

OECD GLOBAL FORUM ON TAXATION

Berlin, 3-4 June 2004



A PROCESS FOR ACHIEVING A GLOBAL LEVEL PLAYING FIELD

I. Introduction

1. At its meeting in Ottawa, Canada in October of 2003, the OECD's Global Forum on Taxation brought together representatives of 40 governments, both OECD and non-OECD, to discuss the issue of a global level playing field in the area of transparency and information exchange in tax matters. At the Ottawa meeting, the Global Forum recognised that while progress has been made towards achieving a level playing field, it also "recognised that a global level playing field does not yet exist and that further progress could and should be made to achieve it, so that all countries¹ can reach the high standards which the participants wish to see achieved." The participants agreed to work intensively to progress the level playing field issue and the broader question of improving the process by which the work can be accomplished. To that end, it set up the Sub-Group on Level Playing Field Issues ("the Sub-Group").

2. The Sub-Group first developed terms of reference for its work, which were revised to take account of comments received, and the Terms of Reference (Annex 1) guided the Sub-Group in developing proposals for achieving a global level playing field.

3. In developing proposals, the members of the Sub-Group were guided by the objective of the global level playing field: to achieve high standards of transparency and information exchange in a way that is fair, equitable and permits fair competition between all countries, large and small, OECD and non-OECD.

4. All countries, regardless of their tax systems, should meet such standards so that competition takes place on the basis of legitimate commercial considerations rather than on the basis of lack of transparency and lack of effective exchange of information. In particular, it is important to prevent the migration of business to economies that do not engage in transparency and effective exchange of information for tax purposes. The Sub-Group recognised that the achievement of the global level playing field would be frustrated by such a lack of co-operation.

5. The Global Forum met in Berlin on 3-4 June 2004 to discuss the Sub-Group's proposals, which were broadly endorsed by the Global Forum participants. The outcomes of the discussions are reflected in this Report.

II. Definition of a Global Level Playing Field²

6. The global level playing field concept, features and role can be defined as follows:

A) CONCEPT:

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

¹ Reference in this document to "countries" should be taken to apply equally to "territories" or "jurisdictions."

² The discussion in section II relates to Terms of Reference, item 1.

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.

7. As stated in the Co-Chair's Statement at the Ottawa Global Forum meeting, not all financial centres currently meet the high standards for effective exchange of information on both criminal and civil taxation matters that the Global Forum wishes to see achieved. The term "high standards" refers to the principles of transparency and effective exchange of information accepted by the Participating Partners, which principles are reflected in the 2002 Model Agreement on Information Exchange on Tax Matters.

8. Central to the concept of a global level playing field is that it is fundamentally about fairness. A convergence of existing practices of information exchange to meet high standards would achieve a global level playing field. The convergence of existing practices of information exchange towards these standards thus should be coupled with a process that ensures equity and fair competition which aims to ensure that financial centres that are engaged in meeting the standards of transparency and effective exchange of information are not disadvantaged by countries that are not part of the process and that the latter are not permitted to profit from the promotion of their position of being outside the process.

9. The concept of a global level playing field, in the context of the work of the Global Forum, also includes the notion of *effective* exchange of information. Effective exchange of information depends on the availability of relevant information to government authorities and the

quality of that information. The Joint Ad Hoc Group on Accounts (JAHGA) has made significant progress in articulating standards relating to the maintenance of, and access to, reliable books and records. The Ottawa Global Forum noted that the work of the JAHGA will continue and the outcome of that work will inform the standards against which practices will be measured.

10. It would be ideal if all significant financial centres would agree to and implement high standards of information exchange at the same time and in the same manner. However, because information exchange generally is implemented through bilateral agreements there will inevitably be some timing differences in implementation. To ensure that the process of achieving those standards is as fair and equitable as possible, however, the global level playing field concept incorporates the expectation that those standards should be achieved within an acceptable timeline and therefore the process for implementation of those standards should not be open-ended.

11. The global level playing field serves as a continuing goal. In working towards that goal, efforts will need to be made by countries on an integrated individual, bilateral and collective basis both to achieve and to maintain that goal.

