**Global Survey – April 2014 by Christopher Owen**

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**Early Adopters Group sets out timetable for automatic exchange of information**

19 March 2014, the Early Adopters Group of the OECD's Common Reporting Standard (CRS) confirmed their commitment to the new standard for automatic exchange of information along with a timetable for implementation.

The Early Adopters Group, which now numbers 44, comprises those countries that have committed to join the pilot automatic exchange of information initiative first launched by France, Germany, Italy, Spain and the UK in April 2013. The OECD published the new CRS on 13 February 2014.

The timetable for implementing the CRS, described as “ambitious but realistic”, is as follows:

* Pre-existing accounts would be those that are open on 31 December 2015 and new accounts would be those opened from 1 January 2016. Hence, new account opening procedures to record tax residence will need to be in place from 1 January 2016;
* The due diligence procedures for identifying high-value pre-existing individual accounts will be required to be completed by 31 December 2016, while the due diligence for low-value pre-existing individual accounts and for entity accounts will be required to be completed by 31 December 2017;
* The first exchange of information in relation to new accounts and pre-existing individual high value accounts will take place by the end of September 2017;
* Information about pre-existing individual low value accounts and entity accounts will either first be exchanged by the end of September 2017 or September 2018, depending on when financial institutions identify them as reportable accounts.

OECD Secretary-General Angel Gurría said: said: “The commitment by so many countries and jurisdictions to implement the OECD’s Global Standard on the basis of a specific and ambitious timetable is good news for everyone who wants to see a fair and transparent international tax system. The rapidity with which the new norms are being developed and agreed shows that the political momentum for reform is now overwhelming.”

The OECD is expected to deliver a detailed Commentary on the new standard, as well as technical solutions to implement the actual information exchanges, during a meeting of G20 finance ministers in September 2014.

In a statement, the Early Adopter Group said: "Tax evasion is a global problem and requires a global solution. We therefore welcome the new standard in automatic exchange of information between tax authorities developed by the OECD. We invite other countries and jurisdictions to join us in this early adoption initiative and to create rapidly a truly global system of automatic information exchange which leaves no hiding places for tax evasion.”

The group currently comprises: Argentina, Belgium, Bulgaria, Colombia, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, India, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Malta, Mexico, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, South Africa, Spain, Sweden, and the UK; the UK's Crown Dependencies of Isle of Man, Guernsey and Jersey; and the UK's Overseas Territories of Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Gibraltar, Montserrat, and the Turks & Caicos Islands.

**Austria and Luxembourg accede to revised EU Savings Tax Directive**

21 March 2014, Austria and Luxembourg finally gave "the green light" to the long-delayed 2008 revision of the European Union’s Savings Tax Directive after years of opposition. The move allows ministers to sign off on the changes to the savings taxation directive – ending bank secrecy for non-citizens in EU countries in January 2017. “Banking secrecy is set to die,” said European Council president Herman Van Rompuy.

The proposed changes to the 2005 savings taxation directive require member states to exchange automatically information on interest payments on savings of citizens of other member states, allowing them to be taxed in accordance with laws where they are tax resident. It also extends existing regulations to profits earned by trusts, foundations and insurance policies.

While other EU member states now exchange information automatically, Luxembourg and Austria had continued to exercise their right to transitional measures and instead impose an anonymous 35% withholding tax. The two countries had insisted that they would only change when other third-party countries – Switzerland, Liechtenstein, Monaco, Andorra and San Marino – had agreed to implement the same rules.

At a two-day summit of EU leaders in Brussels, Luxembourg's Prime Minister Xavier Bettel said he had received "guarantees" from other EU governments that negotiations with the five third-party countries would either be completed by the end of the year or that a clear path to a deal would be laid out. That commitment "allowed us, with Austria, to give the green light," he said. “Luxembourg will become a transparent banking location.”

Algirdas Šemeta, EU commissioner responsible for taxation, said Switzerland and the four other countries now accepted that automatic exchange of information must be at the core of their relations with the EU in taxation. “I have assured member states that our negotiations with these countries will continue with speed and ambition, with the aim of presenting results before the end of the year,” he said.

