

GOVERNMENT OF NIUE



Note No: 02/13

The Government of Niue presents its compliments to the Secretary General of the Organisation of Economic Development of Paris, France.

The Government of Niue has further the honour to request the assistance of the Organisation of Economic Development of Paris, France in ensuring the attached letter reaches its highest destination expediently.

The Office for External Affairs of the Government of Niue avails itself of this opportunity to renew to Secretary General of the Organisation of Economic Development of Paris, France, the assurances of its highest consideration.

Office for External Affairs
Premier's Department
NIUE
11 April 2002





Office of the Premier

By Facsimile and Airmail
00 331 4 430 6321

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

Dear Mr. Johnston,

COMMITMENT OF NIUE

I refer to the OECD's initiative denominated as the project on harmful tax competition. After proper consideration of the issues and concerns discussed between the Government of Niue and the OECD, we confirm the willingness of the Government of Niue to continue with frank and open dialogue on the harmful tax competition initiative and on our views and expectations from OECD in this matter.

The Government of Niue is convinced of the necessity of international co-operation in the issues and matters that affect members of the international community. Therefore, we hereby offer a commitment to the principles of effective exchange of information in tax matters and transparency on the basis outlined below. In this context, the Government of Niue will implement the measures outlined in the attachment hereto by 31 December 2005, on a phased basis, in co-operation with OECD. The detailed implementation of any specific commitments will be subject to approval by the Legislative Assembly of Niue on an ongoing basis as individual legislation and policy proposals are advanced.

We understand that the OECD is prepared to assist us in establishing, improving, or maintaining such practices as are necessary to comply with the commitment.

The commitment is offered on the basis that:

- Niue is not included on the OECD list of un-cooperative tax havens nor subject to any framework of co-ordinated defensive measures;
- Niue 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 such interests. Moreover, the Government of Niue considers it important that OECD countries lead by example in this regard.
- Those jurisdictions, including OECD Member countries and other countries and jurisdictions yet to be identified, that fail either to make equivalent commitments or to satisfy the standards of the 1998 Tax Competition Report, will be the subject of a framework of co-ordinated defensive measures; and

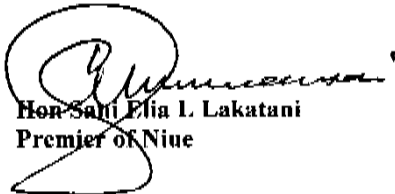
- Niue is invited to participate fully on an equal basis with all committed jurisdictions and OECD countries in any discussions in the Global Forum on the design of internationally accepted standards for the implementation of these and any similar commitments. Niue will also be invited to participate in the ad hoc accounts group consisting of OECD Member States and committed jurisdictions to address issues relating to the accounts and audit or file requirement; and
- Niue 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

The Government of Niue will also ensure that:

- No new regime or practice is introduced that fails to comply with the principles of transparency and effective exchange of information; and
- No existing 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.

The Government of Niue intends to release the substance of this letter and the attachment to financial and business press and other contacts and expects the OECD to publish them in the OECD's internet site.

Yours faithfully,



Hon Sani Elia I. Lakatani
Premier of Niue

Attachment

This attachment outlines the measures that the Government of Niue will take to implement its commitment to the principles of transparency and effective exchange of information.

A. Establishing a process for effective exchange of information

1. The Government of Niue agrees to the effective exchange of information for criminal tax matters beginning in the first year after 31 December 2003 and for civil tax matters beginning in the first year after 31 December 2005. Such exchanges shall be achieved through the adoption of tax information exchange agreements that require the effective exchange of information in specific tax matters upon request. However, with respect to both criminal and civil tax matters, such information may not be provided where the requesting party cannot under its own laws for purpose of enforcing its own tax laws, obtain such information. The tax information exchange agreements will relate to the provision of information upon request and will include protections against unauthorised disclosures or unauthorised use of information and “fishing” expeditions, taking fully into account internationally recognized rights and safeguards such as those 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. In a case involving information required for the investigation and prosecution of criminal tax matters, information shall be provided without the requirement that the conduct being investigated must constitute a crime in Niue.

3. In the case of information requested in the context of a civil tax matter, the absence of a Niue tax interest in the case or in obtaining the information shall not be a bar to the provision of information. The incidence of costs incurred in providing such assistance shall be agreed in the context of the exchange of information agreements entered into by Niue in satisfaction of its commitment. Flexibility is expected in determining the incidence of costs to take into account factors such as the likely flow of information requests between the two parties to the agreement, whether both parties have income tax administrations, the capacity of each party to obtain and provide information, and the volume of information involved.

B. Transparency

1. The Government of Niue will ensure that information on beneficial ownership of Niue companies, partnerships and other legal entities established in Niue, and on the trustees and beneficiaries of trusts is available to its tax or regulatory authorities. This will include companies and other legal entities operating from Niue provided that the information is present within the territory, or in the possession or control of a person subject to the jurisdiction of Niue. The Government of Niue agrees that such information will be subject to exchange under the tax information exchange agreements referred to in paragraph A.1.

2. Subject to de minimis and other possible exceptions, to be developed by Niue together with the OECD and other committed jurisdictions, the Government of Niue will require that companies, partnerships, trusts and other legal entities established in Niue or having a place of business in Niue maintain accounts which are prepared in accordance with generally accepted accounting standards. Filing or auditing requirements will also be introduced for these entities. Niue agrees that such accounts will be subject to exchange under the tax information exchange agreements referred to in paragraph A.1.

3. The Government of Niue agrees that its tax or other regulatory authorities will have access to bank information of persons and companies liable to tax in OECD countries to the extent necessary to perform obligations under a tax information exchange agreement concluded pursuant to paragraph A.1.

C Termination prior to 31st December 2005

1. Niue shall have the annual option by advance written notice to the Chairman of the OECD's Committee on Fiscal Affairs to terminate the implementation of its commitment as outlined in this Attachment as of 31 December of the given year.