

STATEMENT

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ON THE PASSING OF THE OECD'S "HARMFUL TAX PRACTICES" DEADLINE

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This past Tuesday was meant to see the official deadline for offshore finance centres to sign up to the Organisation for Economic Co-operation and Development's plans to attack so-called "harmful tax practices". Unless centres, including the BVI, entered into agreements with the OECD, the world's rich countries threatened to introduce "coordinated defensive measures", or sanctions, against "uncooperative" jurisdictions.

By Tuesday, however, only ten out of a targeted 41 jurisdictions had signed up. Hardly a ringing endorsement of the OECD's process. And on the same day, OECD Secretary-General Donald Johnston issued a statement which confirmed the uncertain situation in which the OECD's project now finds itself. Mr Johnston said simply, "A report issued by the OECD in June last year envisaged the publication of a list of unco-operative tax havens on 31 July 2001. Because negotiations are continuing, the 31 July deadline will have to be changed."

Secretary-General Johnston's statement did not come as a shock to us. Indeed, very little in this whole process has found the BVI unprepared. Throughout, we have gone to considerable pains to operate a well-informed and flexible strategy which has at its core the preservation and protection of the BVI's independence and status as a leading offshore finance centre.

As you know, the position of the Government of the BVI has always been that the BVI does not intend to be on any negative list. We were proud but not surprised last year to have our ongoing efforts to maintain high standards of regulation and supervision recognised by the Financial Action Task Force, which did not include the BVI on its list of countries deemed uncooperative in the fight against money laundering.

When the OECD first announced its initiative some three years ago, some said that it would be in the BVI's interest to sign up early. The BVI Government did not agree. We found what was required to be too ill-defined, open-ended and one-sided. Instead, both on our own and through our activities with other countries in the same position, the BVI has monitored the developing situation closely and worked hard to ensure that we and fellow non-OECD countries are not adversely affected.

I think you will agree that events to date have proved our decision to be the right one. We still do not intend to be on any negative list. But equally, we do not intend to enter into any agreement unless it is clearly in the BVI's strategic interest to do so.

I said that OECD Secretary-General Johnston's statement on Tuesday did not come as a shock. It had been in the making ever since 10 May this year, when US Treasury Secretary, Paul O'Neill, threw the OECD's project into disarray by announcing withdrawal of US support for aspects of the initiative.

I was particularly gratified that Secretary O'Neill took the trouble at that time to indicate his concern about "the potentially unfair treatment of some non-OECD countries". The BVI has sought consistently to highlight the one-sided nature of the OECD initiative. I am proud of our role in helping to establish the International Tax and Investment Organisation in March this year, which brought together some dozen small and developing economies from the Caribbean, Pacific and Asia to develop common responses to the challenges facing us and to publicise our concerns. I am glad that these efforts appear to have reaped results.

Where does the OECD's initiative stand now? Following the US's change of position, OECD members were forced into revising their agreement on 28 June.

Unfortunately, publication of this has been unexpectedly blocked by Spain until the UK agrees to ensure Gibraltar respects the agreement, a matter which the UK says is outside its jurisdiction.

Until the Spanish are satisfied, matters appear to be at an impasse. The old OECD initiative no longer stands, but the new one cannot be made official.

However, from leaks to the press, a statement by G7 finance ministers, statements by Secretary O'Neill and, not least, a letter sent by the OECD recently to the Prime Minister of Barbados, Rt. Hon Owen Arthur, in his capacity as Co-Chair of the OECD-Commonwealth Joint Working group, we have a pretty good idea of what the new agreement may contain.

In particular, it seems that one of the BVI's prime concerns, an attempt by the OECD to outlaw ring-fencing, has been dropped. Instead, the initiative appears to have been refocused on exchange of information. This would make sense. Over the past three years, the BVI has consistently argued on public platforms and in private correspondence and conversation with the OECD for the development of an international protocol on the exchange of information.

We also gather that the OECD has set a new deadline of 30 November. The longer the delay in publishing the report, of course, the more likely I believe this new date will need to be revisited.

I must stress, however, that none of this is official. In the continuing absence of an official, published report setting out the revised OECD initiative, it would be a mistake for any jurisdiction to take any firm decisions based on leaked information.

