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G-20 Action Against Tax Havens May Be Slow Coming

By [Matt Squire](#)

Plans by the Group of 20 to put an end to tax haven abuse could take up to ten years to implement, and will face political challenges, say international tax experts.

The G-20 released a communiqué on Thursday announcing \$1.1 trillion in committed funding for the International Monetary Fund, and calling for action, including possible economic sanctions, against governmental jurisdictions that allow tax evaders to hide their assets. "The era of banking secrecy is over," read the communiqué.

But ending bank secrecy in jurisdictions that house enormous wealth will be easier said than done, as G-20 members must now contend with passing sanctions against tax havens in a coordinated fashion.

"The coordination between G-20 countries in dealing with tax haven abuse has been limited in the past and, given all the other problems [with the global economic downturn], I would expect it to be somewhat limited in the immediate future," said Gary Hufbauer, a senior fellow with the Peterson Institute for International Economics in Washington D.C.

The G-20's overtures are incremental, first steps toward tax haven reform, but real results will have to be accomplished at the legislative level of the G-20 members, he said, adding that such efforts could take up to a decade before concrete, internationally recognized sanctions are in place.

"The G-20 has no power to legislate, and at the end of the day, domestic legislation will deliver the change," said Richard Murphy director of Tax Research LLP, an advisory group based in Norfolk, England. "No one is going to have sanctions imposed on them in the next six months."

The informality of the G-20's structure would also limit their ability to implement and enforce blacklists, said Bruce Zagaris, a partner with Washington D.C.-based law firm Berliner, Corcoran & Rowe "It could stir up a lot of controversy and litigation," he said.

Furthermore, the G-20's plans will require a great deal of political wrangling to assuage the concerns of some of its members, particularly China and Russia, said Hufbauer.

China could put up a fight to protect its banking centers in Macao and Hong Kong, while Russia could become rankled over external surveillance, said Hufbauer. "The Russian banking system is very nationalistic and the last thing they will want is some G-20 group coming in and looking at what they are doing," he said.

The political leadership needed to overcome these hurdles has been lacking from the United States, said Hufbauer. "The U.S., particularly under the Bush administration, has not been enthusiastic about tax haven reform, and the Obama administration has been feeling its way on the topic," he said.

Dow Jones reported on Friday that French Finance Minister Christine Lagarde called for the G-20 to develop a list of sanctions against banks that continue to do business in tax haven jurisdictions, including imposing higher capital requirements.

But some G-20 countries may ultimately lack the "stomach" to pursue sanctions against tax haven regimes, said Scott Michel, president of Washington D.C. law firm Caplin & Drysdale. "There is a sense of propriety at issue here so I wouldn't be surprised if one or more countries decline to move forward on this," he said.

While the G-20 has yet to devise a mutually agreed-upon definition of what constitutes a tax haven jurisdiction, the Paris-based economic policy group, the Organization for Economic Cooperation and Development (OECD), issued a "progress report" Thursday on which countries have complied with international tax standards.

The report, which was cited in the G-20 communiqué, dinged Costa Rica, Malaysia, Philippines and Uruguay for failing to commit to the standards. Austria, Belgium, Brunei, Chile, Guatemala, Luxembourg, Singapore and Switzerland have committed to the standards only this year, and have yet to implement them, according to the OECD.

Both Switzerland and Liechtenstein, which also agreed to adhere to the OECD's tax standards just this year, yielded to international standards in order to not be named as a non-cooperative jurisdiction, according to an Associated Press report on Thursday.

Should real sanctions be put in place by G-20 members, the OECD list may not prove the best model to follow, according to Zagaris. The organization's report only shows how jurisdictions have complied with Article 26 of the group's Model Tax Convention and the number of tax information exchange agreements (TIEAs) they are party to, said Zagaris.

"I would be careful before using this list [as a due diligence tool]."

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Test Your AML IQ?

Which of the following countries have not committed to internationally agreed tax standards as mandated by the Organisation for Economic Co-Operation and Development (OECD)?

- A. Costa Rica.
- B. Liechtenstein.
- C. Malaysia.
- D. None of the above.

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because it's only a progress report and [it is misleading] to the extent that it uses these TIEAs as the only criterion," said Zagaris. "It has some marginal reputation effect [against jurisdictions], but that's it."

The OECD list could give the false impression that a jurisdiction with multiple TIEAs is exempt from tax haven concerns said Murphy. "The TIEA process was set up with cooperation from tax havens, and they were given far too much credibility in the process," he said. "The TIEA process has to be radically reformed."

Governments in Europe, critical of the bank secrecy policies of certain neighboring jurisdictions, have been bolstered by reports that Swiss bank UBS AG and Liechtenstein's LGT have been harboring income from tax authorities.

According to a report released by the U.S. Senate Permanent Subcommittee on Investigations (PSI) in July, billions of dollars in U.S. tax revenue has been lost from income sheltered in jurisdictions in Switzerland and Liechtenstein.

On February 18, UBS agreed to a deferred prosecution agreement with the U.S. Justice Department over charges that it hid the income of certain U.S. customers from U.S. tax authorities. UBS agreed to pay \$780 million and give up the names of certain U.S. account holders under the agreement.

Senator Carl Levin, a Michigan Democrat and chair of the PSI, has pushed for a bill that would formally name 34 jurisdictions as tax havens and would give the Treasury Department the power to take measures against foreign jurisdictions and institutions that stand in the way of U.S. tax enforcement.

The bill's tax haven list has been criticized by U.S. Treasury Department officials.

Listing tax haven countries could damage international economic relations and create a de facto blacklist, wrote Michael Mundaca, Treasury deputy assistant secretary for international tax affairs in a letter appended to a December 18 Government Accountability Report on international taxation. Such a blacklist "may be used as the basis for the imposition of sanctions or other negative measures," he wrote.



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