Austria's Finance Minister Michael Spindelegger said: "It's clear that we cannot wait until a deal with third parties is concluded.”

[**BVI initials FATCA agreement with US**](https://expert.sovereigngroup.com/Blogs/Lists/Posts/Post.aspx?ID=322)

6 March 2014, the British Virgin Islands government announced that it had initialed a Model 1 Intergovernmental Agreement (IGA) under the US Foreign Account Tax Compliance Act (FATCA) after concluding negotiations with the United States.

The BVI government said it would shortly put into place the final legal and administrative procedures to facilitate automatic exchange of financial information about US taxpayers who hold accounts with BVI financial institutions under the IGA. FATCA is due to come into force on 1 July 2014. The BVI also signed an IGA with the UK on 28 November 2013.

**European Parliament backs public registers for companies, trusts and foundations**

11 March 2014, the European Parliament backed, with a large 643 to 30 majority, a draft anti-money laundering bill that requires companies, trusts and foundations to list the names of people who own them in inter-connected public registers set up in each member state. The language refers not only to trusts and foundations, but also to any “similar structures”.

If adopted by member states in its current form, the directive would require names, dates of birth and nationalities of beneficial owners – defined as anyone with ownership or control of 25% or more of the entity – to be made available, not only to tax or law enforcement authorities but to anyone who completes a basic online registration. In order to stop countries blocking public access by making it prohibitively expensive, a provision was added stipulating that user fees should not exceed the register's administration costs.

The parliament’s version of the bill currently limits public disclosure to the identity of the trustee, the settlor and "the class of persons in whose main interest the legal arrangement or entity is set up or operates", but would not extend to documents, which, for instance, detail the nature or the size of the assets. An early draft of the directive included a requirement that the settlor's letter of wishes and the trust deed also be made public, but this was dropped via an amendment introduced by a UK MEP at the committee level.

Trust practitioners have complained that the parliament chose to reject an earlier proposal to follow a recommendation for capturing information on trusts drawn up by the Financial Action Task Force. The FATF's Recommendation 25 does not include public disclosure.

Parliamentary representatives must now take the draft directive into "trialogue" with the European Commission and the member states' Council of Ministers. The Council, which was scheduled to begin discussing it on 26 March, is split. Germany, the Netherlands and Sweden oppose public registers. France supports open registers. The UK supports them for companies only.

**Seychelles creates new Financial Services Authority**

1 March 2014, a newly created Seychelles Financial Services Authority (FSA) took over the regulation of non-bank financial services in the Seychelles. It replaces the Seychelles International Business Authority (SIBA) with an expanded regulatory function and relinquishes all promotional activities.

Established under the Financial Services Authority Act, which was passed by the National Assembly on 17 December 2013 and gazetted on 6 January 2014, the FSA is responsible for the licensing, supervision and development of the non-bank financial services industry of the Seychelles. The FSA is also responsible for the registration of international business companies, foundations, limited partnerships and international trusts in the Seychelles.

FSA chief executive Wendy Pierre confirmed that the FSA had the capacity and the commitment to provide a sound regulatory system in compliance with international laws and practices. The FSA has signed of memoranda of understanding with its most important stakeholders – the Central Bank of Seychelles, the Fair Trading Commission and the Seychelles Investment Board.

By relinquishing all its promotional activities related to the financial services sector that were undertaken by SIBA, the FSA will focus on making licensing and registration more efficient, more effective and more in-line with the needs of the industry. The promotion of financial services is now the responsibility of the Seychelles Investment Board.

**Malta amends Maltese Citizenship Act**

29 January 2014, Malta agreed to amend the Maltese Citizenship Act (L.N.450 of 2013) by introducing a requirement for an effective residence status in Malta prior a grant of Maltese naturalisation. The move followed a meeting with representatives of the European Commission.

In November, Malta's parliament approved an Individual Investor Programme (IIP) introduced under the Maltese Citizenship Act to enable qualifying "high value" applicants to be naturalised and receive a Maltese passport. Malta is a member of the European Union, a member of the Schengen border-less travel area and has a visa waiver agreement with the US.

