



# THE OECD'S PROJECT ON HARMFUL TAX PRACTICES:

## THE 2001 PROGRESS REPORT



## **ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT**

Pursuant to Article 1 of the Convention signed in Paris on 14th December 1960, and which came into force on 30th September 1961, the Organisation for Economic Co-operation and Development (OECD) shall promote policies designed:

- to achieve the highest sustainable economic growth and employment and a rising standard of living in Member countries, while maintaining financial stability, and thus to contribute to the development of the world economy;
- to contribute to sound economic expansion in Member as well as non-member countries in the process of economic development; and
- to contribute to the expansion of world trade on a multilateral, non-discriminatory basis in accordance with international obligations.

The original Member countries of the OECD are Austria, Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The following countries became Members subsequently through accession at the dates indicated hereafter: Japan (28th April 1964), Finland (28th January 1969), Australia (7th June 1971), New Zealand (29th May 1973), Mexico (18th May 1994), the Czech Republic (21st December 1995), Hungary (7th May 1996), Poland (22nd November 1996), Korea (12th December 1996) and Slovak Republic (14th December 2000). The Commission of the European Communities takes part in the work of the OECD (Article 13 of the OECD Convention).

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# THE OECD'S PROJECT ON HARMFUL TAX PRACTICES: THE 2001 PROGRESS REPORT<sup>1</sup>

## I. INTRODUCTION

1. The more open and competitive environment of the last decades has had many positive effects on tax systems, including the reduction of tax rates and broadening of tax bases which have characterized tax reforms over the last 15 years. In part these developments can be seen as a result of competitive forces which have encouraged countries to make their tax systems more attractive to investors. In addition to lowering overall tax rates, a competitive environment can promote greater efficiency in government expenditure programs.

2. However, some tax and related practices are anti-competitive and can undercut the gains that tax competition generates. This can occur when governments introduce practices designed to encourage noncompliance with the tax laws of other countries. Many countries have put in place measures to prevent the erosion of their tax bases. Such measures often increase the complexity of their tax systems and put greater burdens and costs on tax administrations as well as on compliant taxpayers. Ultimately, taxpayer confidence in the integrity and fairness of the tax system, and in government in general, declines as honest taxpayers feel that they shoulder a greater share of the tax burden and that government cannot effectively enforce its own tax laws. Harmful tax practices also distort financial and, indirectly, real investment flows. Furthermore, such practices undermine the ability of each country to decide for itself the allocation of tax burden among mobile and less mobile tax bases, such as labor, property and consumption.

3. By providing a framework within which 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 rate should be, or how its tax system should be structured. It seeks to encourage an environment in which free and fair tax competition can take place.

4. It was with this objective in view, that the OECD Member countries published the report in 1998 entitled *"Harmful Tax Competition: An Emerging Global Issue" (the "1998 Report")*. That report focused on geographically mobile activities, such as financial and other service activities, including the provision of intangibles. It developed criteria to identify the harmful aspects of a particular regime or jurisdiction. In particular, it focused on factors that could cause harm by undermining the integrity and fairness of tax systems. Thus, it focused on four criteria in particular:

- No or nominal taxes in the case of tax havens and no or low effective tax rates on the relevant income in the case of preferential regimes,
- Lack of effective exchange of information,

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1 . Belgium and Portugal abstain from this Report. Luxembourg recalls its abstention to the 1998 Report, "Harmful Tax Competition: An Emerging Global Issue," which also applies to the present Report and regrets that the 2001 progress report is further away from the goal of combating harmful tax competition with respect to the location of economic activities. In addition, Switzerland notes that its 1998 abstention applies to any follow up work undertaken since 1998.

- Lack of transparency, and
- No substantial activities, in the case of tax havens, and ring fencing, in the case of preferential regimes.

The first factor -- no or nominal taxes in the case of tax havens and no or low effective tax rates on the relevant income in the case of preferential regimes -- is a gateway criterion to determine those situations in which an analysis of the other criteria is necessary.

5. Effective exchange of information enables governments to ensure that their own tax laws are being complied with, particularly where cross-border transactions are involved. Globalisation of the economy has had the side effect of opening up new ways in which companies and individuals can avoid taxes that are legally due. As the level of taxpayers' activities outside national borders expands, governments cannot always rely on domestic sources of information to enforce their tax laws. Exchange of information between tax authorities is widely recognised as an effective means of deterring and discovering non-compliance in cross-border transactions. Both the OECD and United Nations model tax conventions include a provision that permits tax authorities to exchange information. Over 225 treaties between OECD Member countries and over 1,500 treaties world-wide are based on these model treaties. In addition, detailed provisions for exchange of information were developed jointly by the OECD and the Council of Europe in the Convention on Mutual Administrative Assistance in Tax Matters. The Inter-American Center of Tax Administrations (CIAT) has also developed a model exchange of information agreement. Other countries have developed similar models. All of these agreements recognise that where effective exchange of information is present, a country's ability to enforce its own tax rules is enhanced.

