ECONOMIC PAPER 77

Assessing the Playing Field

International Cooperation in Tax Information Exchange

Camille Stoll-Davey

Assessing the Playing Field

International Cooperation in Tax Information Exchange

Camille Stoll-Davey

COMMONWEALTH SECRETARIAT
http://www.thecommonwealth.org/publications

Commonwealth Secretariat, Marlborough House, Pall Mall
London SW1Y 5HX, United Kingdom

Economic Paper 77 in the Commonwealth Economic Paper Series

This paper was first presented at the September 2006 meeting of the International Trade and Investment Organisation in the Cayman Islands.

Published by the Commonwealth Secretariat

Designed by Wayzgoose

Printed by The Charlesworth Group

Wherever possible, the Commonwealth Secretariat uses paper sourced from sustainable forests or from sources that minimise a destructive impact on the environment.

Copies of this publication may be obtained from:

The Publications Section
Commonwealth Secretariat,
Marlborough House, Pall Mall,
London SW1Y 5HX, United Kingdom
Tel: +44 (0)20 7747 6342
Fax: +44 (0)20 7839 9081
E-mail: publications@commonwealth.int

Web: www.thecommonwealth.org/publications

ISBN-10: 0-85092-856-7
ISBN-13: 978-0-85092-856-3

Contents

Foreword

The Commonwealth Secretariat strongly believes that to reduce global inequality, international standard setting exercises need to promote a level playing field and fair competition between small developing countries and large rich nations.

In the global arena the lack of representation and effective participation of small vulnerable economies in international standard setting bodies and processes is one of the major drawbacks. The small states have limited opportunities to make inputs into the development of measures that are critical for the efficient functioning of the sector, as well as for their development. Yet their compliance is expected within given timeframes.

In the area of the International Financial Services Sector (IFSS), the Secretariat has firmly supported the efforts of its small member states to both diversify their economies and to achieve a level playing field. However, as the IFSS began to gather economic momentum in these jurisdictions, they suffered a setback through being labelled as tax havens and have since faced punitive sanctions through a non-inclusive OECD-driven process. The Harmful Tax Competition Initiative, as it is termed, has threatened to destroy a new source of growth, employment and revenue for a number of small states which lack the voice and resources to defend their interests effectively.

The Secretariat has been assisting these countries to seek redress by establishing the OECD Global Level Playing Field Sub-group, which has met annually since 2003. In agreeing to the Sub-group, the OECD has helped set the stage for direct dialogue between member and non-member jurisdictions and allowed small states to make some input into setting standards. The Sub-group has also allowed the unique challenges faced by small states to be brought to the fore.

The OECD survey of 82 countries, which is a result of these meetings, provides the backdrop for a review of practices in this sector. The Secretariat commissioned an in-depth analysis of the findings of the survey, which reveals that while some progress has been made, disparities continue to exist. For instance, the issue of Double Taxation and Tax Information Exchange Agreements needs to be addressed by the development of a methodology that recognises the divergence in tax structures across jurisdictions and allows all countries to utilise the same tools.

In the final analysis, the International Financial Services Sector must foster an environment of fair play that takes full account of the interests and vulnerabilities of small developing states.

Ransford Smith
Deputy Secretary-General
Commonwealth Secretariat

Executive Summary

In 1996 the Organisation for Economic Cooperation and Development (OECD) embarked on its Harmful Tax Competition Initiative. As the name implies, the initial objective of this exercise was to identify types of tax competition which OECD members would agree to label as 'harmful' on the basis that types of tax competition deemed harmful would not be permitted. The tax scope of the exercise was initially intended to be broad, while the regulatory scope was to be confined to the membership of the OECD. By 1997 the tax scope of the exercise had been significantly reduced so as to include only competition for mobile financial and other services, while the list of countries which it was intended would comply with the rules had expanded to include a group of some 47 small and developing countries perceived as competing with OECD countries in the financial services sector, which were invited to submit information to assist the OECD in determining whether they met its tax haven criteria. Based on this information, the OECD chose to label 41 of these countries as 'tax havens'.

The 47 small and developing countries were not consulted in the development of the OECD's criteria for unacceptable forms of tax competition, nor in the OECD's unique criteria for 'tax havens', nor in the determination of countries deemed to fit the criteria. Not unexpectedly, the 41 'targeted' countries objected to both the procedural and substantive aspects of the OECD exercise. They asserted the right to a 'level playing field', not only in terms of what was expected from them with regard to tax information exchange and standards for transparency relative to what was expected of OECD members or other competitor countries, but also in terms of a fair basis for financial services sector competition, that is, one that was not biased in favour of OECD members.

After an initial period of occasionally heated debate, the OECD, in conjunction with a sub-group of the targeted 41 non-OECD countries, developed a set of standards for the exchange of information in taxation matters which was published in the form of a non-binding Model Agreement on Tax Information Exchange in 2002. The publication of these standards afforded the basis for a relatively objective assessment of both the tools that are available for tax information exchange in OECD member states and other countries, as well as actual exchange of information practices.

In 2003 the OECD agreed that there was in fact no 'level playing field' and undertook to work with the targeted countries to develop one. In 2004, as part of this exercise, the relevant countries agreed to conduct a benchmarking exercise of the legal and administrative frameworks for exchange of tax information in all the OECD member states, the small and developing countries targeted in the harmful tax competition exercise and a group of non-OECD countries which had significant financial services sectors. The results of the exercise were published in 2006.

This report sets out the background to the 2006 Assessment and a review of the relevant academic literature, together with the results of an analysis of the legal and administrative frameworks of a sample of 25 countries selected from the 82 countries which participated in the 2006 Assessment. The sample was selected to reflect the geographic, population and GDP dispersion of countries included in the 2006 Assessment. It includes member countries of the OECD, member countries of the International Trade and Investment Organisation (ITIO), an organisation formed to represent the interests of the targeted small and developing countries, and non-OECD/non-ITIO countries. The data in the Assessment were correlated with publicly available data from international bodies such as the World Bank, the International Monetary Fund (IMF) and the Financial Action Task Force (FATF), as well as governmental sources. Information derived from interviews with government officials from some of the ITIO countries sampled was also used.

The analysis indicates that in virtually all the countries examined, whether they are OECD member states, ITIO countries or non-OECD/non-ITIO countries:

- there are mechanisms in place for the exchange of information under certain conditions;
- there are limitations to the manner and circumstances under which countries are able to provide tax information; and
- there are limitations to the information which is available to be provided in relation to tax information exchange.

Further, the analysis does not indicate that the legal and administrative frameworks available for tax information exchange in OECD countries are objectively superior to those in ITIO or non-OECD countries.

The findings also show that, in the overwhelming majority of cases, the international instrument made available to small and developing countries is the stand-alone tax information exchange agreement (TIEA), which does not afford them the same economic advantages as are offered to more geopolitically influential countries which are able to use the conventional double taxation conventions (DTCs) as their mechanism for the exchange of information. The net effect of this limitation to TIEAs is the exclusion of small and developing countries from the treaty network; this puts them at an economic disadvantage and creates an ‘unlevel playing field’ for competition in the global financial services sector.

The financial services sector is the most rapidly growing component of the global economy. If a level playing field is to be achieved, where the option of competing in the financial services sector is made available to small and developing countries rather than only to the most developed countries, then either access to the treaty network will have to be made available to these small and developing countries or other means of removing the present, and potential future, discrimination will be required. It is suggested in this paper that the use of fair treaty instruments and non-discrimination in the treatment of small and developing countries will provide a stable long-term basis on which a global community of cooperation in taxation matters will prosper.

1

Introduction

The publication by the Organisation for Economic Cooperation and Development of a baseline survey of legal and administrative mechanisms available for tax information exchange in 82 OECD and non-OECD countries (the 2006 Assessment) marks a significant milestone.[1] The cooperative efforts required to produce this document highlight the evolution of a constructive approach to a complex problem. The 2006 Assessment was designed to examine administrative cooperation in the form of tax information exchange and the potential limits to such cooperation. However, the economic development and competition issues facing small and developing countries in the context of tax information exchange were not addressed.

The competition between states for the control of economic resources is at least as old as the concept of the nation state itself. Traditionally there have been few rules, other than those related to limitations on the use of armed force, to guide such competition. States compete individually and may also form multilateral alliances for the purposes of competition. There are no rules in international law against the use of cartels or similar strategies, which have long been banned under competition law within developed national economies.[2] Yet stable systems of cooperation, whether in the form of governments of individual nation states or coordinated international cooperation, arguably require the common recognition of rules and standards based on shared concepts of fairness – a 'level playing field' for participants in the system of cooperation.

This report seeks to identify existing areas of 'unlevelness' in the playing field, which may have adverse effects on small and developing Commonwealth countries, and to suggest steps which can be taken to address the issues of the 'level playing field' in this context. It builds on previous work done by the Commonwealth Secretariat, the International Trade and Investment Organisation,[3] the OECD and academics working in this area.

2

Background to the 2006 Assessment

The 1996 Lyon Summit of the OECD member states launched an initiative aimed at limiting certain types of tax competition which were deemed contrary to the interests of the world's most developed countries. Although there was little, if any, published evidence that tax competition was in fact adversely affecting, or indeed was likely to adversely affect, the economies of the OECD member states,[4] the concluding communiqué of the Heads of State urged the OECD to develop pre-emptive measures to address any potential or perceived threats of tax competition to the interests of the member countries and to report back in 1998. The communiqué stated:

> Finally, globalisation is creating new challenges in the field of tax policy. Tax schemes aimed at attracting financial and other geographically mobile activities can create harmful tax competition between States, carrying risks of distorting trade and investment and could lead to the erosion of national tax bases. We strongly urge the OECD to vigorously pursue its work in this field, aimed at establishing a multilateral approach under which countries could operate individually and collectively to limit the extent of these practices. We will follow closely the progress on work by the OECD, which is due to produce a report by 1998.[5]

In 1998, in response to this request, the OECD's Committee on Fiscal Affairs published a report entitled *Harmful Tax Competition: An Emerging Global Issue* wherein, among other points, four factors for the identification of 'Tax Havens' and 'Harmful Preferential Tax Regimes' were established.[6] It should be noted that Switzerland and Luxembourg, both OECD member states, did not endorse the report.[7] The OECD's Harmful Tax Competition Initiative, as it became known, was initially only concerned with the activities of OECD member states. In 1997, however, it was decided to include selected (small and developing) non-OECD countries, which the 1998 report labelled as 'tax havens', within the scope of the initiative.[8] Since then the OECD has published further reports on developments in this area, including the 2006 Assessment.

Much of the early history of the OECD's Harmful Tax Competition Initiative was undoubtedly acrimonious and marked by the absence of any meaningful dialogue between the initiators and the non-member target states.[9] There was also an apparent lack of understanding and mistrust on both sides. Tax officials from OECD member states no doubt felt justified in their efforts to secure the economic interests of the governments they represented. The non-OECD countries threatened by the Initiative felt aggrieved by the processes used, the arguably capricious manner in which they were targeted, and the lack of any 'level playing field' in terms of the development and application of any standards for tax-related economic competition, and the threats to their economic development efforts.

The situation at the outset of the Harmful Tax Competition Initiative was exacerbated by the fact that virtually all of the then limited academic literature on the provision of cross-border financial services was written from the perspective of those in geopolitically dominant centres of financial services activities. This is perhaps understandable given that, according to some recent estimates, the member states of the OECD continue to account for approximately 80 per cent of the provision of financial services to non-residents.[10] While a considerable amount of material has since been written about the early phase of the Harmful Tax Competition Initiative and the designation of small and developing non-OECD countries as 'tax havens', the implications of the Initiative for the small and developing non-OECD countries targeted was not fully considered.[11]

The language which has developed in relation to the cross-border financial services sector tends to parallel this dominant country perspective. By way of example, concentrations of financial services activities within the dominant countries tend to be referred to by relatively precise designations such as 'Wall Street', in the case of the United States, and 'the City', in the case of the UK, while those not in dominant countries tend to be referred to generically as 'offshore financial centres'. This has led to an 'us versus them' dichotomy which belies the fact that the activities in these centres are closely linked, if not essentially the same, irrespective of their location. The 'offshore' frame of reference has no doubt been enhanced by the fact that in a number of cases the financial centres outside the dominant countries have also been geographically located close to, but off the geographic shores of, the dominant countries. There has also been a tendency in ill-informed circles to characterise all 'offshore financial centres' as 'tax havens', ignoring the actual economic bases of these centres.