III. A process for achieving a level playing field³

12. The convergence referred to in the global level playing field concept means the convergence of timelines and practices and will be achieved through a process that integrates individual, bilateral and collective elements. The combination of these elements ensures that the necessary flexibility is given to the negotiation of bilateral agreements on information exchange while at the same time collectively furthering the objective of a global level playing field through the Global Forum and through the initiatives of individual countries. The remainder of this section discusses these elements in more detail. An Action Plan with timelines is attached (Annex 2). The integration of these elements should have due regard to the objective that the process for achieving a global level playing field should not interfere with or delay the establishment of bilateral mechanisms for effective exchange of information or progress in reaching the standards which the Participating Partners feel should be achieved.⁴

A. *Individual Aspects*

13. Action at the individual country level is important to achieving a level playing field in the areas of transparency and effective exchange of information in tax matters. Adoption of these principles by all countries is critical to this process. Many countries have already done so. The adoption of the principles may require countries to modify some existing laws and practices to meet the transparency and information exchange standards that Participating Partners wish to see achieved.

14. Action at the individual country level can also play an important role in encouraging other countries that have not yet adopted the principles to do so. Countries should continue to

³ The discussion in section III relates to Terms of Reference items 2 through 8.

⁴ See Terms of Reference item 2.

explore what they can do in their individual capacities, consistent with fairness, equity and proportionality, to support the adoption of transparency and exchange of information standards by others. For example, they could consider how they could use other organisations to which they belong, fora in which they participate, and communications with their business communities to encourage the adoption of these practices. This type of action will support the work carried out collectively through the Global Forum.

15. Some countries have expressed concern about the use of “country lists” maintained by individual countries. In particular, concern has been expressed that lists that are based in whole or in part on the 2000 OECD list of tax haven jurisdictions and have not reflected the significant developments since 2000 may frustrate the process for achieving a global level playing field. For example, a list that does not take into account whether a “listed” country has a tax information exchange agreement with the country maintaining the list could provide a disincentive to the listed country to consider such an agreement with the country maintaining the list. This does not reflect any judgment by the Global Forum on the tax or other policies underlying country lists.⁵

B. Bilateral Aspects

16. The standards that participants wish to see achieved include effective exchange of information on both criminal and civil taxation matters. These standards will generally be implemented through a process of bilateral negotiations. Such a 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. These considerations may also create differences in the timing of the implementation of information exchange.

17. Individual commitments to transparency and effective information exchange include a reference to 2006 as the implementation date for exchange of information in civil tax matters. In order to achieve a global level playing field, all countries should reflect these principles in their bilateral arrangements and should strive to achieve effective exchange of information and transparency by 2006. Nevertheless, it is recognised that countries may adapt their bilateral arrangements to suit their specific needs and this may entail a departure from the 2006 date where this is in their mutual interest. In fact, due to practical considerations, including the proximity of 2006 and the time required to arrange and conclude bilateral negotiations, a strict application of this date may be unworkable in some cases.

C. Collective Aspects

18. In order to ascertain whether progress is being made towards the convergence of existing practices to high standards with the aim of achieving equity and fair competition, the Global Forum should:

- Review the transparency and information exchange practices currently applied by financial centres;

⁵ See Terms of Reference item 6.

- Assess the convergence of existing practices and evaluate the achievement of a global level playing field; and
- Involve significant financial centres that are not currently Participating Partners.

These items are addressed below.

(i) Review the transparency and information exchange practices currently applied by financial centres⁶

19. The Statement of the Co-Chairs of the Ottawa Global Forum meeting notes that an important part of the global level playing field work would be to review the current laws and practices of financial centres and where further progress might be required. This process involves the compilation of information that is relevant to transparency and effective exchange of information for tax purposes. To ensure the fairness and integrity of this process, an agreed methodology and consistent framework for this information gathering exercise would have to be used. This would involve a four step process that would be conducted by the OECD Secretariat and the Sub-Group in conjunction with the country concerned.

