

# CURRENT STATUS OF OECD'S HARMFUL TAX PRACTICES INITIATIVE

## A statement by the Chairman of the OECD's Committee on Fiscal Affairs

Mr. Gabriel Makhlouf

### Introduction

Today the OECD Council agreed to release a report which provides an update on the current status of the OECD's project on harmful tax practices and clarifies the aims and scope of the project.

Before getting into the details I want to emphasise that OECD countries are committed to ensuring that there is a genuine dialogue between them and the jurisdictions identified in the OECD's 2000 Report as well as the jurisdictions that made commitments prior to the release of the 2000 Report. We are convinced that with the enhancements to the OECD project set out in the 2001 Report, which take account of the extensive and constructive dialogue we have had with the jurisdictions over the last 12 months, it will be possible for all jurisdictions to make the commitments we are now looking for.

### Background

1. The OECD's project on counteracting harmful tax practices is part of a wider initiative of Member countries to promote good governance in a globalised economy. Globalisation has enormous potential to improve living standards around the world. But it also brings risks, including the risk of abuses of the free market system, which could have a negative impact on the world economy and its people by distorting the free flow of capital and undermining the ability of governments to finance the legitimate expectations of their citizens for publicly provided goods and services. Unfair tax practices which attract financial services and highly mobile activities can be exploited by tax evaders and therefore can erode a country's tax base, shift the tax burden from dishonest to honest (and generally poorer) taxpayers and distort decisions on where to locate economic activities.

2. The OECD project is intended to counteract such practices. The focus of the project is on geographically mobile activities, including financial and other services, given that the risks posed to governments are greater with respect to these activities than in others.

3. By providing a framework within which all countries - large and small, rich and poor, OECD and non-OECD - can work together to eliminate harmful tax practices, the OECD seeks to promote tax competition that will achieve the overall aims of the OECD to foster economic growth and development world-wide. The OECD project does not seek to dictate to any country what its tax rates should be, or how its tax system should be structured. It also does not seek to hinder enterprises in carrying out their normal business or to threaten the privacy of taxpayers. It seeks to encourage an environment in which transparent and fair tax competition can take place.

4. It was with this objective in view, that the OECD published a report in 1998 entitled *"Harmful Tax Competition: An Emerging Global Issue (the "1998 Report")*, which amongst other things, developed criteria to identify the harmful aspects of a particular regime or jurisdiction.

5. The 1998 Report was followed by a report in June 2000 entitled *"Towards Global Tax Co-Operation: Progress in Identifying and Eliminating Harmful Tax Practices (the "2000 Report")*. That report:

- Identified 47 potentially harmful preferential tax regimes in OECD Member countries.
- Listed 35 jurisdictions found to meet the tax haven criteria.
- Proposed a process whereby tax havens could commit to eliminate harmful tax practices.
- Made proposals for associating non-member economies with the harmful tax practices project.
- Proposed elements of a possible framework of co-ordinated defensive measures designed to counteract the erosive effects of harmful tax practices.

6. Already today the OECD has had considerable success in its dialogue with offshore jurisdictions. Eleven jurisdictions – Aruba, Bahrain, Bermuda, Cayman Islands, Cyprus, Isle of Man, Malta, Mauritius, Netherlands Antilles, San Marino and Seychelles - have committed to eliminate their harmful tax practices. And these jurisdictions are working with us to develop a new legal instrument on Exchange of Information (in fact they are meeting with OECD in Paris this week). Tonga has taken steps to eliminate its harmful tax practices and no longer meets the tax haven criteria.

### **Modifications to the Tax Haven Work**

7. Several jurisdictions interested in making commitments raised concerns about the commitment process, including concerns regarding the transparency of the process and the need for greater detail regarding the harmful features to be eliminated. In November 2000, the OECD responded to these concerns by establishing an alternative process that set out in greater detail the terms of the commitments sought and a proposed timetable for implementation, and by providing for the publication of the details of any future commitments.

8. In response to concerns regarding the application of the no substantial activities criterion to tax havens, the application of a framework of co-ordinated defensive measures to tax havens as of 31 July 2001 and the timeframe for developing implementation plans, we have agreed today on the following modifications to the project:

- The commitments from tax havens will be sought only with respect to the transparency and effective exchange of information criteria to determine which jurisdictions are considered as uncooperative tax havens. Member countries would, however, welcome the removal by tax havens of practices implicated by the no substantial activities criterion insofar as they inhibit fair competition.
- The potential framework of co-ordinated defensive measures would not apply to uncooperative tax havens any earlier than it would apply to OECD Member countries. OECD Members retain the sovereign right to apply, or not to apply, any defensive measures as appropriate, either within or outside a framework of co-ordinated defensive measures
- In the light of these developments and given the number of ongoing discussions with jurisdictions on the conclusion of commitments, it was not feasible to maintain the 31<sup>st</sup> July 2001 deadline for producing a list of uncooperative tax havens. Jurisdictions will now have until the 28<sup>th</sup> February 2002 to make a commitment. Jurisdictions that meet the deadline will not be included in the list of uncooperative tax havens, which will be issued once the CFA has reviewed the outcome of the commitment process.

- To ensure that jurisdictions that have made commitments have sufficient time to develop implementation plans, we are proposing to extend the time for developing implementation plans from six months to twelve months.

9. These modifications do not affect the application of the 1998 and 2000 Reports to Member countries and non-member economies.

10. We believe that with these enhancements and with the intensive bilateral discussions that have taken place with the many jurisdictions over the last six months, the OECD will have addressed many of the concerns expressed over certain aspects of the project. This in turn will reduce the uncertainty over the future direction of this work and encourage jurisdictions to eliminate their harmful tax practices.

11. The OECD recognises that some jurisdictions have concerns about their administrative capacity to meet their commitments. OECD Member countries will explore, through the OECD and other organisations, what specific assistance could be provided. We have already set up an assistance programme for the Pacific region.

12. We would encourage uncommitted jurisdictions to work with us over the next 3 ½ months so that we can achieve our objective of having as many jurisdictions as possible join us in the working towards more transparency and better international cooperation in taxation.