



## REMARKS

by

Senator the Hon.  
James H. Smith  
Minister of State for Finance

Society of Trust and Estate  
Practitioners  
Monthly Meeting  
At  
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5:00 PM

***Mr. President and Members of STEP,  
Distinguished ladies and Gentlemen:***

*The OECD Melbourne Global Forum was the fourth such event held since The Bahamas became a participant, following the execution of a conditional commitment to the OECD in March of 2002.*

*Your invitation to me to report on the Melbourne Meeting is much appreciated and I should like to take this opportunity to give a brief historical review of the Forum within the context of the OECD's harmful Tax Initiative.*

*The Global Forum Meetings are held on an annual basis and typically bring together equal numbers of OECD countries and non-OECD jurisdictions to discuss*

*and consider issues on tax information exchange. The latter group i.e. the non-OECD jurisdictions, consists of those jurisdictions that provided commitments in response to the 2000 name-and-shame list of tax havens released by the OECD, and which are now referred to as Participating Partners.*

*The OECD, I am told, has several Global Fora, and each forum is essentially the mechanism the organization relies on to interact with non-OECD jurisdictions. The Global Forum with which we are concerned is the one dealing with the Harmful Tax Practices initiative stemming from the OECD Reports of 1998 on Harmful Tax Competition and the*

*follow-up Report of 2000, that produced the so-called "blacklist". Apart from political representation by the various EU member dependent territories, the Global Forum is fundamentally a meeting of technocrats consisting of OECD member tax administrators, OECD secretariat for its Committee on Fiscal Affairs, and other technical representatives from non-OECD participants.*

*The shape of the Global Forum has changed over the years starting off with only those non-OECD members that originally committed prior to the release of the 2000 Report. The size of the Global Forum increased dramatically in 2002 as more of the jurisdictions*

*appearing on the 2000 list gave commitments. It is important to note however, that those commitments were given on the basis that the OECD would deliver a level playing field as regards the standards for information exchange it had been advocating.*

*It should also be noted that before the Melbourne Global Forum, all prior Global Fora only permitted participation by non-OECD jurisdictions that had provided commitments. The Melbourne Global Forum was different as it was the first Forum in which other countries and jurisdictions (both OECD and non-OECD) were invited to participate in discussions, without first being*

*required to give commitments. In that regard, you may recall that several OECD members, most notably, Switzerland, Austria, Luxembourg and Belgium had opted out of the Harmful Tax project at varying stages since it began. Nevertheless, an invitation was extended to those member countries to attend the Melbourne Global Forum. It now appears that the invitation was only accepted by Switzerland and Austria. Invitations were also extended to non-OECD countries remaining on the OECD's 2001 blacklist and other so-called "significant financial centers", such as Singapore, Malaysia, Hong Kong, Barbados. The decision to open the Global Forum to countries that had not previously*

*committed to the OECD process on transparency and information exchange was taken at the Berlin Global Forum in 2004, at which time it was agreed that the Global Forum had to be a more inclusive body in order to meet the objectives of a level playing field; this is the position The Bahamas has taken throughout this process.*

*At the Melbourne Global Forum, the meeting received a status update on the template review process. That process is being carried out by a Sub-Group on the Level Playing Field that was appointed at the Ottawa Global Forum in 2003. The members of the Sub-Group are: Australia, The Bahamas, Cayman Islands,*

*France, Germany, Italy, Ireland, United States, Japan, Jersey, Isle of Man, St. Kitts and Nevis, Mauritius, Samoa and Seychelles. The sub-group has been meeting periodically over the past two years for the purpose of carrying out its work, i.e. to examine how a level playing field can be implemented. It should also be noted that the Commonwealth Secretariat sits as an observer in the Sub-Group Meetings.*

*The template review process was an interesting exercise. It involved the collection of data from eighty-one (81) countries regarding their transparency and exchange of information practices and legal frameworks. This information*