Applicants are required to contribute €650,000 to an independently managed National Development Fund. Spouses and children of applicants for Malta citizenship are each required to contribute €25,000 and unmarried children between the ages of 18 and 25 and dependant parents €50,000 each.

The programme was criticised by the European Parliament, which passed a resolution In January to condemn the measure, which stated that EU citizenship should not have a "price tag" and that the rights conferred by EU citizenship, such as the right to move and reside freely within the EU, should not be treated as a "tradable commodity".

The parliament called on Malta to bring its current citizenship scheme into line with EU values and asked the European Commission to issue recommendations to prevent such schemes from undermining the EU’s founding values, as well as guidelines on granting access to EU citizenship via national schemes.

Following a meeting with the Commission, Malta announced amendments to the regulations issued under the Maltese Citizenship Act to clarify that the programme would confer full rights, responsibilities and a full citizenship status.

The amendments include genuine links to Malta through the introduction of an effective residence status in Malta prior to the possibility to acquire Maltese naturalisation. No certificate of naturalisation will be issued unless the applicant provides proof that he/she has resided in Malta for a period of at least 12 months immediately preceding the day of issuing of the certificate of naturalisation.

The Maltese government also informed the Commission that it would evaluate whether an increase would need to be made to the current capping of main applicants (1,800) under the Individual Investor Programme.

**G20 endorses new OECD Standard for automatic exchange of tax information**

23 February 2014, the G20 group of nations agreed to implement a new global standard for automatic exchange of information between tax authorities – the Common Reporting Standard – by the end of 2015.

The communique issued by the Group of 20 finance ministers and central bank governors after their meeting in Sydney said: “We endorse the Common Reporting Standard for automatic exchange of tax information on a reciprocal basis and will work with all relevant parties, including our financial institutions, to detail our implementation plan at our September meeting.

“In parallel, we expect to begin to exchange information automatically on tax matters among G20 members by the end of 2015. We call for the early adoption of the standard by those jurisdictions that are able to do so. We call on all financial centres to match our commitments. We urge all jurisdictions that have not yet complied with the existing standard for exchange of information on request to do so and sign the Multilateral Convention on Mutual Administrative Assistance in Tax Matters without further delay.”

Developed by the OECD, working with G20 countries, and in close co-operation with the EU, the Common Reporting Standard was first published on 13 February. OECD Secretary-General Angel Gurría said: "This is a real game changer. Globalisation of the world's financial system has made it increasingly simple for people to make, hold and manage investments outside their country of residence. This new standard on automatic exchange of information will ramp up international tax co-operation, putting governments back on a more even footing as they seek to protect the integrity of their tax systems and fight tax evasion."

More than 40 countries have already committed to early adoption of the standard. The OECD’s Global Forum on Transparency and Exchange of Information for Tax Purposes has been mandated by the G20 to monitor and review its implementation.

Under the standard, jurisdictions are obliged to obtain financial information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis. The standard consists of two components: a) the Common Reporting and Due Diligence Standard (CRS), which contains the reporting and due diligence rules and b) the Model Competent Authority Agreement (CAA), which contains the detailed rules on the exchange of information.

To prevent circumventing the CRS it is designed with a broad scope across three dimensions:

• The financial information to be reported with respect to reportable accounts includes all types of investment income (including interest, dividends, income from certain insurance contracts and other similar types of income) but also account balances and sales proceeds from financial assets.

• The financial institutions that are required to report under the CRS do not only include banks and custodians but also other financial institutions such as brokers, certain collective investment vehicles and certain insurance companies.

• Reportable accounts include accounts held by individuals and entities (which includes trusts and foundations), and the standard includes a requirement to look through passive entities to report on the individuals that ultimately control these entities.

The CRS also describes the due diligence procedures that must be followed by financial institutions to identify reportable accounts.

The CRS will need to be translated into domestic law, whereas the CAA can be executed within existing legal frameworks such as Article 6 of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters or the equivalent of Article 26 in a bilateral tax treaty. Before entering into a reciprocal agreement to exchange information automatically with another country, it is essential that the receiving country has the legal framework and administrative capacity and processes in place to ensure the confidentiality of the information received and that such information is only used for the purposes specified in the instrument.

