I. Introduction

A. Background

1. As the world has become increasingly globalised it is easier for all taxpayers to make, hold and manage investments through financial institutions outside of their country of residence. Vast amounts of money are kept offshore and go untaxed to the extent that taxpayers fail to comply with tax obligations in their home jurisdiction. Offshore tax evasion is a serious problem for jurisdictions all over the world, OECD and non-OECD, small and large, developing and developed. Countries have a shared interest in maintaining the integrity of their tax systems. Co-operation between tax administrations is critical in the fight against tax evasion and in protecting the integrity of tax systems. A key aspect of that co-operation is exchange of information.

2. The OECD has a long history of working on all forms of exchange of information – on request, spontaneous, and automatic – and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and Article 26 of the OECD Model Tax Convention provide a basis for all forms of information exchange. In particular, since 2009 much progress was made by the OECD, EU and the Global Forum on Transparency and Exchange of Information for Tax Purposes in improving transparency and exchange of information on request.

3. Starting in 2012 political interest also focused on the opportunities provided by automatic exchange of information. On 19 April 2013 the G20 Finance Ministers and Central Bank Governors endorsed automatic exchange as the expected new standard. The G20 decision followed earlier announcements by five European countries of their intention to develop and pilot multilateral tax information exchange based on the Model Intergovernmental Agreement to Improve International Tax Compliance and to Implement FATCA, developed between these countries (France, Germany, Italy, Spain and the United Kingdom) and the United States (the "Model 1 IGA"). On 22 May 2013, the European Council unanimously agreed to give priority efforts to extend automatic exchange at EU and

global level and welcomed on-going efforts made in the G8, G20 and OECD to develop a global standard. On 12 June 2013 the European Commission adopted a legislative proposal to extend the scope of automatic exchange of information in its directive on administrative co-operation. On 19 June 2013 the G8 leaders welcomed the OECD Secretary General report "A Step Change in Tax Transparency" which set out the concrete steps that need to be undertaken to put a global model of automatic exchange into practice. G8 leaders agreed to work together with the OECD and in the G20 to implement its recommendations urgently. On 6 September 2013 the G20 Leaders committed to automatic exchange of information as the new global standard and fully supported the OECD work, with G20 countries, aimed at presenting such a single global standard in 2014. In February 2014, the G20 Finance Ministers and Central Bank Governors endorsed the Common Reporting Standard for automatic exchange of tax information contained in Part II of this document. By May 2014 over 60 jurisdictions had committed to swiftly implement the Common Reporting Standard, including translating it into domestic law. Further, 44 jurisdictions have agreed to a common timetable for the implementation of the Standard.

4. The global model of automatic exchange is drafted with respect to financial account information. Many jurisdictions – OECD and non-OECD – already exchange information automatically with their exchange partners and also regionally (e.g. within the EU) on various categories of income and also transmit other types of information such as changes of residence, the purchase or disposition of immovable property, value added tax refunds, tax withheld at source, etc. The new global standard does not, nor is it intended to, restrict the other types or categories of automatic exchange of information. It sets out a minimum standard for the information to be exchanged. Jurisdictions may choose to exchange information beyond the minimum standard set out in this document.

5. The Common Reporting Standard, with a view to maximising efficiency and reducing cost for financial institutions, draws extensively on the intergovernmental approach to implementing FATCA. While the intergovernmental approach to FATCA reporting does deviate in certain aspects from the CRS, the differences are driven by the multilateral nature of the CRS system and other US specific aspects, in particular the concept of taxation on the basis of citizenship and the presence of a significant and comprehensive FATCA withholding tax. Given these features, that the intergovernmental approach to FATCA is a pre-existing system with close similarities to the CRS, and the anticipated progress towards widespread participation in the CRS, it is compatible and consistent with the CRS for the United States to not require the look through treatment for investment entities in Non-Participating Jurisdictions.

