaining the information described in paragraphs 2.3-2.5 and also indicate whether, and if so how, the production of the information could be compelled if the information is not otherwise forthcoming.

2.6 Where there is no person or governmental authority in your country that is required to maintain ownership information or accounting information, or that has such information, relating to a company formed under your laws, how would your competent authority seek to obtain ownership or accounting information relating to such company in response to a request?

3. Legal Framework of Trusts

Background

3.1 Is it possible to form a trust or similar arrangement under the laws of your jurisdiction?

The trust concept encompasses a wide variety of arrangements. Essential to all of them is the transfer of legal ownership and control from a settlor to a trustee(s). Definitions of trusts are also to be found in the domestic trust laws of those jurisdictions that have specific legislation that applies to trusts.

3.2 Are there separate laws governing the formation of trusts for non-residents (settlers or beneficiaries) in your jurisdiction or where the assets settled in the trust are located outside your jurisdiction?

3.3 Do your trust laws allow for the creation of non-charitable purpose trusts? If so, please describe.

3.4 If you do not have domestic trust legislation do the laws of your jurisdiction allow a resident person to act in a fiduciary capacity for profit in relation to a trust formed under a foreign law?

Information Held by Government Authorities

3.5 Are trusts required to be registered in your jurisdiction and, if so, with what authority?

If some trusts, such as charitable trusts, are required to be registered but others are not, you should identify the type of trusts that are required to be registered and those that are not. Please also note that a trustee may have to disclose the trust arrangement as part of his tax filing obligation and that such disclosure should be treated as a registration.

3.6 If trusts are required to be registered, please describe what information is required to be

supplied to the authorities on registration regarding the identity of the settlor, trustees, protectors, enforcers and beneficiaries and the sanctions for non-compliance. Please also specify how the registration requirement operates in the case of a discretionary trust (i.e., a trust where the interests of the beneficiaries are not fixed but depend upon the exercise by the trustee of some discretionary powers in their favour).

If your law provides for the creation of different types of trusts, and the information reporting requirements differ materially depending on the type of trust, please indicate what the requirements are for each type of trust.

Information held by Intermediaries and Trustees

3.7 Can anyone act as a trustee in your jurisdiction or must a trustee be a bank, a lawyer, or notary or otherwise be from a regulated profession?

If your law provides for the creation of different types of trusts and the requirements differ depending on the type of trust, please indicate what the requirements are in each case.

3.8 Are there specific laws or regulations that regulate trust service providers in your jurisdiction? If so, what information are they required to have regarding the identity of:

- (a) settlors,
- (b) protectors and enforcers, and
- (c) beneficiaries of trusts?

What are the sanctions for non compliance?

If your law provides for the creation of different types of trusts and the requirements differ depending on the class or type of trust please indicate what the requirements are in each case. Of particular interest is the information a trustee is required to have in the case of a discretionary trust.

You do not need to answer questions 3.9 and 3.10 if you regulate all trustees and therefore your answer to sections 3.9 and 3.10 would only be repetitive. However you should answer questions 3.9 and 3.10 if your regulations only apply to certain trustees or where your trust, anti-money laundering or other rules impose additional or separate obligations.

3.9 Is a resident trustee of a domestic trust obligated in your jurisdiction to have information regarding the identity of:

- (a) settlors,
- (b) protectors and enforcers, and
- (c) beneficiaries of trusts?.

What are the sanctions for non-compliance?

A domestic trust is one governed by the laws of your jurisdiction. Identification requirements may be placed on a trustee as a matter of trust law, tax law, or, for example because trustees are subject to anti-money laundering legislation that imposes customer identification requirements on them. The basis for the obligation should be stated. In some countries a distinction exists for anti-money laundering purposes between the requirements that apply to trustees that are professionals, such as lawyers or accountants, and other trustees. Where such distinctions exist they should be described. Distinctions may also exist depending on the type of trust (e.g., discretionary as opposed to a fixed trust) and such distinctions should be described as well. Of particular interest is what information a trustee is required to have in the case of a discretionary trust.