The G20 communique therefore threatened “tougher incentives” against the 14 jurisdictions which, in the course of their Phase 1 peer reviews by the Global Forum, were determined to be unable to move to Phase 2 until their legal and regulatory frameworks for exchange of information in tax matters had been improved and could therefore not be rated – Botswana, Brunei, Dominica, Guatemala, Lebanon, Liberia, Marshall Islands, Nauru, Niue, Panama, Switzerland, Trinidad & Tobago, United Arab Emirates and Vanuatu..

The G20 also promised to engage with, and support low-income and developing countries “so that they benefit from our work on tax”.

Pascal Saint-Amans, director of the OECD’s centre for tax policy and administration, said a decision on the technology needed and detailed rules on how governments would swap tax data is likely to be made at a G-20 meeting in Brisbane in September.

G20 finance minsters also committed to a global response to Base Erosion and Profit Shifting (BEPS) on the principle that profits should be taxed where economic activities deriving the profits are performed and where value is created. “We continue our full support for the G20/OECD BEPS Action Plan, and look forward to progress as set out in the agreed timetable. By the Brisbane summit, we will start to deliver effective, practical and sustainable measures to counter BEPS across all industries, including traditional, digital and digitalised firms, in an increasingly globalised economy,” said the communiqué.

“The political message is that we will be closing down all the loopholes,” said Saint-Amans. “What multinationals are doing is legal. If it’s legal and you don’t like the outcome, you need to change the rules.”

**Treasury issues “final” rules package under FATCA**

20 February 2014, the US Treasury and Internal Revenue Service (IRS) released what it termed as called "the last substantial package of regulations necessary to implement the Foreign Account Tax Compliance Act (FATCA)", which is now due to take effect on 1 July this year.

FATCA, which was enacted by Congress in 2010, seeks to obtain information on accounts held by US taxpayers in other countries. It generally requires US financial institutions to withhold a portion of certain payments made to foreign financial institutions (FFIs) that do not agree to identify and report information on US account holders.

To address situations where foreign law would prevent an FFI from reporting directly to the IRS, the Treasury developed two alternative model intergovernmental agreements (IGAs). These IGAs facilitate the effective and efficient implementation of FATCA information, fulfil the information reporting objectives and further reduce burdens on FFIs located in partner jurisdictions. The US has signed agreements with 22 countries, with more initialled or under negotiation.

Since final regulations for FATCA were published in January 2013, Treasury and the IRS have extended the start of withholding and account due diligence requirements by six-months to 1 July 2014, opened the FATCA portal in August 2013 and issued a final FFI Agreement for financial institutions in January 2014.

The new rules package makes additions and clarifications to the previously-issued FATCA regulations, and also provides guidance to coordinate FATCA rules with pre-existing due diligence, reporting, and withholding requirements under other provisions of the US tax code.

Guidance and key amendments provide for: a framework to allow certain entities to provide information on US account holders directly to the IRS, rather than through a withholding agent; the treatment of certain special-purpose debt securitisation vehicles; the treatment of disregarded entities as branches of FFIs; the definition of an expanded affiliated group; and transitional rules for collateral arrangements prior to 2017.

**Hong Kong introduces Bill to lower tax for captives**

8 January 2014, the Inland Revenue (Amendment) (No. 3) Bill 2013, aiming to cut down by half the profits tax on captive insurers, was presented to the Legislative Council for first reading.

The proposed measure, announced in the 2013-14 Budget, aims to give captive insurers the same tax concessions in Hong Kong as those currently applicable to reinsurance companies and is designed to attract more enterprises to establish their captive insurers in Hong Kong. At present there are only two.

Secretary for Financial Services and the Treasury, Professor K C Chan, said: "With a sound regulatory regime and a broad talent pool, Hong Kong is well positioned to establish itself as a centre for captive insurance. Forming a cluster of captive insurers here will help the development of other related businesses, including reinsurance, legal and actuarial services."

The potential of Hong Kong as a hub for captive insurers was also reinforced by a policy promulgated by the Chinese Government in June 2012, encouraging Mainland enterprises to form captive insurers in Hong Kong so as to enhance their risk management.

