

# The OECD's Harmful Tax Practices Initiative -

Seven and a half years after the publication of  
"Tax Haven" list.

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# AGENDA

- I. Background overview of the Harmful Tax Practices initiative
- II. The standards for information exchange and transparency in tax matters
- III. The Level Playing Field Reports
- IV. Where are we now and next steps?????

I.

# Background overview

## In summary -

- **1990s** – the seeds of the “harmful tax competition” initiative within the EU and the OECD.
- **2000-2003** – getting OECD countries and the tax haven jurisdictions to cooperate with the initiative.
- **2003-2005** - working to establish a level playing field for OECD and non-OECD countries/jurisdictions

## The 1990s

- **1997 - EU agrees a non-binding Code of Conduct on Business Taxation intended to eliminate harmful tax competition between member states and their dependent and associated territories. Agree also to engage with third countries on this matter.**
- **1998 OECD Report - Harmful Tax Competition: An Emerging Global Issue. This report sets out the criteria for determining a harmful preferential tax regime in OECD countries and a tax haven.**

# OECD Criteria for “Tax Havens” and “Harmful Preferential Tax Regimes”

**(1) The main factors for being a tax haven are a) no or only nominal effective tax rates; b) lack of effective exchange of information; c) lack of transparency; and d) absence of a requirement of substantial activities.”**

**(2) The main factors of a harmful preferential tax regime have the following, “a) no or low effective tax rates; b) ‘ring fencing’ of regimes; c) lack of transparency; and d) lack of effective exchange of information.”**

## 2000-2002

- **2000** Report identifying “tax havens” and “harmful tax regimes” based on the criteria contained in the 1998 Report. OECD also sought commitments from tax havens to exchange of information and transparency standards. Majority of commitments conditional on the implementation of a global level playing field.
- **2002**
  - Report – listing non-cooperative jurisdictions i.e. those that failed to give a commitment to the OECD.
  - establishment of the Joint Ad Hoc Group on Accounts (JAHGA).
  - Release of OECD Model Exchange of Information Agreement

## 2003-2005

- **2003**
  - Report on Access to Bank Information
  - Ottawa Global Forum agrees to the establishment of the Level Playing Field Sub-Group to look into how this could be achieved.
- **2004** - Berlin Global Forum Report – defined the global level playing field and asked the Sub-Group to produce a report to determine how level the playing field was.
- **2005** - Melbourne Global Forum – acceptance of the LPF Report

## II.

The standards for information exchange and transparency in tax matters

# Key principles of transparency and information exchange for tax purposes\*

- Existence of mechanisms for EOI upon request
- EOI for purposes of domestic tax law in both criminal and civil matters.
- No restrictions of information exchange caused by application of dual criminality principle or domestic tax interest requirement
- Respect for safeguards and limitations
- Strict confidentiality rules for information exchanged
- Availability of reliable information (in particular bank, ownership, identity and accounting information) and powers to obtain and provide such information in response to a specific request.

\* *p.14 of the 2006 Level Playing Field Report.*

# Standard Models for information exchange

- **OECD**

- 2002 EOI Agreement Model
- Art. 26 OECD Model DTC
- Joint OECD/CoE Mutual Legal Assistance in Administrative Tax Matters.

- **UN**

- Art. 26 UN Model Convention between Developed and Developing Countries

## Standards for transparency

- OECD paras. 19 -28 of 2006 LPF Report
  - Access to bank information for EOI
  - Access to ownership, identity and accounting information
  - Availability of ownership, identity and accounting information.
- FATF recommendations 5,33 and 34
- EU Third Money Laundering Directive – member states have until 31<sup>st</sup> December 2007 to implement this.

### **FATF Recommendation 33**

Countries should take measures to prevent the unlawful use of legal persons by money launderers. Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. In particular, countries that have legal persons that are able to issue bearer shares should take appropriate measures to ensure that they are not misused for money laundering and be able to demonstrate the adequacy of those measures. Countries could consider measures to facilitate access to beneficial ownership and control information to financial institutions undertaking the requirements set out in [Recommendation 5](#).

### **FATF Recommendation 34**

Countries should take measures to prevent the unlawful use of legal arrangements by money launderers. In particular, countries should ensure that there is adequate, accurate and timely information on express trusts, including information on the settlor, trustee and beneficiaries, that can be obtained or accessed in a timely fashion by competent authorities. Countries could consider measures to facilitate access to beneficial ownership and control information to financial institutions undertaking the requirements set out in [Recommendation 5](#).

II.

# The Level Playing Field Reports

## 2006 - 2007

- The Level Playing Field Report (renditions 1 & 2) – 82 jurisdictions were surveyed regarding their respective EOI and transparency laws.
- US GAO Report – transparency standards in the US. This Report showed that minimal ownership information for company formations is collected or available.
- Assessing the Level Playing Field – ITIO/ComSec Report (A critical review of the 2006 LPF Report, looking at selected countries).
- FATF MER of major OECD countries. (U.S. & Australia)

IV.

Where are we and next  
steps??????

# OECD Process

OECD Press release 12/10/07 -

“Significant restrictions on access to bank information for tax purposes remain in three OECD countries (Austria, Luxembourg and Switzerland) and in a number of offshore financial centres (e.g Cyprus, Liechtenstein, Panama and Singapore). Moreover, a number of offshore financial centres that committed to implement standards on transparency and the effective exchange of information standards developed by the OECD’s Global Forum on Taxation have failed to do so.”

Paolo Ciocca, Chair, Committee on Fiscal Affairs on the release of the 2007 LPF Report:

“.....a number of jurisdictions still have not implemented the standards for transparency and exchange of information developed by the Global Forum. “The time has come for countries that have not yet done so to implement them,” Mr. Ciocca said. “In January 2008 the Committee on Fiscal Affairs will have a review of the future direction of this initiative. We will continue to press for further progress and explore within the Committee how such progress could be achieved.”

## Independent action for cross-border tax cooperation by OECD Member States

- (1) EU** - 2004 the EU adopted a Communication on Preventing and Combating Financial and Corporate Malpractice which provides a strategy for co-ordinated action in the financial services, company law, accounting, tax, supervision and enforcement areas, to reduce the risk of financial malpractice. In the tax field, the EU is seeking more transparency and information exchange in the company tax area to better able to deal with complex corporate structures. More coherence of EU policies concerning offshore financial centres is also being pursued, with the aim of encouraging these jurisdictions to move towards transparency and effective exchange of information.

**(2) Canada – 2007 Anti -Tax haven Initiative, which will amongst other things, “prevent multinational corporations from using tax havens and other tax avoidance structures to generate two expense deductions for only one investment, so-called "double dipping".**

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