



Mr. Donald Johnston
Secretary General
OECD
2 RUE André Pascal
75775 Paris Cedex 16
France

VIA FAX: 011 33 1 44 30 63 21

COMMITMENT LETTER - BRITISH VIRGIN ISLANDS

Dear Sir:

1. I refer to the discussions between officials of the OECD and the British Virgin Islands in connection with the OECD's project on harmful tax practices, in particular the principles of transparency and effective exchange of information. It should be noted that in the last several years the Government of the British Virgin Islands had embarked on a robust legislative reform programme designed to bring the British Virgin Islands to internationally recognized standards in the area of international trade and finance. You will, no doubt, agree that any elaborate legislative reform process does take time, especially if an effective enforcement mechanism is to be assured.
2. In the area of exchange of information, the British Virgin Islands has a long standing tradition of rendering legal assistance to foreign regulatory and law enforcement authorities in criminal and to some extent civil matters where such requests were received and found to meet the standard requirements for rendering assistance. This is reflected in various legislation, such as the Mutual Legal Assistance (United States of America) Act, 1990, Criminal Justice (International Co-operation) Act, 1993, Financial Services (International Co-operation) Act, 2000 and Financial Services Commission Act, 2001
3. The British Virgin Islands has always welcomed regulatory and law enforcement investigators from foreign jurisdictions whose requests for assistance meet the necessary legal standards for such assistance to be present in the territory when the relevant investigations are being carried out.
4. This tradition of assistance and the provision of necessary information to foreign jurisdictions is and has always been considered to be a necessary element in an efficient and effective law enforcement process. In addition, the British Virgin Islands would like to stress that it has a good track record both in its compliance with internationally established standards, and close co-operation, in financial regulation and the fight against crime generally.
5. Thus consistent with our commitment in ensuring compliance with international standards and fostering co-operation, the British Virgin Islands formally takes the

position that it commits to the principles of transparency and effective exchange of information in tax matters. The British Virgin Islands believes that an effective exchange of information regime should be founded on the internationally accepted principles of reciprocity which normally apply in bi-lateral and multi-lateral agreements negotiated between countries. The British Virgin Islands considers the establishment of a level playing field among all OECD Member countries and also those non-Member jurisdictions with which it is materially in competition in the provision of cross-border financial services to be essential..

6. The British Virgin Islands will protect its economic interest and fiscal autonomy in any future negotiations with the OECD. It is to be noted that the issue of a level playing field is critical to those interests.

7. In this respect, the Government of the British Virgin Islands undertakes to adopt such steps as may be necessary to implement the measures outlined in the attachment hereto which will also serve as the basis for bi-lateral negotiations on tax information exchange agreements.

This undertaking is based on the understanding that

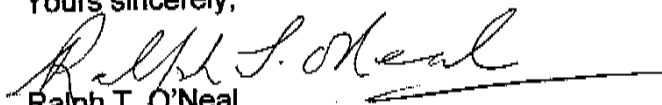
- (a) the British Virgin Islands will not be included in any OECD list of unco-operative tax havens, nor shall it be subject to a co-ordinated framework of defensive measures by OECD countries especially bearing in mind that co-operation requires confidence building and trust in the development of a fruitful relationship;
- (b) the Government of the British Virgin Islands views its cooperation with the OECD as a partnership founded on mutual respect. Accordingly, the British Virgin Islands will be invited to participate fully and on an equal basis in any discussions in the Global Forum or any similar grouping or meeting on the design of internationally accepted standards for the implementation of the principles of transparency and effective exchange of information applicable to the British Virgin Islands;
- (c) the detailed implementation of any measures not already provided for under the laws of the British Virgin Islands is subject to the approval of the Executive and Legislative Councils of the British Virgin Islands and shall take into account internationally recognized rights and safeguards such as those arising out of Article 17 of the International Covenant on Civil and Political Rights and similar obligations.
- (d) with respect to exchange of information, the British Virgin Islands reserves the right to decline a request for information if the disclosure of the information would be contrary to public policy (ordre public) or it is information which a country making the request cannot obtain under its own laws for purposes of the enforcement of its own tax laws.

