LEVELING THE PLAYING FIELD

Proposal by the International Trade and Investment Organization

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INTRODUCTION

This paper proposes a way forward for the OECD harmful tax practices initiative.

The participating partners made commitments to the initiative on the understanding that a level playing field would first be put in place. However, notwithstanding the OECD's public assurances to ITIO members and other participating partners, progress towards developing a level playing field is not at an advanced stage.

For the OECD initiative to proceed in a timely and effective manner, or indeed proceed at all, OECD countries must fulfill their side of the bargain. Steps must be taken as a priority to set up an objective process for the creation of a level playing field.

Since its initiative began in 1998, the OECD has move towards greater recognition of the value of proceeding on the basis of partnership. ITIO members welcome this. They would urge OECD member countries to support the efforts to realise the level playing field on which the initiative is predicated.

The proposals set out in this paper are presented in good faith. We trust they will be considered in the same light.

STRUCTURE

A constructive dialogue on the "level playing field" issue requires the subject matter to be defined and framed. This paper is thus divided into the following sections:

A. Preliminary Considerations;

B. General and Specific Considerations on the Structure and Function of the Level Playing Field in Relation to Tax Information Exchange;

C. Existing Proposals for Standards in Respect of Tax Information Exchange upon Request – The EU Tax Package and the OECD Model Agreement for Exchange of Information Upon Request; and

D. Conclusions and Recommendations.

A. Preliminary Considerations

1. Defining and framing matters to be discussed requires a common approach.

2. It is suggested that the most logical approach to defining and framing the issues for discussion is to agree the general case relating to the level playing field issues in relation to tax information exchange and only then look at the specific circumstances which apply at present.

3. The following specific considerations need to be articulated:

   a) Which objective standard is to be used to assess the "levelness" of the playing field over time;

   b) What is the norm or convention or current generally applied standard in respect of the exchange of information for tax purposes; and

   c) What proposals exist for changing the current norm or convention or current generally applied standard and on what time line?

B. General and Specific Considerations on the Structure and Function of the Level Playing Field in Relation to Tax Information Exchange.

Structure and Function of the Level Playing Field

4. Countries generally enter into tax information exchange arrangements as part of tax treaties or other arrangements which are motivated by a desire for mutual economic and social benefits usually in the form of increased trade efficiency.

5. The "level playing field issue" in relation to tax information exchange is not a new one. The importance of the requirement for a level playing field in this regard has been repeatedly stated.

6. As it was put by Gabs Mahklouf in his paper at the Global Forum meeting in the Cayman Islands in October 2002, "*The work that we will be undertaking this week is intended to apply to both OECD and non-OECD countries. We are looking to work with you towards a common standard for all of us.*"

7. Similarly, as was stated by Deputy Secretary-General Seiichi Kondo at that same 2002 meeting in respect of the OECD's position on the issue of a level playing field's function, "*I am sure that you also wish to see a successful outcome of this process so that by 2006 we will have achieved our common goal of a* ***level playing field that will ensure fair competition.***"

8. These statements echo earlier statements made in Global Forum meetings including the November 2001 meeting, the record of which states at Para 74:

"The Bureau member for Ireland pointed out that at the October (2001) meeting of the Forum on Harmful Tax Practices several issues, including the level playing field issue had been discussed. ***He stated that the outcome of these discussions confirmed that jurisdictions could not be held to a standard that would exceed the international standard in this area. He informed the delegates that the current proposal to ensure a level playing field was to advance the work in three areas: first, taking forward the harmful tax practices project, second, updating Article 26 of the OECD Model Tax Convention, and third, implementation of the 2000 Report on "Improving Access to Bank Information for Tax Purposes." He reported that the Forum had agreed on these conclusions and that the conclusions would be presented to the Committee on Fiscal Affairs. Finally, he pointed out that this work would have to be put on a harmonised timetable with the tax haven work****"*

9. The primacy and rationale of the level playing field have also been recognized in other fora as evidenced by the concluding statement of the Heads of Government of the 51 Commonwealth countries (including a large number of both OECD and non-OECD participating partners) at Coolom, Australia in March 2002:

   "32. Heads of Government reaffirmed the right of sovereign nations to determine their own tax and fiscal policies and welcomed the proposed adjustments being made to the OECD Harmful Tax Competition Initiative and hoped that the dialogue, promoted by the Commonwealth, would ensure that the process continued to be inclusive. They reiterated that ***the standards and timelines for non-OECD jurisdictions should be no more onerous than those for OECD members****."*

10. This recent statement echoes a statement found in a February 2000 UK Treasury paper on tax competition in which it was stated:

    "4.7 Countries identified by the OECD as tax havens will quite properly expect EU and other OECD member countries to meet at least the same standards of effective exchange of information including access to, and exchange of bank information for, tax purposes, as they themselves are expected to meet under the Harmful Tax Competition initiative."

