

## **Colloquium on International Initiatives and Developments Impacting the Industry**

### **International Tax Initiatives**

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I am billed today as speaking on international taxation initiatives. And within that broad framework the focus of my talk will be on the OECD initiative on transparency and effective exchange of information. There have been some developments in recent months flowing from this initiative, and in light of these, the Government and Commission felt it important that you as representatives of the BVI finance sector were updated on the OECD and the BVI's negotiating stance.

However, before I focus in on this, I would like to put the OECD initiative in its political context. As you may know, this particular initiative started back in 1996. At almost the same time the EU started on the long winding and tortuous path towards the EU Savings Directive. And the new Labour UK Government in conjunction with the Overseas Territories commissioned the KPMG study into financial regulation in these Islands. We have also had from this period onwards major assessments by the IMF and Financial Action Taskforce to name but two. So from the late 1990s the BVI has been in the international spotlight.

All the initiatives that I have mentioned are part of a pattern. A trend which will continue unabated. As evidenced by the Financial Stability Forum's decision last year to establish an Offshore financial centres review group to review reviews on off-shore centres of its members.

As Governments have come to terms with the concept of globalisation, they have shown a growing determination to be able to track the movement of money across the financial markets. 9/11 only heightened this pre-existing desire which stems in part from a belief that it is only through genuine transparency and exchange of information that Governments can tackle criminal activity and terrorism.

But these international Governments' agendas go beyond crime and security. In an age of increasing pressure on public budgets there is also a growing political imperative to tackle tax evasion. And as you will be aware the definition of tax evasion is broadening all the time. And the area of legitimate avoidance is accordingly shrinking. In fact many Governments would prefer to end the distinction between the two – hence the OECD objective to cover exchange of information on both criminal and civil tax matters.

In the UK, not a budget goes by without further measures to tackle tax avoidance. And the Treasury is concerned not only to look within the UK national borders when trying to clamp down on avoidance. The UK Government is not untypical in seeing tax evasion as a global problem which needs a global solution.

So how does the BVI respond to such an onslaught?

Well so far very successfully.

The Government and the Commission have recognised that the future lies in being accepted by the international community as being in the top tier of finance centres. As a legitimate centre of expertise which operates under a regulatory regime which matches international standards and as a jurisdiction that is known to co-operate with the international community.

The BVI has therefore engaged constructively with international initiatives. The territory has adopted international standards when they have become genuine international standards as opposed to the aspirations of a few major countries or organisations. And the BVI has constantly pursued the need for a level playing field.

I referred briefly earlier to the EU Savings Directive. This is an excellent example of the strategy I have outlined in practice.

When the EU first decided in its wisdom that the dependent and associated territories of EU Member States should be included under the terms of any EU Savings agreement the BVI reacted as you would expect – unfavourably. The BVI Government at the time made it clear that before any agreement could be reached between Member States and the BVI, agreements would also need to be in place with the named third countries – which included Switzerland and Monaco. The BVI also made it clear that the same terms would need to be on offer as were available to Member States and Third countries.

As a result, the BVI won the right to offer you the industry the ability to offer your clients either a withholding tax or exchange of information. This was certainly not the original intention of the UK which was always the most forceful proponent of automatic exchange or indeed other Member States.

We still continue to press the UK on extension of the EU Savings Directive. As you may be aware the EU Commission is supposed to be seeking equivalent agreements with other major finance centres. Just last month Mrs Smith raised this issue with the UK Treasury and we were told that the UK will continue to push this agenda.

In the case of the OECD, the BVI has adopted the same stance. Constructive engagement, co-operation but always in the context of the level playing field. And always looking to protect and enhance the reputation of the BVI.

I would just like to take you briefly through the history of the OECD initiative and the BVI's response thus far.

The initiative was first conceived in the OECD Ministerial Communiqué of May 1996 which called upon the Organisation to “*develop measures to counter the distorting effects of harmful tax competition*”.

The Committee on Fiscal Affairs duly adopted a Report entitled 'Harmful Tax Competition: An Emerging Global Issue' in January 1998. And this was approved in April by the OECD Council on Counteracting Harmful Tax Competition which also instructed the Committee on Fiscal Affairs to establish a Forum on Harmful Tax Practices, to implement the measures outlined in the report and to develop a dialogue with non-Member countries. The OECD initiative originally had 2 objectives – firstly to identify and eliminate harmful preferential regimes and secondly to ensure transparency and effective exchange of information.

