

## **Draft Conclusions and Next Steps: A Proposal by the Sub-Group on Level Playing Field Issues<sup>1</sup> for Discussion at the Melbourne Global Forum Meeting**

The agenda for the upcoming Global Forum meeting contemplates a discussion of the factual report which summarises the information gathered through the template/questionnaire process and consideration of the next steps in the Global Forum's work. The Sub-Group on Level Playing Field Issues has developed this draft as a means of facilitating the discussion of possible next steps at the Global Forum meeting in November. The draft is not intended to pre-empt the discussions in Melbourne and is subject to the deliberations and conclusions of the Global Forum.

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<sup>1</sup> The Sub-Group members that developed this draft are: Australia, The Bahamas, the Cayman Islands, France, Germany, Isle of Man, Italy, Japan, Jersey, Mauritius, Panama, Saint Kitts and Nevis, Samoa, the Seychelles and the United States.

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### **A. Introduction and Background**

1. On 15-16 November 2005, Australia hosted the fourth meeting of the OECD Global Forum on Taxation to discuss the importance of achieving a global level playing field<sup>2i</sup> in respect of improving transparency and effective exchange of information in the tax area. Over [ ] representatives from [ ] governments met in Melbourne to review progress towards a level playing field in these areas. The meeting was chaired by Mr. Papali'i Tommy Scanlan, Governor of the Central Bank of Samoa, and Bill McCloskey, Chair of the OECD's Committee on Fiscal Affairs. The Honourable Peter Costello, MP, Treasurer of the Commonwealth of Australia, opened the meeting.

2. The purpose of the Melbourne meeting was to review implementation of the process agreed at the Global Forum meeting held in Berlin in June 2004 for working towards a global level playing field based on high standards of transparency and effective exchange of information in tax matters. Two key aspects of this process were to invite other significant financial centres to participate in the dialogue and to carry out a review of countries'<sup>3</sup> legal and administrative frameworks in the areas of transparency and exchange of information in tax matters. A draft report of the results of the review was circulated to all participants and formed the basis of the Global Forum's discussions (hereafter referred to as the "Report").

3. The Melbourne Global Forum welcomed representatives from a number of countries that had not previously participated in the Global Forum's dialogue on transparency and exchange of information in tax matters. Representatives from [ ] joined other OECD and non-OECD countries in the review of the Report and in the discussions on how to achieve the high standards on transparency and effective exchange of information that the Global Forum wishes to see achieved.

### **B. The Review of Countries' Legal and Administrative Frameworks**

4. The review of countries' legal and administrative frameworks initiated at the 2004 Berlin Global Forum meeting and the discussions at the Melbourne meeting reveal that progress is being made towards a

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<sup>2</sup> The global level playing field concept, features and role is defined in paragraph 6 of the Berlin Report as follows:

**A) CONCEPT:**

*The level playing field is fundamentally about fairness to which all parties in the Global Forum are committed.*

*In the context of exchange of information achieving a level playing field means the convergence of existing practices to the same high standards for effective exchange of information on both criminal and civil taxation matters within an acceptable timeline for implementation with the aim of achieving equity and fair competition.*

**B) FEATURES:**

*Will provide for –*

- i) inclusive process*
- ii) mutual benefits through bilateral implementation*
- iii) a consistent and rigorous approach to any failure to implement*
- iv) review and verification mechanisms*
- v) the standard and the timeline.*

**C) ROLE:**

*The level playing field serves as a goal.*

*Achieving a level playing field in respect of exchange of information requires that all jurisdictions, OECD and non-OECD members, should act in a manner consistent with the concept in their bilateral relationships and more broadly.*

<sup>3</sup> References in this document to "countries" should be taken to apply equally to "territories" or "jurisdictions".

level playing field in the areas of transparency and effective exchange of information in tax matters. The Report indicates that:

- [80] of the countries reviewed reported having legal mechanisms in place to permit the exchange of information in criminal tax matters in certain circumstances.
- [65] of the countries reviewed have legal mechanisms in place that permit the exchange of information for both criminal and civil tax matters.
- Of the countries that are able to exchange information for both civil and criminal tax purposes, the vast majority do not require a domestic tax interest to obtain and respond to a request for information.
- [73] of the countries reviewed are able to obtain and provide banking information in response to a request for information related to a criminal tax matter in some or all cases.
- [53] of the countries reviewed are able to obtain and provide banking information in response to a request for information related to a civil tax matter in some or all cases.
- All countries that are able to exchange information reported having safeguards in place to protect the confidentiality of any information exchanged.
- [74] of the countries reviewed reported that ownership information is available for companies and [45] countries reported it was available with respect to partnerships. In most cases, legal ownership information is available. Beneficial ownership information is available in an increasing number of countries.
- [74] of the countries reviewed require accounting information to be maintained by or for companies. Of the [53] countries that have trust law, [43] require trusts to keep accounting records.