6. The transparency criterion is concerned with ensuring that 1) laws are applied on an open and consistent basis among similarly situated taxpayers, and 2) information needed by tax authorities to determine a taxpayer's situation is in place. Lack of transparency can make it difficult, if not impossible, for tax authorities to apply their laws effectively and fairly. "Secret" rulings, negotiated tax rates, or other practices that fail to apply the law in an open and uniform way are examples of lack of transparency. Lack of transparency is also present if there is inadequate regulatory supervision or if the government does not have legal access to financial records. Taxpayers as well as the governments of other countries have an interest in knowing how the laws of a particular country are applied and that they are being applied in a consistent and fair manner.

7. The no substantial activities criterion was included in the 1998 Report as a criterion for identifying tax havens because the lack of such activities suggests that a jurisdiction may be attempting to attract investment and transactions that are purely tax driven. It may also indicate that a jurisdiction does not (or cannot) provide a legal or commercial environment that would attract substantive business activities in the absence of the tax minimising opportunities it provides.

8. In the case of jurisdictions that offer preferential regimes, the 1998 Report includes as a factor whether a country insulates its core tax base from the effects of providing a preference. For example, if a country offering a preferential regime denies that regime to resident taxpayers or domestic activities, it is not willing to bear the costs in lost revenues with respect to its own tax system. Such regimes are said to be "ring fenced".

9. The Report also provides eight additional factors which can assist in identifying harmful preferential tax regimes.

10. The 1998 Report was followed by a progress report in June 2000 entitled *"Towards Global Tax Co-Operation: Progress in Identifying and Eliminating Harmful Tax Practices (the "2000 Report")*. That report outlined the progress made by the Forum on Harmful Tax Practices in its work. In addition, the 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. Those jurisdictions that make such a commitment are referred to in this Report as "committed jurisdictions."
- 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.

11. The 1998 Report envisioned three parts to the harmful tax practices work: Member country preferential regimes, tax havens and non-member economies. This progress report focuses primarily on the tax haven work in accordance with the mandate of the 2000 Report<sup>2</sup>.

## **II. MEMBER COUNTRY WORK**

12. At the present time, the work with Member countries is focused on developing several application notes. The application notes will assist Member countries in determining whether preferential regimes are, or could be applied to be, harmful and in determining how to remove the harmful features of such regimes. The 1998 Report and the 2000 Report envisaged an appropriate balance between the Member country, non-member economy, and tax haven work. In the light of the modifications in Chapter IV, the Committee will determine this issue in the context of its work relating to preferential tax regimes taking into account the application notes including those relating to ring fencing. Future reports will focus on progress on this work.

13. The Committee recognises the importance of involving the business community in the development of the application notes. For this reason, the Committee regularly consults the Business and Industry Advisory Committee (BIAC). BIAC has established a liaison group to work closely with Member countries in taking forward this work.

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2 . The 2000 Report was accompanied by a Council recommendation.

### **III. NON-MEMBER ECONOMY WORK**

14. As regards the work with non-OECD countries, the 2000 Report stressed the need to "encourage non-member economies to associate themselves with the 1998 Report". The Forum is actively pursuing this mandate and has had discussions with several non-member economies in Asia and in Latin America. Multilateral regional meetings with non-member countries in Africa, Asia and South America have also been held in conjunction with the Southern African Development Community, the Asian Development Bank, and the Inter-American Center of Tax Administrations (CIAT). An international symposium was also held in Paris in June 2000, co-hosted by France. It was attended by 27 OECD Member countries and 29 non-member economies, along with the IMF, World Bank, Commonwealth Secretariat and four tax organisations. Ministers and senior officials discussed the global implications of harmful tax practices and support for a global drive to address harmful tax practices came from a wide range of countries.

15. In September 2001, the OECD hosted another meeting on harmful tax practices under the auspices of the Global Forum. This meeting brought together OECD Members, committed jurisdictions and non-member economies. The meeting considered the experiences of OECD Member and non-member countries with harmful tax practices, effective exchange of information, certain draft application notes, and the process under which non-member economies can associate themselves with the harmful tax practices work.