B. Key features of a global model of automatic exchange of financial account information

6. For a model of automatic exchange of financial account information to be effective it must be specifically designed with residence jurisdictions' tax compliance in mind rather than be a by-product of domestic reporting. Further, it needs to be standardised so as to benefit the maximum number of residence jurisdictions and financial institutions while recognising that certain issues remain to be decided by local implementation. The advantage of standardisation is process simplification, higher effectiveness and lower costs for all stakeholders concerned. A proliferation of different and inconsistent models would potentially impose significant costs on both government and business to collect the necessary information and operate the different models. It could lead to a fragmentation of standards, which may introduce conflicting requirements, further increasing the costs of compliance and reducing effectiveness. Finally, because tax evasion is a global issue, the model needs to have a global reach so that it addresses the issue of offshore tax evasion and does not merely relocate the problem rather than solving it. Mechanisms to encourage compliance may be also required to achieve this aim.

7. In 2012 the OECD delivered to the G20 the report "Automatic Exchange of Information: What it is, How it works, Benefits, What remains to be done",[1] which summarises the key features of an effective model for automatic exchange. The main success factors for effective automatic exchange of financial information are: *(1)* a common standard on information reporting, due diligence and exchange of information, *(2)* a legal and operational basis for the exchange of information; and *(3)* common or compatible technical solutions.

1. Common standard on reporting, due diligence and exchange of information

8. An effective model for automatic exchange of information requires a common standard on the information to be reported by financial institutions and exchanged with residence jurisdictions. This will ensure that the reporting by financial institutions is aligned with the interests of the residence country. It will also increase the quality and predictability of the information that is being exchanged. The result will be significant opportunities for the residence country to enhance compliance and make

1. OECD (2012), *Automatic exchange of information: What it is, how it works, benefits, what remains to be done*, OECD, Paris, available on www.oecd.org/ctp/exchange-of-tax-information/automatic-exchange-of-information-report.pdf.

optimal use of the information (e.g. through automatic matching with domestic compliance information and data analysis).

9. In order to limit the opportunities for taxpayers to circumvent the model by shifting assets to institutions or investing in products that are not covered by the model, a reporting regime requires a broad scope across three dimensions:

- **The scope of financial information reported:** A comprehensive reporting regime covers different types of investment income including interest, dividends and similar types of income, and also address situations where a taxpayer seeks to hide capital that itself represents income or assets on which tax has been evaded (e.g. by requiring information on account balances).
- **The scope of account holders subject to reporting:** A comprehensive reporting regime requires reporting not only with respect to individuals, but should also limit the opportunities for taxpayers to circumvent reporting by using interposed legal entities or arrangements. This means requiring financial institutions to look through shell companies, trusts or similar arrangements, including taxable entities to cover situations where a taxpayer seeks to hide the principal but is willing to pay tax on the income.
- **The scope of financial institutions required to report:** A comprehensive reporting regime covers not only banks but also other financial institutions such as brokers, certain collective investment vehicles and certain insurance companies.

10. In addition to a common standard on the scope of the information to be collected and exchanged, an effective model of automatic exchange of financial information also requires a common standard on a robust set of due diligence procedures to be followed by financial institutions to identify reportable accounts and obtain the accountholder identifying information that is required to be reported for such accounts. The due diligence procedures are critical as they help to ensure the quality of the information that is reported and exchanged. Finally feedback by the receiving jurisdiction to the sending jurisdiction regarding any errors in the information received can also be an important aspect of an effective automatic exchange model. Such feedback may take place in the form of spontaneous exchange of information, another important aspect of co-operation between tax authorities in itself.

2. Legal and operational basis for exchange of information

11. Different legal basis for automatic exchange of information already exist. Whilst bilateral treaties such as those based on Article 26 of the OECD Model Tax Convention permit such exchanges, it may be more efficient to establish automatic exchange relationships on the basis of a multilateral exchange instrument. The Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the "Convention"),[2] as amended in 2011, is such an instrument. It provides for all forms of administrative co-operation, contains strict rules on confidentiality and proper use of information, and permits automatic exchange of information. One of its main advantages is its global reach.[3] Automatic exchange under the Convention requires a separate agreement between the competent authorities of the parties, which can be entered into by two or more parties thus allowing for a single agreement with either two or more parties (with actual automatic exchange always taking place on a bilateral basis). Such a competent authority agreement then activates and "operationalises" automatic exchange between the participants. Where jurisdictions rely on other information exchange instruments, such as bilateral treaties, a competent authority agreement can serve the same function.

