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## Summary

The Organization for Economic Cooperation and Development (OECD) celebrated its 50th anniversary in 2011, a time when the global economy was struggling to recover from the financial crisis and slow economic growth. The OECD is an intergovernmental economic organization in which the 34 member countries discuss and develop key policy recommendations that often serve as the basis for international standards and practices. In addition, the OECD members analyze economic and social policy and share expertise and exchanges with more than 70 developing and emerging economies. The 34 member countries include Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, The Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States. While all of the member countries are considered to be economically advanced and collectively produce 60% of the world's goods and services, membership is limited only by a country's commitment to a market economy and a pluralistic democracy. The OECD also has extended an invitation to the Russian Federation for membership, which includes meeting rigorous best practices relative to anti-bribery and anti-corruption standards. Furthermore, the OECD works with other potential partners such as Brazil, China, India, Indonesia, and South Africa with a view toward possible membership.

The member countries rely on the OECD Secretariat in Paris to collect data; monitor trends; analyze and forecast economic developments; and research social changes and patterns in trade, environment, agriculture, society, innovation, corporate and public governance, taxation, sustainable development, and other areas to inform their discussions and to assist them in pursuing their efforts to develop common policies and practices. Following the financial crisis, the OECD played a major role in providing cross-country analyses of market reforms and programs to stimulate growth. The United States has sparred periodically with other OECD member countries over various issues, including U.S. antidumping laws and the size of the U.S. financial contribution. Karen Kornbluh was appointed in 2009 by President Obama to serve as the U.S. Ambassador to the OECD. She stepped down as Ambassador and Daniel W. Yohannes was nominated to serve as the next U.S. Ambassador to the OECD. Key issues for Congress include OECD work on coordinating national approaches to curtailing bribery and the illicit use of tax havens. Congress appropriated about \$82.2 million to the OECD in FY2013; the budget request for FY2014 was \$83.2 million.

## Contents

Background.....	1
OECD Issues.....	3
OECD and the Financial and Economic Crises .....	5
OECD and the G-8.....	7
Tax Havens, Anti-Corruption, and the OECD .....	8
Base Erosion and Profit Shifting .....	10
Issues for Congress .....	12

## Contacts

Author Contact Information.....	15
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## Background

The United States, along with a number of European countries, formed the predecessor organization to the OECD, the Organization for European Economic Cooperation (OEEC), in order to administer aid under the Marshall Plan for the reconstruction of Europe after World War II. In 1961, the OECD was formed to take over from the OEEC with a mandate to build strong economies in its member countries, improve efficiency, hone market systems, expand free trade, and contribute to development in industrialized as well as developing countries. In 2011, the OECD celebrated its 50th anniversary. The 34 member countries of the OECD decided to broaden the OECD beyond its roots as a transatlantic organization into a global network of nations that focus their efforts on assisting developing and newly emerging economies that adopt free market systems. As a result of this broader perspective, the OECD has shifted its emphasis from focusing exclusively on the members of the OECD to assessing the manner in which various policy issues affect a broad range of countries, including the impact globalization is having on world trade, wages, and industrial development.

The OECD is organized around three main bodies: the Council, the Committees, and the Secretariat. Committees are comprised of representatives of all the member countries. The overriding committee is the Council, which has decision-making power. It is composed of one representative for each member country, generally at the level of Ambassador; gives guidance to the OECD; and directs its work. Since the work agenda is set by unanimous consent by the Council, a veto by a Council member removes an item from the agenda. The Council meets at the ministerial level once a year, when foreign, finance, and other ministers from member countries raise issues and set the priorities for OECD work for the coming year. About 200 committees, comprised of some 40,000 senior government officials from the member countries and representatives from the private sector and labor, meet to review and contribute to work that is conducted by the Secretariat. In many cases, these committees serve as conduits for providing information on work that is being conducted by officials among the OECD member countries on economic issues.

The Council also determines the OECD's budget, which presently amounts to about €354 million, or about \$460 million (€1.00 = \$1.3). The OECD's budget is comprised of shared expenses, public sales of publications, assessments of all the members based on the relative size of their economies, and voluntary contributions (not a part of the official budget). The United States, which appropriated about \$82.2 million in FY2012 (the Administration has asked Congress to appropriate \$83.2 million in FY2014), contributed 21.58% of the OECD's budget.<sup>1</sup> The U.S. share of the budget is expected to decline to 19.53% in 2018 as a result of financing reforms. In addition, the OECD undertakes special projects and research at the request of and on behalf of a smaller number of OECD members and other non-OECD members, who fund those projects separately.

The Secretariat is comprised of a staff of about 2,500, mostly economists, scientists, lawyers, and other professionals, who are organized into directorates to support the work of the Committees to deliver the work program approved by the Council. As a result, the Secretariat is organized along

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<sup>1</sup> *Function 105 & Other International Programs, Fiscal Year 2014, Executive Budget Summary*, Department of State, p. 46. Available at <http://www.state.gov/documents/organization/207305.pdf>.

substantive areas to mirror the work of the Committees, although the structure is flexible enough to handle cross-disciplinary studies. There are 13 directorates that focus their work in such areas as employment and labor; environment and economics; trade and investment; biotechnology, agriculture, science and technology, internet, tax and anti-bribery standards, gender, green growth; public management; and globalization and development. One directorate collects data, monitors trends, and analyzes and forecasts economic developments, while other directorates research social changes or evolving patterns in trade, environment, agriculture, technology, taxation, and more. In addition to standard statistics that provide quantitative measures of economic development, the OECD has developed a “better life initiative” through which it is attempting to assess more broadly the quality of life and policies that can enhance living conditions of people and households and improve well-being.