### **IV. TAX HAVEN WORK**

16. Part II(b) of the 1998 Report describes four key factors to determine whether a jurisdiction is a tax haven. The first is that the jurisdiction imposes no or only nominal taxes. The no or nominal tax criterion is not sufficient, by itself, to result in characterisation as a tax haven. The OECD recognises that every jurisdiction has a right to determine whether to impose direct taxes and, if so, to determine the appropriate tax rate. An analysis of the other key factors is needed for a jurisdiction to be considered a tax haven. The three other factors to be considered are:

- Whether there are laws or administrative practices that prevent the effective exchange of information for tax purposes with other governments on taxpayers benefiting from the no or nominal taxation.
- Whether there is a lack of transparency.
- Whether there is an absence of a requirement that the activity be substantial, which would suggest that a jurisdiction may be attempting to attract investment or transactions that are purely tax driven.

17. Beginning in 1998, the Forum entered into discussions with 47 jurisdictions. These jurisdictions were invited to submit information to assist the Forum in its determination of whether they met the tax haven criteria. Most jurisdictions participated in the review process through bilateral or multilateral contacts. The Committee concluded that six jurisdictions did not meet the tax haven criteria. In addition,

another six jurisdictions -- Bermuda, Cayman Islands, Cyprus, Malta, Mauritius and San Marino -- were not included in the 2000 Report because, prior to its release, they committed to eliminate their harmful tax practices. It should be noted that several of these jurisdictions currently do not impose direct taxes and need not do so to fulfil their commitments. The Report was clear that its identification of jurisdictions as tax havens reflected the technical conclusions of the Committee based upon the criteria set out in the 1998 Report and was not intended to be the basis for the application of a possible framework of co-ordinated defensive measures. The Council instructed the Committee to take forward an active dialogue with the jurisdictions listed in the 2000 Report with a view to obtaining the commitment of the jurisdictions to eliminate harmful tax practices in accordance with the principles of the 1998 Report.<sup>3</sup>

### **Progress in the Commitment Discussions**

18. The Forum has engaged in an extensive dialogue with the tax havens listed in the 2000 Report through bilateral and multilateral discussions. These discussions have resulted in additional commitments. The discussions also have greatly improved the understanding of the jurisdictions regarding the objectives of the harmful tax practices work. Almost all of the jurisdictions have indicated in discussions that they agree with the broad principles underlying the harmful tax practices project.

19. A number of multilateral discussions have also occurred since the issuance of the 2000 Report. A joint OECD-Commonwealth meeting was hosted by Barbados in January 2001 under the Chairmanship of the Prime Minister of Barbados. That conference had over 160 participants from 13 OECD countries, 13 Commonwealth Caribbean jurisdictions, 5 Pacific Commonwealth Islands, 8 other Commonwealth non-OECD countries<sup>4</sup>, as well as the International Monetary Fund, the World Bank, the Inter-American Development Bank, the Inter-American Center of Tax Administrations (CIAT), the Caribbean Community (CARICOM), the Caribbean Development Bank and the Pacific Islands Forum. A conference for the Pacific region was hosted in Japan in February 2001. That conference was co-sponsored with the Pacific Islands Forum (PIF) and was attended by 13 PIF members and 8 OECD Members<sup>5</sup>, the Asian Development Bank, the World Bank, the International Monetary Fund and the Commonwealth Secretariat. A joint OECD-Pacific Islands Forum meeting was held with South Pacific Island jurisdictions in Fiji in April of 2001. That conference was attended by PIF Members and OECD Member countries as well as the

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3. The United Kingdom confirms that it will remain responsible for any international obligations arising from any international fiscal treaties, agreements or commitments which affect its Overseas Territories or Crown Dependencies within the framework of the OECD Harmful Tax Practices initiative, including any that may be necessary to fulfil commitments entered into by those Overseas Territories or Crown Dependencies.

4. The 13 OECD countries were: Australia, Canada, Czech Republic, France, Germany, Ireland, Italy, Japan, Mexico, Netherlands, Sweden, the United Kingdom and the United States. The 13 Commonwealth Caribbean jurisdictions were: Anguilla, Antigua and Barbuda, The Bahamas, Barbados, Belize, British Virgin Islands, Cayman Islands, Dominica, Grenada, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines and Turks & Caicos Islands. The 5 Pacific Commonwealth Islands were: The Cook Islands, Niue, Seychelles, Tonga and Vanuatu. The eight other Commonwealth non-OECD countries were: Brunei Darussalam, Cyprus, Jamaica, Malaysia, Malta, Mauritius, Namibia, and Singapore.