In June 2000 the OECD published an initial 'blacklist' of 35 'tax haven' countries, a number greater than the number of OECD countries.[12] In November 2000 the OECD, under the OECD's multilateral framework of 'the Global Forum on Taxation' (Global Forum), commenced a dialogue with six non-OECD countries which had made what the OECD viewed as acceptable, political commitments to remove harmful tax practices and to implement transparency in taxation matters, as well as effective exchange of information in civil and criminal tax matters.[13] In January 2001, with the assistance of the Commonwealth Secretariat, the scope of the dialogue and the number of countries participating was greatly expanded. Subsequently during 2001, five additional countries made similar commitments, increasing the number of committed countries to 11.[14] This increase in committed countries may be linked to the OECD's revised criteria, which continued to include 'transparency' and 'effective exchange of information', but removed 'lack of substantial activities' and 'ring fencing'.[15] Following this revision in the OECD's criteria, a significant number of additional commitments from countries were received. In 2002 the evolving collaboration under the OECD's Global Forum produced a non-binding Model Agreement on Tax Information Exchange ('Model Agreement') setting out certain standards for the exchange of tax information and transparency.[16] In addition, the Global Forum Joint Ad-hoc Group on Accounts developed guidance for accounting and record-keeping requirements to be used in association with the 2002 Model.[17] It should be noted that a number of countries whose commitments were not made until, or after, late 2001 do not accept the OECD Tax Information Exchange Agreement model as being an 'international standard', as they were not parties to the development of the model.

Competition Among Financial Centres

Financial centres, both 'onshore' and 'offshore', compete with each other to attract flows of money. One of the factors which influences these flows, and which in a sense therefore both defines and links so-called 'onshore' and 'offshore' jurisdictions, relates to regulatory regimes. As noted by Wise:

> … [i]n an age of instant telecommunications, insularity is not determined by geography. Today, offshore banking centers are not necessarily physical islands set off by the oceans; rather, they are islands surrounded by a sea of regulation.[18]

That is not to say that so-called offshore centres are unregulated. Rather, as Rawlings has noted,[19] they are indeed regulated, but often in a manner which differs from that of the 'onshore' regulators, offering more efficient and competitive alternatives to the users of international financial systems.

Regulatory regimes can both attract and repel international financial flows. By way of example, a contributing factor in the initial development of the so-called offshore financial centres (OFCs) in the Bahamas and the Cayman Islands can be linked to the early efforts of the USA to defend the Bretton Woods system, a dollar-centric global geopolitical economy within a bounded national financial regulatory framework. The Interest Equalisation Tax (IET) imposed by the USA in 1963 as a capital control measure similarly had the effect of stimulating the rapid growth of the eurocurrency system. Banks in London realised that they were able to lend US dollars globally at lower rates than banks in the USA; as a result they established branches in the Caribbean financial centres and elsewhere. This allowed them to operate free of exchange controls and interest rate ceilings, and meant that their infrastructural costs were lower than those of banks based in London. They also benefited from the convenience of being in the same time zone as many of their clients. US banks soon followed suit; the total number of overseas branches of US banks rose from 180 to 732 between 1965 and 1975, with the Caribbean financial centres' component increasing from five to 164 over the same period.[20] It may thus be argued that under the law of unintended consequences, the IET capital controls largely shaped the emergence of modern international finance and the so-called OFCs in the mid-1960s. As observed by Aliber:

… [B]anks did not invent the euromarket, governments created it by seeking to control the natural flow of money.[21]

Edwards adds:

… [T]he remarkable development of offshore dollar banking is at bottom a history of regulatory myopia, together with a good bit of regulatory mismanagement.[22]

Capital Mobility

The control of mobile financial services was a major focus of the OECD's 1998 report. The general global decrease in restrictions on cross-border capital movement stimulated by the relaxation of capital controls in the 1970s, coupled with improvements in telecommunications, produced a marked increase in the mobility of capital. The dynamic economic activity brought about by this increase in capital mobility, together with a perpetual search for profits, helped to develop new monies which were detached from national spaces – so called 'stateless monies' – the regulation of which was in tension with the existing state-centric geo-regulatory frameworks. Such 'stateless monies' challenged existing territorial regulation as the organising principle of the modern international political economy. As Leyshon has noted:

… [T]here emerged for the first time an essentially de-territorialized economic phenomenon, which possessed a logic and a dynamic completely at odds with the national-centric order of the international regulatory system.[23]

The natural response of state-based regulators was to attempt to establish control over this economic phenomenon of new monies in order to force the genie back into the bottle and bring it under their control.

Market Efficiency

It may be argued, and indeed it has been accepted by the OECD, that one of the main historic benefits of the so-called OFCs is the way in which they facilitate commerce by creating market efficiency and liquidity.[24] It may further be argued that without the competitive pressures brought about by the non-OECD financial centres, the global markets would exhibit higher potential credit costs, other pricing inefficiencies and general illiquidity. Nonetheless, by the late 1990s the OECD member countries had come to view this set of market efficiency advantages provided to the global markets as being more than offset by a perceived threat to their existing positions.

Tax havens generally rely on the existing global financial infrastructure and have traditionally facilitated capital flows and improved financial market liquidity. Now that the non-haven countries have liberalized and de-regulated their financial markets, any potential benefits brought about by tax havens in this connection are more than offset by their adverse tax effects.[25]

It should be noted, however, albeit in retrospect, that the available literature indicates that while tax rates and tax rate differentials may affect some investment decisions, there is little if any good evidence to support the conclusion that the activities of the small and developing nations targeted in the OECD exercise pose a threat to the tax bases of the OECD countries.[26]

Global Competition and Regulatory Response

It is useful at this juncture to recall that as a result of the 1959 treaty extensions to the 1945 treaty between UK and the USA, many of the small and developing countries in the Caribbean which were former UK colonies were included in the treaty network. However, these treaty extension agreements, which included provisions for the exchange of tax information, were terminated, in many instances unilaterally, by the USA around 1983.[27] In order to counteract the double taxation which resulted from the cancellation of the treaties, many small and developing countries in the Caribbean found it necessary to change their income tax systems to exempt non-resident income in order to prevent double taxation of such income, which would ultimately have stifled inward investment. It may thus be argued that the 'onshore' regulatory measure of unilaterally cancelling treaties was a root cause of the lack of tax information exchange which the OECD countries later complained of. It is arguable that had the 1980s approach been one of modifying treaties to prevent abuse, rather than cancelling them, then many of the problems later perceived by the OECD might never have arisen.[28]

By the late 1990s, the OFCs had grown to constitute a significant part of the new economic geography. This development of the OFCs corresponds to the global transition from a modern to a postmodern geopolitical economy in which the mobility of capital and its new geography challenges the state-territorial organisation of traditional regulatory space and power.

The resulting global competition to control this new geography – involving so-called 'stateless monies' – has led to the emergence of new regulatory regimes. Established economies, threatened by the potential loss of existing business and/or potential future business growth, may feel compelled to modify their regulatory requirements to secure their own interests. They may also respond by influencing or collaborating with other established economies to coordinate regulation or to form cartels in order to modify the regulatory regimes of others.[29] Wise has noted that in their attempts to regain control when regulations were undermined, the policy-makers are faced with two choices:

> … [E]ither they must seek to mitigate regulations in the direction of conditions existing in the external market, or, conversely, they must seek to gain control over the external market.[30]

By way of example, the USA's regulatory response to the burgeoning eurodollar market resulting from its IET may be viewed as consistent with the strategies suggested by Wise. It first sought to mitigate regulation to attract the dollars back onshore by enhancing the competitiveness of US onshore banking; second, it sought to regulate offshore jurisdictions by applying US legal power extraterritorially in the offshore jurisdictions.[31]

As has been further noted by O'Brien:

> Financial market regulators no longer hold full sway over their regulatory territory: that is rules no longer apply to specific geographic frameworks, such as nation-states or other typical regulatory jurisdictional territories.[32]

Seen in this context, it should come as no surprise that in response to perceived or anticipated competitive threats coming from OFCs, 'onshore' authorities have sought to coordinate their efforts to assert extraterritorial control. As noted by the OECD's Jeffrey Owens in relation to the Harmful Tax Competition Initiative:

> We needed to encourage jurisdictions to come to the table. Our Member countries thought long and hard on what would be the most effective approach and concluded, as did the FATF, that we needed deadlines and a distinction to be made between cooperative and uncooperative jurisdictions.[33]

It was also arguably important to encourage those approaching 'the table' to do so with a certain posture of supplication. The result was the adoption of threats of 'blacklists' and other economic 'defensive measures' as a means of expanding control over regulatory territory.

Democratic Deficit

The action of effecting changes in the legal and regulatory framework of individual nation states without the input of the citizens of that nation state, or with a lack of representation from the democratic base of the nation state itself, arguably creates a 'democratic deficit' which taints the outcome and is likely to render it inherently unstable.

William Wechsler, a former senior US official writing in 2002 about the US strategic approach to extra-territorial regulatory control in the late 1990s, stated:

> The strategy also had to recognize the limits of traditional law-enforcement and regulatory channels as well as the relative ineffectiveness of previous diplomatic efforts. Furthermore, any strategy had to be global and multilateral, since unilateral actions would only drive dirty money to the world's other major financial centers. Yet Washington could not afford to take the 'bottom-up' approach of seeking a global consensus before taking action; if the debate were brought to the UN General Assembly, for example, nations with under-regulated financial regimes would easily outvote those with a commitment to strong international standards. Finally, the strategy had to be politically tenable, given the varied U.S. interests in many nations with underregulated financial sectors.[34]

It is perhaps worthy of note in this context that a subsequent objective assessment by the OECD's sister organisation, the FATF, has cast some doubt on claims of strong regulatory standards on the parts of those at the 'top'.[35] In addition the IMF Financial Centre Assessment Report noted that the so-called 'off-shore' financial centres were 'more favourably' regulated.[36]

This approach, described by Wechsler, of 'top-down' implementation, rather than seeking to achieve global consensus, and of only targeting countries which have relatively little geo-political influence, is consistent with what Keohane and Nye have referred to as the 'club model' of global governance.[37] In the club model, agencies of dominant governments (to the exclusion of other governments) work in a coordinated fashion to establish and promulgate rules, standards of practice and intended norms.

In the early phases of the Harmful Tax Competition Initiative, the small and developing non-member countries which were selected for potential 'blacklisting' were arguably not allowed any meaningful input into the process which resulted in them being placed on the blacklist. Indeed, the countries which were threatened with 'listing' were identified prior to the formal listing by the OECD, in effect creating a separate blacklist which anticipated the subsequent list.[38] It is arguable that a foreseeable consequence of this type of 'top-down' strategy would be to disrupt the economies of the small and developing countries which were targeted and force them to concentrate their limited resources on taking steps to have their countries removed from the blacklist rather than on maintaining any competitive advantage. In addition, the spawning of derivative individual country blacklists by adherents of the strategy arguably created further disadvantages for the targeted countries.[39]

The damage done to the economies of countries targeted by both the OECD's list and individual countries' lists remains a concern for many of the countries listed.[40] The economies of these small nations have suffered immense consequences as a result of being blacklisted by the OECD.[41] The constructive dialogue which has developed in the Initiative in the last few years has, however, offered the possibility of some relief for the countries originally listed. Indeed, it has now been acknowledged by the OECD that the information on which its 2000 list was based has been superseded by information set out in the 2006 Assessment.[42]

3

The 'Level Playing Field' in Context

In 2003 at the Global Forum meeting in Ottawa, following the presentation of a proposal by members of the ITIO, both OECD and non-OECD Global Forum members acknowledged that the 'playing field' was unlevel and commendably committed themselves to work toward the principle of a 'level playing field'.[43] In their closing statement, the co-chairs of the Ottawa Global Forum, Gabriel Makhlouf, Chair of the OECD's Committee on Fiscal Affairs, and Deputy Prime Minister and Finance Minister of the Cook Islands, the Honourable Dr Terepai Maoate, referred to the fact that 'the level playing field is fundamentally about fairness'. In particular

> … [the participants] agreed that ways should be explored to involve significant financial centres that are not currently participating in the Global Forum process.[44]

This recognition by the Global Forum that working towards a level playing field required the extension of the process to other financial centres represented a significant step forward for the original 41 targeted non-OECD countries. The Ottawa Global Forum also established a sub-group of participants to develop proposals for consideration by the full Global Forum for achieving a global level playing field and a process by which this work could be taken forward.[45]

At its 2004 meeting in Berlin, the Global Forum agreed to continue working towards a global 'level playing field' by ensuring that the implementation of the high standards for transparency and exchange of information in civil and criminal tax matters would be implemented in a manner which permits equitable and fair competition between all countries, OECD and non-OECD. Of particular note at this meeting was the commitment of both OECD and non-OECD participating countries to embrace the principle of fairness. As stated in the 2004 Berlin report:

> Central to the concept of a global 'level playing field' is that it is fundamentally about fairness.[46]

The report tabled by the 'level playing field' subgroup at the Berlin Global Forum, which was agreed by the participants, expanded further on the need for other financial centres to be brought within the process:

> 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.[47]

The Global Forum position on the relationship between exchange of information and fairness in economic competition between countries was articulated in the 2004 Berlin Report in the following manner:

> …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.[48]

Also in 2004, the Global Forum took a further step in its efforts to achieve a level playing field by committing itself to conduct a survey of the legal and administrative frameworks of selected OECD and non-OECD countries with the goal of documenting the actual mechanisms for the exchange of information.[49] The survey was intended to establish a benchmark of where OECD and non-OECD countries stood in relation to the standards on transparency and the effective exchange of information embedded in the 2002 Model Agreement.