The OECD produces (1) semi-annual economic outlook reports that analyze economic conditions generally and provide forecasts of economic growth in member countries; (2) comprehensive reports on the individual members of the OECD; and (3) a vast amount of statistical information and data on the member countries that are made comparable to facilitate comparison and analysis regarding best policies and practices. These data include national accounts, economic indicators, labor force and employment, migration, education, energy, taxation, tourism, and environment. The OECD also initiated and coordinates the work of the International Collaborative Initiative on Trade and Employment (ICITE), a group of 10 organizations with the stated goal of improving understanding of the impact of international trade on labor. The ICITE project has attempted to improve the knowledge base of trade and labor through empirical analysis, publications, and conferences. In 2012, the group published *Policy Priorities for International Trade and Jobs*, a compilation of 14 separate studies, ranging from trade, wages, and employment to trade and services, trade and working conditions, and regional trade perspectives.<sup>2</sup> Similar coordination takes place regarding the Internet as part of the Information and Communication Technology Policy Committee.

In the 1990s, the OECD, under the direction of its member countries, including the United States, spearheaded an international agreement to outlaw crimes of bribery, and it continues to coordinate efforts that are aimed at reducing the occurrence of money laundering and corruption. Also, the OECD is a pivotal player in promoting corporate codes of conduct that attempt to develop a voluntary set of standards for multinational firms that can be applied across national borders. The OECD is also analyzing the role of state-owned enterprises in the world economy, and it is spearheading the development of potential international standards on the Internet. In 2011, the OECD members adopted an updated version of the OECD Guidelines for Multinational Enterprises that (1) includes a new chapter on human rights that is consistent with the United Nations’ Guiding Principles on Business and Human Rights; (2) provides a new and comprehensive approach to due diligence and responsible supply chain management; (3) makes changes to such chapters as combating bribery, employment and industrial relations, bribe solicitation and extortion, environment, consumer interests, and disclosure and taxation; and (4) provides clearer and reinforced procedural guidance to strengthen the role of the National Contact Points, who hear complaints in each country.<sup>3</sup>

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<sup>2</sup> *Policy Priorities for International Trade and Jobs*, edited by Douglas Lippoldt, Organization for Economic Cooperation and Development, 2012.

<sup>3</sup> *OECD Guidelines for Multinational Enterprises* 2011 Edition, OECD, 2011.

In the area of international investment, the OECD also sponsors a number of initiatives, including (1) the Freedom of Investment roundtable, a forum for governments to discuss policy frameworks for international investment and capital movements; (2) the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Afflicted and High-Risk Areas to help companies respect human rights and avoid contributing to conflict through their mineral or metal purchasing decisions and practices; and (3) the Policy Framework for Investment, a non-binding set of policy areas to improve conditions for domestic and foreign investment.

## OECD Issues

The OECD is a strong proponent of the view that increasing world economic growth and welfare is best supported by a free and open flow of goods, services, and capital. As a result, it views its own role in this process as that of a leading proponent of the benefits of globalization and as a “forum in which governments can work together to share experiences and seek solutions to common problems.” The OECD also seeks to facilitate a dialogue among its members and with developing countries on good governance to develop institutions and regulatory structures that can make a broad range of benefits available to the OECD members and to developing countries.

Following the 2008-2009 financial crisis, the OECD directed its efforts to issues closely related to the crisis: low growth and high government debt levels; balancing stimulus measures to spur economic growth with efforts to consolidate public finances; and creating jobs, providing equal opportunities, and restoring trust among citizens. Since then, the OECD has shifted its focus to a new initiative titled “New Approaches to Economic Challenges” (NAEC) to improve the OECD’s analytical frameworks and policy advice.<sup>4</sup> This approach is meant to improve the OECD’s analytical framework by improving the way the OECD analyzes factors in key linkages and feedbacks in order not only “to improve better policy advice that delivers higher rates of economic growth, but to improve people’s well-being, support a fair distribution of the benefits of growth and ensure natural resources are used in a way that is sustainable over the long term.”<sup>5</sup> In order to promote this agenda, the OECD expects to focus on three broad areas:

- ***Inclusiveness and Growth.*** The OECD is focusing its analyses on supporting countries in the design and implementation of agendas aimed at reforming their economies to spur growth and jobs. Continuing work will focus on such structural issues as competition and productivity; education and job skills; labor and product market reforms; domestic and international markets; innovation; and the more efficient use of energy. It is also looking at measures to make economic growth more inclusive and improving living standards across the board. This includes addressing structural reforms to affect the high rates of unemployment, issues of long-term structural unemployment, job instability, and poor career prospects. This initiative also will include an assessment of the skills that are necessary to compete in the global economy, while understanding the effect of the global economy on local economies. The initiative also includes migration, areas of high youth unemployment, an assessment changing skills needed in the

<sup>4</sup> *New Approaches to Economic Challenges (NAEC) Summary and Update*, Meeting of the OECD Council and Ministerial Level, Organization for Economic Cooperation and Development, Paris, 29-30 May, 2013, p. 2.

