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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).