The survey took the form of a standard questionnaire designed to identify components of the legal and administrative frameworks of the 82 participating countries as at 31 December 2005. Individual questions in the survey reflected elements of the requirements for exchange of information derived from the earlier work done in the preparation of the 2002 Model Agreement.

Prior to publication, each of the 82 countries was given the opportunity to comment on a draft version of the 2006 Assessment. The final version therefore represents the closest to a consensus opinion on the state of legal and administrative mechanisms for exchange of tax information in the 82 countries surveyed as could reasonably be expected.

The preparation for the 2005 Melbourne Global Forum focused on two key areas: the invitation to other financial centres to participate in the dialogue and the development of the report on the questionnaire-based work on exchange of information and transparency. The outcomes of the Forum made reference to two individual country actions:

> A large number of countries still allow bearer shares. In some countries the availability of ownership information is further complicated by the fact that responsibility for corporate law is in the hands of political sub-divisions. Progress in this area is expected to be assisted by countries' implementation of Recommendations 5, 33 and 34 of the FATF Recommendations and other international initiatives (e.g. EU Second and Third Money Laundering Directives). Countries are encouraged to review their current policies, including those of political subdivisions, if relevant, and to report the outcome of their review at the next Global Forum meeting.[50]

The issues underlying these recommendations are of particular concern to non-OECD countries in the context of level playing field debate, particularly in light of recent reports commenting on the federal v. state systems in the USA issued by the FATF and the US Government Accountability Office on Company Formations in the individual US states.[51] The outcomes of the Melbourne Global Forum report also emphasised the importance of mutual benefits for both parties in any bilateral arrangements (see below).

4

Methodology

The research methodology adopted in this paper includes the following elements:

1. An analysis of data from the 2006 Assessment relating to a sample of 25 countries. The analysis is aimed at identifying the nature and prevalence of limitations within the relevant legal and administrative frameworks. As the 2006 Assessment lists the details of limitation but does not give aggregate or prevalence data, the paper focuses on that aspect. The countries in the sample were selected to reflect the geographic dispersion as well as the population and GDP dispersion of the 82 countries covered in the Assessment. This sample has been further divided into three groups: OECD, ITIO and non-OECD/non-ITIO.

2. A correlation of data in the 2006 Assessment with materials published by other international organisations, including the World Bank, the FATF and the IMF, as well as data published by individual governments.

3. An analysis of interviews conducted with representatives from individual small and developing Commonwealth countries that participated in the 2006 Assessment process to establish factors which were outside the scope of the 2006 OECD Assessment, but which, from the perspective of those countries, contribute to what has been identified as the 'unlevel playing field'.

It should be noted that the limitations addressed in the context of the 2006 Assessment refer only to legal and administrative mechanisms, rather than to limitations related to the actual practices of the countries. The ability to provide tax information for foreign tax authorities only pursuant to an international agreement is not viewed as a limitation, as this is an accepted international norm.

The countries reviewed include:

- First Group – OECD countries:
  The OECD countries selected include all of the group of seven leading industrial countries (G-7) – USA, UK, Canada, Japan, France, Germany and Italy. Other OECD countries which also have developed economies with strong financial services industries and which are included in the First Group are Switzerland, Austria and Luxembourg.

- Second Group – ITIO countries:
  The ITIO countries selected reflect the geographical dispersion of ITIO member countries in the Caribbean, the Pacific and Europe. The countries selected from the Caribbean are the Cayman Islands, Barbados, the British Virgin Islands, St Kitts and

Nevis, and St Lucia. The countries selected from the Pacific are Samoa and Vanuatu. The European country included is the Isle of Man.

- Third Group – Other Countries:
  Included in this group are non-ITIO and non-OECD countries which also reflect the geographical dispersion of countries included in the 2006 Assessment. The countries include Mauritius, Singapore, United Arab Emirates, Bahrain, Hong Kong, China, Costa Rica and Monaco.

5

Review of Selected Countries

The results of the review of the 25 countries may be taken in conjunction with the appendices set out at the end of this paper. Appendix I provides a table of information from the World Bank's data-resource for OECD countries. Appendix II provides a similar report for the countries targeted by the Harmful Tax Competition Initiative. Appendix III sets out the counterparties to the double taxation conventions with the countries included in this review.

First Group: OECD Countries

1. United States of America

Overview: The most recent World Bank statistical database indicates that the GDP of the USA is $12,409 billion with a gross national income per capita (GNIPC) of $41,950 and a population of 296.4 million. The World Bank ranks the USA as first in the world for GDP and third in both population and GNIPC.[52]

Mechanism for Exchange of Information: The 2006 Assessment indicates that the USA has entered into 55 double tax conventions and 30 tax information exchange agreements.[53] Further analysis of information from the US Treasury indicates that the counterparties to 29 of the DTCs are other OECD countries, while the vast majority of the remaining 26 counterparties are large developed or natural resource-rich countries.[54] Similar analysis of US TIEAs indicates that 18 of the TIEAs are with small and developing countries which were originally targeted by the OECD in 2000.[55] Further, with the exception of the TIEAs with Jamaica, Mexico and Barbados, US TIEAs were all 'stand-alone' agreements, that is, they were not associated with DTCs.[56] Nine of the 12 'stand-alone' TIEAs, not with countries targeted in the Harmful Tax Competition Initiative, are with poor and developing countries, principally in Latin America.

Limitations: The limitations to the effective exchange of information in the USA, as noted in the 2006 Assessment, as well as by the General Accountability Office of the US Government and the FATF, include the lack of availability of information on beneficial ownership in respect of companies registered in certain US states.[57] Further, the mechanism for exchange of information is exercised at federal level, while the availability of information on the beneficial ownership of corporate entities is typically controlled at state level. In states such as Delaware and Nevada, company formation procedures and reporting requirements may not accurately or adequately capture or retain information on beneficial ownership of corporate vehicles.[58] This is of some significance in that Delaware companies are arguably the corporate vehicles most frequently used by non-residents of the USA for so-called offshore transactions. Bearer share companies are also permitted.

2. United Kingdom

Overview: The World Bank statistical database indicates that the GDP of the UK is $1,927 billion with a GNIPC of $32,690 and a population of 60.2 million. The World Bank ranks the UK as sixth in the world for GDP, thirteenth in GNIPC and twenty-first in population.[59]

Mechanism for Exchange of Information: The 2006 Assessment indicates that the UK has entered into 109 DTCs and has no TIEAs.[60] Further analysis of information from HM Revenue and Customs indicates that the counterparties to 29 of the DTCs are OECD countries, seven are with EU members or EU applicant countries other than OECD countries, 41 are with former British colonies or affiliated territories and 27 are with important trading partners or countries with important natural resources such as oil and minerals.[61]

Limitations: The legal and administrative limitations to the effective exchange of information in the UK include the availability of bearer shares and the lack of requirements for companies to have beneficial ownership information.

3. Canada

Overview: The World Bank statistical database indicates that the GDP of Canada is $1,061 billion with a GNIPC of $32,220 and a population of 32.27 million. The World Bank further ranks Canada as twelfth in the world for GDP, sixteenth in GNIPC and thirty-sixth in population.[62]

Mechanism for Exchange of Information: The 2006 Assessment indicates that Canada has entered into 83 DTCs and has one TIEA with Mexico, an OECD country with which Canada also has a DTC.[63] Further analysis of information from the Canadian Department of Finance's database indicates that the counterparties to 27 of the DTCs are OECD countries, eight are with EU or EU applicant countries other than OECD countries, 26 are with important trading partners or countries with important natural resources such as oil and minerals, nine are with former British colonies (Commonwealth countries) or affiliated territories other than OECD countries and six are with former French colonies (La Francophonie).[64]

Limitations: The limitations to the effective exchange of information in Canada include the availability of bearer shares and limitations on the availability of information regarding beneficiaries of trusts where there is no Canadian tax interest.

4. Japan

Overview: The World Bank statistical database indicates that Japan's GDP is $3,944 billion with a GNIPC of $31,410 and a population of 128 million. The World Bank ranks Japan as third in the world for GDP, nineteenth in GNIPC and tenth in population.[65]

Mechanism for Exchange of Information: The 2006 Assessment indicates that Japan has entered into 44 DTCs and had no TIEAs.[66] Further analysis of information from the Japanese Ministry of Finance indicates that the counterparties to 26 of the DTCs are OECD countries, two are with EU or EU applicant countries and 13 are with important trading partners and countries other than OECD countries with important natural resources such as oil or minerals.

Limitations: The legal and administrative framework in place in Japan provides for effective exchange of information pursuant to DTCs.

5. France

Overview: The World Bank statistical database indicates that the GDP of France is $1,830 billion with a GNIPC of $30,540 and a population of 60.7 million. The World Bank ranks France as seventh in the world for GDP, twenty-third in GNIPC and twentieth in population.[67]

Mechanism for Exchange of Information: The 2006 Assessment indicates that France entered into 105 DTCs and had 11 TIEAs.[68] Further analysis of information from the French Ministry of Finance indicates that the counterparties to 29 of the DTCs are OECD countries, nine are with EU or EU applicant countries other than OECD countries, 30 are with important trading partners and countries with important natural resources such as oil or mining not falling into other classifications, and 20 are with former French colonies (La Francophonie).

Limitations: The limitations to the effective exchange of information in France include the availability of bearer share and debt securities.

6. Germany

Overview: The World Bank statistical database indicates that the GDP of Germany is $2,418 billion with a GNIPC of $29,210 and a population of 82.4 million. The World Bank ranks Germany as fifth in the world for GDP, twenty-seventh in GNIPC and fourteenth in population.[69]

Mechanism for Exchange of Information: The 2006 Assessment indicates that Germany entered into 89 DTCs and had three TIEAs.[70] Further analysis of information from the German Ministry of Finance indicates that the counterparties to 29 of the DTCs are OECD countries, seven are with EU or EU applicant countries other than OECD countries and 30 are with important trading partners and countries with important natural resources such as oil or mining not included in the other categories.

Limitations: The limitations to the effective exchange of information in Germany include the availability of bearer share and debt securities.

7. Italy

Overview: The World Bank statistical database indicates that the GDP of Italy is $1,668 billion with a GNIPC of $28,840 and a population of 57.4 million. The World Bank ranks Italy as eighth in the world for GDP, twenty-ninth in GNIPC and twenty-third in population.[71]

Mechanism for Exchange of Information: The 2006 Assessment indicates that Italy entered into 73 DTCs and had no TIEAs.[72] Further analysis of information from the Italian Ministry of Finance indicates that the counterparties to 28 of the DTCs are OECD countries, seven are with EU or EU applicant countries, and 28 are with important trading partners or countries with important natural resources such as oil or mining.

Limitations: The limitations to the effective exchange of information in Italy include the availability of bearer share and debt instruments.

8. Switzerland

Overview: The World Bank statistical database indicates that the GDP of Switzerland is $256 billion with a GNIPC of $37,080 and a population of 7.4 million. The World Bank ranks Switzerland as thirty-sixth in the world for GDP, sixth in GNIPC and ninety-second in population.[73]

Mechanism for Exchange of Information: The 2006 Assessment indicates that Switzerland entered into 68 DTCs and had no TIEAs.[74] Further analysis of information from the Swiss Ministry of Finance indicates that the counterparties to 28 of the DTCs are OECD countries, five are with EU or EU applicant countries which are not members of the OECD and 23 are with important trading partners and countries with important natural resources such as oil or minerals which do not fall into either of the above two classifications.

Limitations: The limitations to the effective exchange of information in Switzerland generally include the limitation of tax information exchange to cases of tax fraud and the like. Switzerland has only two DTCs which contain what the OECD classifies as broad exchange of information provisions, and those two clauses do not cover all tax matters. Switzerland also permits the use of bearer shares and debt instruments.