<sup>5</sup> *Strategic Orientations of the Secretary-General 2013 and Beyond*, Meeting of the OECD Council at Ministerial Level, Organization for Economic Cooperation and Development, Paris, 29-30 May, 2013., p. 5.

labor market, and mitigating the impact on income inequality that arises from necessary economic adjustments. In addition, the initiative will address the needs and issues of developing countries, including food security, illicit financial flows, governance of tax incentives to attract investment, and sustainable economic development.

- ***Interconnectedness for Growth.*** This initiative is directed at analyzing the rise in interconnectedness and complexity that characterizes the global economy. Central to this concept is keeping markets open for trade and investment. The OECD hopes to assist governments in raising the rate of economic growth by seizing the opportunities offered by the global economy to develop new sources of growth. Areas of opportunity include such OECD initiatives as knowledge-based assets; global value chains; trade in value added; and green growth. To assist in this analysis, the OECD and World Trade Organization (WTO) are assembling a database on trade in value-added that is providing information on global trade, investment, and production patterns. The OECD expects to use this database to examine where and what types of jobs are being generated through global value chains through international trade and investment, including the role that investment in and income from knowledge-based capital play in global value chains. The OECD also will analyze the role that regional trade agreements play in promoting growth among the participating countries and the expected effects of the agreements on other parts of the world.
- ***Institutions and Governance for Growth.*** The OECD argues that the recent financial and economic crises have undermined public confidence in markets, governments, and businesses. Consequently, the OECD argues that governments need to restore confidence by demonstrating strong political leadership and build a foundation of trust among citizens. In order to accomplish this goal, the OECD argues that policy makers must assure their citizens of the reliability of their policy action by (1) pursuing smarter and more effective governance through better regulation, increased resource efficiency, and by using innovative methods and technology to facilitate and support better planning and decision-making; (2) improving financial transparency and accountability; and (3) making government more open and more inclusive. The OECD also contends that governments need to adopt taxation policies to ensure that revenues are adequate to maintain sound public finances and businesses need to improve corporate governance to create value in companies for investors and all stakeholders. The OECD has assisted in this goal by updating the OECD Guidelines for Multinational Enterprises. In addition, the OECD has long argued that financial regulators need to address systemic vulnerabilities in the business models of large banks, including a separation of the commercial aspects of banking from investment banking activities. The OECD also supports efforts to improve financial education and consumer protection. The OECD hopes to strengthen its role as a partner to national and sub-national governments in implementing public policies by (1) enhancing the impact of its work with national governments; (2) focusing work on the implementation of policies; and (3) increasing the exposure of OECD to national leaders. Finally, the OECD has stated its intention to increase its efforts to be “a more effective and inclusive global policy network.”<sup>6</sup>

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<sup>6</sup> *Ibid*, p. 12-13.



Looking ahead, the OECD is directing its efforts at strengthening its role as an inclusive global partner. Some observers have viewed the OECD at times primarily as an organization representing the interests of the advanced economies and not focusing enough resources on developing economies. As a result, the OECD is attempting to:

- Work with partner countries to create mechanisms to jointly identify priority areas for collaboration; strengthening data exchanges; fostering greater coordination through contact points; and encouraging opportunities for exchanges.
- Build on regional initiatives in Latin America, Eurasia, Southwest Europe, Sub-Saharan Africa, and Southeast Asia to exchange policy perspectives and develop common understanding of joint policy challenges.
- Improve the process of accession to the OECD to make the OECD more inclusive, relevant, diversified, and a more global organization.
- Address global governance issues by contributing to the economic, social, and environmental work agendas of the G-8 and the G-20.
- Play a leading role in global standard-setting by providing a forum for nations to share experiences and best practices; updating and upgrading new as well as existing standards and instruments; soliciting the views of non-member countries; and reviewing existing instruments to determine their relevance.
- Identify gaps and needs in global standard-setting and consider how the OECD can contribute.<sup>7</sup>

## OECD and the Financial and Economic Crises

Since the 2008-2009 financial crisis and the ensuing economic recession, the OECD has worked closely with the G-20<sup>8</sup> group of nations to address economic recovery, global imbalances, and structural reforms.<sup>9</sup> According to the OECD, it has provided support to the G-20 on a wide range of issues, including

- **Restoring growth and jobs.** The OECD supported the G-20 through work with the International Monetary Fund (IMF) in developing a framework for strong, sustainable, and balanced growth.

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<sup>7</sup> *Ibid.*, p. 14-15.

<sup>8</sup> Members of the G-20 consist of the following countries: Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, South Korea, Turkey, the United Kingdom, the United States, and the European Union. The Group of Twenty, or G-20, is a forum for advancing international economic cooperation among 20 major advanced and emerging-market countries. The G-20 was originally established in 1999 to facilitate discussions among the G-20 finance ministers. The prominence of the G-20 increased with the onset of the global financial crisis in the fall of 2008, and the G-20 started meeting at the leader level. In September 2009, the G-20 leaders announced that, henceforth, the G-20 would be the “premier” forum for international economic cooperation.

<sup>9</sup> The OECD published a report on its role titled, *OECD Strategic Response to the Financial and Economic Crisis: Contributions to the Global Effort*, OECD Report C(2008)191/Final, December 23, 2008. A copy of the report is available at <http://www.oecd.org/dataoecd/33/57/42061463.pdf>.