However, right from the beginning this initiative was controversial even with OECD Member States. Luxembourg and Switzerland abstained in Council on the approval of the Report. And in fact they, together with Austria and Belgium, have still not signed up to the OECD principles of transparency and exchange of information despite being members.

Following the election of George Bush in the US, in 2001 the elimination of harmful preferential regimes – which included regimes in OECD Member States - was quietly dropped. However that still left exchange of information and transparency.

'Tax havens' – and I use the OECD's terminology here - were singled out in the 1998 Report which called for the Forum to draw up a list of 'tax havens' within a year of its first meeting. The 'tax haven' list was to be based on the following criteria:

First, no or only nominal taxes;

Second, lack of effective exchange of information;

Third, lack of transparency; and

Finally, no substantial activities.

In its 2000 Progress Report, 35 jurisdictions were listed as having met the criteria of being a tax haven. This was a 'technical' list and in no sense was intended as a 'blacklist' by the OECD. Although ever since it has been referred to in the world's media as a blacklist and does in fact form the basis of blacklists in some countries.

The BVI was included in this list along with the other British Overseas Territories and Crown Dependencies. Six jurisdictions that had been investigated made an advance commitment to the OECD and were omitted from this original list. The OECD then set a deadline for the jurisdictions on this list to commit to its principles of transparency and exchange of information or else face being formally listed as unco-operative.

During this period, the BVI was an active and founding Member of the ITIO which played a leading role in publicly challenging the basic tenets of the OECD initiative and enlisted the support of the Commonwealth Secretariat and some sympathy in the media.

The BVI also played an important role in coordinating with non-ITIO members such as the Channel Islands.

This lobbying and the refusal to compromise by a substantial proportion of the listed jurisdictions led to a major concession by the OECD. It was accepted that commitments by the so called tax havens could be caveated with reference to the need for a level playing field in standards.

As a result on April 2 2002 the BVI committed to the OECD process.

The Island's letter to the OECD confirming its commitment includes a reference to the need for a level playing field, stating:

*'The British Virgin Islands considers the establishment of a level playing field among all OECD member countries and also those non-Member jurisdictions with which it is materially in competition in the provision of cross-border financial services to be essential.'*

In its commitment letter the BVI agreed to conclude tax information exchange agreements with OECD Member States which would encompass exchange of criminal tax matters in the first year after 31 December 2003 and civil tax matters in the first year after 31 December 2005.

BVI subsequently concluded a tax information exchange agreement with the United States on 3 April 2002 which became operational in March this year in accordance with the original OECD commitment.

Following the passage of its deadline for commitments to the OECD's principles, the OECD identified a list of uncooperative jurisdictions. This so called 'blacklist' was published in April 2002 and consisted of seven jurisdictions: Andorra, Liechtenstein, Liberia, Monaco, the Marshall Islands, Nauru and Vanuatu. Since this date, Vanuatu and Nauru have also made their commitment to the principles and have come off the list.

The process up until this point proved to be an education for the OECD Secretariat as well as certain OECD Member States – although I am not claiming all by any means had a change of attitude. However, overall there was an acceptance that the OECD needed to take a more participatory and conciliatory approach.

All the off-shore centres and OECD Member States became 'participating partners' in the initiative. It may seem like semantics – it is semantics – but important none the less.

As part of the on-going process the participating partners met under the auspices of the OECD Global Forum on Taxation in Cayman in 2002. It was formally agreed that to achieve a level laying field it was necessary to examine current and developing standards and practices of exchange of information and transparency in all countries and territories.

This assertion was again reiterated at the Ottawa Global Forum the following year which established a Sub-Group on Level Playing Field Issues, precisely to address the need to extend the reach of this process on the basis of fair and objective criteria.

At the same time the Joint Ad Hoc Group on Accounts was established with BVI as the Co-Chair in order to agree guidance on exactly what standards could be expected in terms of accounting and record keeping requirements for corporations, trusts and other entities.

The next significant breakthrough came at the OECD Global Forum in Berlin in June 2004. At this Forum, 2 major concessions were won by the participating partners.

1. As you know the commitments undertaken by the participating partners were originally predicated on deadlines for criminal exchange of information by the year following 31 December 2003 and civil exchange by the year following 31 December 2005 – in other words this year. Albeit with the level playing field caveat I mentioned earlier. The Global Forum in Berlin recognised that the level playing field had not been achieved and instead of referring to a specific deadline the report agreed by all participating partners referred to the need to achieve bi-lateral implementation of standards '*within an acceptable timeframe*'. The report also referred to taking account of mutual economic interests as part of this process.
2. It was also agreed that an objective review would take place into the standards of transparency and exchange of information in all finance centres – be they on-shore or off-shore to be overseen by the Level Playing Field Sub-Group.