11. The essence of the <u>structure</u> of a level playing field in the current context is that all participating partners implement <u>at least</u> the same minimum standards in all bilateral and multilateral arrangements to which they are a party at any given time and similarly that all participating partners should be prepared to apply the same consequences (if any), to any jurisdiction that refuses to live up to this standard. In recognition of the fact that information exchange standards are not static, at such time as the minimum standards change, a level playing field would also require that participating partners should make such changes uniformly and in respect of arrangements which apply to all other participating partners. In recognition of the fact that some countries may choose to put into effect more than the minimum standards, participating partners should be free to do so without compulsion either to move beyond the minimum standards of the norm, or to abstain from doing so.

12. The <u>structure of the level playing field</u> was also captured in the ITIO/STEP report, *Towards A Level Playing Field* (2002), as follows:

"The design of new rules to facilitate cross-border exchange of information must evolve through a consensual process including the following elements:

- *establishment of a level playing field (i.e. all countries must be subject to the same rules for the same activities, implemented on the same timetable and with the same consequences for non-co-operation).*
- *discussion of issues in a universal forum which includes all jurisdictions offering facilities that may be affected by the outcome;*
- *appropriate regard to competing considerations, such as reasonable financial privacy….*

"Discrimination is not the solution, however. Fairness requires reliance on a legitimate process in determining and realising the […..] goal of the OECD and the non-OECD [countries] alike in this exercise."

Specific Considerations

THE OBJECTIVE STANDARD FOR "LEVELNESS"

13. It is suggested that the objective standard for "levelness" should relate to whether an impartial observer would be able to observe and document both the legal framework for the flow of tax information and the actual flow of information between or among the relevant authorities of all participating partners according to an internationally agreed standard, which in turn would specify the content and timeliness of the information flow. Such a standard should permit countries to arrive transparently at the internationally agreed standard by a variety of mechanisms and should not necessarily require a universally implemented single convention.

14. The necessary prerequisite for levelness is therefore an internationally agreed standard for the exchange of information in tax matters.

PRESENT STATE OF "LEVELNESS"

15. There is at present no public international law norm or convention in respect of exchange of information in tax matters. Various countries negotiate exchange of information protocols to suite their mutual commercial interests and countries with DTA's apply similar or different standards for exchange of information as among their trading partners according to their commercial interests.

16. That is not to say however that there are not broad common elements of to be found in the tax information protocols utilized by some participating partners, whether arising from the use of various versions of existing model conventions such as the OECD Model Convention or the UN Model Convention, or otherwise.

17. The proper method for identifying what such broad common elements are as a matter of current practice involves a "benchmarking" study of all tax information exchange arrangements, whether within a DTA or otherwise, entered into by each participating partner, whether with another participating partner or otherwise. Such an analysis has been commenced by several of the participating partners and further participation would be most welcome.

18. While "levelness" may not have been achieved at this point in time due to the absence of accepted standards, at least two proposals exist for modifying the current state of "levelness".

PREVIOUS TIMELINE PROPOSALS IN THE CONTEXT OF THE 1998 HARMFUL TAX COMPETITION REPORT AND ITS UPDATES

19. The 1998 Report and subsequent publications indicated that as part of the leveling process, OECD Member States would be reviewing their tax practices with a view to the elimination of "harmful tax practices".