3.10 Irrespective of whether or not your jurisdiction has trust legislation, is a resident trustee of a foreign trust obligated, in your jurisdiction, to have information regarding the identity of :

- (a) settlors,
- (b) protectors and enforcers, and
- (c) beneficiaries?

What are the sanctions for non-compliance?

A foreign trust is one which is governed by the law of another jurisdiction. Otherwise the commentary on 3.8 above is also relevant in responding to this question.

Information Held by other persons

3.11 Are there any other persons that under your laws are required to have information on the identity of settlors, trustees, protectors, enforcers or beneficiaries? If so, please describe.

Documentation Requirements

3.12 Where in any of the above cases there is an obligation on the trustee or a governmental authority to have identity information on settlors, protectors and enforcers, and beneficiaries, for how long is such information required to be kept? Please also state whether the document retention period is affected by possible subsequent events (e.g., migration of the trust or termination of the business relationship).

3.13. Where such identity information is required to be kept, is the information required to be kept within your jurisdiction?

3.14 Are trustees resident in your jurisdiction required to maintain any other documents relating to the formation or management of the trust, e.g., a trust deed, a letter of wishes, etc? Are any of these documents required to be deposited with a registry?

If there are different requirements for different types of trusts, please highlight the distinctions.

4. Obtaining Information About Trusts

4.1 Do your laws (trust law or otherwise) contain confidentiality or secrecy provisions that prohibit or restrict the disclosure of information regarding the identity of settlors, trustees, protectors, enforcers or beneficiaries to your authorities for purposes of responding to a specific request for exchange of information for tax purposes? If so, please identify the types of trusts to which such provisions apply, explain the circumstances in which these restrictions operate and provide the relevant legal citation?

Examples of such provisions would include confidentiality provisions that are included in your trust law or umbrella provisions that provide for confidentiality in relation to all international financial activities.

4.2 Where information on the identity of settlors, trustees, protectors, enforcers or beneficiaries is required to be kept in the cases described above (i.e., by (i) a governmental authority, (ii) a regulated trust service provider, (iii) a resident trustee of a domestic trust, (iv) a resident trustee of a foreign trust, or (v) any other person) please indicate whether your competent authority has powers to obtain the information from such persons or governmental authority for the purpose of responding to a specific request for exchange of information in a tax matter and if so under what conditions.

In responding please specify whether your competent authority can obtain the information directly or whether your competent authority has to rely on another governmental authority (e.g. a court) in order to obtain the information.

4.3 For the purpose of responding to a request for exchange of information in tax matters, what powers, if any, do your authorities have to obtain information on the identity of settlors, beneficiaries, trustees, protectors or enforcers of trusts from any person not required to have such information (i.e., persons not described in 4.2) who are in possession of or able to obtain such information?

4.4 Please describe how your competent authority would go about obtaining the information described in paragraphs 4.2-4.3 and also indicate whether and, if so, how the production of the information could be compelled if the information is not otherwise forthcoming.

5. Partnerships Legal Framework

Background

5.1 Do your laws provide for different types of partnerships? If so, please identify the different types.

5.2 Are there separate laws providing for partnerships in your country depending on whether the partners are resident in your country and/or whether the partnership carries on business there?

Information Held by Government Authorities

5.3 Are partnerships provided for in the laws of your jurisdiction required to be registered with your authorities? If so, please indicate which authority they are required to register with and what type of information is required to be disclosed regarding the identity of the partners, including ongoing changes (e.g., is there a requirement to disclose the identity of the partners or in the case of partners that are companies the ultimate owners of the companies). What are the sanctions for non-compliance?

Please note that registration includes the obligation to register with your tax authorities. If your law provides for different types of partnerships or different types of partners (e.g., general or limited) and the information reporting requirements differ materially depending on the type of partnership or partner please indicate what the requirements are for each type. Similarly, if registration with a number of different authorities is required, please indicate what the reporting requirements are with regard to ownership information in each case.