I should also stress that, while matters may be at an impasse, this should not be taken to mean that the initiative is dead. Far from it. The OECD has not seen fit, as yet, to postpone its work on creating an international model for bilateral exchange of information agreements. This model is currently being developed in an OECD working group in which those ten countries which have made a commitment have been invited to participate.

While we have great respect for individual jurisdictions within the working group, the Government of the BVI must seriously question whether the group's activity should continue. As currently constituted, the group is not sufficiently representative of the vast number of jurisdictions that its deliberations may affect.

It may seem odd for the OECD not to suspend the work of this group while the overall initiative of which it is a part remains stalled. Yet as far as I know, the OECD has not chosen to suspend the group. It may yet wish to do so. But for now, we must deal with the group as it stands.

As I said, the BVI has long argued the need to develop proper mechanisms for the international exchange of information. We have also been consistently clear that, to ensure general acceptance, standards need to be developed on a truly inclusive basis.

That is why I am today calling upon OECD members to show good faith by inviting all countries with an interest, including small states, to participate without precondition in the working group's discussions.

Either the OECD wants to achieve the best possible international exchange of information standards, in which case the BVI stands ready to contribute.

Or it wants to use – or, more accurately, abuse – the working group as a means to other ends, holding out the carrot of membership to coerce more jurisdictions into signing up to its project, even while this remains mired in irresolution and uncertainty.

In this case, I fear that the group's work will remain compromised as a result of its limited membership. There is a very real danger that the objectivity, quality and viability of the group's deliberations will be called into question and its output will meet resistance rather than acceptance.

If the OECD still intends its project to succeed, following the current hiatus, it must refocus not just its targets but its approach. From now on, the process must be clearly based on inclusiveness and co-operation rather than exclusiveness and confrontation.

In the BVI, we have always maintained that offshore finance centres must respect the reasonable concerns of onshore countries. This is part and parcel of being a serious international player. The Government of the BVI does not think it appropriate for offshore centres to trumpet themselves as havens for tax evasion, thus undermining high-tax countries' fiscal systems.

Instead, centres must continue to emphasise the numerous other advantages of conducting business on a tax-neutral platform. And we must all provide well-resourced support in the ongoing global battle against money laundering.

By showing respect, we earn respect. Demonstrating that we take seriously our responsibilities to the onshore world strengthens our right to be treated seriously and fairly. As mentioned, Treasury Secretary O'Neill has made clear his concern with the OECD's heavy-handed tactics. I am hopeful that the OECD now finally appears to be opening its ears to our demands for a level playing field, judging by its responses to our 17 questions and the unofficial reports of the revised tax project.

I was heartened to learn only this week that the OECD has finally provided promised clarifications of 17 fundamental points of its initiative. These were sought by the BVI and other non-OECD members of the OECD-Commonwealth Joint Working Group at a meeting in Paris on 28 February 2001. Although we may still have questions about the detail of some of the replies, I see this as a positive sign and a useful confidence-building measure.

It would be a shame if the goodwill the OECD's response has engendered among small and developing economies was thrown away by unnecessary intransigence over the working group on exchange of information.

A final point on exchange of information. Outside of the OECD context, the European Union's plans for an exchange of information agreement among its member states remain a matter of real concern for the BVI. I must tell you that, even while protesting to its EU colleagues that it has no real jurisdiction in these matters, the United Kingdom is pressurising its Overseas Territories to sign up to the EU's aim of automatic exchange of information.

The EU's plans depend, however, on non-EU countries such as the US and Switzerland making similar arrangements, and the BVI does not see how we can reasonably be expected to make changes while these countries give no indication that they are prepared to do so.

In conclusion, let me reiterate as I have on so many occasions that experience demonstrates how difficult it is to get off negative lists. The goal posts are constantly changed, the hurdles become more insurmountable and business is lost. As a matter of deliberate policy, the BVI has the resources to do whatever is prudent and timely to keep BVI off any negative list.

I have been heartened by the number of private sector and public sector officials here in the BVI and elsewhere who have commended us on our strategy for handling the international initiatives. However, I must caution against premature celebration. We must not become complacent. Rather, we should all continue to reconcile our efforts to ensure that the BVI financial services industry is fully compliance with all relevant international standards and best practice procedures.

Let us continue to work together for the good of our industry and the community. Let us by our collaborative and collective effects keep the BVI off any negative list. Let us continue to add our voice to those demanding a truly inclusive approach to setting international standards. Only by so doing can we safeguard the future of the industry upon which we have come so much to rely.