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THE G20 LEADERS' DECLARATION

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The G20 met in St Petersburg on 5-6 of September 2013 and one of the items on the agenda was tax and, more particularly, the work of the OECD on tax transparency and base erosion and profit shifting (BEPS). On 19 July 2013, the OECD published its BEPS Action Plan on Base Erosion and Profit Shifting (the Action Plan). The Action Plan was commissioned by the G20 and, indeed, the G20 Finance Ministers endorsed it unanimously at their meeting in Moscow the following day. In preparation for the St Petersburg forum, the OECD provided the G20 leaders with a progress report on the work being done by the Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) and the Action Plan. The fruit of the G20 meeting was the G20 Leaders' Declaration (the Declaration), published on 6 September, which included a section on tax (at paragraphs 50-52).

The Declaration endorses the "ambitious and comprehensive" Action Plan and calls upon the G20 members to examine their domestic laws and to assess how they contribute to BEPS. Individual countries must seek to address any problems domestically, but in order to ensure that this is done on a coherent and consistent basis between jurisdictions, there needs to be an agreed overriding blueprint which countries can conform with. However, reaching international consensus will not happen overnight and leaders will not want this to delay domestic measures.

The Declaration endorses tax transparency and information exchange and calls on work to continue towards full international information exchange, primarily by encouraging all countries to sign up to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (which has been signed by all G20 members, and more than 50 countries in total have signed or indicated their intention to sign). The importance of confidentiality and proper use of any information is noted. This has been one of the key concerns raised by businesses and will need to be dealt with satisfactorily if their support is to be gained. The G20 aims to have full automatic information exchange between G20 members by the end of 2015.

The OECD has been criticised in the past for not paying enough attention to the interests of developing countries. The Declaration addresses the issue of how to involve developing countries and ensure that they too benefit from increased information exchange. It calls upon the Development Working Group, the Finance Track, the Global Forum and other international organisations to work with the OECD to produce a roadmap showing how developing countries can overcome obstacles to participation in the new standard of information exchange. The G20 states its intention to share expertise, help build capacity and create long-term partnerships to achieve success, and also endorses the OECD's Tax Inspectors Without Borders initiative. There is no reference to the UN specifically but, as the international body with the largest and most varied representation, it would seem like a possible starting point to represent developing countries in this process.

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The Declaration illustrates the growing political momentum for change, but the main challenges of implementation and reaching a global consensus on tax reforms still lie ahead, in what could be a lengthy and complex process. The progress being made with global transparency and information exchange highlights how the world has changed. Not long ago, tax authorities were required to maintain tax payer confidentiality save for exceptional circumstances. These restrictions extended to other government bodies, and in certain jurisdictions the tax payer could seek legal remedy where these duties were breached. The perceived erosion of tax bases in G20 jurisdictions, together with public's misunderstanding of technical cross border tax issues, has pushed political momentum towards a global regime of information exchange.

Political momentum is to be welcomed where the policy objectives are fair and clear, but the bigger issues are yet to be addressed. For example, one of the OECD's primary aims through the Action Plan is to prevent double non-taxation. It is simple to say that in a bilateral transaction with funds moving between parties, it is not right that those funds are not taxed anywhere. Coming up with a workable solution as to where tax should in fact be imposed is not so simple, particularly in multilateral scenarios. In order to achieve global symmetry of tax treatment, global agreement will be required as to how to determine what the correct location to impose tax is in any given situation. A new system for assessing cross border taxation may be required, but the Action Plan does not consider alternatives, such as formulary apportionment or destination-based tax. These systems may not provide the answer, but widening the debate to consider them (and other alternatives) may provide further discussion and insight which does lead to a solution. The uncertainty is also not welcome, particularly as the global economy limps out of recession.

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