    This work was summarized and reported back to the Global Forum at relevant times. By way of example from the Global Forum meeting in Malta in July 2001, the record of that meeting shows at the following paragraphs:

    1. "The delegate for the UK indicated that he was going to cover three areas: the member country work, defensive measures and the commitment process going forward. He first outlined that there had been no change as regards the work with OECD member countries. The list of 47 potentially harmful regimes that had been identified in the 2000 Report remained unchanged. He reported that the OECD member countries were in a process of reviewing the regimes, partly through the development of application notes, with a view to determining whether the regimes were actually harmful. ***OECD member countries were committed to remove any features of their regimes that are actually harmful by the April 2003 deadline.*** *The reason that there was only a short discussion on the OECD member country work in the 2001 Report was simply a reflection of the fact that no decisions had to be taken at this point in time. He confirmed that Member country work would continue in accordance with the 1998 and 2000 Reports and that the 2003 deadline remained unchanged.*

    2. ***The delegate for the UK further explained that there had been only one change regarding the co-ordinated framework for defensive measures. The date for the potential application of defensive measures against uncooperative tax havens had been put back to April 2003.*** *He reiterated that defensive measures would be taken by the individual OECD member countries and not by the OECD as an organisation."*

20. As events have transpired, it has not been possible to date for the Member States of the OECD to agree and publish which if any of the 47 potentially harmful tax practices they have determined to be actually harmful. This is certainly understandable given that matters in respect of "harmful tax practices" have not been finally resolved among the EU Members of the OECD, with recent media reports that 2019 is now the accepted EU target date for discontinuance for some such "harmful tax practices"

21. Another aspect of the earlier proposals was related to "coordinated defensive measures" which were to be applied to "uncooperative countries and jurisdictions". As was indicated in the July 2001 report at Para. 7 by the OECD Co-Chair:

    3. "Third, he reported that the potential application of a framework of co-ordinated defensive measures with respect to tax havens would be delayed until such time as it would apply to OECD member countries."

22. Consistent with the above, at the same meeting the French Delegate confirmed that:

"the aim of the project was to have, by 2005, a distinction only between co-operative and uncooperative countries and jurisdictions irrespective of whether such countries and jurisdictions would be tax havens, OECD members or non-member economies".

23. As events have unfolded no "coordinated defensive measures" have been announced in relation to uncooperative OECD or non-OECD countries. Indeed many of the countries which have refused to participate in the Global Forum process have now been granted "immunity" from coordinated defensive measures originally proposed.

C. Existing Proposals for New Standards and Timelines in Respect of Exchange of Tax Information upon Request

EU Tax Package

24. Discussions subsequent to the publication of the OECD's new Model for tax information exchange among the fifteen Member States of the European Union, the ten EU Accession States, and a number of other countries including some non-EU, OECD Member States and several non-cooperative countries, have identified a new alternative standard for exchange of tax information upon request which the EU has proposed will apply among those states as of 1 January 2005 if arrangements are concluded by 30 June 2004. (It is noted that at least four of the accession states including Malta, Estonia, Lithuania, and Slovenia have requested derogations of at least two years from this 2005 date.)

25. The fundamental objective of the EU's Tax Package which sets out the new alternative standard is to bolster the EU's internal market and tax base without damaging the EU's financial services sector. As was stated in the July 2001 text of the EU's announcement of the launch of its Tax Package:

***"In order not to hamper the competitiveness of the EU financial industry**, Member States have committed themselves to promote the adoption of information exchange in their dependent and associated territories, such as the Channel Islands and Aruba. At the same time, the EU has started exploratory talks with some key third countries with the view of having "equivalent measures" introduced there.*

***"The objective of this is to avoid flows of capital from the EU financial centres to these third countries, once the exchange of information is introduced in the EU.** Contacts were started with the USA in February and extended to San Marino, Liechtenstein, Monaco, Andorra and Switzerland."*

26. The automatic exchange of information component in the EU proposal relates primarily to the taxation of savings income, but the general scope of the implications of the directive as it applies to the exchange of tax information upon request generally is much more broad, exempting Switzerland, Luxembourg, Austria and a number of other countries which have refused to cooperate with the OECD's Harmful Tax Competition project from engaging on exchange of information upon request on a basis consistent with the OECD Model Agreement indefinitely. As was stated at Para 6 of the relevant section in the January 2003 European Council of Finance Ministers meeting conclusions:

"The Council agrees that (in extension to its conclusions of 13 December 2001) the ***directive on the taxation of Savings based on exchange of information as the ultimate objectiv****e, will contain provisions ensuring that:*

"- 12 Member States will implement automatic exchange of information from 1 January 2004, the date of implementation of the directive, and of the agreements with third countries as well as with the dependent or associated territories.