- a) The OECD Secretariat and the Sub-Group, using an agreed template would, in conjunction with the countries concerned, collect such information about each Participating Partner as well as significant financial centres that are not Participating Partners. Thus, information would be compiled on all OECD countries, all non-OECD Participating Partners, and all significant financial centres that are outside of these two groups. The Global Forum feels that the identification and review of significant financial centres should be a dynamic process and that these countries should be invited to participate in the Global Forum.⁷
- b) The OECD Secretariat and the Sub-Group would transmit for verification to each country under review in the Global Forum the information that the Secretariat and the Sub-Group had gathered about that country.
- c) Following an opportunity for verification by individual countries, the information compiled about all the countries under review would be made available to the full Global Forum for comments and questions prior to finalisation. In those cases, hopefully few, where verification is not forthcoming, the information collected by the Secretariat and the Sub-Group would be circulated to the full Global Forum for comments and questions prior to finalisation.
- d) Where factual disagreements regarding the practices of a particular country arise, a small group of Participating Partners would be designated following an agreed process to try to resolve the factual disagreement.

⁶ See Terms of Reference item 3.

⁷ The Sub-Group has initially identified the following countries as examples of significant financial centres that should be included in the process: Andorra, Barbados, Brunei, Costa Rica, Dubai, Guatemala, Hong Kong-China, Liberia, Liechtenstein, Macao-China, Malaysia (Labuan), Marshall Islands, Monaco, Philippines, Singapore, Uruguay.

20. The information collected and disseminated would be of a purely factual and objective nature. It would not include any judgments and would not draw any conclusions. The provision of such information would permit every Participating Partner to assess the progress towards meeting the standards of transparency and information exchange and to determine where further progress is required. In addition, this information should be helpful to Participating Partners (particularly those without the resources to compile this information on their own) to assess the positions of other countries for purposes of negotiations on information exchange arrangements.

21. Thereafter, each Participating Partner would be responsible for providing to the OECD Secretariat and the Sub-Group any new information regarding developments with respect to transparency and information exchange (e.g., new tax information exchange agreements or income tax treaties, new legislation to improve transparency and exchange of information) and the OECD Secretariat and the Sub-Group would be responsible for monitoring developments in non-participating countries. This information would be provided to the Participating Partners as it becomes available and the process described above for reviewing the information would be followed.

*(ii) Assessment of the convergence of existing practices to the high standards for effective exchange of information and evaluation of the achievement of the global level playing field*⁸

22. The information compiled under section (i) above will enable the Participating Partners to assess the degree of convergence that has been achieved. The first assessment would take place in mid 2005.

23. Immediately thereafter, using the factual assessment the Participating Partners would then evaluate the achievement of a global level playing field. This evaluation process would cover all countries included in the process referred to in (i) above. Such an evaluation would take into account all the facts and circumstances. For example, the evaluation necessarily would take into consideration that a country may not have been asked to negotiate an information exchange arrangement, the status of ongoing negotiations, and whether the countries concerned have, for reasons of mutual interest, agreed to implement information exchange on dates other than 2006.

24. The results of the Global Forum's assessment of convergence and its evaluation of the global level playing field situation would be included in a report. The Global Forum could agree to release this report to the public. The report would serve to provide factual information that sets out the state of transparency and exchange of information practices as of that time.

25. If published, the report would also serve as public recognition in those cases where the transparency and effective exchange of information standards have been met in whole or in part. Other avenues for providing public recognition to countries that have implemented or are implementing transparency and effective exchange of information before and after 2006 also should be explored.⁹

⁸ See Terms of Reference item 4.

⁹ See Terms of Reference item 8.

(iii) Involve significant financial centres that are not currently Participating Partners in the process for achieving a global level playing field, including bringing them into the Global Forum¹⁰

26. The practices of all OECD countries, all non-OECD Participating Partners and all other significant financial centres outside of these two groups influence the achievement of the global level playing field. Because of this, efforts to include all countries not already part of the process are imperative. The inclusive approach is intended to communicate that no country be permitted to profit from being neither a party to the principles nor a part of the process. The Global Forum will take steps to engage all relevant countries in this process.