12. All treaties and exchange of information instruments contain strict provisions that require information exchanged to be kept confidential and limit the persons to whom the information can be disclosed and the purposes for which the information may be used. The OECD released a Guide on Confidentiality,[4] which sets out best practices related to confidentiality and provides practical guidance on how to ensure an adequate level of protection. Before entering into an agreement to exchange information automatically with another jurisdiction, it is essential that the receiving jurisdiction has the legal framework and administrative capacity and processes in place to ensure the confidentiality of the information received and that such information is used only for the purposes specified in the instrument.

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2. The Multilateral Convention was developed jointly by the Council of Europe and the OECD and opened for signature by the member states of both organisations on 25 January 1988. The Convention was amended to respond to the call of the G20 at its April 2009 London Summit to align it to the international standard on exchange and to open it to all countries, in particular to ensure that developing countries could benefit from the new more transparent environment. It was opened for signature on 1 June 2011.
3. For information on jurisdictions covered by the Convention, signatories and ratifications see www.oecd.org/tax/exchange-of-tax-information/status_of_convention.pdf.
4. OECD (2012), *Keeping it Safe: The OECD Guide on the Protection of Confidentiality of Information Exchanged for Tax Purposes*, OECD, Paris, available on www.oecd.org/ctp/exchange-of-tax-information/keeping-it-safe-report.pdf.

3. Common or compatible technical solutions

13. Common or compatible technical solutions for reporting and exchanging information are a critical element in a standardised automatic exchange system – especially one that will be used by a large number of jurisdictions and financial institutions. Standardisation will reduce costs for all parties concerned.

14. The technical reporting format must be standardised so that information can be captured, exchanged and processed quickly and efficiently in a cost effective manner and secure and compatible methods of transmission and encryption of data must be in place.

C. Overview of the standard on automatic exchange of financial account information

15. Part II of this document contains (A) a model competent authority agreement/arrangement ("Model CAA") and (B) the common standard on reporting and due diligence for financial account information (CRS). Together they constitute the common standard on reporting, due diligence and exchange of information on financial account information.

16. Implementation of the standard will require translating the CRS into domestic law. Signing a competent authority agreement based on the model then allows putting in place the information exchange based on existing legal instruments, such as the Convention or bilateral income tax conventions. The exchange of information could also be implemented on the basis of a multilateral competent authority agreement/arrangement, or jurisdictions could enter into a multilateral intergovernmental agreement or multiple intergovernmental agreements that would be international treaties in their own right covering both the reporting obligations and due diligence procedures coupled with a more limited competent authority agreement. The legal basis could also be EU legislation that would cover the elements of the CRS.

1. Summary of the Model Competent Authority Agreement

17. The Model CAA links the CRS and the legal basis for the exchange (such as the Convention or a bilateral tax treaty) allowing the financial account information to be exchanged. The Model CAA consists of a number of whereas clauses and seven sections, and provides for the modalities of the exchange to ensure the appropriate flows of information. The whereas clauses contain representations on the domestic reporting and due diligence rules that underpin the exchange of information pursuant to the competent authority agreement. They also contain representations on confidentiality, safeguards

and the existence of the necessary infrastructure for an effective exchange relationship.

18. It contains a section dealing with definitions (Section 1), covers the type of information to be exchanged (Section 2), the time and manner of exchange (Section 3) and the confidentiality and data safeguards that must be respected (Section 5). Consultations between the competent authorities, collaboration on compliance and enforcement, amendments to the agreement and the term of the agreement, including suspension and termination, are dealt with in Sections 4, 6 and 7.