9. Austria

Overview: The World Bank statistical database indicates that the GDP of Austria is $276 billion with a GNIPC of $33,130 and a population of 8.2 million. The World Bank ranks Austria as thirty-third in the world for GDP, twelfth in GNIPC and eighty-eight in population.[75]

Mechanism for Exchange of Information: The 2006 Assessment indicates that Austria entered into 67 DTCs and had no TIEAs.[76] Further analysis of information from the Austrian Ministry of Finance indicates that the counterparties to 28 of the DTCs are OECD countries, six DTCs are with EU or EU applicant countries which are not OECD member states and 20 are with important trading partners which have important natural resources such as oil or minerals but are outside the OECD and EU groupings.

Limitations: The limitations to the effective exchange of information in Austria include a restriction on access to bank information to cases of tax evasion rather than all criminal and civil tax matters. Austria also permits bearer share and debt instruments. Companies are only required to have legal rather than beneficial ownership information on non-bearer shares. Austrian trustees are not required to have identity information on beneficiaries.

10. Luxembourg

Overview: The World Bank statistical database indicates that the GDP of Luxembourg is $34 billion with a GNIPC of $65,340 and a population of 0.46 million. The World Bank ranks Luxembourg as eighty-seventh in the world for GDP, first in GNIPC and one hundred and sixty-fourth in population.[77]

Mechanism for Exchange of Information: The 2006 Assessment indicates that Luxembourg entered into 47 DTCs and had no TIEAs.[78] Further analysis of information from the Luxembourg Ministère des Finances indicates that the counterparties to 28 of the DTCs are OECD countries, two are EU or EU applicant countries which are not members of the OECD, and ten DTCs are with important trading partners and countries with important natural resources such as oil or minerals which do not fall into either of the above two classifications.

Limitations: The limitations to the effective exchange of information in Luxembourg include restricted access to bank and certain holding company information in the case of civil tax matters, the availability of bearer share and debt instruments, and the lack of obligation on limited liability companies to hold beneficial ownership information. Luxembourg trustees are not required to have identity information on beneficiaries.

Second Group: ITIO Countries

1. Cayman Islands

Overview: The World Bank statistical database indicates that information on the GDP of the Cayman Islands is unavailable, as is information on the GNIPC. However, the GNIPC has been estimated to be in the 'high-income' category.[79] The population is estimated to be 45,000 and ranks as two hundred and second.[80]

Mechanism for Exchange of Information: The 2006 Assessment indicates that the Cayman Islands entered into no DTCs and has one TIEA – with the USA.[81]

Limitations: The legal and administrative framework in place in the Cayman Islands provides for effective exchange of information pursuant to an international agreement such as a DTC or TIEA.[82]

2. British Virgin Islands

Overview: The World Bank statistical database does not include the British Virgin

Islands. The UN Department of Economic and Social Affairs indicates that the population is 22,000 and ranks as two hundred and fifteenth in the world.[83] The Government of the British Virgin Islands estimates the per capita GDP as $16,312.[84]

Mechanism for Exchange of Information: The 2006 Assessment indicates that the British Virgin Islands has entered into no DTCs and has one TIEAs with the United States of America.[85] The UK's DTC with Switzerland is extended to the British Virgin Islands.

Limitations: The legal and administrative framework for tax information exchange in the British Virgin Islands permits the effective exchange of information pursuant to an international obligation.

3. Barbados

Overview: The World Bank statistical database indicates that the GDP of Barbados is unavailable as is information on the GNIPC. However the GNIPC has been estimated to be in the 'upper middle-income' category.[86] The population is estimated to be 270,000 and ranks as one hundred and seventy-second.[87]

Mechanism for Exchange of Information: The 2006 Assessment indicates that Barbados entered into 23 DTCs and had one TIEA.[88] Further analysis of information from the Barbados Ministry of Finance and Economic Affairs indicates that Barbados is one of 11 parties to the CARICOM multilateral tax treaty, which in effect produces ten bilateral DTCs. The counterparties to eight of the remaining DTCs are OECD countries, while an additional three are with other former British colonies or affiliated territories, and two are with important trading partners or countries with important natural resources such as oil or mining, which do not fall into any of the above classifications.[89]

Limitations: The limitations to the effective exchange of information in Barbados, as identified in the 2006 Assessment, include the absence of client information retention requirements for partnerships not doing business in Barbados, as well as for trustees of Barbados trusts which are not doing business in Barbados.

4. St Kitts and Nevis

Overview: The World Bank statistical database indicates that the GDP of St Kitts and Nevis is $0.69 billion with a GNIPC of $12,500 and a population of 48,000. The World Bank ranks St Kitts and Nevis as one hundred and sixtieth in the world for GDP, seventieth in GNIPC and two hundred and first in population.[90]

Mechanism for Exchange of Information: The 2006 Assessment and information from the Ministry of Finance in St Kitts and Nevis indicates that St Kitts and Nevis has entered into the multilateral CARICOM tax treaty, which provides ten DTCs, and that the country has no TIEAs.[91]

Limitations: The limitations to the effective exchange of information in St Kitts and Nevis identified in the 2006 Assessment include an absence of a record retention period for certain trusts and limited partnerships.

5. St Lucia

Overview: The World Bank statistical database indicates that the GDP of St Lucia is $1.055 billion with a GNIPC of $5,980 and a population of 166,000. The World Bank ranks St Lucia as one hundredth and fifty-fourth in the world for GDP, one hundred and twelfth in GNIPC and one hundred and eightieth in population.[92]

Mechanism for Exchange of Information: The 2006 Assessment and information from the Ministry of Finance indicates that St Lucia entered into 11 DTCs and had one TIEA.[93] St Lucia is a signatory to the CARICOM multilateral tax treaty; the counter-party to the remaining DTC is an OECD country.

Limitations: The limitations to the effective exchange of information in St Lucia as identified in the 2006 Assessment include the absence of a record retention period for certain trusts.

6. Samoa

Overview: The World Bank statistical database indicates that the GDP of Samoa is $1.22 billion with a GNIPC of $6,480 and a population of 185,000. The World Bank ranks Samoa as one hundred and fifty-first in the world for GDP, one hundred and eightieth in GNIPC and one hundred and seventy-sixth in population.[94]

Mechanism for Exchange of Information: The 2006 Assessment indicates that Samoa entered into no DTCs and had no TIEAs.[95]

Limitations: The limitations to the effective exchange of information in Samoa according to the 2006 Assessment include the ability to exchange tax information only in respect of criminal tax matters and the availability of bearer share and debt instruments.

7. Vanuatu

Overview: The World Bank statistical database indicates that the GDP of Vanuatu is $0.69 billion with a GNIPC of $3,170 and a population of 211,000. The World Bank ranks Vanuatu as one hundred and sixty-first in the world for GDP, one hundred and forty-seventh in GNIPC and one hundred and seventy-fifth in population.[96]

Mechanism for Exchange of Information: The 2006 Assessment indicates that Vanuatu has entered into no DTCs and had no TIEAs.[97]

Limitations: The limitations to the effective exchange of information in Vanuatu according to the 2006 Assessment include the ability to exchange tax information only in respect of criminal tax matters and the availability of bearer share and debt instruments.

8. Isle of Man

Overview: The World Bank statistical database indicates that the GDP of the Isle of Man is not available. The GNIPC has been estimated to be $27,770 with a ranking of twenty-second and the population is estimated to be 77,000 and ranks as one hundred and ninety-third.[98]

Mechanism for Exchange of Information: The 2006 Assessment indicates that the Isle of Man entered into one double tax convention with the United Kingdom and had no TIEAs.[99] However since the Assessment, the Isle of Man has ratified tax information exchange agreements with the Kingdom of the Netherlands and the USA.

Limitations: The limitations to the effective exchange of information in the Isle of Man according to the 2006 Assessment include the absence of a specified record retention period for certain partnerships.

Third Group: Non-ITIO and Non-OECD Countries

1. Mauritius

Overview: The World Bank statistical database indicates that the GDP of Mauritius is $15.5 billion with a GNIPC of $12,450 and a population of 3.07 million. The World Bank ranks Mauritius as one hundred and fifteenth in the world for GDP, seventh-first in GNIPC and one hundred and thirty-second in population.[100]

Mechanism for Exchange of Information: The 2006 Assessment indicates that Mauritius entered into 30 DTCs and had no TIEAs.[101] Further analysis of information from the Mauritius Ministry of Finance indicates that the counterparties to seven of the DTCs are OECD countries, one is with an EU or EU applicant country which is not an OECD country and 11 are with important trading partners and countries with important natural resources such as oil or mining, which do not fall into either of the two previous groups.[102]

Limitations: The legal and administrative framework in place in Mauritius provides for effective exchange of information pursuant to an international agreement such as a DTC or TIEA.

2. Singapore

Overview: The World Bank statistical database indicates that the GDP of Singapore is $130.2 billion with a GNIPC of $29,780 and a population of 4.35 million. The World Bank ranks Singapore as fifty-fourth in the world for GDP, twenty-fifth in GNIPC and one hundred and sixteenth in population.[103] Singapore is a member of the OECD's sister organisation, FATF.

Mechanism for Exchange of Information: The 2006 Assessment indicates that Singapore entered into 49 DTCs and had no TIEAs.[104] Further analysis of information from the Inland Revenue Authority of Singapore indicates that the counterparties to 24 of the DTCs are OECD countries, five are with EU or EU applicant countries other than OECD countries and 15 are with important trading partners and countries with important natural resources such as oil or minerals.[105]

Limitations: The limitations to the effective exchange of information in Singapore according to the 2006 Assessment include the ability to provide tax information only if there is a Singaporean domestic tax interest. With respect to companies, only legal ownership information, rather than beneficial ownership information, must be retained,

3. United Arab Emirates

Overview: The World Bank statistical database indicates that the GDP of the United Arab Emirates (UAE) is $103 billion with a GNIPC of $24,090 and a population of 4.5 million.[106] The World Bank ranks the UAE as fifty-sixth in the world for GDP, thirty-fourth in GNIPC and one hundred and twelfth in population.[107] One of the Emirates, Dubai, is an emerging financial centre. Apart from the taxation of its oil industry, the effective rate of personal and corporate income taxation is zero.

Mechanism for Exchange of Information: The 2006 Assessment indicates that the UAE entered into 25 DTCs and had no TIEAs.[108] Further analysis of information from the UAE Ministry of Finance indicates that the counterparties to 11 of the DTCs are OECD countries, one is with an EU applicant country and ten are with important trading partners and countries with important natural resources such as oil or minerals.

Limitations: The limitations to the effective exchange of information in the UAE according to the 2006 Assessment include the absence of requirements to retain beneficial ownership information of certain companies and the absence of a requirement for trustees to retain records after they give up their trusteeship.

4. Bahrain

Overview: The World Bank statistical database indicates that the GDP of Bahrain is $14.8 billion with a GNIPC of $21,290 and a population of 73,000. The World Bank ranks Bahrain as one hundred and seventeenth in the world for GDP, forty-seventh in GNIPC and one hundred and fifty-eighth in population.[109] Bahrain has no personal or corporate tax.

Mechanism for Exchange of Information: The 2006 Assessment indicates that Bahrain has entered into 11 DTCs, only three of which have specific exchange of information provisions, and that it has no TIEAs.[110] Further analysis of information from the Bahrain Ministry of Finance indicates that the counterparty to one of the DTCs is France, an OECD country, and that four are with important trading partners and countries with important natural resources such as oil or minerals.

Limitations: The legal and administrative framework in place in Bahrain provides for effective exchange of information pursuant to an international agreement such as a DTC or TIEA.

5. Hong Kong, China

Overview: The World Bank statistical database indicates that the GDP of Hong Kong, China is $214.5 billion with a GNIPC of $34,670 and a population of 6.9 million. The World Bank further ranks Hong Kong, China as fortieth in the world for GDP, tenth in GNIPC and one hundred and ninety-fourth in population.[111] Hong Kong is a member of the OECD's sister organisation, FATF.

Mechanism for Exchange of Information: The 2006 Assessment indicates that Hong Kong has entered into two conventional DTCs and has no TIEAs.[112] It is also a party to a number of tax treaties covering shipping and air transport. Further analysis of information from the Inland Revenue Department of Hong Kong indicates that the counterparty to one of the DTCs is an OECD country.[113]

Limitations: The limitations to the effective exchange of information in Hong Kong according to the 2006 Assessment include the inability to exchange tax information in the absence of a domestic tax interest and the absence of requirements for the obtaining and retention of beneficial ownership information with respect to companies. Similarly there is no obligation to obtain or retain trust, settlor or beneficiary information.