- ***Assisting G-20 countries in sharpening their social response to the crisis.*** The OECD contributed to the preparations of the G-20 Labor Ministerial held in Washington in April 2010 and in Paris in September 2011, including reports, background documents, or notes on various labor issues.
- ***Reforming the international monetary system.*** The OECD has provided analytical work that examines how structural reforms can promote financial integration, reduce global imbalances, and limit the volatility of capital flows.
- ***Pursuing the agenda on financial regulation.*** The OECD developed high-level principles on financial consumer protection, which were endorsed at the Cannes 2011 Summit. It also supports the G-20 agenda on financial inclusion and small and medium-size enterprise (SMEs) financing.
- ***Taxation.*** The OECD has worked with the G-20 to combat tax evasion through a peer review process that includes over 100 countries and a joint OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters, which provides for automatic exchange of tax information.
- ***Anticorruption.*** The OECD has engaged in the G-20 Anticorruption Working Group in the areas of foreign bribery, whistleblower protection, public sector integrity, and enhanced dialogue with business.
- ***Reinvesting in agriculture, combating price volatility, and promoting food security.*** The OECD coordinated with the Food and Agriculture Organization of the United Nations (FAO) in preparing the policy report on “price volatility in food and agricultural markets policy responses,” which provided the basis for the G-20 Agriculture Ministers to develop their Action Plan. The OECD is involved in the follow-up and assigned staff to the Agricultural Market Information System initiative. The OECD, with its partner organizations, is making specific recommendations to G-20 members in the area of agricultural productivity and the environment conducive to promoting private investment in agriculture.
- ***Phasing out fossil fuel subsidies.*** The OECD is supporting countries in implementing their commitments to the G-20 fossil fuel subsidy initiative and released in October 2011 the first-ever Inventory of Estimated Budgetary Support and Tax Expenditures for Fossil Fuels. The OECD is one of the four international organizations that contributed to the joint report to leaders at the June 2010 summit in Toronto and the November 2010 summit in Seoul and coordinated the International Organization report for the November 2011 summit in Cannes.
- ***Implementing the Seoul consensus on development.*** The OECD worked closely on six of the nine pillars of the Multiyear Action Plan—domestic resource mobilization; human resource development; food security; trade; investment and job creation; and knowledge sharing—and is actively contributing to their implementation. The OECD also provided relevant inputs to the other pillars—infrastructure; growth with resilience/social protection; and financial inclusion—to the G-20 countries and international organizations that are leading their implementation.
- ***Global value chains.*** At the G-20 St. Petersburg summit in June 2013, the OECD, in combination with the World Trade Organization (WTO) and the United Nations Conference on Trade and Development (UNCTAD), delivered a

report on the contribution global value chains can make to sustainable growth in advanced and developing countries.<sup>10</sup>

- **Long-Term Investment Financing.** The OECD delivered a report to the G-20 on a framework for encouraging institutional investment in long-term assets, such as infrastructure and renewable energy projects, to strengthen the global economy.<sup>11</sup>

## OECD and the G-8

In addition, the OECD was tasked by the G-8<sup>12</sup> to assist Arab countries in transition through the Deauville Partnership with Arab Countries in Transition initiative that was adopted by the G-8 countries in May 2011 at Deauville, France, to provide political and economic support for reforms in Tunisia, Egypt, Libya, Morocco, and Jordan.<sup>13</sup> The G-8 reaffirmed their commitment to the Deauville Partnership at the G-8 summit at Camp David in May 2012 to support the democratic transition and to strengthen governance, foster economic and social inclusion, create jobs, support private sector-led growth, and advance regional and global integration. The OECD role consists of taking the lead in the areas of governance and anti-corruption by setting standards and providing monitoring. In addition, the Partnership is sponsoring an OECD initiative to help transitioning countries achieve eligibility into the Open Government Partnership (OGP).<sup>14</sup> At a meeting of G-8 finance ministers on September 10, 2011, in Marseille, the ministers expressed support for the OECD's involvement with Middle East/North Africa countries that is aimed at improving policy frameworks for investment and governance and advancing a structural reform agenda. In April 2012, the OECD co-sponsored a conference on "Building Open, Fair, and Transparent Government for Growth and Development," and in May 2012, the OECD co-sponsored a conference on ways to increase private investment in the Partnership countries. On May 23, 2012, the U.S. State Department, through its office of the U.S.-Middle East Partnership Initiative, provided \$1.5 million to the OECD to support open governance and political participation in the Middle East and North Africa.<sup>15</sup>

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<sup>10</sup> *Implications of Global Value Chains for Trade, Investment, Development, and Jobs*, OECD, WTO, UNCTAD, August 6, 2013. Available at <http://www.oecd.org/trade/G20-Global-Value-Chains-2013.pdf>.

<sup>11</sup> *G-20/OECD High-Level Principles of Long-term Investment Financing by Institutional Investors*, Organization for Economic Cooperation and Development, September 2013. Available at <http://www.oecd.org/daf/fin/private-pensions/G20-OECD-Principles-LTI-Financing.pdf>.

<sup>12</sup> Members of the G-8 include Canada, France, Germany, Italy Japan, Russia, the United Kingdom, and the United States.

