

Office of the Prime Minister



Rarotonga Cook Islands

By Facsimile and Airmail
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Mr Donald Johnston
Secretary General
OECD
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FRANCE

22 March 2002

Dear Mr. Johnston

Commitment of the Cook Islands

The Government of the Cook Islands has taken careful note of the 1998 OECD report entitled *Harmful Tax Competition: An Emerging Global Issue*, as well as subsequent progress reports and developments, in particular, The OECD's Project on Harmful Tax Practices, The 2001 Progress Report.

The Cook Islands believes that OECD member countries and committed jurisdictions need to establish a level playing field preferably through application of minimum standards for the effective exchange of information among financial centres. In recognition of this, the Cook Islands proposes that OECD Member States and jurisdictions, which like the Cook Islands are committed to the effective exchange of information should seek to establish a framework aimed at:

- Securing the implementation of the standards for effective exchange of information and
- Facilitating the participation of as many jurisdictions as possible in the ongoing process of achieving international cooperation on matters pertaining to effective exchange of information and transparency.

The spirit of partnership which the Cook Islands has always fostered with other countries and international organisations and the additional international partnerships which the Cook Islands is developing in the context of L'Accord de Cotonou are matters of great importance to the Cook Islands Government. It is the spirit of these international relationships that moved the Cook Islands Government to adopt the United Nations Security Council Resolution 1373 on 27 December 2001.

In recognition of these important issues, the modifications to the OECD Harmful Tax Competition Initiative made in the 2001 Progress Report, and in keeping with its policy of international cooperation, the Cook Islands makes a commitment to transparency and effective exchange of information and is pleased to announce its willingness to enter into agreements for tax information exchange with the Member States of the OECD in order to achieve effective exchange of information on a phased basis as set out below. Further, in keeping with its policy of fiscal transparency, the Cook Islands wishes to state that by 31 December 2005 :

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- It will ensure that, information on beneficial ownership of companies, partnerships and other legal entities and on trustees and beneficiaries of trusts is available to its tax or regulatory authorities. This will include companies, which being incorporated elsewhere, have a place of business in the Cook Islands, provided the information is present within the Cook Islands or in the possession or control of a person subject to its jurisdiction. This information will be subject to exchange under tax information exchange agreements.
- Subject to de minimis exceptions to be developed by the Cook Islands together with the OECD and other committed jurisdictions, the Cook Islands will require accounts to be kept by companies, partnerships, trusts and other legal entities established in the Cook Islands or having a place of business in the Cook Islands. The requirement to audit accounts will follow accepted international standards and accounts will be required to be filed in support of tax returns. This information will be subject to exchange under tax information exchange agreements.
- Its regulatory authorities will have access to bank account information relevant to tax matters of both resident and non-resident business enterprises, individuals and other entities including trusts, to the extent necessary to perform obligations under a tax information exchange agreement.

With regard to the effective exchange of information, the Cook Islands agrees to enter into tax information exchange agreements which shall become effective for criminal tax matters for the first tax year after 31 December 2003 and for civil tax matters for the first tax year after 31 December 2005. These agreements will relate to the provision of information upon request and will include protections against unauthorised disclosures, unauthorised use of information and "fishing" expeditions. In the case of criminal tax matters information will be provided without regard to the fact that the conduct being investigated may not constitute a crime in the Cook Islands. Moreover, the absence of a Cook Islands tax interest in a case or in obtaining the information shall not be a bar on the provision of information in civil tax matters. However, with respect to both criminal and civil tax matters, 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. The detailed implementation of specific commitments will be subject to the Cook Islands Parliamentary approval on an ongoing basis as individual legislation and policy proposals are advanced.

Our commitment to enter into exchange of information agreements with OECD Member States and provide transparency is offered on the basis that:

- The Cook Islands will not be included on the OECD list of uncooperative tax havens nor subject to any framework of coordinated defensive measures;
- The Cook Islands is determined to protect its sovereignty, economic interests and fiscal autonomy at all times and in any future negotiations with the OECD. The issue of a level playing field is critical to those interests;
- The Cook Islands will be invited to participate fully on an equal basis in any discussions in the Global Forum of OECD Member countries and committed

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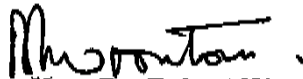
jurisdictions on the design of internationally accepted standards for the implementation of these and any similar commitments. The Cook Islands will also be invited to participate in the ad hoc accounts group consisting of OECD Member States and committed jurisdictions to address issues raised by the accounts and audit or file requirement;

- The Cook Islands will receive, upon request, technical assistance, as required, for amending and/or implementing laws, regulations, practices and procedures as may be necessary to comply with the commitment herein and;
- Those jurisdictions, including OECD member countries and other countries and jurisdictions not yet identified, 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 coordinated defensive measures;

The Government of the Cook Islands will ensure that:

1. No new tax regime or practice is introduced that fails to comply with the principles of transparency and effective exchange of information: and
2. No existing tax regime or practice is modified in such a way that after the modification it would not comply with the principles of transparency and effective exchange of information.

Yours faithfully


The Hon. Dr. Robert Woonton
PRIME MINISTER
COOK ISLANDS