6. Costa Rica

Overview: The World Bank statistical database indicates that the GDP of Costa Rica is $43.2 billion with a GNIPC of $9,680 and a population of 4.3 million. The World Bank ranks Costa Rica as seventy-eighth in the world for GDP, eighty-third in GNIPC and one hundred and seventeenth in population.[114]

Mechanism for Exchange of Information: The 2006 Assessment indicates that Costa Rica has no conventional DTCs in force although it has signed DTCs with two OECD countries and has signed a TIEA with the USA.[115]

Limitations: The limitations to the effective exchange of information in Costa Rica according to the 2006 Assessment include the inability to exchange tax information for all tax purposes and the availability of bearer share and debt instruments.

7. Monaco

Overview: The World Bank statistical database indicates that information on the GDP of Monaco is unavailable as is information on the GNIPC. However, the GNIPC has been estimated to be in the 'high-income' category.[116] The population of Monaco is 33,000 and ranks two hundred and fourth.[117]

Mechanism for Exchange of Information: The 2006 Assessment together with information from the Département des Finances et de l'Economie indicates that Monaco entered into one conventional DTCs with France, an OECD country, and that it had no TIEAs.[118]

Limitations: The limitations to the effective exchange of information in Monaco according to the 2006 Assessment include the absence of any requirement for resident trustees of foreign trusts to retain trust records for any specified period of time.

6

Observations

The results of the analysis of the legal and administrative mechanisms identified in the 2006 Assessment indicate that in the case of almost all countries examined there are:

- mechanisms in place for the exchange of information under certain circumstances;
- limitations to the manner and circumstances under which countries are able to provide tax information;
- limitations to the types of information which are available.

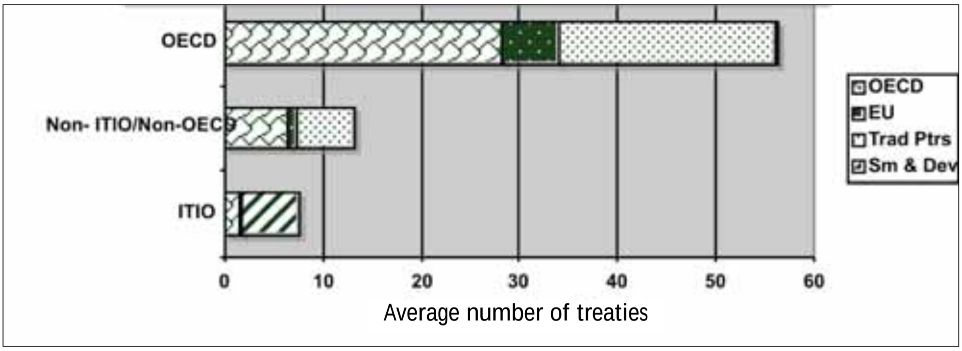
There is no evidence in the 2006 Assessment to indicate that countries within the OECD have overall better legal and administrative frameworks for exchange of tax information than countries outside the OECD. Nor is there any evidence in the Assessment to indicate that the small and developing countries, identified by the OECD in 2000 as 'tax havens', have legal and administrative frameworks of inferior quality to those within the OECD or to those within the group of non-OECD financial centres which were not targeted as tax havens. This observation is consistent with a recent IMF Assessment Report, which, after comparing so-called OFCs with 55 'onshore' jurisdictions, indicated that the regulatory and administrative framework in 'OFCs' are actually 'more favourable'.

> Compliance levels for OFCs are, on average, more favorable than those for other jurisdictions assessed by the Fund in its financial sector work.[119]

A relatively clear pattern emerged from the review of counterparties to the two most common forms of bilateral international agreements providing for exchange of information, DTCs and TIEAs (see Figure 1 and Appendix III). The data suggest a distinction in the application of these two forms of agreement, depending on whether or not a small or developing country was involved. The use of DTCs is typically found between OECD countries, and between OECD countries and countries with large dynamic economies, geopolitical influence or scarce natural resources. It therefore appears that geopolitically powerful countries tend to make decisions on entering into DTCs on an economic or geopolitical basis, rather than on consideration of issues such as equity between nations or the development aspirations of small and developing countries. An exception to the pattern of granting DTCs may exist in relation to the historical treatment by certain geopolitically powerful countries of former colonies.

Stand-alone TIEAs, on the other hand, are a recent development and appear to remain the domain to which small and developing countries are relegated. As would be expected, countries included in the DTC treaty networks have more tax treaties with tax information provisions than countries which are excluded from the treaty network.

Figure 1. Average Number of DTCs and Distribution of Counterparties



7

The Implications of the Use of DTCs as Compared with TIEAs

Many different mechanisms serve as instruments for the exchange of tax information. Some are purely a matter of domestic law, while others are bilateral in nature and yet others are multilateral. In general, multilateral arrangements are employed among countries with integrated economies or countries which have similar economies and are at similar stages of development.

Bilateral exchange of information provisions are most commonly set out in double taxation conventions. Such agreements typically provide for reciprocal economic benefits, the limitation of double taxation and the partitioning of taxing rights and enforcement cooperation. In understanding the role of such DTCs it is important to bear in mind that the taxation regimes of countries are typically biased so as to enhance the international competitiveness of the country creating the relevant taxation system, and that tax information may be required to give effect to such biases. DTCs may be seen as offsetting, over-riding or modifying some of those biases in order to promote international commerce between the signatories.

Currently there are approximately 2,500 tax treaties in existence, linking more than 170 countries.[120] Based on the information in the 2006 Assessment and information from other publicly available sources, it would appear that something approximating one-third of the 2500 treaties are among OECD member countries and that almost two-thirds of these 2500 treaties have at least one of the 30 OECD countries as a counterparty. The OECD countries may therefore be seen as being at the core of the tax treaty network.

Treaty-related linkages create a myriad economic benefits which only countries which are party to this treaty network are able to enjoy and which those closest to the economic centre of the network have the greatest opportunity to benefit from.[121] By way of example, double taxation conventions, as the name implies, generally limit the economic inefficiency created by double taxation, for example by providing for lower withholding tax rates. Countries which are parties to the treaty network may enjoy such benefits, with the result that countries outside the network are left at an economic disadvantage.

Consider the following hypothetical and simplified example in which there is an investor who is considering an investment in one of two countries. One country is a participant in a treaty network in that it has a DTC with the investor's home country, whereas the other country has no such treaty. The investor's home country taxes worldwide income at a rate of 25 per cent and neither exempts taxed foreign income nor gives credit for foreign taxes paid. Each of the two countries in which the investor is considering investing applies a withholding tax on relevant income of 25 per cent which is applied in the absence of any treaty-based derogation from this rate. One of the provisions of the relevant DTC between the investor's home country and one of the countries in which an investment is being considered is that withholding tax rates on income are reduced to 5 per cent. Apart from tax considerations, the countries offer the investor the same opportunities.

If the investor invests in the country that is part of the treaty network, his after-tax return on investment will be greater than if he invested in the country excluded from the treaty network. This arises by virtue of the fact that the investor would pay 25 per cent tax in his country of residence plus 5 per cent withholding tax if investing in the country within the treaty network, but 25 per cent plus an additional 25 per cent if he was investing in the country outside the treaty network. Whether intended or not, the logically foreseeable end result of exclusion from treaty networks is that in such circumstances private sector entities, who could provide much-needed development capital, may 'vote with their feet' by placing their investments in jurisdictions which offer the greater treaty advantage and after-tax return, a form of tax competition not covered in the Harmful Tax Competition Initiative.

Tax information exchange agreements have existed in something like their current form since the League of Nations developed exchange of information models in the period 1921–45. However, the League of Nations document was not used historically as a stand-alone instrument, as generally countries only agreed to negotiate the exchange of tax information under conditions which were mutually beneficial and typically within the context of a conventional taxation treaty such as a modern DTC. The modern form of TIEA and its role in the hierarchy of tax-related international agreements arguably emerged in the 1980s. Richard Gordon, then a senior advisor to the US Internal Revenue Service, originally proposed two alternatives to conventional tax treaties which could be used in the context of countries which the US regarded as 'tax havens', which in that context included both OECD and non-OECD countries. One of these alternatives was a bilateral tax information exchange agreement combined with specific economic inducements, and the other was a modified form of tax treaty designed to limit certain economic distortions which might occur in relation to the application of conventional DTCs between countries with high rates of direct tax and those with low rates of direct tax, as well as to prevent certain other perceived misuses. In the end, the USA chose the TIEA plus inducements option (the inducements taking the form of the Caribbean Basin Initiative benefits plus the avoidance of the 'big stick').[122] The OECD's Harmful Tax Competition Initiative in its initial form may be seen as the offspring (whether legitimate or not) of this 1980s US approach, modified by the removal of the benefits set out in the Caribbean Basin Initiative. The 'big stick', however, was retained. As noted by Langer:

> This is yet another example of a Caribbean jurisdiction getting only the worst half of a tax treaty. It must give information, but it gets nothing in return.[123]

Forty-six TIEAs are identified in the 2006 Assessment, almost two-thirds of which have the USA as one of the parties.[124] Most of the small number of TIEAs to which the USA is not a party exist in parallel with a conventional tax treaty which provides mutual economic benefits. Most of the US TIEAs were negotiated in the context of the Caribbean Basin Initiative. As noted by the ITIO:

> It is to be presumed that absent such benefits [Caribbean Basin Initiative], and in particular in situations in which there are significant tax rate differentials, few countries have found TIEAs attractive as they do not provide the types of reciprocal economic benefits found within comprehensive taxation agreements.[125]

Arguably, in the promotion of a polarised DTC or TIEA approach, there is a danger for small and developing countries of the emergence of a 'two-tiered system' which would allow the 'first class' rich countries, as well as countries with greater geopolitical influence or scarce resources, such as oil, to share in the benefits of the treaty network, while smaller countries and naturally resource-poor countries are excluded. This could potentially exacerbate development problems for small and developing countries which are restricted to the stand-alone TIEAs and are prevented from participating in the benefits of the treaty network. From a global perspective, any approach which relegates these small and developing countries to the status of a 'second class' country would arguably violate any principle of 'fairness'. As noted by Ms Latu, the former Attorney General of Samoa:

> Small and developing countries are frequently excluded from or not given the opportunity to participate in such treaty networks because they do not have the economic influence of larger nations – specifically in such areas as trade and export of commodities or resources. … [T]his becomes a 'vicious circle' in which the economic influence of small and developing countries is held back by being excluded from treaty networks.[126]

The exclusion of smaller countries with minimal geopolitical influence from the treaty network and their relegation to TIEA class is undoubtedly a possible means of competition available to larger countries, which can unfairly bias the economic effects of selected mechanisms for the exchange of information. Essentially, it can be argued that, from a regulatory competition perspective, by excluding small and developing countries from the treaty networks the larger more geopolitically powerful states may have wittingly or unwittingly exercised 'the competitive adjustment of rules, processes or enforcement regimes in order to achieve an advantage.'[127] Unless this situation is corrected, the rich will get richer and the poor will continue to be disadvantaged.

8

A Way Forward

There has been considerable rapprochement between the representatives of the OECD and non-OECD participants in the Global Forum process. Both OECD and non-OECD participants have recognised that 'the level playing field is fundamentally about fairness'.[128] At the ITIO meeting in Melbourne in November 2005, it was noted that:

> … [t]he 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.[129]

In essence the principle of 'fairness' is intended to be verified on two separate levels, which are:

1. The mechanisms used for the exchange of information must be fair and equitable;
2. The outcome of the exchange of information must allow 'fair competition between all countries'.

The available evidence is that the domestic tools for exchange of information are in place and available to the vast majority of participants in that process. That is not to minimise the hurdles which remain.

The position of the OECD countries in simplified terms appears to continue to be that they require tax information from other countries in order to effectively and efficiently apply their taxation regimes in a manner which meets the standards of integrity and fairness which they wish to apply between their own taxpayers. In addition, they wish to obtain this information at as low a cost and with as little disruption to their competitive positions and existing international arrangements as possible. In that regard, there may be a wish not to 'devalue' the granting of a DTC or incur extra administrative costs, which might arise from making DTCs available to less geopolitically powerful countries from which they want tax information. It is likely that the OECD as a collective body will wish to continue to set the parameters for tax information exchange instruments to be used with non-members in order to maintain a competitive advantage.