5.4 Are partnerships provided for in other jurisdictions' laws that carry on activities (including investment activities) in your jurisdiction required to be registered with your authorities? If so, please identify the relevant authority and indicate what, if any, information is required to be disclosed regarding the identities of the partners, including ongoing changes (e.g., is there a requirement to disclose the identity of the partners or, in the case of partners that are companies, the ultimate owners of the companies). What are the sanctions for non-compliance?

Information Held by Intermediaries

5.5 Can anyone form a partnership in your jurisdiction or must a service provider such as a registered agent or lawyer be used?

If the requirements differ depending on the type of partnership involved, please describe the requirements in each case.

5.6 Are there laws or regulations that regulate such service providers in your jurisdiction? If so, what information are they required to have regarding the identity of the partners, including ongoing changes (e.g., is there a requirement to know the identity of the partners or, in the case of partners that are companies, the ultimate owners of the companies). What are the sanctions for non-compliance?

The term “service provider” includes any person that holds itself out as carrying on the business of forming partnerships, providing a registered office for partnerships or acting as a registered agent for partnerships. If your jurisdiction’s definition of the term is narrower, please indicate to whom your regulations apply.

5.7 Are there any other laws or regulations (other than laws or regulations applicable specifically to partnership service providers) that require certain persons providing services to a partnership to identify the partners in a partnership, and does such a requirement apply in some or all cases? If so, please specify what these requirements are and the sanctions for non-compliance.

For example, service providers may not be regulated in your jurisdiction as such but some service providers, such as lawyers or auditors, may still be subject to anti-money laundering legislation that requires them to identify partners in partnerships to which they provide services.

Information Held by the Partnership or Partners

5.8 What information regarding the identity of partners in the partnership, provided under your laws,

Is the partnership, or particular partners such as a general partner, required to have? Is this information required to be maintained in a register or other similar record?

If the requirements differ depending on the type of partnership involved, please describe the requirements in each case.

Information Held by Other Persons

5.9. Are there any other persons that under your law are required to have ownership information on partnerships? If so, please identify the persons concerned and describe what information they are required to have.

Documentation Requirements

5.10 Where in any of the above cases there is an obligation on any person or governmental authority to have information on the identity of persons with a partnership interest, for how long is such information required to be kept? Please also state whether the document retention period is affected by possible subsequent events (e.g., liquidation of the partnership or termination of the business relationship).

5.11. Where such information is required to be kept, is the information required to be kept within your jurisdiction?

6. Obtaining Information about Partnerships

6.1 Do your laws (partnership law or otherwise) contain confidentiality or secrecy provisions that prohibit or restrict the disclosure of information regarding the identity of partners to your authorities for purposes of exchange of information for tax purposes? If so, please identify the types to which such provisions apply, explain the circumstances in which these restrictions operate and provide the relevant legal citation.

See the commentary at paragraphs 2.1 and 4.1 above for examples of such provisions.

6.2 Where information on the identity of partners is required to be kept in the cases described above (i.e., by (i) government authorities (ii) regulated service providers, (iii) other service providers, (iv) the partnership or by a partner, or (v) other persons), please indicate whether your competent authority has powers to obtain the information from such person or governmental authority for the purpose of responding to a request for exchange of information in a tax matter and, if so, under what conditions.

In responding please specify whether your competent authority can obtain the information directly or whether your competent authority has to rely on another governmental authority (e.g., a court) in order to obtain the information.

6.3 For the purpose of responding to a specific request for exchange of information in tax matters, what other powers, if any, do your authorities have to obtain information on the identity of partners in a partnership from persons not required to have such information (i.e., persons not described in paragraph 6.2.) that are in possession of control of such information?