<sup>13</sup> Countries in the Partnership currently include the five Partnership countries (Egypt, Tunisia, Jordan, Morocco, and Libya), the G-8, Saudi Arabia, the United Arab Emirates, Kuwait, Qatar, and Turkey. The International Financial Institutions include the African Development Bank, the Arab Fund for Economic and Social Development, the Arab Monetary Fund, the European Bank for Reconstruction and Development, the European Investment Bank, the Islamic Development Bank, the International Finance Corporation, the International Monetary Fund, the OPEC Fund for International Development, and the World Bank, and the Organization for Economic Cooperation and Development.

<sup>14</sup> The Open Government Partnership (OGP) is a diverse coalition of governments who have pledged to embrace a set of high-level open government principles, pledge country-specific commitments for putting the principles into practice and invite civil society organizations to assess their individual and collective progress.

<sup>15</sup> *Media Note*, United States Mission to the OECD, May 23, 2012.

## Tax Havens, Anti-Corruption, and the OECD

The OECD also has addressed the issue of tax havens in various forms since it began in 1961. It issued its first convention on tax havens in 1963, with the *Draft Double Taxation on Income and Capital*. In 1977, the OECD issued its first major update of its Draft with the *Model Convention and Commentaries* to reflect the experience of OECD members with bilateral treaties, the increasingly sophisticated methods for tax evasion, and the development of new and more complex international business activities and relations. In 1991, the OECD again updated its tax convention to reflect the liberalization in capital markets and the globalization in business activities with the *Model Tax Convention on Income and Capital*, the forerunner to the current convention.

The United States, as an OECD member country, recognizes and abides by the provisions of the OECD model tax convention. Nevertheless, the United States has its own model income tax convention, last updated in 2006, which it uses to sign bilateral tax conventions with partner countries. Currently, the United States has signed bilateral tax treaties with nearly 70 other countries, including an income tax treaty with Malta that took effect in July 2010. According to the U.S. Department of the Treasury, the United States has reservations with the first 12 articles in the OECD model tax convention that deal with taxes on income. In general terms, the U.S. reservations focus on differences in the way the U.S. and OECD tax conventions identify certain terms and the way certain taxes are applied to various forms of income, such as royalties, certain types of deferred payments, taxes on branch profits, and state and local taxes.

Tax havens have attracted increased attention from policy makers as a result of new efforts to curtail the use of tax havens for tax avoidance, combined with efforts since the terrorist attacks of September 11, 2001, to track financial flows that may be diverted to illegal activities. Also, some policy makers are targeting tax havens as part of their efforts to increase government revenues during the current economic downturn and to improve the integrity of the financial system in the wake of the financial crisis. At the G-20 Summit meeting in London in April 2009, the G-20 leaders announced that they were adopting measures to curtail tax havens and to target “non-cooperative jurisdictions.” In particular, the Summit communiqué stated that the G-20 members, “stand ready to take agreed action against non-cooperative jurisdictions, including tax havens. We stand ready to deploy sanctions to protect our public finances and financial systems. The era of banking secrecy is over.”<sup>16</sup>

In addition, on May 4, 2009, President Obama announced a set of proposals to “crack down on illegal overseas tax evasion, close loopholes, and make it more profitable for companies to create jobs here in the United States.”<sup>17</sup> The Administration’s proposal reportedly was intended to ensure that the U.S. tax code did not “stack the deck against job creation” in the United States and that it reduced “the amount of taxes lost to tax havens.”

In addition, at the G-20 June 2010 summit in Toronto, the members declared that “corruption threatens the integrity of markets, undermines fair competition, distorts resource allocation, destroys public trust and undermines the rule of law,” and they established a working group to provide recommendations on actions the G-20 members could take to address tax havens and tax

<sup>16</sup> *Global Plan for Recovery and Reform; the Communiqué From the London Summit, G-20, April 2, 2009.*

<sup>17</sup> *Remarks by the President on International Tax Policy Reform, May 4, 2009.*

evasion.<sup>18</sup> At the November 2010 Seoul summit, leaders adopted the G-20 Anti-Corruption Action Plan<sup>19</sup> developed by the working group that provides a common approach to an effective global anti-corruption regime. The plan includes a group of standards that the G-20 members adopted, including the following.

1. Implementing the U.N. Convention Against Corruption.
2. Adopting and enforcing measures against bribery.
3. Preventing corrupt officials from accessing the global financial system and from laundering their proceeds of corruption.
4. Developing a cooperative framework to deny entry and safe haven to corrupt officials.
5. Strengthening international cooperation in the areas of extradition, mutual legal assistance, and asset recovery.
6. Adopting measures related to preventing and detecting transfers of the proceeds of crime, direct recovery of property, freezing and confiscating of property, and cooperation in voluntary disclosure and return and disposal of assets.
7. Implementing whistleblower protection rules by the end of 2012.
8. Strengthening the effective functioning of anti-corruption bodies or enforcement authorities in the prevention and fight against corruption and enable these authorities to carry out their function free from undue influence.
9. Promoting integrity, transparency, accountability, and the prevention of corruption in the public sector, including in the management of public finances.

On December 5, 2012, the OECD released its latest progress report on jurisdictions that have agreed to comply with the internationally agreed tax standard, which was adopted by the G-20 in 2004 and the United Nations in 2008.<sup>20</sup> In this latest version of the progress report, there are no jurisdictions that are listed as non-cooperative jurisdictions. The standard set by the G-20 is that a jurisdiction must sign agreements with at least 12 other jurisdictions to be considered to have substantially implemented the agreement.

