



27 February 2002

Donald Johnston Esq
Secretary General
Organisation for Economic Co-operation
and Development
2 Rue Andre Pascal
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France

Dear Secretary General,

OECD INITIATIVE ON 'HARMFUL TAX COMPETITION'

In 1998, the OECD adopted its Report on "Harmful Tax Competition: An Emerging Global Issue" (the "1998 Report"). The Gibraltar Government notes that in agreeing to the adoption of the 1998 Report, to the subsequent OECD progress report of 2001 (together, the "Reports") and to the OECD Council Recommendation of 9 April 1998, OECD Member countries have agreed to abide by the principles enunciated in the Reports. The Gibraltar Government notes, however, that two OECD member countries abstained from adopting the 1998 Report.

Notwithstanding the above, the Gibraltar Government has engaged constructively in a series of bilateral and multilateral meetings with the OECD. These meetings have served to clarify a number of issues.

Furthermore, in considering its position, the Gibraltar Government attaches fundamental importance to the view expressed by the OECD itself that fair tax competition is not to be discouraged. In addition, to achieve a meaningful and equitable result from the current process the creation of a level playing field in respect of all matters covered by the Reports is essential. The Gibraltar Government has borne both of these points firmly in mind in its decision making process. Gibraltar 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.

Accordingly, and on that basis, the Gibraltar Government is entering into a political commitment to the principles of transparency and effective exchange of information.

The commitment is offered on the basis of the following further points:

1. The commitment is without prejudice to Gibraltar's autonomy in fiscal affairs and its fundamental economic interests, the protection of both of which is paramount to Gibraltar.
2. Gibraltar does not feature on the OECD's list of uncooperative tax havens and will not be subject to a co-ordinated framework of defensive measures.
3. Gibraltar will be invited to participate fully on an equal basis in any discussions in the Global Forum of OECD member countries and representative non-member countries and jurisdictions on the design of internationally accepted standards for the implementation of these and any similar commitments. Gibraltar is of the view that jurisdictions generally must become increasingly integrated into the process of setting new international standards if those standards are to attract global support, and of implementing existing and new international standards, and that the Committee on Fiscal Affairs work on taxation in this regard will only be fully successful if it is carried out on a global basis and through a global partnership.
4. Those jurisdictions, including OECD member countries, that fail either to make equivalent commitments or to satisfy the standards of the 1998 Report will be the subject of a common framework of defensive measures.
5. The implementation of the commitment will be subject to the parliamentary approval of the House of Assembly in Gibraltar on an ongoing basis as individual legislative and policy proposals are advanced.

The details of the Gibraltar Government's commitment to be phased in by 31 December 2005, in accordance with an implementation plan to be agreed with the OECD are as follows:

1. **Effective Exchange of Information.**
 - (1) To allow tax information to be exchanged, only upon specific request, with designated authorities in OECD Member countries, in criminal tax matters by 31 December 2003 and in civil tax matters by 31 December 2005. Such information will be exchanged in accordance with tax

information exchange agreements to be negotiated by Gibraltar, with appropriate safeguards against "fishing expeditions".

- (2) Not to introduce bank secrecy laws.
- (3) The information in paragraph (1) above will be provided without regard to whether or not there is a tax interest of Gibraltar in the case or in obtaining the information.

In the case of information required for the investigation and prosecution of criminal tax cases, the information will be provided without the requirement that the conduct being investigated would constitute a crime under the laws of Gibraltar if it occurred in Gibraltar.

The Government of Gibraltar will have administrative practices in place so that the legal mechanism for exchange of information will function effectively and can be monitored.

- (4) To negotiate tax information exchange agreements in accordance with the foregoing, subject to there being full reciprocity (ie the other party has the same or equivalent provisions for the relevant exchange of information) including adequate protection against the unauthorised disclosure of information by the receiving jurisdiction and taking fully into account privacy obligations arising out of Article 17 of the International Covenant on Civil and Political Rights, Article 8 of the European Convention of Human Rights and similar obligations.

2. Transparency.

Many of the commitments that Gibraltar is giving under this criterion are already met in Gibraltar. However, the Government of Gibraltar undertakes:

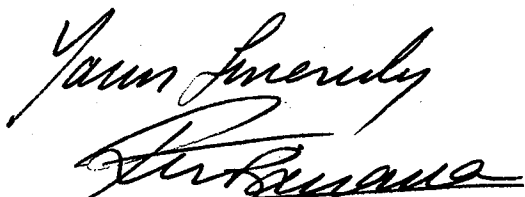
- (1) Where this is not already the case, to enable beneficial ownership information of companies, partnerships, and other entities organised, operating or having a place of business in Gibraltar, to be available to the Gibraltar Government.
- (2) Where this is not already the case, to enable information on the settlors and beneficiaries of trusts organized, operating or having a place of business in Gibraltar, to be available to the Gibraltar Government.
- (3) Where this is not already the case to require companies and other business entities including trusts incorporated or operating in Gibraltar to draw up accounts in accordance with generally accepted international standards; such accounts to be either (i) audited or (ii) filed on a public basis or (iii) filed on a non public basis with the Gibraltar Government or (iv) be accessible to the Gibraltar Government.

- (4) To ensure that the Government of Gibraltar have access to bank information relevant to tax matters of business enterprises, individuals and other entities including trusts.
- (5) To abolish the ability for investors to negotiate the tax rate to be applied.
- (6) To abolish share warrants to bearer.

3. Standstill.

As from the date of this letter, the Gibraltar Government shall not:

- (1) introduce any new taxation regime or practice that fails to comply with the principles of transparency and effective exchange of information, or
- (2) modify any existing taxation regime or practice in such a way that, after the modifications, it would not comply with the principles of transparency and effective exchange of information.



P.R. Caruana
Chief Minister