6.4 Please describe how your competent authority would go about obtaining the information described in paragraphs 6.2 and 6.3 and also indicate whether, and if so how, the production of the information could be compelled if the information is not otherwise forthcoming.

7. Foundations Legal Framework

Background

7.1 Do your laws include the concept of a foundation and is it thus possible to form a foundation under your laws?

The concept of a foundation includes many different variations. At a very general level a foundation is a separate legal entity to which assets are transferred by the founder(s) and which then holds such assets for the benefit of a particular purpose. Very often foundations serve charitable, scientific or social purposes, but foundations may also be created to benefit certain individuals such as the members of a family (family foundations).

7.2. Are there special rules governing foundations in cases where they (i) have been set up by non-residents and/or (ii) are intended to benefit non-residents?

Information held by Government Authorities

7.3. Does your law require the registration of foundations?

Please note that registration includes registration with a tax authority. If some foundations are required to be registered but others are not, you should identify the types of foundations that are required to be registered and those that are not. In your response you should also consider whether registration is required for foundations formed under foreign law, for instance where a foundation formed under foreign law is managed and controlled from within your jurisdiction or it otherwise carries on activities in your jurisdiction.

7.4 With respect to any foundations required to be registered, what information is required to be supplied to the authorities regarding the identity of the founder, members of the foundation council and any beneficiaries and what foundation documents are required to be deposited with the registry? What are the sanctions for non-compliance?

If your law provides for the creation of different types of foundations, and the information reporting requirements differ materially depending on the type of foundation, please indicate what the requirements are for each type of foundation.

Information Held by Intermediaries

7.5. Can anybody form a foundation in your jurisdiction or must an intermediary such as a formation agent, lawyer or notary be used?

7.6 Are there specific laws or regulations in your jurisdiction that regulate such persons as corporate service providers? If so, what information are such persons required to have regarding the identity of the founder(s), the members of the foundation council and the identity of any beneficiaries? What are the sanctions for non-compliance?

7.7 Are there any other laws or regulations that require such persons to know the identity of founder(s), members of the foundation council and any beneficiaries?

For instance, your jurisdiction may not regulate corporate service providers as such but your anti-money laundering legislation may, for instance, require a lawyer involved in the formation of a foundation to know the identity of the founder(s).

Information Held by the Foundation and Members of the Foundation Council

7.8 What information regarding the identity of founder(s) and any beneficiaries is the foundation required to have (e.g., where the assets have been transferred by a nominee to the foundation is there a requirement to know the identity of the person behind the nominee), is such information required to be kept in a particular form and what are the sanctions for non-compliance?

7.9 Are foundations formed under the laws of your jurisdiction required to have one or more resident members of the foundation council and if so what information are they required to have regarding the identity of the founder and any beneficiaries and what are the sanctions for non-compliance?

Information Held by Other Persons

7.10 Are there any other persons that under your laws are required to have information on the identity of the founder(s), the members of the foundation council and the identity of any beneficiaries? If so, please describe.

Documentation Retention

7.11 Where in any of the above cases there is an obligation on any person or governmental authority to have information on the identity of founder(s), members of the foundation council and any beneficiaries, and for how long is such information required to be kept? Please also state whether the document retention period is affected by possible subsequent events (e.g., liquidation of the foundation or termination of the business relationship).

7.12. Where information on the identity of founder(s), members of the foundation council and any beneficiaries is required to be kept, is the information required to be kept within your jurisdiction?

8. Obtaining Information About Foundations

8.1 Do your laws (foundation laws or general laws) contain confidentiality or secrecy provisions that prohibit or restrict the disclosure of information regarding the identity of founder(s), members of the foundation council and any beneficiaries to your authorities for purposes of responding to a specific exchange of information for tax purposes? If so, please identify the types of foundations to which such provisions apply and explain the circumstances in which these restrictions operate.

Examples of such provisions would include confidentiality provisions that are included in your foundation laws or umbrella provisions that provide for confidentiality in relation to all international financial activities.