According to the OECD, standards on transparency and exchange of information developed by the OECD were endorsed by all of the key countries, including jurisdictions which had opposed exchanging bank information. This standard has been universally accepted and endorsed by the United Nations, which has incorporated the OECD standard into the U.N. Model Tax Convention. In 2012, nearly 800 agreements had been signed by jurisdictions that previously had been identified by the OECD as not substantially implementing the standard.<sup>21</sup> In September 2009, the OECD restructured and strengthened the Global Forum on Transparency and Exchange of

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<sup>18</sup> *The G-20 Toronto Summit Declaration*, G-20, June 27, 2010, paragraph 40.

<sup>19</sup> G-20 Anti-Corruption Action Plan, Annex III, *The Seoul Summit Document*, G-20, November 2010.

<sup>20</sup> *A Progress Report on the Jurisdictions Surveyed by the OECD Global Forum in Implementing the Internationally Agreed Tax Standard*, the Organization for Economic Cooperation and Development, December 5, 2012.

<sup>21</sup> *Global Forum on Transparency and Exchange of Information for Tax Purposes: Progress Report to the G-20 Leaders: Global Forum Update on Effectiveness and On-going Monitoring*, the Organization for Economic Cooperation and Development, September, 2013, p. 2.

Information for Tax Purposes to “monitor and trigger effective exchange” of information.<sup>22</sup> The Global Forum is comprised of 119 members, including all G-20 members, all OECD countries, and all offshore jurisdictions. It has a three-year mandate to peer review all the members and other jurisdictions that may require special attention. By September 2013, the Forum had completed 113 reviews covering 98 jurisdictions. The peer reviews encompass two phases: Phase 1 reviewed the legal and regulatory frameworks, while Phase 2 assesses the practical implementation of the standard. The reports include recommendations to improve the situation in the reviewed jurisdictions.

In addition to the issue of tax havens, the OECD has worked to build international support for a set of standards for transparency and the exchange of information in tax matters. The principles of transparency and exchange of information are believed to be essential to ensure that economic activity is conducted in a fair and transparent manner by combating tax fraud and tax evasion. Both OECD and non-OECD countries jointly produced the 2002 *Model Agreement on Exchange of Information on Tax Matters*. The standards of transparency and exchange of information that comprise the basis for the Model Agreement on Exchange of Information on Tax Matters subsequently were adopted by the G-20 Finance Ministers in 2004 and by the U.N. Committee of Experts on International Cooperation in Tax Matters in October 2008. The standards are the same as those specified in Article 26 of the OECD’s Model Tax Convention.

## Base Erosion and Profit Shifting

The increased pace of globalization, or the global expanse of business operations through global value chains, direct investment, and capital flows, has raised concerns about gaps in tax rules and friction between countries over tax revenues, tax compliance, tax sovereignty, and tax fairness. While the data on the tax implications of globalization are not conclusive, various studies agree that global business activities apparently are eroding national tax bases through profit-sharing transactions across national borders, affecting governments, taxpayers, and other businesses. The OECD concluded that “current international tax standards may not have kept pace with global business practices,” particularly in the areas of trade in intangibles and the development of the digital economy.<sup>23</sup> Despite the advance of bilateral tax treaties and a broad international consensus on some general tax principles, the OECD contends there remain important gaps in national rules governing the taxation of cross-border activities and multinational corporations. Accordingly, gaps in national tax systems allow non-resident taxpayers to derive substantial profits from transacting with customers located in another country. As a result, the OECD argues that not only should nations adjust their laws and regulations to cover such issues as transfer pricing, the balance between source and residence taxation, and the tax treatment of intra-group financial transactions, but nations also should engage in a comprehensive, globally supported approach.

The digital economy, in particular, is challenging traditional standards of taxation as a result of gaps in national tax systems that lead to some types of activity either not being taxed, or taxed at very low rates. The OECD argues, however, that low tax rates, by themselves, are not the issue, but that the issue involves business practices that are designed specifically to separate taxable income from the activities that generate it. In addition, the OECD argues that it is important to

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<sup>22</sup> *Ibid.*

<sup>23</sup> *Addressing Base Erosion and Profit Shifting*, Organization for Economic Cooperation and Development, 2013, p. 7.

examine how enterprises of the digital economy add value and make their profits in order to determine whether and to what extent it may be necessary to adjust the current rules to account for the specific features of the industries that are involved and the extent to which they are shifting profits between tax jurisdictions.

As a result of these concerns, G-20 finance ministers directed the OECD to study the impact of globalization on the tax base of its members and to develop an action plan to assist governments in addressing the issue. Through its Committee on Fiscal Affairs, the OECD presented an action plan to the G-20 that was adopted by the G-20 at the September 2013 G-20 summit in St. Petersburg. The OECD's *Action Plan on Base Erosion and Profit Shifting* addresses base erosion and profit shifting by offering a coordinated and comprehensive approach.<sup>24</sup> The OECD's action plan is comprised of 15 items, including the following.