2. Summary of the Common Reporting Standard

19. The CRS contains the reporting and due diligence standard that underpins the automatic exchange of financial account information. A jurisdiction implementing the CRS must have rules in place that require financial institutions to report information consistent with the scope of reporting set out in Section I and to follow due diligence procedures consistent with the procedures contained in Section II through VII. Capitalised terms used in the CRS are defined in Section VIII.

20. The financial institutions covered by the standard include custodial institutions, depository institutions, investment entities and specified insurance companies, unless they present a low risk of being used for evading tax and are excluded from reporting. The financial information to be reported with respect to reportable accounts includes interest, dividends, account balance or value, income from certain insurance products, sales proceeds from financial assets and other income generated with respect to assets held in the account or payments made with respect to the account. 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 relevant controlling persons.

21. The due diligence procedures to be performed by reporting financial institutions for the identification of reportable accounts are described in Sections II through VII. They distinguish between individual accounts and entity accounts. They also make a distinction between pre-existing and new accounts, recognising that it is more difficult and costly for financial institutions to obtain information from existing account holders rather than requesting such information upon account opening.

- For **Preexisting Individual Accounts** financial institutions are required to review accounts without application of any de minimis threshold. The rules distinguish between Higher and Lower Value Accounts. For Lower Value Accounts they provide for a permanent residence address test based on documentary evidence or the FI would need to determine the residence on the basis of an indicia search. A self-certification (and/or documentary evidence) would be needed in case of conflicting indicia, in the absence of which reporting would be done to all reportable jurisdictions for which indicia have been found. For Higher Value Accounts enhanced due diligence procedures apply, including a paper record search and an actual knowledge test by the relationship manager.

- For **New Individual Accounts** the CRS requires a self-certification (and the confirmation of its reasonableness) without de minimis threshold.
- For **Preexisting Entity Accounts**, financial institutions are required to determine: a) whether the Entity itself is a Reportable Person, which can generally be done on the basis of available information (AML/KYC Procedures) and if not, a self-certification would be needed; and b) whether the Entity is a Passive NFE and, if so, the residency of Controlling Persons. For a number of account holders the active/passive assessment is rather straight forward and can be made on the basis of available information, for others this may require self-certification. Jurisdictions may choose to allow financial institutions to apply a threshold such that Preexisting Entity Accounts below USD 250 000 (or local currency equivalent) are not subject to review.
- For **New Entity Accounts**, the same assessments need to be made as for Pre-existing Accounts. However, as it is easier to obtain self-certifications for New Accounts, the USD 250 000 (or local currency equivalent) threshold does not apply.

22. Section IX of the CRS describes the rules and administrative procedures an implementing jurisdiction is expected to have in place to ensure effective implementation of, and compliance with, the CRS.

3. Commentaries on the Model CAA and CRS

23. For each section of the Model CAA and the CRS, there is a detailed Commentary that is intended to illustrate or interpret its provisions. The Commentaries are contained in Part III of the Report. Given that implementation will be based on domestic law, it is important to ensure consistency in application across jurisdictions to avoid creating unnecessary costs and complexity for financial institutions in particular those with operations in more than one jurisdiction. For certain limited situations alternatives are provided for in the Commentaries.

4. Technical Solutions

24. Finally, this document also contains guidance on relevant technical solutions. It includes a schema to be used for exchanging the information and provides a standard in relation to the IT aspects of data safeguards and confidentiality, and transmission and encryption for the secure transmission of information under the CRS. Annex 3 contains a diagrammatic representation of the CRS schema and its user guide. As provided in the Model Competent Authority Agreement, Competent Authorities will use the CRS schema for purposes of exchanging the information to be reported. The schema may also be used by Reporting Financial Institutions for purposes of reporting the information (as permitted by domestic law). The IT aspects of data safeguards and confidentiality and the transmission and encryption standards are contained in the Commentary on Sections 3 and 5 of the Model CAA.