

GOUVERNEMENT DE
LA REPUBLIQUE DE
VANUATU

MINISTRE DES FINANCES
ET DE LA GESTION
ECONOMIQUE

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GOVERNMENT OF THE
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Mr. Donald J. Johnston
OECD Secretary-General
2 Rue Andre Pascal
75775 Paris CEDEX 16
France

Dear Mr. Johnston

RE: OECD Harmful Tax Initiative

I am writing on behalf of the Government of Vanuatu concerning the OECD's Project on Harmful Tax Competition, as set out in its 1998 Report entitled "Harmful Tax Competition: An Emerging Global Issue."

In the adoption of the 1998 Report and the subsequent 2001 Progress Report (together hereinafter referred to as the "Reports"), OECD member countries have themselves agreed to abide by the principles enunciated in the Reports.

The Vanuatu Government notes, however, that two OECD member countries have specifically abstained from adopting the 1998 Report and that an additional two other countries have abstained from adopting the 2001 Report.

Notwithstanding the above, the Vanuatu Government has engaged constructively in a series of bilateral and multilateral consultations with the OECD. These meetings have served to clarify a number of issues.

The Vanuatu Government attaches fundamental importance to the view expressed by the OECD itself that fair tax competition is not to be discouraged.

In its decision making process, the Vanuatu Government has consulted widely with all the major stakeholders in the offshore finance industry as well as within Government.

These commitments will have significant adverse cost and revenue implications on the small economy of Vanuatu. Taking into account the need to pursue the long term development of its economy and recognising the important roles of fiscal and other

measures in this context, and the need to maintain its fiscal autonomy. Vanuatu makes these commitments in the hope that OECD Member countries and other international organisations take these adverse revenue effects into account in determining the development assistance they provide.

Areas of possible assistance could include improving existing revenue systems and their administration and generally assistance in strengthening capacities in financial services and diversification of the economy.

Attached is a schedule of commitments which have been the subject of discussions between us and which I am now authorised to make on behalf of the Government of Vanuatu. These commitments, which should be read in conjunction with this cover letter are offered on the basis that:

- Vanuatu is removed from the OECD list of Uncooperative Tax Havens;
- Vanuatu will not be subject to any framework of coordinated defensive measures by OECD member states;
- Vanuatu will protect its Sovereignty, economic interests and fiscal autonomy in all negotiations with the OECD. Vanuatu considers the establishment of a level playing field among all OECD member countries, and those non-member jurisdictions with which it is materially in competition with in the provision of cross border financial services, to be critical to its economic interest;
- 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 of the 1998 Harmful Tax Competition Report, will be the subject of a common framework of coordinated defensive measures.
- Vanuatu is invited to participate on an equal basis in any discussions in the Global Forum on the design of internationally accepted standards for the implementation of these and any similar commitments. Vanuatu 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 requirements.
- Vanuatu will receive, upon request, technical assistance, as required, for amending and/or implementing laws, regulations, practices and procedures, and negotiating such agreements as may be necessary to comply with the commitment herein.
- The detailed implementation of any commitments not already provided for under the Vanuatu law is subject to the approval of the Parliament of Vanuatu.

Yours faithfully

Honourable Sela Moisa
Minister of Finance and Economic Management



Attachment

This Attachment, which is to be read in conjunction with the cover letter, sets out the manner in which Vanuatu will implement its commitment and outlines the measures that the Government of Vanuatu is prepared to take on a phased basis by 31 December 2005 in cooperation with the OECD.

A. Establishing a Process for an Effective Exchange of Information.

1. Vanuatu stands ready to negotiate effective exchange of information agreements for criminal tax matters, which shall become effective for the first tax year after 31 December 2003. As regards the effective exchange of information, Vanuatu stands ready to negotiate agreements for civil tax matters which will become effective for the first tax year after 31 December 2005. Such exchanges shall be achieved under bilaterally negotiated tax information exchange agreements that require the effective exchange of information on specific tax matters pursuant to a specific request. The tax information exchange agreements will define the tax matters covered and include protection against unauthorized disclosures, unauthorized use of information and "fishing expeditions".
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 Vanuatu. 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.
3. In the case of information requested in the context of a civil tax matter, the absence of a Vanuatu 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.
4. 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 Vanuatu 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.

B. Transparency

1. Vanuatu will ensure that information on beneficial ownership of companies, partnerships, and other legal entities and on trustees and beneficiaries of trusts established in Vanuatu is available to its tax or regulatory authorities. This will include companies and other entities having a place of business in Vanuatu provided that the information is present within Vanuatu or in the possession or control of a person subject to the jurisdiction of Vanuatu. Vanuatu agrees that such information will be subject to exchange agreements referred to in paragraph A. 1.
2. Subject to de minimis and other exceptions to be developed in the Joint Ad Hoc Group on Accounts, the Government of Vanuatu will require that companies, partnerships, trusts, and other legal entities established or having a place of business in Vanuatu keep accounts in accordance with the standards being developed by the

Joint Ad Hoc Group on Accounts. Vanuatu agrees that such accounts will also be subject to exchange under the tax information exchange agreements referred to in paragraph A. 1.

- 3 Vanuatu agrees that its tax or regulatory authorities, or such other authority as it may designate, will have access to bank information to the extent necessary to perform obligations under a tax information exchange agreement concluded pursuant to paragraph A. 1.

C. Standstill

The Government of Vanuatu will ensure that:

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