5. The PIF members were: Cook Islands, Fiji, Republic of Marshall Islands, Federated States of Micronesia, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu. The OECD Members were Australia, Canada, France, Japan, Korea, New Zealand, Norway and the United Kingdom. Australia and New Zealand are also PIF Members.



PIF and OECD Secretariats. A meeting among jurisdictions from Europe, the Middle East, and OECD Member countries was held in Paris in February 2001<sup>6</sup>.

20. As a result of the meeting held in Barbados, a Joint Working Group co-chaired by Australia and Barbados was established. The OECD Members of the group include Australia, France, Ireland, Japan, the Netherlands and the United Kingdom. The non-OECD jurisdictions include Antigua and Barbuda, Barbados, the British Virgin Islands, the Cook Islands, Malaysia, Malta, and Vanuatu. The Joint Working Group was given a remit to find a mutually acceptable political process by which commitments could be made and to examine how to continue the dialogue begun in Barbados. Meetings of the Joint Working Group took place in London in January 2001 and in Paris in March 2001.

21. Discussions have been held with all 35 jurisdictions listed in the 2000 Report. These discussions are continuing on either a bilateral or multilateral basis. Many of the jurisdictions have substantially advanced towards making a commitment and the OECD looks forward to receiving their commitments in the near future.

22. Since the issuance of the 2000 Report, 5 jurisdictions have made commitments to eliminate harmful tax practices. They are Aruba, Bahrain, the Isle of Man, the Netherlands Antilles, and the Seychelles. These jurisdictions are now considered committed jurisdictions. Thus, there are now 11 committed jurisdictions. In addition, Tonga has recently made legislative changes and taken administrative actions to address those areas that led to its identification by the OECD in June 2000 as a tax haven and therefore will not be considered for inclusion in any list of uncooperative jurisdictions.

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

23. The dialogue between the OECD Members and the tax haven jurisdictions has resulted in the OECD having a better understanding of the concerns of the jurisdictions regarding the commitment process and participation in the harmful tax practices work. Since the inception of the harmful tax practices project, the Committee has sought to operate through a co-operative process.

24. 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.

25. The OECD Members responded to these concerns by establishing an alternative process that set out in greater detail the terms of the commitments sought, a proposed timetable for implementation and by providing for the publication of the details of any future commitments.

26. Some Member countries, as well as some tax havens, have expressed concerns regarding the application of the no substantial activities criterion, 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.

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6. The participants were 12 non-OECD jurisdictions (Andorra, Bahrain, Cayman Islands, Cyprus, Gibraltar-Overseas Territory of the United Kingdom, Guernsey-Dependency of the British Crown, Isle of Man-Dependency of the British Crown, Jersey-Dependency of the British Crown, Liechtenstein, Malta, Monaco and San Marino) and 14 OECD Member countries (Australia, Belgium, Canada, France, Germany, Greece, Ireland, Italy, Japan, Netherlands, Norway, Poland, the United Kingdom and the United States). In addition, the OECD Secretariat, the European Commission and the International Monetary Fund were also present.

27. The 1998 Report indicates that the lack of substantial activities is one of the criteria to be applied in identifying a jurisdiction as a tax haven. However, the determination of whether local activities are sufficiently substantial is difficult, as was anticipated in paragraph 55 of the 1998 Report. Consequently, in interpreting the no substantial activities criterion, the Forum sought to determine whether there were factors that discouraged substantial domestic activities. In the light of the discussions with the jurisdictions, the Committee concluded that it should not use this method to determine whether or not a tax haven is uncooperative.

28. Thus, the Committee has decided that commitments 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. In applying the transparency and exchange of information criteria many factors are relevant, including a relaxed regulatory framework, which reduces transparency and makes it less likely that the information needed for effective exchange of information will be available. The Forum will continue to examine all factors affecting the ability of a jurisdiction to engage in effective exchange of information.

29. The jurisdictions that have made commitments prior to the issuance of this report will be informed that they can choose to review their commitments in respect of the no substantial activity criterion.

30. Member countries would welcome the removal by tax havens of practices implicated by the no substantial activities criterion insofar as they inhibit fair competition.

31. Some Member countries, as well as some tax havens, have expressed concern over the lack of symmetry in the timing of the potential application of a framework of co-ordinated defensive measures to Member countries and tax havens. While the 1998 Report anticipated the potential need for such measures, it did not set a time for their application. The 2000 Report provided that the co-ordination of the defensive measures would not be implemented prior to 31 July 2001.