27. The Global Forum considered the importance of uniform consequences for failure to implement the standards of transparency and effective exchange of information but felt it was premature at this stage to discuss such measures.¹¹

IV. Concluding Remarks

28. The underlying objective of the global level playing field is to facilitate the creation of an environment in which all significant financial centres meet the high standards of transparency and effective exchange of information on both criminal and civil taxation matters. This is vital to ensuring that countries can obtain from other countries the information necessary to enforce their own tax laws, to ensuring that financial centres that meet such standards are not unduly disadvantaged by doing so, and to ensuring that financial centres that meet such high standards are and remain fully integrated into the international financial system and the global community. Any significant financial centre that decides not to adopt high standards of transparency and effective exchange of information must not be permitted to profit from that decision.

29. Individual, bilateral, and collective actions in combination are necessary for the achievement of the common objective of the global level playing field: an international financial system characterised by fair competition, and which is free of the distortions created through lack of transparency and lack of effective exchange of information.

¹⁰ See Terms of Reference item 5.

¹¹ See Terms of Reference item 7.

ANNEX 1 **TERMS OF REFERENCE**

Introduction

The Ottawa Global Forum meeting held on 14-15 October 2003 brought together representatives of 40 governments, both OECD and non-OECD, that are committed to the principles of transparency and effective exchange of information for tax purposes. In pursuit of these principles, the participants agreed to establish a small group to “develop proposals for consideration by the Global Forum for achieving a global level playing field and a process by which this work could be taken forward,” “based on the widely accepted principles of equity and shared responsibility”.

The Global Forum, in its Co-Chairs’ closing statement, also “acknowledged the need to continue the discussion to establish bilateral mechanisms for effective exchange of information and that the level playing field is fundamentally about fairness.” Furthermore, it stated that “ways should be explored to involve significant centres that are not currently participating in the Global Forum process, and that an important part of the process would be to review what standards financial centres currently apply and where further progress might be required.”

Before beginning its work, the sub group has been requested to develop for approval by the Global Forum a “draft terms of reference” listing the issues that would be addressed. In response to this request, the sub group proposes that its work cover the following areas.

Draft Terms of Reference

In light of the recognition by all Participating Partners that in the context of the current OECD initiative a level playing field in the areas of transparency and exchange of information in tax matters does not yet exist, the Sub-Group will work on:

1. Defining the global level playing field concept, features and role, having regard to the need for fair competition and considering the requirement for equity in standards and implementation timelines.
2. Considering a process and timeframe for achieving a global level playing field, having regard that such process should not interfere with or delay the establishment of bilateral mechanisms for effective exchange of information or progress in reaching the high standards which the participants feel should be achieved.

3. Reviewing the standards currently applied by Participating Partners and other financial centres on the issues of transparency and effective exchange of information, having regard to the participants' commitments to the principles underlying the exchange of information standard.
4. Considering a process to evaluate progress towards a global level playing field and the achievement thereof.
5. Considering mechanisms to involve significant financial centres that are not currently Participating Partners in the process for achieving a global level playing field, including bringing them into the Global Forum.
6. Identifying the different categories and functions of existing country lists and the grounds upon which countries place jurisdictions on or remove jurisdictions from such lists.
7. Identifying uniform consequences for failure to implement transparency and effective exchange of information.
8. Considering ways to publicly recognize fulfillment of the transparency and effective exchange of information standards.

The subgroup on level playing field issues will work with the aim of reporting back to the Global Forum on the above mentioned issues in April 2004.

ANNEX 2
**PROPOSED ACTION PLAN FOR ACHIEVING TRANSPARENCY AND EFFECTIVE
EXCHANGE IN TAX MATTERS**

	DATE	ACTION
1.	Mid-July 2004	Comments on draft template by members of Global Forum
2.	1st week of September	Sub-Group agrees on revised template
3.	Autumn 2004	Meeting of JAHGA and meeting on Level Playing Field Issues
4.	March 2005	Finalise template responses with specific country concerned
5.	May 2005	Peer review of template responses (see para. 19(c))
6.	July 2005	Sub-Group – Preparation of factual report on transparency and information exchange.
7.	October/November 2005	Global Forum meeting

As stated in Parts III. A. and B., throughout this period, all countries are encouraged to undertake individual and bilateral actions to work towards achieving a global level playing field.