*is intended to provide a factual analysis of exactly how level the playing field is in these areas. It is proposed that a Report, summarizing the information in the templates and accompanied by tables on key areas, such as maintenance of beneficial ownership information and accounting information for various types of legal structures, will be completed by the second quarter of 2006.*

*Interestingly, preliminary indications are that many practices for which OFCs have been cited for deficiencies abound in OECD countries. Good examples of this are the proliferation of bearer shares and the failure to meet the same high standards for anti-money laundering as*

*are generally found in place in OFCs. The final Report will no doubt provide a wealth of information about the unevenness of the playing field which at present appears to be tipped heavily in favour of OECD members and non-Member economies that were not named in any of the listing exercises. In other words, it is becoming increasingly difficult for the OECD to maintain its 'holier than thou' status.*

*I should also mention that two of the more positive outcomes of the Melbourne Global Forum are as follows:*

- First, the acknowledgement by the OECD that its 2000 list should not be*

*relied upon to discriminate against jurisdictions appearing on the list, and that any list should be based on current facts. This arose from concerns repeatedly expressed to the OECD that its 2000 list was being used against jurisdictions appearing on the list even though many would have effected improvements to their regulatory frameworks since that time, and have also been engaged with the OECD in discussions.*

- *Second the important outcome at the meeting was the re-affirmation that exchange of information arrangements need not only take effect through a Tax Information Exchange Agreement*

*but may also occur through a Double Tax Agreement, depending on the mutual interests of the parties.*

*At the Forum the majority of countries that contributed to the debate expressed their preference for Double Taxation agreements as the means by which to provide arrangements for information exchange.*

*It is worth mentioning here, that the OECD has been asked to reconcile the more lenient provisions of the relevant article on information exchange under its Model Double Tax Treaty (Article 26) in use in most member states and the Model Exchange of Information Agreement*

*which it has proposed for adoption by countries that do not use the double taxation treaty route. In this connection, it is important to note that the double taxation agreement that is used to facilitate trade, by removing the possibility for taxing a business twice, essentially restricts its main focus to mutual assistance within the context of the treaty that would facilitate the purpose of the treaty. The Model Exchange of Information on the other hand, simply calls for the provision of information for the purposes of assisting with tax administration and enforcement generally. To be sure however, the OECD has encouraged contracting states to*

*take account of mutual interests and benefits as part of arrangements for tax information exchange.*

*Another inconsistency noted was that the override of bank secrecy for exchange of tax information, is not universally accepted within the OECD. This would of course, have significant implications for the achievement of a level playing field.*

*I should now like to take this opportunity to make mention of another engagement, at a higher level, which The Bahamas has recently engaged in relation to examining standards for international cooperation in tax matters. The Legal*

*Advisor at the Ministry of Finance, Mrs. Rowena Bethel, has been appointed to the United Nations Committee of Experts on International Cooperation in Tax Matters. This committee held its first meeting in Geneva last week and has established a Working committee on Exchange of Information. That committee's mandate is to look at proposed changes to the relevant exchange of information provision under the United Nations Model Double Taxation Convention between developed and developing countries; and to review the state of tax information exchange work carried out by other international organizations (including the work carried out by the OECD). The other*

*members of the working committee are the experts from: Spain, United States, Switzerland, Qatar and the Russian Federation.*

*Both Fora, the OECD and the UN will keep us abreast of crucial developments in this area. As a major international business center, it is important that we maintain an awareness of global developments that may impact our services industry. The government is committed to sustainable growth in financial services through improving the competitive positioning of The Bahamas, and the refinement of the regulatory framework. We believe that external engagements are an important aspect of*



*these enhancements (though we also believe that such engagements must be on a fair and even basis) and will continue to work towards expanding our knowledge base while at the same time, providing relevant input in the international decision-making process which affect the affairs of this country.*

*Once again, let me express my gratitude to STEP for permitting me to share these thoughts with you.*

*Thank you.*

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