8.2 Where ownership information is required to be kept in the cases described above (i.e., by (i) government authorities (ii) regulated corporate service providers, (iii) other service providers, (iv) the foundation or (v) resident member of the foundation council), please indicate whether your competent authority has powers to obtain the information from such person or a governmental authority for the purpose of responding to a request for exchange of information in a tax matter and if so under what conditions.

In responding please specify whether your competent authority can obtain the information directly or whether your competent authority has to rely on another governmental authority to obtain the information.

8.3 For the purpose of responding to a request for exchange of information in tax matters, what powers, if any, do your authorities have to obtain information on the identity of founder(s),

members of the foundation council and any beneficiaries from any person not required to have such information (i.e., persons not described in 8.2.) that is in possession or control of such information?

Such persons could include, for instance, the founder(s) or the beneficiaries.

8.4 Please describe how your competent authority would go about obtaining the information described in paragraphs 8.2 and 8.3 and also indicate whether, and if so how, the production of the information could be compelled if the information is not otherwise forthcoming.

9. Transparency Features of Tax System

9.1 Are there any non-transparent features of your jurisdiction's tax system, such as rules or guidelines that depart from accepted laws and practices as these are generally applied, secret rulings, discretionary provisions (whether advance rulings or otherwise) or other measures that enable taxpayers to elect or negotiate the rate of tax to be applied?

This feature of transparency is concerned with transparency as it is applied to the practices of tax authorities. It is concerned with practices such as the favourable application of the tax laws to certain taxpayers only or the failure to make widely known the administrative practices of a jurisdiction.

ANNEX 5**PART IV: 2004 PROGRESS REPORT ON THE OECD'S PROJECT ON HARMFUL TAX PRACTICES****PART IV: FRAMEWORK OF CO-ORDINATED DEFENSIVE MEASURES****Introduction**

28. OECD member countries as well as non-OECD economies currently use a variety of measures to address harmful tax practices. The Committee recognises, however, that there are limits to the usefulness of unilateral and bilateral measures to respond to a problem that is inherently global in nature. Thus, the Committee has examined ways in which defensive measures may be co-ordinated to more effectively neutralise the deleterious effects of harmful tax practices. As noted in paragraph 32 of the 2001 Report, a potential framework of co-ordinated defensive measures would not apply to uncooperative tax havens any earlier than it would apply to OECD member countries with harmful preferential regimes.

29. The Committee considers that a framework of co-ordinated defensive measures should be guided by the following principles:

- a) A framework of co-ordinated defensive measures should be proportionate and targeted at neutralising the deleterious effects of harmful tax practices.
- b) The framework should take into account whether a member country already has applicable existing defensive measures and the effectiveness of those measures.
- c) The framework should recognise that each participant retains the sovereign right to apply or not apply any defensive measures as appropriate, either within or outside a framework of co-ordinated defensive measures.
- d) Each participant may choose to implement and enforce the defensive measures in a manner that is proportionate and prioritised according to the degree of harm that a particular harmful tax practice has the potential to inflict and taking into account the effectiveness of its existing defensive measures.
- e) There are different forms of harmful tax practices and different defensive measures may be appropriate in different circumstances.

- f) A co-ordinated response to harmful tax practices which results from a dialogue between member countries will reinforce the effectiveness of unilateral measures and overcome the inherent limits of such measures.
- g) Any common framework must be carefully crafted to avoid imposing unnecessary compliance burdens on taxpayers or administrative burdens on tax administrations.
- h) A framework for a common approach to defensive measures must be dynamic, able to adapt to changing circumstances and will need ongoing implementation and verification procedures to be effective.