32. The Committee recognises that the potential application of a framework of co-ordinated defensive measures to tax havens prior to their potential application to OECD Member countries raises concerns regarding a level playing field between Member countries and tax havens. Therefore, the Committee agreed that a potential framework of co-ordinated defensive measures would not apply to uncooperative tax havens any earlier than it would apply to OECD Member countries with harmful preferential regimes. Each OECD Member country retains the sovereign right to apply or not apply any defensive measures as appropriate, either within or outside a framework of co-ordinated defensive measures.

33. In the light of the above developments and given the number of ongoing discussions with jurisdictions on the conclusion of commitments, the Committee has decided that the time for making commitments will be extended to **28 February 2002**. Such an approach is in accord with the aim of the 2000 Report to “establish a co-operative process to promote the elimination of harmful tax practices in jurisdictions identified in the 2000 Report...”. The objective of the tax haven work remains to obtain commitments from as many of the jurisdictions as possible. The modifications to the work contained in this Report are likely to facilitate this process by promoting an inclusive and constructive approach which emphasises the benefits of the initiative, including the opportunities for technical and capacity building assistance which OECD Member countries commit themselves to provide to jurisdictions who commit to the process. If all jurisdictions make a commitment prior to 28 February 2002, it will not be necessary to issue a list differentiating between those jurisdictions that have made a commitment and those that have not.

34. In order to ensure that jurisdictions that have made commitments have sufficient time to develop implementation plans, the Committee has decided to extend the time for developing implementation plans from six months after the date of making the commitment to twelve months after the date of making the commitment.

35. These modifications do not affect the application of the 1998 and 2000 Reports to Member countries and non-member economies. In addition, the factors in the 1998 Report used to identify tax havens remain unchanged.

### **Commitments to Transparency and Effective Exchange of Information**

36. A jurisdiction will not be considered uncooperative if, by 28 February 2002, it commits to transparency and effective exchange of information, as discussed in paragraphs 37 and 38.

37. By committing to transparency, a jurisdiction agrees that there will be no non-transparent features of its tax system, such as rules that depart from established laws and practices within the jurisdiction, "secret" tax rulings or the ability of persons to "negotiate" the rate of tax to be applied. Transparency also requires financial accounts to be drawn up in accordance with generally accepted accounting standards and that such accounts either be audited or filed. Exceptions to this standard may be warranted where the transactions of an entity are de minimis or the entity is engaged solely in local activities and does not have foreign ownership, beneficiaries, management or other involvement. A committing jurisdiction also agrees that its governmental authorities should have access to beneficial ownership information regarding the ownership of all types of entities and to bank information that may be relevant to criminal and civil tax matters. The information to be maintained to meet the transparency criterion should be available for exchange pursuant to legal mechanisms for exchange of information as described below.

38. By committing to effective exchange of information, a jurisdiction agrees to establish a mechanism for the effective exchange of information that includes the following elements. The commitment ensures that there is a legal mechanism in place that allows information to be given to a tax authority of another country in response to a request for information that may be relevant to a specific tax inquiry. An essential element of effective exchange of information is the implementation of appropriate safeguards to ensure that the information obtained and provided is used only for the purposes for which it was sought. The adequate protection of taxpayers' rights and the confidentiality of their tax affairs is essential to preserving the integrity and effectiveness of exchange of information programmes. The OECD Member countries have agreed to provide technical assistance to establish such safeguards and more generally, to assist in the implementation of exchange of information programmes in the jurisdictions. In the case of information requested for the investigation and prosecution of a criminal tax matter, the information should be provided without a requirement that the conduct being investigated would constitute a crime under the laws of the requested jurisdiction if it occurred in that jurisdiction. In the case of information requested in the context of a civil tax matter, the requested jurisdiction should provide information without regard to whether or not the requested jurisdiction has an interest in obtaining the information for its own domestic tax purposes. The committing jurisdiction is also asked to agree that it will have administrative practices in place so that the legal mechanism for exchange of information will function effectively and can be monitored. The committed jurisdictions have been invited to work with OECD Members to develop an exchange of information instrument that could be used to satisfy their commitments. This work is described more fully in the section on Implementation of Commitments, below.