At the Melbourne Global Forum in November last year these developments progressed further. '*An Assessment of the Progress Towards a Level Playing field*' was reviewed. There were still some amendments to be agreed but we are expecting the report to be published shortly.

But the crucial aspect of this assessment is that it is based on objective criteria and covers every major finance centre.

In this report a total of 82 countries are reviewed on the basis of:

- existence of mechanisms for exchange of information by request
- exchange of information for purposes of domestic tax law in both criminal and civil matters
- restrictions on information exchange caused by application of dual criminality principle or domestic tax interest requirement
- Respect for safeguards and limitations

- Strict confidentiality rules for information exchanged
- Availability of reliable information (in particular bank, ownership, identity and accounting information) and powers to obtain and provide such information in response to a specific request.

If you think back to the beginning of this process and the basis of the so called technical list – then you can see just how far we have come. These criteria are objective and they are being applied universally. Also at Melbourne were a number of financial centres not previously represented but who took part in the assessment including Hong Kong and Singapore.

This report is still confidential, but I can tell you that BVI is not singled out. The BVI meets international standards but does not exceed them.

In terms of TIEAs, the Melbourne Forum went further than Berlin and in the absence of a level playing field positively encouraged mutual benefits as part of TIEA negotiations.

One final note on the old ‘technical’ list issue – at Melbourne it was again raised as a matter of concern by participating partners including the BVI. As I mentioned earlier it has formed the basis of a number of blacklists despite never being intended as such. At Melbourne it was acknowledged that this list was out dated and Members were called on to review any national lists they might have accordingly. So if you know of any – please let us know.

So where do we go from here?

Well as I have indicated the Assessment will be published shortly and we are also expecting another Progress Report sometime over the summer. There will also be another Global Forum either later this year or early next. Increasingly it looks as though we will see individual countries asked to justify themselves if they do not reach accepted standards of transparency and exchange as judged in the Assessment. I know some participating partners are very keen to look at what have been called political subdivisions – ie Delaware and Wyoming.

The BVI will continue to press for a level playing field and will continue to ensure that the standards in this jurisdiction are in line with current norms. However, there is increasing bi-lateral pressure to negotiate and conclude Tax Information Exchange Agreements. Although it is now accepted that mutual benefits need to be offered.

The BVI’s position on TIEAs is that in the absence of a level playing field the territory will only conclude such agreements where there are clear mutual benefits. We will also keep pace with developments with our competitors. Our understanding is that at the current time a number of jurisdictions are close to reaching agreement – as you may be

aware the Isle of Man last year concluded an agreement with the Netherlands and Bermuda reached agreement with Australia. We are monitoring these developments closely and the benefits that are achieved.

At the current time we have ongoing negotiations with Australia, New Zealand, Ireland, Canada, France and the UK. We are also scheduled to start negotiations with China next month and Spain in the autumn. We are not about to announce a whole raft of agreements. We are still at the stage of looking at mutual benefits which can include reputational benefits, technical assistance, double taxation clauses, a non-discrimination clause and removal from any blacklists.

And this is where we would appreciate any assistance that you can offer in terms of identifying potential benefits. Not least, because it is important that we get feedback from you on the countries that have approached us for negotiations. So this is meant to be the beginning of a continuing dialogue and consultation.

You may well ask – why conclude any agreements at all given we still do not have a level playing field?

Well first, as I have said, that is why we are asking for mutual benefits. But also coming back to my original point – we are in the international spotlight – and we always need to think about the BVI's reputation in the international community. At the present time, not having a network of TIEAs is not damaging. However, increasingly being seen to be uncooperative in this area could have a negative impact.

So as I said the Government's intention is to keep pace with international developments – but we will not be outstripping our competitors in this area.

As we look to the future, the OECD process has highlighted more than ever the need to move away from the old fashioned divide between on-shore and off-shore financial centres. The key distinction should be between reputable and well-regulated finance centres and those that are badly regulated and fail to meet international standards - including badly regulated onshore centres, whether members of the OECD or not.

The BVI has already positioned itself well in this new environment. The jurisdiction already meets international standards and has demonstrated the flexibility to adjust as these standards develop.

To conclude, the BVI will remain the subject of intense international scrutiny – but as long the Government, Commission and yourselves continue down the path of constructive pragmatic engagement then the BVI has every opportunity to take advantage of a world in which good standards are recognised and, crucially, rewarded.

Thank you