5. The review showed that both OECD and non-OECD countries have implemented or made considerable progress towards implementing many of the transparency and effective exchange of information standards that the Global Forum wishes to see achieved. There is no longer any OECD country where a domestic tax interest, of itself, is an impediment to exchange of information. A growing number of non-OECD economies are negotiating agreements that provide for exchange of information (e.g., Aruba, Bahrain, British Virgin Islands, Cayman Islands, Guernsey, Jersey, Isle of Man), many countries have improved transparency by implementing the FATF customer due diligence requirements and several countries have recently required bearer shares to be immobilised or held by an approved custodian (e.g., the British Virgin Islands, the Cook Islands, Saint Kitts & Nevis). The Global Forum welcomes these developments but further progress is needed if a global level playing field is to be achieved. The remainder of this note discusses possible next steps in the Global Forum's work.

### C. Next Steps

6. It may be useful to consider the next steps in terms of the categories of actions that formed the basis of the process established in Berlin. The process endorsed at the Berlin Global Forum meeting recognised that integrated individual, bilateral and collective actions would be needed both to achieve and to maintain the goal of a level playing field.

#### (i) Individual actions

7. In terms of *individual actions*, the Berlin Report referred to the fact that some countries may need to modify some existing laws and practices to fully implement the principles of transparency and effective exchange of information in tax matters. Despite the progress referred to in the previous section, further actions at the individual country level remain necessary.

8. The Global Forum recognised that countries will not be able to move simultaneously to make the necessary changes due to differences in legal systems and in the issues – political, economic and

institutional -- that different countries would need to address. Nevertheless, all countries are strongly encouraged to take the necessary steps towards a level playing field. In particular:

(i) Further progress is required in some countries to address the constraints placed on international co-operation to counter criminal tax abuses. In today's global environment it is important for all countries to co-operate with other countries in the fight against all financial crimes, including tax crimes, and that this requires the implementation of transparency and the establishment of effective exchange of information mechanisms. The small number of countries that have such constraints on their ability to co-operate in fighting tax crimes are encouraged to review their current policies and to report the outcome of their review at the next Global Forum meeting.

(ii) Further progress is required to address those instances where countries require a domestic tax interest to obtain and provide information in response to a specific request for information related to a tax matter. Those countries where this is still a requirement are encouraged to review their current policies on this issue and to report the outcome of their review at the next Global Forum meeting.

(iii) Further progress is required in the area of access to bank information for tax purposes. Although [most] countries reported being able to obtain such information for criminal tax matters, [a number of] countries continue to have strict limits on access to bank information which excessively constrain their ability to respond to specific requests for information in civil and criminal tax cases. Those countries are encouraged to review their current policies on this issue and to report the outcome of their review at the next Global Forum meeting

(iv) Further progress is required in some countries to ensure that competent authorities have appropriate powers to obtain information for civil and criminal tax purposes. Although the [majority] of countries have such powers some countries reported limitations on the use of their information-gathering powers to the onshore sector or otherwise lack the power to obtain information for exchange of information purposes. Those countries are encouraged to review their current policies and to report the outcome of their review at the next Global Forum meeting.

(v) Most countries have access to legal ownership information of companies, trusts, partnerships, foundations and other organisational structures. Beneficial ownership information is available in a far fewer, but an increasing, number of countries. Further improvement is necessary. A large number of countries still allow bearer shares. In some countries the availability of ownership information is further complicated by the fact that responsibility for corporate law is in the hands of political sub-divisions. Progress in this area is expected to be assisted by countries' implementation of Recommendations 5, 33 and 34 of the FATF Recommendations and other international initiatives (e.g. EU Second and Third Money Laundering Directives<sup>4</sup>). Countries are encouraged to review their current policies, including those of political subdivisions, if relevant, and to report the outcome of their review at the next Global Forum meeting.

(vi) Most countries reviewed reported requiring the keeping of accounts by companies and partnerships. However, certain exceptions to this requirement exist, notably in the context of some international company regimes. Those countries that do not require the keeping of accounting records for international company regimes are encouraged to review their current policies and to report the outcome of their review at the next Global Forum meeting.

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<sup>4</sup> The EU Second Money Laundering Directive has been transposed into the domestic law of all EU Member States. The EU Third Money Laundering Directive has been adopted by the Council of Economic and Finance Ministers but has not yet been transposed into the domestic law of the Member States.