Subject to LegCo passing the Bill, the tax concession will take effect from the year of assessment 2013-14.

**Seychelles establishes new Financial Services Authority**

1 March 2014, under The Financial Services Authority Act 2013 the Seychelles International Business Authority (SIBA) changed its name to the Financial Services Authority (FSA) and assumed responsibility for regulating all offshore non-bank financial services in the Seychelles.

The former SIBA had twin roles as both regulator and promotion agency for international business in the Seychelles. The new FSA will function solely as a regulator and is responsible for the licensing, supervision and development of the non-bank financial services industry. It is also responsible for the registration of International Business Companies, Foundations, Limited Partnerships and International Trusts in the Seychelles.

FSA chief executive Wendy Pierre confirmed that the FSA had the capacity and commitment to fulfill its mission to provide a sound regulatory system in compliance with international laws and practices.

The FSA has signed of memoranda of understanding with its most important stakeholders – the Central Bank of Seychelles, the Fair Trading Commission and the Seychelles Investment Board.

**UK investor scheme does not deliver economic benefits**

25 February 2014, the UK government’s Migration Advisory Committee (MAC) issued a new report examining the Tier 1 (Investor) route, which found that the scheme, as currently constituted, did not deliver significant economic benefits to the UK.

The Tier 1 (Investor) route allows high-net-worth individuals to obtain a visa to enter or remain in the UK if they can invest £1 million in government bonds – effectively a loan. It does not grant them a UK passport.

The committee, which provides independent and evidence-based advice to the government on migration issues, found the favourable economic impacts of the Tier 1 (Investor) route were "typically exaggerated". It also said the £1 million investment threshold was probably too low, having not been raised since 1994. It recommended that the threshold be increased to £2 million.

MAC's chaiman Professor Sir David Metcalf said: "In this report the Migration Advisory Committee is not stating that there is little or no gain to UK residents from the investor route. Rather, we express some healthy scepticism concerning the benefits normally asserted."

According to the report, 433 Russians and 419 Chinese had come to the UK since 2008 under the scheme. The third largest group was US citizens, who made just 96 applications over the five years.

Professor Metcalf said the government had effectively been “giving away” visas. “The present system, it seems, is designed to minimise the gains to UK residents and maximise the gains to the migrants,” he said. “Indeed, we pay them for making the application. They get interest on their loan – the gilts.”

**Switzerland and EU open negotiations on savings tax**

17 January 2014, Switzerland and the European Union officially started negotiations on revising the taxation of savings agreement with a view to closing existing loopholes and better preventing tax evasion. Swiss State Secretary Jacques de Watteville met with Heinz Zourek, head of the European Commission's Taxation and Customs Union Directorate-General, to establish the technical details for the negotiations.

The Commission was instructed by the Economic and Financial Affairs Council (ECOFIN) to negotiate an amendment to the existing agreement with Switzerland on 14 May last year. The Swiss Federal Council adopted the negotiation mandate to revise the taxation of savings agreement with the EU on 18 December. The negotiating parties have agreed to hold regular meetings in the first half of 2014.

The EU wishes to amend the agreement in line with the proposed revision of its own Savings Taxation Directive, which was adopted on 13 November 2008. The Commission proposal seeks to improve the Directive, so as to better ensure the taxation of interest payments that are channelled through intermediate tax-exempted structures. It is also proposed to extend the scope of the Directive to income equivalent to interest obtained through investments in some innovative financial products as well as in certain life insurance products.

**OECD head praises Crown Dependencies on transparency**

11 February 2014, OECD Secretary-General Angel Gurría singled out the UK Crown Dependencies – the Isle of Man, Jersey and Guernsey – for praise for the progress they had made towards increasing tax transparency.

Speaking during a debate at the European Competition Forum in Brussels, Gurría said he had "received a number of commitments directly from the Crown Dependencies" since the G8 Summit in Loch Erne in 2013. He continued: "This is a good development, although there is still more to do. Some of the problems are not in the islands, but in the 'big islands' – in the UK itself and in the US."