Possible Defensive Measures

30. As noted above, the possible defensive measures that might be co-ordinated must remain flexible. It is not, therefore, possible to produce an exhaustive or exclusive list of measures that might be used. Based on the identification of some measures currently in use in OECD member countries and non-OECD economies, a number of measures have been identified as being potentially useful to neutralise the deleterious effects of harmful tax practices. These defensive measures are--

- The use of provisions having the effect of disallowing any deduction, exemption, credit or other allowance in relation to all substantial payments made to persons located in countries or jurisdictions engaged in harmful tax practices except where the taxpayer is able to establish satisfactorily that such payments do not exceed an arm's length amount and correspond to bona fide transactions.
- The use of thin capitalisation provisions restricting the deduction of interest payments to persons located in jurisdictions engaged in harmful tax practices.
- The use of legislative or administrative provisions having the effect of requiring any resident who makes a substantial payment to a person located in a country or jurisdiction engaged in a harmful tax practice, enters into a transaction with such a person, or owns any interest in such a person to report that payment, transaction or ownership to the tax authorities, such requirement being supported by substantial penalties for inaccurate reporting or non-reporting of such payments.
- The use of legislative provisions allowing the taxation of residents on amounts corresponding to income that benefits from harmful tax practices that is earned by entities established abroad in which these residents have an interest and that would otherwise be subject to substantially lower or deferred taxes.
- The denial of the exemption method or modification of the credit method. Where a country levies no or nominal tax on most of the income arising therein because of the existence of harmful tax practices, it may not be appropriate for such income to receive an exemption otherwise intended to relieve double taxation. Member countries that permit foreign tax credits may wish to modify those rules to prevent the pooling of income benefiting from harmful tax practices with other

income. In addition, such countries may wish to implement systems to verify the amounts claimed actually constitute creditable taxes.

- The use of legislative provisions ensuring that withholding taxes at a minimum rate apply to all payments of dividends, interest and royalties made to beneficial owners benefiting from harmful tax practices.
- The use of provisions for special audit and enforcement programs to co-ordinate enforcement activities involving entities and transactions related to countries and jurisdictions engaged in harmful tax practices.
- Terminating, limiting and not entering into tax treaties. Participating countries could adopt, and make public, a policy of not entering into tax conventions with countries and jurisdictions involved in harmful tax practices. Those that are parties to conventions with such countries and jurisdictions may wish to take appropriate measures to ensure that these conventions are limited or terminated. Alternatively, participating countries could consider that all existing or proposed treaties with a country or jurisdiction engaging in harmful tax practices contain a limitation of benefits clause which would prevent the benefits of the treaty from being claimed by third country residents who had no real connection with the country or jurisdiction. With respect to terminating an existing treaty, it is recognised that such action has important implications which go beyond the revenue impact of the treaty.

Framework for Co-ordinating Defensive Measures

31. Based on the principles identified in the introduction to this Part, any OECD member country that believes that a specific harmful tax practice of a country or jurisdiction that is unco-operative in eliminating harmful tax practices should be addressed in a co-ordinated fashion can propose such co-ordination. It should describe the specific harmful tax practice at issue and identify the harm that the practice causes. The member country should also identify the specific types of defensive measures it is taking and the measures it would like other member countries to consider taking. OECD member countries will then discuss the issue. This discussion could involve the degree to which other member countries are affected by the specific practice, whether they already have defensive measures that apply and any other relevant considerations. Recognising the sovereign right of member countries to apply or not to apply defensive measures as well as the differing effects that harmful tax practices have on different member countries, any action may involve all or only some OECD member countries.

32. The above approach will permit member countries to increase the effectiveness of national measures by making them applicable on a co-ordinated basis while at the same time ensuring that the application of the particular measure is proportionate and prioritised and appropriate for the circumstances of each member country.

33. Non-OECD economies that wish to associate themselves with the work on harmful tax practices may also want to co-ordinate their actions with those of OECD member countries. To this end, OECD member countries may consider informing the other Participating Partners and

24 May 2004

SGLPF(2004)1/CONF

non-OECD economies that have associated themselves with the work about the defensive measures that they are taking in a particular case so that non-OECD economies may take those measures into account in considering what action is in their sovereign interest.