The latitude for bilateral negotiations between OECD and non-OECD participants in the Global Forum process appears to have expanded since 2000 to include the possibility of mutual benefits. As was noted in the 2005 Global Forum outcomes report:

> Ensuring that mutual benefits are derived by both parties will further the goal of helping financial centres that meet the high standards set for transparency and effective exchange of information in tax matters to be 'fully integrated into the international financial system and the global community.' Further, it is hoped that by providing

> mutual benefits, greater progress towards a level playing field will be made. The nature of any such benefits would necessarily depend on the legal systems and particular circumstances of the two parties to the arrangement. Countries are encouraged to try to ensure that their bilateral arrangements for effective exchange of information for all civil and criminal tax matters provide benefits for both parties.[130]

The position of the non-OECD countries which were targeted in the Harmful Tax Competition Initiative remains that they are willing to advance the work of the Global Forum, but that fairness must be applied across borders and not constrained by geographic limits or power politics. They are aware of the economic implications of DTCs as opposed to TIEAs and how the application of a 'second-class' solution may adversely affect their development objectives over the long term. A number are of the view that not only must they take into account the potential impact of 'second-class' solutions, but they must also work to counter the ongoing effects brought about by past stigmatisation produced by the 2000 'blacklist', the fairness and objectivity of which is questioned.

Concern has also been expressed in relation to the fact that some rapidly developing financial centres such as Dubai, part of the United Arab Emirates, are taking shape inside countries which are within the existing OECD treaty networks, albeit that such treaties existed before the Dubai International Financial Centre in its current form was created. While recognising that all countries should be free to compete for international financial services, there is concern that further distortions created by the geopolitics of the tax treaty network will unfairly influence the development opportunities of the small, less geopolitically influential, countries targeted by the 1998 Harmful Tax Competition Initiative.

Rhetoric is another area in which issues exist. While the use of the 'tax haven' description has declined, it has not disappeared from high-level OECD documents.[131] On the other hand, the use of descriptions such as 'neo-imperialist' has disappeared. However, while from one perspective the OECD appears to be adopting a limited collaborative approach with the smaller economies, there is some concern that from another perspective the OECD may be opening up a new front of attack. By way of example, the recent report issued by the OECD Forum on Tax Administration pays no attention to the work done and the progress made to date.[132] The communiqué's focus on offshore centres, the lack of reference to those financial centres outside the original OECD 1998 report and the failure to address the political sub-divisions or actual general domestic regimes of member countries indicates organisational blindness and may be viewed as a retrograde step which is damaging to the whole process.

What scope does this analysis leave for a way forward? Arguably there is considerable scope for progress. There is clearly no evidence that the most geopolitically powerful states recognise any obligation to provide tax information to other states apart from a form of international agreement or arrangement or domestic legislation of their own choosing. Similarly, there is clearly no requirement in international law that exchange of tax information outside the context of DTCs should be an obligation restricted to the least geopolitically powerful states. The overwhelming evidence is that the trappings of DTCs are the accepted context and standard accompaniments for exchange of information provisions. Yet the reality is that a considerable amount of political capital has been spent on the assumption that small and developing countries could be manoeuvred into accepting onerous obligations without the benefits of a DTC, on the basis of something called a TIEA, or at least in association with something called a TIEA. Political capital has also been spent on stigmatising small and developing countries in order to legitimise this process.

On the other hand, a considerable amount of political capital has been spent on trying to replace that assumption with a proposition that a more stable and productive basis for expanding international cooperation in taxation matters would be based on the creation of a 'level playing field', which would allow fair competition in the international financial services sector. It should be noted that recently the Isle of Man, an ITIO member, working with the Kingdom of the Netherlands, an OECD country, agreed a package of arrangements which provide for the exchange of tax information together with other economic measures, including the specification that the exchange of information should not operate in the context of discrimination. It is apparently the intent of these countries to enter into further negotiations with the objective of producing a more conventional comprehensive taxation agreement. This approach may be viewed as an example of an innovative collaboration that serves the interests of both countries in advancing the exchange of tax information in a manner which obviates potential for the specified discriminatory effects. It remains to be seen what progress can be achieved from this approach.

10

Conclusion

The express goal of the OECD Global Forum on exchange of tax information has been stated to be the achievement of 'convergence of existing practices of information exchange to meet high standards' which 'would achieve a global level playing field.'[133] The benchmark 2006 Assessment conducted by the OECD has been particularly useful in identifying the existence in all countries reviewed of available tax information frameworks, albeit with variations in the manner in which exchange of tax information is achieved, and in most countries, of limitations in the existing mechanisms for the exchange of information.

There appear to be two principal obstacles to expanding cooperation on tax information exchange. The first is that the form of tax information exchange instrument that is usually offered to small and developing countries is the TIEA which is disadvantageous in comparison with the normal DTC, which is the preferred bilateral instrument for cooperation among more geopolitically influential states. The second is the lack of truly international standards, in that small and developing countries feel unfairly pressured to apply standards not uniformly applied by those countries which are applying the pressure or by other competitor countries with greater geopolitical influence. In relation to each of these obstacles there is an apparent lack of a 'level playing field'.

Overcoming these obstacles would appear to be achievable if there is the will to do so. In relation to the use of fair bilateral instruments, both technical and competition/policy issues exist. The technical issues, which may be highlighted in arguments against the use of DTCs in relation to small and developing countries with taxation systems which may differ in some respects from those of larger and developed countries, are clearly surmountable given a common objective of a 'level playing field'. This is an area in which an intermediary organisation such as the Commonwealth acting as facilitator may be of assistance.

Concern has been expressed by representatives of the smaller countries that they have been pressured by the more geopolitically powerful countries to implement more onerous standards, with tighter timetables, than the more geopolitically powerful countries are prepared to adopt. The 2006 Assessment and related materials add support to the propositions that firstly, the small and developing countries participating in the exercise had justifiable concerns at the outset of the Harmful Tax Competition Initiative and secondly, the small and developing countries are generally able to meet the standards uniformly applied by the member states of the OECD at the date of the 2006 Assessment. Given the evolution of that process and the recent positive developments, the way forward would appear to lie in the expansion and continuation of more inclusive and constructive dialogue among countries with concerns related to tax information exchange, based on a common commitment to, and understanding of, fair treatment for all participants.

If the objective of the current OECD Global Forum process is to provide a self-enforcing global community of cooperation in relation to tax administration based on a 'level playing field' and if, as indicated in the 2006 Report the 'level playing field' is fundamentally about fairness, then perhaps Rawls's concept of fairness within systems of cooperation should be taken into consideration:

> The central organising idea of social cooperation has at least three essential features:
>
> (a) … [S]ocial cooperation is guided by publicly recognised rules and procedures which those cooperating accept as appropriate to regulate their conduct.
>
> (b) The idea of cooperation includes the idea of fair terms of cooperation: these are terms each participant may reasonably accept and sometimes should accept, provided that everyone else likewise accepts them. Fair terms of cooperation specify an idea of reciprocity or mutuality: all who do their part as the recognised rules require are to benefit as specified by a public and agreed upon standard.
>
> (c) The idea of cooperation also includes the idea of each participant's rational advantage, or good. The idea of rational advantage specifies what it is that those engage in cooperation are seeding to advance from the standpoint of their own good.[134]

This analysis of the 2006 Assessment and the identified background materials thus suggests that the use of fair treaty instruments incorporating commonly developed and applied standards and the fair treatment of small and developing countries will produce the kind of community of cooperation which will provide a stable long-term basis for cooperation in taxation matters. Such a system will have the potential to 'contribute to the expansion of world trade on a multilateral non-discriminatory basis', to quote from Article 1 of the OECD's Paris Convention.

Appendix I

Average GDP of OECD Countries

(Data extracted from World Bank Statistics Resource)

OECD Countries		World Bank GNIPC Rank	GNIPC (thousands of International $)	World Bank Population Ranking	Population (millions)	GDP-PPP (billions of International $)
1	Luxembourg	1	65.34	164	0.457	34.06
2	United States	3	41.95	3	296.497	12,409.47
3	Norway	4	40.42	111	4.618	185.66
4	Switzerland	6	37.08	92	7.441	255.63
5	Iceland	8	34.76	170	0.295	10.48
6	Ireland	9	34.72	119	4.151	169.93
7	Denmark	11	33.57	105	5.418	182.72
8	Austria	12	33.14	88	8.211	276.41
9	United Kingdom	13	32.69	21	60.203	1,926.81
10	Belgium	14	32.64	73	10.471	337.11
11	Netherlands	15	32.48	55	16.329	537.68
12	Canada	16	32.22	36	32.271	1,061.24
13	Sweden	18	31.42	82	9.024	280.31
14	Japan	19	31.41	10	127.956	3,943.75
15	Finland	20	31.17	108	5.245	163.88
16	Australia	22	30.61	49	20.321	643.07
17	France	23	30.54	20	60.743	1,829.56
18	Germany	27	29.21	14	82.485	2,417.54
19	Italy	29	28.84	23	57.471	1,667.75
20	Spain	33	25.82	29	43.389	1,133.54
21	Greece	41	23.62	71	11.089	261.60
22	New Zealand	42	23.03	120	4.110	92.52
23	Korea, Dem. Rep.	46	21.85	25	48.294	1,056.09
24	Czech Rep.	49	20.14	74	10.196	217.35
25	Portugal	50	19.73	72	10.557	212.45
26	Hungary	56	16.94	75	10.088	182.45
27	Slovak Rep.	58	15.76	107	5.387	88.67
28	Poland	66	13.49	32	38.165	533.55
29	Mexico	81	10.03	11	103.089	1,052.44
30	Turkey	88	8.42	16	72.636	612.31
Avg. over 30 OECD countries			28.77		38.89	1,125.87

Appendix II

Average GDP of Countries Targeted as ‘Tax Havens’

(Data extracted from World Bank Statistics Resource)

	Countries Targeted	World Bank GNIPC Rank	GNIPC* (thousands of Intern’l $)	World Bank Population Rank	Population (millions)	GDP–PPP (billions of Intern’l $)
1	Principality of Liechtenstein	5	38.75	203.00	0.034	UA
2	Guernsey/Sark/Alderney – Crown Dependencies	7	35.92	182.00	0.149†	UA
3	Jersey	7	35.92	182.00	0.149†	UA
4	Isle of Man – Dependency of the British Crown	22	27.70	193.00	0.077	UA
5	Bahrain	47	21.29	158.00	0.727	14.86
6	Republic of the Seychelles	57	15.94	190.00	0.084	UA
7	Federation of St Kitts & Nevis	70	12.50	201.00	0.048	0.69
8	Antigua and Barbuda	75	11.70	191.00	0.081	1.00
9	Tonga	92	8.04	187.00	0.102	0.82
10	Panama	99	7.30	130.00	3.232	25.48
11	Grenada	100	7.26	186.00	0.107	0.88
12	Republic of Marshall Islands	103	2.93	197.00	0.063	UA
13	Belize	105	6.74	171.00	0.292	2.21
14	Samoa	108	6.48	176.00	0.185	1.22
15	St Vincent and the Grenadines	109	6.46	183.00	0.119	0.82
16	St Lucia	112	5.98	180.00	0.166	1.06
17	Commonwealth of Dominica	119	5.56	194.00	0.072	0.43
18	Republic of Maldives	120	2.39	168.00	0.329	UA
19	Republic of Vanuatu	147	3.17	175.00	0.211	0.69
20	Liberia	206	0.13	129.00	3.283	UA
21	Andorra	HL	–	195.00	0.066	UA
22	Anguilla – UK Overseas Territory	–	–	–	–	UA
23	Aruba – Kingdom of the Neths	HL	–	188.00	0.101	UA
24	Barbados	HL	–	172.00	0.270	UA
25	Commonwealth of the Bahamas	HL	–	169.00	0.323	UA
26	Principality of Monaco	HL	–	204.00	0.033	UA
27	Netherlands Antilles – Kingdom of the Netherlands	HL	–	177.00	0.183	UA
28	Niue – New Zealand	–	–	–	–	UA
29	US Virgin Islands – US Ext. Terr.	HL	–	184.00	0.115	UA
30	British Virgin Islands – UK Overseas Terr.	–	UA		–	UA
31	Cook Islands		UA		–	UA
32	Gibraltar – UK Overseas Terr.		UA		–	UA
33	Montserrat – UK Overseas Terr.		UA		–	UA
34	Republic of Nauru		UA		–	UA
35	Turks & Caicos – UK Overseas Terr.		UA		–	UA
	Average over 35 targeted countries		13.11		0.387	4.18

*It should be noted that 11 of these countries had GNIPC of less than $10,000.

†World Bank data indicate that the combined population of all the Channel Islands is 149,000.

