



## Office of the Chief Minister

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Our Ref: CM10/1

27 February 2002

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

Dear Mr. Johnston

### COMMITMENT OF MONTSERRAT

I am writing in connection with the OECD's project on harmful tax competition. I am pleased to inform you that **Montserrat** commits to the principles of effective exchange of information in tax matters and transparency.

To ensure compliance with these principles, **Montserrat** will implement the measures outlined in the attachment.

The detailed implementation of specific commitments will be subject to **Montserrat** Parliamentary approval on an ongoing basis as individual legislation and policy proposals are advanced.

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

These commitments will have significant adverse costs impacts on the small economy of **Montserrat**; but, taking into account the need to pursue the long term development of its economy, and recognizing the important roles of fiscal and other measures in this context, and the need to maintain its fiscal autonomy, **Montserrat** makes these commitments in the hope that the OECD will be responsive to these objectives. Areas of possible assistance could include tax policy, tax administration and generally assistance in strengthening capacities in financial services.

**Montserrat** is determined to protect its economic interests and fiscal autonomy in any future negotiations with the OECD. The issue of a level playing field is critical to those interests.

The commitment is offered on the basis that:

1. **Montserrat** is not included on the OECD list of un-cooperative tax havens.
2. **Montserrat** will not be subject to any framework of coordinated defensive measures by members of the OECD.
3. Those jurisdictions, including OECD Member countries and other countries and jurisdictions yet to be identified, that fail to make equivalent commitments or to satisfy the standards in the 1998 Tax Competition Report will be the subject of a common framework of coordinated defensive measures; and
4. **Montserrat** 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 application of these and any similar commitments.

Montserrat will ensure that:

1. No new regime or practice is introduced that fails to comply with the principles of transparency and effective exchange of information; and
2. 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.

Yours faithfully,



Dr. the Honourable John A. Osborne  
**CHEF MINISTER**

## Attachment

This Attachment outlines the measures that **Montserrat** will take on a phased basis by 31<sup>st</sup> December 2005 to implement its commitment to the principles of transparency and effective exchange of information. Details of these measures and a specific timetable will be developed together with the OECD.

### **1. Establishing A Process For Effective Exchange Of Information**

- In recognition of OECD's modifications to its initiative on harmful tax practices and in an effort to promote and foster international co-operation in tax matters, Montserrat agrees to the effective exchange of information for criminal tax matters beginning in the first tax year after 31<sup>st</sup> December 2003 and for civil tax matters beginning in the first tax year after 31<sup>st</sup> December 2005. These arrangements will relate to the provision of information upon specific request and will include protections against unauthorised disclosures and/or unauthorised use of information by the receiving jurisdiction (taking into account the interest of public policy (ordre public), the need to protect trade, business, industrial, commercial and professional secrets, respect for attorney-client privilege and restriction on disclosure to jurisdictions that are not party to the agreement authorising the exchange of information). Information of the type referred to in bullet points 1-3 in section 2 shall not be treated as secret merely because it meets the criteria in those paragraphs. It is understood that the process will entail the negotiation and adoption of tax information exchange agreements or arrangements which may take one or more of several forms, including bilateral or multilateral agreements or arrangements or other formats or instruments, currently being developed by the Global Forum Working Group.
- In a case involving information required for the investigation and prosecution of criminal tax matters, the information will be provided without the requirement that the conduct being investigated would constitute a crime under the laws of Montserrat if it occurred in Montserrat. However, 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.
- In the case of information requested in the context of a civil tax matter, the absence of Montserrat tax interest in the case or in obtaining the information shall not be a bar to the provision of such information. However, 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 incidence of costs incurred in providing assistance in criminal and civil tax matters shall be agreed in the context of the exchange of information agreements

or arrangements entered into by Montserrat 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 or arrangement, whether both parties have income tax administrations, the capacity of each party to obtain and provide information, and the volume of information involved.

## **2. Transparency**

- Montserrat undertakes to ensure that information on beneficial ownership of companies, partnerships and other legal entities established in Montserrat, including managers of collective investment funds and trustees and beneficiaries of trusts, is available to its tax or regulatory authorities. This will include companies and other legal entities operating from Montserrat provided that the information is present within the territory, or in possession or control of a person subject to the jurisdiction of Montserrat. Montserrat agrees that such information will be subject to exchange under the tax information exchange agreements referred to in paragraph 1.
- Montserrat further undertakes to require the keeping of accounts by companies, partnerships, trusts and other legal entities established in Montserrat or having a place of business in the jurisdiction. Subject to de minimis and other exceptions to be developed by Montserrat together with the OECD and other committed jurisdictions, filing and auditing requirements will also be introduced for such entities. Montserrat agrees that such information will be subject to exchange under the tax information exchange agreements referred to in paragraph 1.
- Montserrat will also ensure that its tax or regulatory authorities, or such other authority as it may designate, will have access to bank information relevant to tax matters to the extent necessary to perform obligations under a tax information exchange agreement concluded pursuant to section 1.