**US court dismisses bankers' challenge to account disclosure rules**

13 January 2014, a US federal judge dismissed a lawsuit challenging new reciprocal rules brought in under the Foreign Account Tax Compliance Act (FACTA), which will oblige US banks to report information about certain US accounts held by non-US citizens. The new rules come into effect in March.

In order to secure information about accounts held overseas by US citizens, the US government was obliged to offer some degree of reciprocity to foreign tax authorities under the various Intergovernmental Agreements that have been signed to implement FATCA.

The Internal Revenue Service (IRS) therefore drew up a rule that would, for the first time, require disclosure by US banks of information about accounts held by non-resident aliens that earn at least $10 of interest per year. This information would then be passed on to tax authorities in account-holders’ home countries.

Last April, bank industry associations in Texas and Florida – where banks hold a lot of Latin American money – brought a lawsuit against the US Treasury and the IRS, which claimed that the new rule violated both the Administrative Procedure Act and the Regulatory Flexibility Act. They also argued that the new requirement would cause more harm to banks than the IRS had anticipated and might spark sufficient capital flight to destabilise local banks and economies.

The federal court in the District of Columbia threw out the challenge. In a 23-page ruling, Judge James Boasberg found that the IRS had “reasonably concluded that the regulations will improve US tax compliance, deter foreign and domestic tax evasion, impose a minimal reporting burden on banks, and not cause any rational actor—other than a tax evader—to withdraw his funds from US accounts.”

The court also noted that the IRS, which has estimated that foreign individuals have up to $400 billion in US accounts, would only pass information on to the 70 countries with which it has information exchange agreements. These require the relevant authorities to store information responsibly and treat it as confidential.

"The court's opinion today represents an important step in our commitment to work with our treaty partners to eliminate cross-border tax evasion," said Assistant Attorney General Kathryn Keneally, head of the US Justice Department's tax division, in a statement.

Had the legal challenge been successful, the US government would have found it harder to get other countries to comply with FATCA, which is now due to come into force in July after several delays.

**Swiss banks seek tax amnesty as one-third accept US offer**

31 December 2013, the US tax authorities said 106 Swiss banks had signed letters of intent to seek non-prosecution agreements with the US Department of Justice under the US programme before the deadline expired. US prosecutors had invited more than 300 Swiss banks to apply if they had "reason to believe" they had violated US tax laws.

Participating institutions must disclose how they helped US taxpayers hide assets, hand over data on undeclared accounts and pay penalties. The agreement does not cover the 14 Swiss banks already under US criminal investigation, which include some of the biggest private banks such as Credit Suisse and Julius Baer.

Kathryn Keneally, assistant attorney general in the Justice Department's tax division, disclosed the number when speaking at a conference in Arizona on 25 January 2014. She did not name any banks seeking entry into the programme and cautioned that the final figure could change.

The Swiss Federal Council authorised, on 29 November 2013, certain unspecified banks to cooperate with the US authorities within the framework of the US programme to resolve their longstanding tax dispute. It encouraged the Swiss banks to give serious consideration to their participation in the programme and to make their decisions in a timely manner.

The framework, which was agreed by way of a joint statement on 29 August, provided for a unilateral US programme in which any Swiss banks that were not already the target of a criminal investigation by the US and which believed that they have violated US law, had until 31 December to notify the US authorities that they wished to participate.

Banks seeking non-prosecution agreements must disclose the total number of US accounts since 2008, their highest dollar value, and the employees who managed them. The banks must also use independent examiners to certify findings. Participating banks face penalties of up to 50% of the value of the assets they managed on behalf of US taxpayers.

Switzerland agreed to enable affected banks to participate in the programme voluntarily provided that they first sought authorisation from the Swiss Federal Council. Information on the number and identity of the banks in question is confidential and will not be communicated.

Under the US programme, banks can apply under a category that determines the level of their penalty, if any. Category 1 banks are those already under US investigation. Such banks are expected to settle their outstanding issues with the US authorities and may face significant fines. Category 2 banks are expected to disclose undeclared US accounts containing at least $50,000 and pay fines, while banks in the third and fourth categories will be required to prove they have not helped US taxpayers evade taxes.