Appendix III

Counterparties to DTCs and TIEAs

(All data extracted from the relevant government databases and the OECD Assessment)

Country Groups				Counterparties					
				DTCs					TIEAs*
		Total DTCs	Total TIEAs	OECD Countries	EU Countries†	Trading Partners	Former Colonies	Small & Dev'g Countries	Small & Dev'g Countries
Group 1									
1	United States	55	30	29	5	13		1	18
2	United Kingdom	109	0	29	5	27	41		
3	Canada	84	1	27	8	26		1	
4	Japan	44	0	26	2	12			
5	France	104	10	29	9	29	20		
6	Germany	89	3	29	7	28			
7	Italy	73	0	28	7	20			
8	Switzerland	68	0	28	7	16		1	
9	Austria	67	0	28	5	17			
10	Luxembourg	46	0	28	2	6			
Group 2									
1	Cayman Islands	0	1						
2	British Virgin Islands	0	1						
3	Barbados	23	1	8		2		9	
4	St Kitts and Nevis	10	0	1				9	
5	St Lucia	11	1	1				9	
6	Samoa	0	0						
7	Vanuatu	00							
8	Isle of Man	1	0	1					
Group 3									
1	Mauritius	30	0	7		11			
2	Singapore	49	0	24		15			
3	United Arab Emirates	25	0	11		5			
4	Bahrain	11	0	1		2			
5	Hong Kong, China	2	0	1		1			
6	Costa Rica	0	1						
7	Monaco	1	0						

Small and developing countries indicates countries with population of less than 300,000, which are not former colonies.

*TIEAs in this context means 'stand-alone' TIEAs, i.e. not supported by a DTC.

†Countries which are members of the EU, but not of the OECD.

Notes

1 OECD, 'Tax Co-operation: Towards a Level Playing Field – 2006 Assessment by the Global Forum on Taxation' (14 August 2006) <http://www.oecd.org/document/60/0,2340,en_2649_37427_36791868_1_1_1_37427,00.html>

2 Examples of this include the anti-trust laws in the USA and the Competition Act in the UK, as well as the European Competition Directives.

3 The ITIO is a group of small and developing countries which work for a 'level playing field in the trade in services', 23 July 2006 <www.ITIO.org> The ITIO's Proposal for the Level Playing Field (23 July 2006) <http://www.itio.org/documents/Levelling_the_playing_field.htm>

4 W. Leibfritz, J. Thornton and A. Bibbee (1997). 'Taxation and Economic Performance', OECD/GD(97)107, OECD Economics Department Working Paper No. 176; R. Griffith and A. Kemm (2004). 'What Has Been the Tax Competition Experience of the Last Twenty Years?', Institute of Fiscal Studies and University College London, WP04/05; R. Teather (2005). 'The Benefits of Tax Competition', Institute of Economic Affairs, London.

5 OECD (1998). *Harmful Tax Competition: An Emerging Global Issue*, p. 7, para. 2 (14 August 2006) <http://www.oecd.org/dataoecd/33/0/1904176.pdf>

6 OECD (note 5).

7 OECD (note 5, Annex II).

8 Robert Kudrle (2005). 'US Defection from the OECD "Harmful Tax Competition" Project: Rhetoric and Reality', Hubert Humphrey Institute, University of Minnesota.

9 Kudrle (note 8).

10 ITIO (2003). 'Levelling the Playing Field', Proposal by the ITIO to the OECD Global Tax Forum, 14–15 October 2003, Ottawa, Canada.

11 Kudrle (note 8); M. Langer (2002). 'The Outrageous History of Caribbean Tax Treaties with OECD Member States', *Tax Notes International*, 10 June 2002, pp. 1187–99; G. Rawlings (2005). 'Responsive Regulation, Multilateralism, Bilateral Tax Treaties and the Continued Appeal of Offshore Finance Centres', working paper No. 74, Centre for Tax System Integrity Research, School of Social Sciences, Australian National University, Canberra.

12 OECD (2000). 'List of 35 "Tax Havens"' (12 August 2006) <http://www.oecd.org/dataoecd/60/11/2664514.pdf>. Six countries threatened with being 'blacklisted', but which made political commitments to enter into EOI upon request agreements, were excluded from this list; they were Bermuda, Cayman Islands, Cyprus, Malta, Mauritius and San Marino.

13 For the six countries, see note 12.

14 The jurisdictions included Aruba, Bahrain, Isle of Man, Netherlands Antilles and the Seychelles (OECD, 2001, #420, para. 22).

15 This narrowing of the OECD's scope may arguably be related to the change in the stance of the USA following the election of President Bush. Treasury Secretary O'Neill's Statement on OECD Tax Havens, US Office of Public Affairs (27 October 2006) < http://www.ustreas.gov/press/releases/po366.htm>

16 OECD (2002). 'Agreement on Exchange of Information on Tax Matters' (13 August 2006) <http://www.oecd.org/dataoecd/15/43/2082215.pdf>

17 OECD (2006). Note 1, Annex III.

18 D. Wise (1982). 'International Banking Facilities and the Future of Off-Shore Banking', Fletcher Forum, p. 300.

19 Rawlings, see note 11.

20 R. Johns (1983). *Tax Havens and Offshore Finance*, Pinter, London, p. 29.

21 R. Aliber (1979). 'Monetary Aspects of Offshore Markets', *Columbia Journal of World Business*, 14(3), p. 19.

22 F. Edwards (1981). 'The new "International Banking Facility": a study in regulatory frustration', *Columbia Journal of World Business*, 16, p. 6.

23 A. Leyshon (1992). 'The Transformation of Regulatory Order: Regulating the Global Economy and Environment', *Geoforum*, 23(3), p. 260.

24 OECD (note 23). Liquidity refers to the ability to buy or sell a particular item relatively quickly without causing a significant movement in the price.

25 OECD (1998). 'Harmful Tax Competition: An Emerging Global Issue', p. 21, para. 48 (14 August 2006) <http://www.oecd.org/dataoecd/33/0/1904176.pdf>

26 Leibfritz et al; Griffith and Kemm; and Teather (note 4).

27 The justification given was that residents of non-treaty countries had used the Caribbean treaties to reduce withholding taxes on investment into the OECD countries. Langer (note 11).

28 Any potential or perceived abuse of these treaty extensions arguably could have been adequately addressed by well drafted limitation on benefit provisions (LOB); see Langer (note 11).

29 R. Keohane and J. Nye Jr, ‘The Club Model of Multilateral Cooperation and Problems of Democratic Legitimacy’, paper prepared for the American Political Science Convention, Washington, DC, 31 August–3 September 2000.

30 D. Wise (1982). ‘International Banking Facilities and the Future of Off-shore Banking’, 6 Fletcher Forum, p. 312.

31 A. Hudson, ‘Beyond the Borders: Globalisation, Sovereignty and Extraterritoriality’ (15 April 2000) <http://www.alanhudson.org.uk/borders.pdf>

32 R. O’Brien (1992). *Global Financial Integration: The End of Geography*, Royal Institute of International Affairs, London, p. 1.

33 Jeffrey Owens (2002). ‘The OECD work on Tax Havens’, presented at the Friedrich Ebert Foundation Conference on ‘Money Laundering and Tax Havens – The Hidden Billions for Development’, OECD Centre for Tax Policy and Administration, p. 6.

34 W.F. Wechsler (2001). ‘Follow the Money’, *Foreign Affairs*, 80, p. 40.

35 FATF (2006). ‘Summary of the Third Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism: United States of America’, from para. 36; FATF (2005). ‘Summary of the Third Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism: Australia’ (22 August 2006) <www.fatf-gafi.org/dataoecd/22/38/35509034.pdf>; FATF (2005). ‘Summary of the Third Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism: Ireland’ (22 August 2006) <www.fatf-gafi.org/dataoecd/63/29/36336845.pdf>

36 (IMF) (2004). ‘Offshore Financial Centers: The Assessment Program – An Update’ (16 August 2006) <http://www.imf.org/external/np/mfd/2004/eng/031204.pdf>

37 J. Nye Jr (2003). ‘The “Democracy Deficit” in the Global Economy: Enhancing the Legitimacy and Accountability of Global Institutions’, Task Force Report #57 – The Trilateral Commission (23 July 2006) <http://www.trilateral.org/projwork/tfrsums/tfr57.htm>

38 The OECD published a list in June 2000 of countries which would be ‘blacklisted’ as ‘havens’ unless they made political commitments to comply with the wishes of the OECD member countries (14 August 2006) <http://www.oecd.org/dataoecd/60/11/2664514.pdf> The OECD subsequently published a ‘blacklist’ of ‘uncooperative tax havens’ (2002) (14 August 2006) <http://www.oecd.org/document/19/0,2340,en_2649_201185_2082323_1_1_1_1,00.html>

39 Society of Trust and Estate Practitioners (STEP) (2005). ‘Deconstructing National Tax Blacklists: Removing the Obstacles to Cross-Border Trade in Financial Services’, Report prepared for the Society of Trust and Estate Practitioners, presented at the ‘Beyond the Level Playing Field?’ symposium, London, 19 September 2005.

40 STEP (note 39).

41 Commonwealth Secretariat (2006). ‘Developmental Implications of Anti-Money Laundering Taxation Regulations’, paper prepared by J.C. Sharman, presented at the Commonwealth Finance Ministers Meeting, Sri Lanka 12–14 September, 2006 (28 October 2006) < http://www.thecommonwealth.org/Shared_ASP_Files/UploadedFiles/60F584BC-D173-40B2-A126-05DCC68DC6E7_FMM(06)17.pdf>

42 OECD (2006) (note 1), p. 53.

43 ITIO (2003). ‘Levelling the Playing Field’, Proposal by the ITIO to the OECD Global Forum on Taxation, Ottawa, Canada, 14–15 October 2003.

44 Ibid., closing statement by the co-chairs (13 October 2006) < http://www.oecd.org/document/0/0,2340,en_2649_33745_16643264_1_1_1_1,00.html>

45 OECD countries included in this sub-group are: Australia, France, Germany, Japan, and USA. Non-OECD countries include the Bahamas, Cayman Islands, Isle of Man, Jersey, Mauritius, Panama, St Kitts & Nevis and Samoa. The sub-group also includes representatives of the OECD Secretariat and the Commonwealth Secretariat.

46 OECD (2004). ‘The OECD’S Project on Harmful Tax Practices: the 2004 Progress Report’ (Berlin Report), p. 12, para. 21 (14 August 2006) <http://www.oecd.org/dataoecd/60/33/30901115.pdf>

47 Berlin Report (note 41), para. 8.

48 Berlin Report (note 41), para. 3.

49 The survey sought to identify legal and administrative frameworks for exchange of tax information in all OECD countries, all non-OECD countries originally targeted in the 2000 ‘blacklists’ and non-OECD financial centres not originally targeted in the Harmful Tax Competition Initiative.

50 Progress Towards a Level Playing Field: Outcomes of the OECD Global Forum on Taxation, Melbourne, 15–16 November 2005, para. 8(v) (13 October 2006) http://www.oecd.org/dataoecd/28/55/35670025.pdf

51 FATF, 'FATF Assesses the United States System for Combating Money Laundering and Terrorist Financing' <http://www.fatf-gafi.org/document/23/0,2340,en_32250379_32237217_37101591_1_1_1_1,00.html>; General Accounting Office; Minimal Ownership Information is Collected and Available (13 October 2006)<http://www.gao.gov/new.items/d06376.pdf>

52 The World Bank statistical resources (14 August 2006): Gross Domestic Product (PPP GDP) <http://site resources.worldbank.org/DATASTATISTICS/Resources/GDP_PPP.pdf>; Gross National Income per Capita (GNIPC) <http://siteresources.worldbank.org/DATASTATISTICS/Resources/GNIPC.pdf>; Population <http://siteresources.worldbank.org/DATASTATISTICS/Resources/POP.pdf>

53 OECD (2006), Table A3, p. 85 (note 1).

54 Internal Revenue Services, Income Tax Treaties (14 August 2006) <:http://www.irs.gov/businesses/international/article/0,,id=96739,00.html>

55 These countries include the British Virgin Islands, the Marshall Islands, St Lucia, Cayman Islands, Turks and Caicos Islands, Montserrat, Anguilla, Jersey, Isle of Man, Grenada, Guernsey, Dominica, the Bahamas, Bermuda, Barbados, Aruba, the Netherlands Antilles and Antigua and Barbuda. The original OECD list of target countries in 2000 (14 August 2006) < http://www.oecd.org/dataoecd/60/11/2664514.pdf>

56 This is evidenced by Trinidad, Jamaica and Mexico, with Mexico also being an OECD country.

57 General Accountability Office (2006). 'Company Formations: Minimal Ownership' (14 August 2006) <http://www.gao.gov/new.items/d06376.pdf>

58 FATF (2006). 'Summary of the Third Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism: United States of America', p. 9.