## **Implementation of Commitments**

39. Each committed jurisdiction has agreed to develop together with the Forum a plan (an "implementation plan") describing the manner in which it intends to achieve its commitment to eliminate harmful tax practices by 31 December 2005. This is the date set in the 1998 Report for Member countries to remove the benefits to taxpayers benefiting on 31 December 2000 from any harmful preferential regimes, and is approximately 2-1/2 years after the main deadline by which Member countries have committed to remove the harmful features of their harmful preferential tax regimes.

40. Implementation plan discussions have been held with all of the advance commitment jurisdictions and will begin soon with those jurisdictions that have committed since the issuance of the 2000 Report. The Committee has decided that implementation plans should be completed within twelve months (rather than within six months) of making the commitment to ensure that committed jurisdictions have sufficient time to undertake those changes that are necessary to eliminate harmful tax practices by 31 December 2005.

41. A key component of the commitments is to establish a programme of effective exchange of information. As foreseen in the 2000 Report, a collaborative process has been established between OECD Member countries and the committed jurisdictions to achieve that goal. The committed jurisdictions were invited in September 2000 to join a working group of OECD Member countries in the development of an instrument for effective exchange of information. The group has met twice in Paris and once in Malta and is holding a fourth meeting in Paris on 12-16 November 2001. The meetings of the working group are jointly chaired by the Netherlands and Malta.

42. The group has focused its discussions on developing an instrument that would provide a legal framework for effective exchange of information and at the same time would adequately protect the confidentiality of taxpayer information and prevent use of the information for unauthorized purposes. The group has considered the types of information that should be available for exchange and the means by which the information could be obtained. Considering the importance of the work on exchange of information, the Committee encourages the group to continue to advance its work.

43. The Committee recognises the importance of working co-operatively with jurisdictions. To further involve committed jurisdictions in the harmful tax practices work, committed jurisdictions will be invited to provide input into the development of relevant application notes. Committed jurisdictions also will be invited to participate in events organised under the auspices of the Global Forum that relate to their commitment. In this connection, committed jurisdictions participated in a meeting on harmful tax practices held in September 2001.

## **Assisting Committed Jurisdictions**

44. The Council has instructed the Committee to work with interested international and bilateral assistance agencies to assist committed jurisdictions to fulfil their commitments and to work with these jurisdictions during the transitional period to support their economies as they move away from harmful tax practices.

45. Some jurisdictions have indicated concerns about their administrative capacity to meet their commitments. OECD Member countries will offer, through the OECD and other organisations, specific assistance in strengthening and improving the design of the administrative capacities of those jurisdictions that require it.

46. The Committee has also explored with the Development Assistance Committee the forms of assistance that may be appropriate to help committed jurisdictions further develop their economies as they move to eliminate harmful tax practices. Other international organisations and development banks, such as the World Bank, have also offered to assist in this effort. OECD Member countries will continue to examine how their assistance programmes can, on a bilateral basis, be re-targeted to assist committed jurisdictions and to encourage international organisations to take into account the special needs of committed jurisdictions in the design of multilateral assistance programmes.

## **V. FRAMEWORK OF CO-ORDINATED DEFENSIVE MEASURES**

47. To mitigate the impact of harmful tax practices a variety of measures are currently used by OECD Member countries and non-member economies. The 1998 Report noted that there are limits to the effectiveness of such measures when they are applied on a unilateral or bilateral basis to a problem that is inherently global in nature. The 1998 Report examines how the measures that are already in place, and any appropriate new measures, can be co-ordinated in a way that will enable countries to more effectively support each other's efforts to protect themselves from harmful tax practices. Thus, a framework of co-ordinated defensive measures is a means by which countries with similar concerns can support each other's efforts to counter the effects of harmful tax practices. It would address the global nature of harmful tax practices and allow each individual country's defensive measures to be applied in the most effective manner. A framework of co-ordinated defensive measures also serves to protect the competitive position of those jurisdictions that have eliminated harmful tax practices with respect to jurisdictions that have not committed to do the same. Each individual Member country has the right to implement the measures it deems necessary to counteract harmful tax practices.

48. In the design of a framework of co-ordinated defensive measures, the Committee will be guided by several considerations:

- A framework of co-ordinated defensive measures should be proportionate and targeted at neutralising the deleterious effects of harmful tax practices.
- The adoption of defensive measures is at the discretion of individual countries.
- Each country is free to choose to enforce defensive measures in a manner that is proportionate and prioritised according to the degree of harm that a particular practice has the potential to inflict.

49. Although the Committee believes that a framework of co-ordinated defensive measures can help mitigate the impact of the erosive effects of harmful tax practices and ensure against their spread, it strongly prefers an approach that promotes change through dialogue and consensus.