9. The Berlin Report also referred to the important role that individual countries can play in encouraging other countries to implement the principles, including through the use of “other organisations to which they belong, fora in which they participate, and communications with their business communities to encourage the adoption of these practices”. Over the last year, several countries did use their participation in other organisations and groups to promote the implementation of the principles of transparency and effective exchange of information. In July 2005, the G-8 Heads of Government endorsed at the Gleneagles Summit the work on transparency and exchange of information and encouraged all countries to implement those principles<sup>5</sup>. The G-20 Finance Ministers and Central Bank Governors issued a statement on 21 November 2004 committing themselves “to the high standards of transparency and exchange of information for tax purposes that have been reflected in the Model Agreement on Exchange of Information on Tax Matters” and “call[ed] on all countries to adopt these standards.” They further “strongly support[ed] the efforts of the OECD Global Forum on Taxation to promote high standards of transparency and exchange of information for tax purposes and to provide a cooperative forum in which all countries can work towards the establishment of a level playing field based on these standards.”<sup>6</sup> Further actions by such groupings and in other fora could help foster progress towards a level playing field.

10. The Berlin Report also suggested that countries should develop and implement communications strategies aimed at promoting the principles of transparency and exchange of information for tax purposes to their business communities. Members of the Global Forum have participated in numerous events organised by the financial community and this has helped to promote a better understanding of the objectives of the Global Forum. Ensuring that business understands the objectives of the Global Forum’s work and the importance of transparency and effective exchange of information in an increasingly globalised world will make the implementation of these principles more politically acceptable.

11. Public awareness campaigns are also important in efforts to improve taxpayer compliance. Voluntary compliance with the tax laws is often influenced by the public’s perceptions of overall compliance. Until all countries adopt and implement the high standards of transparency and effective exchange of information, there will continue to be a risk that the public will perceive that secure tax evasion opportunities exist abroad. Individual countries can counter such perceptions by publicising their efforts to pursue taxpayers that fail to comply with their tax obligations in their countries of residence by abusing the anonymity offered by some countries. Countries should also publicise that they are entering into bilateral agreements to be able to obtain the information necessary to ensure compliance with the tax laws by all taxpayers.

12. Individual countries can also pursue acceptance of the principles of transparency and exchange of information by not marketing themselves as places where anonymity from foreign tax authorities is assured and by countering attempts at such marketing or the promotion of structures or arrangements that rely upon anonymity to avoid tax obligations.

#### (ii) Bilateral actions

13. In terms of *bilateral actions*, the Berlin Report highlighted that the principle of effective exchange of information for civil and criminal tax matters will generally be implemented through a process of bilateral negotiations. The Berlin Report acknowledged that “[i]t would be ideal if all significant financial

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<sup>5</sup> See paragraph 14(i) of The Gleneagles Communiqué on Africa, July 14.

<sup>6</sup> The members of the G-20 are the finance ministers and central bank governors of 19 countries: Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Korea, Mexico, Russia, Saudi-Arabia, South Africa, Turkey, the United Kingdom and the United States. Another member is the European Union, represented by the Council presidency and the President of the European Central Bank. The managing director of the IMF and the president of the World Bank, plus the chairpersons of the International Monetary and Financial Committee and Development Committee of the IMF and World Bank, also participate in the talks as ex-officio members.

centres would agree to and implement high standards of information exchange at the same time and manner” but recognised that because exchange of information is generally implemented on a bilateral basis, there would be some timing differences in implementation. The global level playing field concept as defined in the Berlin Report does, however, incorporate the expectation that bilateral implementation of those standards should be achieved within an acceptable timeframe and not be open-ended so as to ensure fairness and equity of the process.

14. The Berlin Report pointed out that the bilateral “process permits the contracting parties to take account of the totality of their bilateral relations, their respective legal systems and practices, and their mutual economic interests.” The Berlin Report encouraged all countries to strive to achieve effective exchange of information and transparency by 2006 but recognised that countries could adapt their bilateral arrangements to suit their specific needs and mutual interests.

15. The review of countries’ legal and administrative frameworks has shown that the vast majority of countries are already in a position to exchange information in cases of tax crimes. It is important for all countries to participate in the fight against all financial crimes, including tax crimes, and those countries that are not yet able to do so are encouraged to enter into bilateral arrangements for exchanging information with other countries to combat tax crimes. Those countries that currently are able to provide such assistance are encouraged to review their current legal and administrative frameworks with a view to ensuring the widest possible co-operation among countries to combat tax crimes.

16. The review revealed that [many, most] countries reviewed also have laws and legal instruments in place that would enable effective exchange of information for criminal and civil tax purposes. Progress in bilateral negotiations has been made recently by some countries and others are in the process of such negotiations.

17. The Global Forum notes that since the Cayman Islands meeting in 2002, [3] new bilateral tax information exchange agreements have been signed and more than [41] are currently being negotiated. These involve [14] OECD member countries and [10] non OECD countries. Countries that are currently in negotiations are encouraged to complete them and those countries which have not initiated such negotiations are encouraged to do so. An indicator of the developing co-operation between OECD and non-OECD countries is the increase in TIEAs and DTCs.