59 World Bank statistical resources (note 44).

60 OECD 2006 Assessment (note 45).

61 HM Revenue and Customs (22 August 2006) <:http://www.hmrc.gov.uk/international/treatiesb.htm>

62 World Bank statistical resources (note 44).

63 OECD 2006 Assessment (note 45).

64 Department of Finance, Canada (22 August 2006) < http://www.fin.gc.ca/treaties/cndtxtreat_e.html>

65 World Bank statistical resources (note 44).

66 OECD 2006 Assessment (note 45).

67 World Bank statistical resources (note 44).

68 OECD 2006 Assessment (note 45).

69 World Bank statistical resources (note 44).

70 OECD 2006 Assessment (note 45).

71 World Bank statistical resources (note 44).

72 OECD 2006 Assessment (note 45).

73 World Bank statistical resources (note 44).

74 OECD 2006 Assessment (note 45).

75 World Bank statistical resources (note 44).

76 OECD 2006 Assessment (note 45).

77 World Bank statistical resources (note 44).

78 OECD 2006 Assessment (note 45).

79 The World Bank categorises countries with a per capita income of over $10,726 per annum as 'high-income' countries (14 August 2006) <http://siteresources.worldbank.org/DATASTATISTICS/Resources/GNIPC.pdf>

80 World Bank statistical resources (note 44).

81 World Bank statistical resources (note 44).

82 IMF. 'Cayman Islands: Assessment Supervision and Regulation of the Financial Sector' (14 August 2006) <http://www.imf.org/External/Pubs/FT/SCR/2005/cr0591.pdf>

83 United Nations (14 August 2006) <http://esa.un.org/unpp/>

84 Development Planning Unit of the British Virgin Islands, 14 August 2006 <http://www.dpu.gov.vg/Plans/NIDS/PresentSituation.htm>

85 World Bank statistical resources (note 44).

86 The World Bank categorises countries with a per capita income of $3,446–$10,725 per annum as 'upper middle-income' countries (14 August 2006) < http://siteresources.worldbank.org/DATASTATISTICS/Resources/GNIPC.pdf>

87 World Bank statistical resources (note 44).

88 OECD 2006 Assessment (note 45).
89 Barbados Ministry of Finance (22 August 2006) <: http://www.treasury.gov/offices/tax-policy/library/barbados protocol.pdf>
90 World Bank statistical resources (note 44).
91 OECD 2006 Assessment (note 45).
92 World Bank statistical resources (note 44).
93 OECD 2006 Assessment (note 45).
94 World Bank statistical resources (note 44).
95 OECD 2006 Assessment (note 45).
96 World Bank statistical resources (note 44).
97 OECD 2006 Assessment (note 45).
98 World Bank statistical resources (note 44).
99 OECD 2006 Assessment (note 45).
100 World Bank statistical resources (note 44).
101 OECD 2006 Assessment (note 45).
102 Mauritius Ministry of Finance and Economic Development (22 August 2006) <http://www.gov.mu/portal/sites/ncb/fsc/tax.htm>
103 World Bank statistical resources (note 44).
104 OECD 2006 Assessment (note 45).
105 Inland Revenue Authority of Singapore (23 August 2006) < http://www.iras.gov.sg/ESVPortal/tax_resources/treaties/index.asp>
106 World Bank statistical resources (note 44).
107 World Bank statistical resources (note 44).
108 OECD 2006 Assessment (note 45).
109 World Bank statistical resources (note 44).
110 OECD 2006 Assessment (note 45).
111 World Bank statistical resources (note 44).
112 OECD 2006 Assessment (note 45).
113 Inland Revenue Department of Hong Kong (24 August 2006) < http://www.ird.gov.hk/eng/tax/edu.htm>
114 The World Bank statistical resources (note 44).
115 OECD 2006 Assessment (note 45).
116 The World Bank categorises countries with a per capita income of over $10,726 per annum as ‘high income’ countries (14 August 2006) < http://siteresources.worldbank.org/DATASTATISTICS/Resources/GNIPC.pdf>
117 World Bank statistical resources (note 44).
118 OECD 2006 Assessment (note 1); Département des Finances et de l’Economie (12 August 2006) < http://www.gouv.mc/devwww/wwwnew.nsf/1909$/495e638995f98929c1256f5e0052c441gb?OpenDocument&4Gb>
119 IMF (note 34).
120 UNCTAD (2002). ‘Experiences with Bilateral and Regional Approaches to Multilateral Cooperation in the Area of Long-Term Cross-Border Investment, Particularly Foreign Investment’, Trade and Development Board, Commission on Investment, Technology, and Related Financial Issues, Expert Meeting in Geneva, 12–14 June 2002, p. 5 (26 August 2006) <http://www.unctad.org/en/docs/c2em11d2_en.pdf> In September 2005 the OECD reported that there are more than 2500 bilateral tax treaties in force around the world (3 September 2006) http://www.oecd.org/document/11/0,2340,en_2649_33747_35318475_1_1_1_1,00.html
121 OECD 2006 (note 1), p. 15 para. 31. Sixty-five of the approximate 150 countries are included in this report.
122 In this context other benefits were negotiated, such as the Caribbean Basin Initiative.
123 Langer (note 11), p. 7.
124 OECD 2006 report, p. 17, para. 31.
125 ITIO (2005). ‘Levelling the Playing Field’, OECD Global Tax Forum, Melbourne, 15–16 November, p. 3.
126 ITIO (2006). ‘Global Transparency, Exchange of Tax Information and Small Nations – Much Has Been Done, But More is Needed to Ensure a Level Playing Field’ (22 August 2006) <http://www.itio.org/documents/itio_oecd_final.pdf#search=%22'vicious%20circle'%22>
127 R. Baldwin and M. Cave (1999). *Understanding Regulation: Theory, Strategy, and Practice*, Oxford University Press, Oxford, p. 180.
128 OECD (2004). ‘The OECD’s Project on Harmful Tax Practices: The 2004 Progress Report’ (Berlin Report), p. 12, para. 21 (14 August 2006) <http://www.oecd.org/dataoecd/60/33/30901115.pdf>

129 ITIO) (2005). 'Levelling the Playing Field' (22 August 2006) <http://www.itio.org/documents/melbourne_itio_oecd_paper_nov_05.pdf#search=%22fair%20competition%20between%20all%20countries%22>

130 OECD 2006 (note 1), p. 52.

131 Meeting of the OECD Council at the Ministerial Level (2006). (22 August 2006) <http://www.oecd.org/dataoecd/42/9/36686180.pdf>.

132 OECD, Third Meeting of the OECD Forum on Tax Administration, 14–15 September 2006, Final Seoul Declaration (13 October, 2006) <http://www.oecd.org/dataoecd/38/29/37415572.pdf>

133 OECD 2006 (note 1) pp. 7–8.

134 J. Rawls (2003). *Justice as Fairness: A Restatement*, Harvard University Press, Cambridge, p. 6.

Bibliography

Aliber, R. (1979). 'Monetary Aspects of Offshore Markets', *The Columbia Journal of World Business* 14(3): 8.

R. Baldwin. and M. Cave (1999). *Understanding Regulation: Theory, Strategy and Practice*, Oxford University Press, Oxford.

Edwards, F. (1981). 'The new "International Banking Facility": a study in regulatory frustration', *Columbia Journal of World Business*, 16.

Financial Action Task Force (2006). 'Summary of the Third Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism – United States of America'.

—— (2005). 'Summary of the Third Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism: Australia', <www.fatf-gafi.org/dataoecd/22/38/35509034.pdf >

—— (2005). 'Summary of the Third Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism: Ireland', <www.fatf-gafi.org/dataoecd/63/29/36336845.pdf>.

General Accountability Office (2006). 'Company Formations: Minimal Ownership', <http://www.gao.gov/new.items/d06376.pdf>

Griffith, R. and Kemm, A. (2004). 'What Has Been the Tax Competition Experience of the Last Twenty Years?', Institute of Fiscal Studies and University College, London, WP04/05.

Hudson, A. (1998). 'Beyond the Borders: Globalisation, Sovereignty and Extra-territoriality', <http://www.alanhudson.org.uk/borders.pdf>

International Monetary Fund (2004). 'Offshore Financial Centers: The Assessment Program – An Update', < http://www.imf.org/external/np/mfd/2004/eng/031204.pdf>

International Trade and Investment Organization (2003). 'Levelling the Playing Field', Proposal by the ITIO to the OECD Global Tax Forum, Ottawa, Canada, 14–15 October 2003.

—— (2005). 'Levelling the Playing Field', OECD Global Tax Forum, Melbourne, 15–16 November 2005 < http://www.itio.org/documents/melbourne_itio_oecd_paper_nov_05.pdf>

—— (2006). Global Transparency, Exchange of Tax Information and Small Nations – Much Has Been Done, But More Is Needed to Ensure a Level Playing Field <http://www.itio.org/documents/itio_oecd_final.pdf#search=%22'vicious%20circle'%22>

Owens, Jeffrey (2002). 'The OECD Work on Tax Havens', Centre for Tax Policy and Administration (OECD), presented at Friedrich Ebert Foundation Conference on 'Money Laundering and Tax Havens – The Hidden Billions for Development'.

Johns, R. (1983). *Tax Havens and Offshore Finance*, Pinter, London.

Kudrle, Robert (2005). 'US Defection from the OECD "Harmful Tax Competition" Project: Rhetoric and Reality', Hubert Humphrey Institute, University of Minnesota.

Langer, M. (2002). 'The Outrageous History of Caribbean Tax Treaties with OECD Member States', *Tax Notes International*, 10 June 2002: 1187–99.

Leibfritz, W., Thornton, J. et al. (1997). 'Taxation and Economic Performance', OECD Economics Department Working Paper No. 176, OECD/GD(97)107.

Nye Jr, J. (2003). 'The "Democracy Deficit" in the Global Economy: Enhancing the Legitimacy and Accountability of Global Institutions', Task Force Report #57 – The Trilateral Commission.

O'Brien, R. (1992). *Global Financial Integration: The End of Geography*. Royal Institute of International Affairs, London.

OECD (1998). 'Harmful Tax Competition: An Emerging Global Issue.' <http://www.oecd.org/dataoecd/33/0/1904176.pdf>.

—— (2000). 'List of 35 "Tax Havens"', <http://www.oecd.org/dataoecd/60/11/2664514.pdf>

—— (2002). 'Agreement on Exchange of Information on Tax Matters', <http://www.oecd.org/dataoecd/5/43/2082215.pdf>

—— (2004). 'The OECD'S Project on Harmful Tax Practices: The 2004 Progress Report' (Berlin Report) <http://www.oecd.org/dataoecd/60/33/30901115.pdf>

—— (2006). 'Tax Co-operation: Towards a Level Playing Field – 2006 Assessment by the Global Forum on Taxation'.

Rawlings, G. (2005). 'Responsive Regulation, Multilateralism, Bilateral Tax Treaties and the Continued appeal of Offshore Finance Centres', working paper No. 74, Centre for Tax System Integrity Research, School of Social Sciences, Australian National University, Canberra.

Rawls, J. (2003). *Justice as Fairness: A Restatement*, Harvard University Press, Cambridge, MASS.

Society of Trust and Estate Practitioners (2005). 'Deconstructing National Tax Blacklists: Removing the Obstacle to Cross-Border Trade in Financial Services', Report prepared for the STEP, presented at the 'Beyond the Level Playing Field?' symposium, London, 19 September 2005.

Teather, R. (2005). 'The Benefits of Tax Competition', Institute of Economic Affairs, London.

UNCTAD (2002). 'Experiences with Bilateral and Regional Approaches to Multilateral Cooperation in the Area of Long-Term Cross-Border Investment, Particularly Foreign Investment', Trade and Development Board', Commission on Investment, Technology, and Related Financial Issues, Expert Meeting in Geneva, 12–14 June 2002, <http://www.unctad.org/en/docs/c2em11d2_en.pdf>

Wechsler, W. F. (2001). 'Follow the Money', *Foreign Affairs*, 80: 40.

Wise, D. (1982). 'International Banking Facilities and the Future of Off-Shore banking', 6 Fletcher Forum.

Taxation is a significant factor in determining the global distribution of economic activity, particularly in the financial services sector, one of the most rapidly growing components of the global economy.

The participation of small and developing countries in this sector depends on creating a "level playing field" between rich countries on the one hand, and small and developing countries on the other. It also requires mechanisms for removing the present and potential future discrimination against small and developing countries in this sector.

Stoll-Davey analyses recent debates between the OECD and small and developing countries (represented through the International Trade and Investment Organisation), and suggests ways to ensure fairness in future international taxation matters.

Commonwealth Secretariat

ISBN 978-0-85092-856-3

9 780850 928563