1. Address the tax challenges of the digital economy by identifying the main difficulties that the digital economy poses for the application of existing international tax rules and develop options to address these difficulties, including coordinating national rules.
2. Neutralize the effects of mismatches in international model tax conventions and national tax arrangements by developing model treaty provisions and recommendations regarding the design of domestic rules.
3. Strengthen rules regarding the deductibility of interest expenses and other financial payments.
4. Develop recommendations regarding best practices in the design of rules to limit base erosion through the use of interest expenses, transfer pricing, and other financial transactions.
5. Counter harmful tax practices by improving transparency and preferential tax regimes, including requiring substantial business activity for any preferential tax regime to more closely align the allocation of income with the economic activity that generates the income.
6. Develop model treaty provisions and recommendations regarding the design of domestic rules to prevent granting treaty benefits in inappropriate circumstances.
7. Develop changes to the definition of "permanent establishment" to prevent the artificial avoidance of taxation or profit shifting through transfer pricing and the enforcement of the arm's length principle and other financial transactions that separate income from the economic activities that produce that income and shift it into low-tax jurisdictions.
8. Develop rules to prevent base erosion and profit shifting by firms moving intangibles among their corporate group. This would include developing a broad and clearly delineated definition of intangibles.
9. Develop rules to prevent base erosion and profit shifting by firms transferring risks among or allocating excessive capital to members of their corporate group.
10. Develop rules to prevent base erosion and profit sharing by engaging in transactions which would not, or could only very rarely, occur between third

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<sup>24</sup> *Action Plan on Base Erosion and Profit Shifting*, Organization for Economic Cooperation and Development, 2013.

- parties, including transfer pricing, profit splits in the context of global value chains, and such tax base eroding payments as management fees and head office expenses.
11. Establish methodologies to collect and analyze data on the scale and economic impact of base erosion and profit shifting and ensure that there are tools available to monitor and evaluate the effectiveness and economic impact of the actions taken to address tax base erosion issues on a continuing basis.
  12. Develop recommendations regarding the design of mandatory disclosure rules for aggressive or abusive transactions, arrangements, or structures, considering the administrative costs for tax administrations and businesses and drawing on the experiences of the increasing number of countries that have such rules.
  13. Develop rules regarding transfer pricing documentation to enhance transparency for tax administration, taking into consideration the compliance costs for business.
  14. Make dispute resolution mechanisms more effective by removing obstacles that prevent countries from solving treaty-related disputes under mutual agreement programs (MAP), including the absence of arbitration provisions in most treaties.
  15. Develop solutions to address obstacles that prevent countries from solving treaty-related disputes under a mutual agreement procedure.

## Issues for Congress

Among some consumer groups, there is growing concern over the economic impact of globalization. At times, these concerns have spurred some groups to single out the OECD for criticism as a result of the OECD's leading role as a proponent of free trade, open markets, and globalization. Others, concerned over the size of the U.S. government budget deficit, question the value of the U.S. contribution to the OECD. Some critics contend that the OECD represents a danger to national sovereignty, because they claim it is one among a number of international bodies that exceeds the authority of national governments, yet is accountable to no one. Others view the OECD as an economic cartel dominated by the United States and serving mainly the economic and political interests of the United States.<sup>25</sup> These groups also argue that the OECD is pursuing free trade and open markets at the expense of the poorest and least developed countries; that the pursuit of free market economics worsens further the disparity of income between the richest and the poorest countries; and that the OECD is promoting the expansion of multinational corporations at the expense of national governments and national economic interests.

The OECD is the creation of its member countries and, therefore, reflects the interests and views of its members and is independent of any other international organization. As such, it contends that it has no hidden or independent agenda of its own, but that its agenda is set by its members. It also argues that free trade and open markets have proven to be the best route to economic development and to higher national incomes and that its members promote better understanding of the economic and social problems of developing countries. OECD members have also committed to make the benefits of free trade and open markets more accessible to developing

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<sup>25</sup> See *The OECD's Crocodile Tears* at <http://www.flyingfish.org.uk/articles/oecd/tears.htm>



economies. The United States plays a leading, but not a commanding, role within the OECD. This means that, at times, the United States carries a larger than average portion of the responsibility for determining the agenda of the OECD and in helping to direct the course of policy developments. This also means that the United States often is a target for criticism from groups that object to the policies or the performance of the OECD.

The United States plays an active role in the full array of OECD activities, including chairing 29 committees. In support of the needs of developed countries in the WTO negotiations, the OECD has pursued analytical research into the impact regional trade agreements are having on the multilateral trading system; the agricultural policies of OECD countries; the issue of labor mobility; the impact of barriers to trade in services; and the trade policy implications of changes in the structure of national economies. U.S. delegates actively participated in efforts to strengthen competition and antitrust policies within OECD countries, and to extend and strengthen the OECD's Anti-Bribery Convention. In addition, U.S. delegates have supported efforts within the OECD to review national regulatory reform efforts, because they argued that targeted regulatory reform, especially transparency, can benefit domestic and foreign stakeholders alike by improving the quality of regulation and enhancing market openness.

In 2002, U.S. delegates pressed for greater support for the OECD's Arrangement on Guidelines for Officially Supported Export Credits, which restricts the use of tied aid financing in promoting exports. They gained support in 2002 for a U.S. proposal to merge and update two agreements that banned tied aid in Central and Eastern Europe and key countries of the former Soviet Union, respectively, and formally incorporated the new agreement into the Arrangement. The United States also proposed applying the rules governing the use of tied aid to untied aid and a formal review of the use of "market windows," or quasi-government financial institutions that support national exports, but are not subject to multilateral rules. U.S. negotiators oppose the efforts by some OECD members to shift the issue of export credit controls to the World Trade Organization (WTO), because U.S. negotiators believe that a consensus favoring controls on export financing would be unlikely since the WTO forum would include those very developing countries that benefit the most from export credit subsidies.