8. Concomitant with its undertaking herein, the Government of the British Virgin Islands will also ensure that

- (a) no new regime or practice is introduced which fails to comply with the principles of transparency and effective exchange of information; and
- (b) no existing regime or practice is modified in a way that it fails to comply with the principles of transparency and effective exchange of information.

9. Let me assure you that the Government of the British Virgin Islands will not resile from its international responsibilities in upholding and promoting internationally established and accepted standards of practice in the regulation of trade and finance as they are key to the successful development of our country. We continue to display maximum interest in being associated with, and where given the opportunity to participate in, the development of standards in relation to financial services and international co-operation.

Yours sincerely,



Ralph T. O'Neal

Chief Minister and Minister of Finance, Economics and Development Planning

ATTACHMENT

This attachment outlines the measures the Government of the British Virgin Islands undertakes to implement on a phased basis by 31st December, 2005 with respect to the principles of transparency and effective exchange of information.

The Government of the British Virgin Islands recognizes that the achievement of transparency and effective exchange of information on a global basis requires a level playing field. In this regard, the Government of the British Virgin Islands understands that it will be invited to fully participate on an equal basis in the Global Forum to discuss the design of internationally accepted standards relevant to this commitment.

A. Establishing a Process for Effective Exchange of Information

1. Accordingly, the Government of the British Virgin Islands, in recognition of the OECD's modifications contained in the 2001 Report and in an effort to promote and foster international co-operation in tax matters, agrees to the effective exchange of information for criminal tax matters beginning in the first year after 31st December, 2003 and for civil tax matters in the first year after 31st December, 2005. These arrangements will relate to the provision of information upon request and will include protections against unauthorized disclosures and unauthorized use of information (taking into account the interest of public policy (ordre public), the need to protect trade, business, industrial, commercial and professional secrets, respect for attorney-client privilege and other restrictions on unauthorized disclosure). Information of the type referred to in paragraphs B. 1. and B. 3. shall not be treated as secret merely because it meets the criteria in those paragraphs. The process will entail the negotiation and adoption of bilateral tax information exchange agreements.
2. In a case involving information required for the investigation and prosecution of criminal tax matters, information will be provided without the requirement that the conduct being investigated or prosecuted must constitute a crime in the British Virgin Islands. However, such information may not be provided where the party requesting it cannot, under its own laws for purposes of enforcing its own tax laws, obtain such information.
3. In the case of information requested in the context of a civil tax matter, the absence of a British Virgin Islands tax interest in the matter or in obtaining the information will not be a bar to the provision of the information.

B. Transparency

1. The Government of the British Virgin Islands undertakes to ensure that information on beneficial ownership of companies, partnerships and other legal entities established in the British Virgin Islands, including managers of collective investment funds, and trustees and beneficiaries of trusts, is available to its tax or regulatory authorities. This includes companies and other legal entities operating from the British Virgin Islands provided that the information is present within the territory, or in the possession or control of a person subject to the jurisdiction of the British Virgin Islands. The British Virgin Islands agrees that such information will be subject to exchange under the tax information exchange agreements referred to in paragraph A.1.
2. The Government of the British Virgin Islands further undertakes to require the keeping of accounts by companies, partnerships, trusts and other legal entities established in the British Virgin Islands or having a place of business in the territory. Subject to exceptions to be developed by the Government of the British Virgin Islands together with the OECD and other committed jurisdictions, filing and/or auditing requirements will also be introduced for these entities. In this regard, the Government of the British Virgin Islands understands that it will be invited to participate in the joint ad hoc group on accounts consisting of OECD Member countries and committed jurisdictions to address issues raised by the accounts and audit or filing requirements. The British Virgin Islands agrees that such information will be subject to exchange under the tax information exchange agreements referred to in paragraph A.1.
3. The Government of the British Virgin Islands will also ensure that its tax and regulatory authorities or such other authority as it may designate will have access to bank information relevant to tax matters. The British Virgin Islands agrees that such information will be subject to exchange under the tax information exchange agreements referred to in paragraph A.1.