18. In the vast majority of cases where bilateral arrangements exist for effective exchange of information for both civil and criminal tax matters, including the agreements referred to above, the parties derive mutual benefits from the arrangement either as a result of a likely balance in the exchange of information or through other benefits. Ensuring that mutual benefits are derived by both parties will further the goal of helping financial centres that meet the high standards set for transparency and effective exchange of information in tax matters to be “fully integrated into the international financial system and the global community.”<sup>7</sup> Further, it is hoped that by providing mutual benefits, greater progress towards a level playing field will be made. The nature of any such benefits would necessarily depend on the legal systems and particular circumstances of the two parties to the arrangement. Countries are encouraged to try to ensure that their bilateral arrangements for effective exchange of information for all civil and criminal tax matters provide benefits for both parties.

19. Public recognition is an important benefit to those countries that implement the principles of transparency and effective exchange of information and OECD countries are encouraged to give recognition where such implementation occurs. Such recognition benefits the other country by enhancing its reputation.

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<sup>7</sup> See paragraph 28 of Berlin Report.

(iii) Collective actions

20. In terms of *collective actions*, the Berlin Report called for a review of countries' legal and administrative frameworks in the areas of transparency and information exchange, an assessment of the convergence of existing practices and the involvement of significant financial centres that are not currently Participating Partners. The initial analysis of the data received is now well advanced and all but [ ] of the significant financial centres invited to the Global Forum attended the meeting.

21. [Eighty-two] countries were included in the review, which was carried out using a detailed template/questionnaire developed by the Global Forum. As foreseen in the Berlin Report, all of the countries included in the review were invited to complete the template/questionnaire. All but [list countries] completed the questionnaire and responded to any clarifications sought. Some delays were encountered in this fact-gathering process and the Sub-Group was not able to make the draft report available to the Global Forum in July as originally contemplated by the Berlin Report. As a result, the Global Forum was not in a position to finalise the Report at the Melbourne meeting. The Global Forum asked the Sub-Group on Level Playing Field Issues to work with participants to finalise the Report by \_\_\_\_2006. The issuance of the Report would help to provide public recognition to those countries that have implemented the high standards of transparency and effective exchange of information and ensure that current information on countries' legal and administrative frameworks is widely available.

22. Once the Report is finalised, the Global Forum will provide periodic progress reports on developments since the initial Report was released. Countries will be encouraged to regularly provide updates on developments in their legal and administrative frameworks with respect to transparency and effective exchange of information and that information will be made available to all participants. The Report and its updates are expected to play an important role as an ongoing reference tool.

#### **D. Public Recognition**

23. The Global Forum acknowledges that, for political and historical reasons, changes to improve transparency and to establish effective exchange of information are not always easy and that it is important for international bodies to give public recognition when such changes are implemented.

24. International bodies may wish to consider providing tangible forms of positive recognition, through their work programmes and in public statements, to countries that implement the principles of transparency and effective exchange of information.

#### **E. Relevance of OECD List of Tax Havens Published in 2000**

25. Having reviewed the Report and the positive developments contained therein and discussed at the Melbourne meeting, a number of Global Forum participants expressed concerns about the continuing relevance of the OECD list published in 2000 of jurisdictions meeting the technical criteria for identifying tax havens. It was agreed that the list should be seen in its historical context and as an evaluation by OECD member countries at a particular point in time of which countries met the criteria set out in the 1998 OECD report<sup>8</sup>. More than five years have passed since the publication of the OECD list and positive changes have occurred in individual countries' transparency and exchange of information laws and practices since that time. Countries and their parliaments should recognise this progress in their bilateral relations and any relevant legislation. The Report, once completed and as updated periodically, will assist countries and their parliaments in that process.

<sup>8</sup> Harmful Tax Competition: An Emerging Global Issue. OECD, Paris, 1998.

## **F. Endorsement of Principles of Transparency and Effective Exchange of Information**

26. The vast majority of the countries represented at the Melbourne Global Forum meeting have either already implemented the principles of transparency and exchange of information or have committed themselves to doing so or have expressed a willingness to examine how these principles could be implemented. The Global Forum particularly welcomed the endorsement by [name countries] of the principles and their willingness to work towards a level playing field in the areas of transparency and effective exchange of information. The other new participants [name countries] were invited to consider how they also could associate themselves with these principles

## **H. Next Meeting of the Global Forum**

27. Participants at Melbourne agreed that these meetings are a useful way of reviewing the progress towards a level playing field and in encouraging a multilateral dialogue among governments which host financial centres.

28. The Global Forum welcomed the progress made by the Sub-Group on Level Playing Field Issues in carrying out the mandate given to it at the Berlin Global Forum meeting, confirmed that it would wish the Sub-Group to continue its work and complete its mandate and agreed that the Sub-Group should propose a date for the next meeting of the Global Forum at which the further progress made on the items discussed in Melbourne would be addressed.

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