U.S. delegates have also placed a high priority on international investment issues in the OECD. As part of the OECD's Declaration on International Investment and Multinational Enterprises, each OECD member has designated national contact points (NCPs), or the government agencies designated by each country to monitor implementation of the Guidelines within their territory. The U.S. national contact point is the Director of the Office of Investment Affairs, the Department of State. The United States also pressed for and contributed to a working paper on the general treatment and expropriation obligations in international investment agreements in order to clarify the content of those obligations for arbitrators, investors, and the international community. U.S. efforts also focused on the OECD's High Level Process on Steel to address overcapacity in the global steel market and any market-distorting practices that contribute to excessive and inefficient steel capacity. In December 2002, participants agreed to develop the elements of an agreement for reducing or eliminating trade-distorting subsidies in steel and to explore developing a voluntary commitment to refrain from introducing new subsidy programs that may maintain or enhance steel capacity. The United States also supported efforts to establish a joint trade capacity building database to assist trade negotiators from developing countries.

Another area of concern for U.S. delegates has been the issue of tax havens. During the last half of the 1990s, the OECD member countries initiated efforts to curtail the use of tax havens for illicit tax purposes. The OECD member countries defined tax havens as attempts to attract foreign

investment in financial and other mobile services by providing preferential tax treatment to such investment through a regime that excludes local residents from benefitting from the regime or that limits access to the local market, thereby protecting the local market from foreign competition, coupled with a lack of transparency and a lack of effective exchange of information for tax purposes. OECD member countries initiated these efforts because they were concerned that certain kinds of tax competition for internationally mobile capital were anticompetitive. This project has evolved over time. The main focus now has shifted to improving the transparency of tax and regulatory regimes and to establishing effective exchange of information for tax purposes. U.S. delegates led the efforts to refocus the project on advancing the long-standing policy of promoting the exchange of information for tax purposes.

The issues of bribery and tax havens have been major concerns among the OECD's members and have prompted certain changes in U.S. laws. International flows of capital and goods and services around the world, a phenomenon referred to as globalization, have grown dramatically over the last decade and are producing significant challenges for the OECD member countries, including the United States. International flows of capital are the prime mover behind exchange rates and global flows of goods and services, and represent the heightened growth of foreign investment and cross-border business transactions. One outcome of this global expansion of business transactions, however, has been the increased use by multinational corporations and nations of voluntary, legally enforceable, and industry-specific codes of conduct. One such code promoted by the OECD is the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which focuses on a set of issues related to the bribing of public officials.<sup>26</sup> Since the Convention entered into force on February 15, 1999, 39 countries, including the United States,<sup>27</sup> have passed national legislation implementing the Convention. The U.S. delegates also pushed to have the OECD update its landmark 1998 study on counterfeiting and piracy to determine the extent and current impact of these activities and to improve law enforcement efforts among OECD countries.

Since the terrorist attacks of September 11, 2001, the Financial Action Task Force on Money Laundering (FATF), a body housed within the OECD, has pursued improvements in the anti-money laundering mechanisms in tax havens and among its own member countries, redirecting its efforts to focus on terrorist financing. On October 31, 2001, the FATF revised its Forty Recommendations for combating money laundering and issued a new set of guidelines and a set of nine Special Recommendations on terrorist financing<sup>28</sup> (updated in 2004). In the accompanying statement, the FATF indicated that it had broadened its mission beyond the issue of money laundering to focus on combating terrorist financing and that it was encouraging all countries to abide by the new set of guidelines.

On February 15, 2012, the FATF members adopted a revised and updated set of the FATF Forty Recommendations,<sup>29</sup> which added the proliferation of financing of weapons of mass destruction to FATF's areas of surveillance and updated and extended the FATF's mandate through 2020.<sup>30</sup>

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<sup>26</sup> *Convention on combating Bribery of Foreign Public Officials in International Business Transactions and Related Documents*, Organization for Economic Cooperation and Development, 2011.

<sup>27</sup> P.L. 105-366, November 10, 1998.

<sup>28</sup> *FATF Cracks Down on Terrorist Financing*. Washington, FATF, October 31, 2001, p. 1.

<sup>29</sup> *The FATF Recommendations: International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, Financial Action Task Force, February 2012.

<sup>30</sup> *Financial Action Task Force Mandate (2012-2020)*, Financial Action Task Force, April 20, 2012.

The new mandate is intended to (1) deepen global surveillance of evolving criminal and terrorist threats; (2) build a stronger, practical, and ongoing partnership with the private sector; and (3) support global efforts to raise standards, especially in low capacity countries. In addition, the revised recommendations address new and emerging threats, while clarifying and strengthening many of the existing obligations. In addition, the new standards address the challenge of terrorist financing by integrating standards for combating terrorist financing throughout the Recommendations, thereby eliminating the need for the nine Special Recommendations. On April 20, 2012, the FATF members adopted a new mandate for the FATF and renewed FATF's mandate through December 31, 2020.

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