"- Austria, Belgium and Luxembourg will from the date of implementation of the directive and of the agreements with third countries as well as with the associated or dependent territories operate a (transitional) withholding tax, with 75/25 revenue sharing and will - implement automatic exchange of information, ***if and when the EC enters into an agreement by unanimity in the Council with Switzerland, Liechtenstein, San Marino, Monaco and Andorra to exchange of information upon request as defined in the OECD agreement, (****The OECD Agreement on Exchange of Information on Tax Matters as developed by the OECD global forum working group on effective exchange of information (DAFFE/CFA(2002)24/final)) , applying simultaneously the withholding tax rate defined for the corresponding period, for the purposes of the directive ; and,* ***if and when the Council agrees by unanimity that the USA are committed to exchange of information upon request as defined in the OECD agreement for the purposes of the directive****."*

27. Further, the EU's Tax Package has been developed specifically to address a current "level playing field" problem within the EU and therefore to an extent the OECD itself. As was noted in the European Commission's July 2001 FAQ regarding the current state of exchange of information for tax purposes;

"Do Member States not already co-operate in exchanging information on cross-border interest on savings?

"Not sufficiently. There are legislative provisions in place for Member States to exchange information. Bilateral tax treaties include a clause providing for information exchange and there is an EC Directive on Mutual Assistance in Tax Matters Directive (77/799), which provides for information exchange, on request, spontaneously and automatically. The problem with the clauses in tax treaties and with the Mutual Assistance Directive is that they allow Member States to refuse to provide information in certain cases, e.g. if they would not under their domestic laws or administrative practices be able to carry out or collect this information for their own purposes or if the applying State itself would not be able to provide similar information if requested.

"These exceptions mean that certain countries cannot, under their current laws, exchange information on savings interest and that other countries are not required to provide information to these countries.

"Furthermore, ***the tax treaties clauses and the Mutual Assistance Directive do not include common rules concerning the details of the information to be reported, the format and frequency of the information exchanges, and the mechanisms to carry out the information exchange, with the result that even when information is exchanged it is not always in a very usable form.*** *The present proposal for a Directive would establish a clear and comprehensive system of information exchange between Member States in the savings taxation area."*

28. In summary, the elements of this new EU standard for exchange of tax information upon request are as follows.

29. The newly proposed EU minimum standard in respect of the exchange of tax information upon request, which the EU will expect of its own members as well as other European countries and the United States of America:

    a) will come into effect at an indeterminate point in time in the future, likely after 2011,
    b) will be restricted to exchange of information upon request, and
    c) will apply essentially only to tax information exchange in criminal matters in circumstances in which the dual criminality standard for cooperation is maintained and the scope of criminal activity is limited to "tax fraud and the like".

30. As a condition precedent to its agreement in respect of such cooperation, Switzerland has indicated that it has received assurances from the majority of OECD Member States (the fifteen EU Member States plus itself), that it will not be pressured to enter into any other form of tax information exchange protocol in the context of the recently developed OECD Global Forum Model (as discussed below) or otherwise. The text of this arrangement as set out by the Swiss Ministry of Finance on 21 March 2003 is:

    "In a memorandum of understanding (MOU) Switzerland commits itself to the EU in the double taxation agreement with the EU member states and on the basis of mutuality to agree to administrative assistance in cases of tax fraud. This would cover individuals and companies. Administrative assistance would be provided on justified request in cases of tax fraud under Swiss law, as well as in cases of other equally serious offences. "Offences comparable to tax fraud include violations of precisely definable penal tax regulations of other states which exhibit the same degree of wrongdoing as tax fraud in Switzerland but which are not covered by Swiss procedures and thus by extension not by Swiss law. Simple tax evasion is not covered by this provision."

    "Clarifications, which were necessary from Switzerland's perspective, were completed in a three-party meeting on 6 March 2003 between Switzerland, the European Commission and the EU Presidency. To be clarified in particular was the implied intention of the EU in the Council resolution of 21 January 2003 of continually seeking to persuade Switzerland and other third countries to move to a system primarily envisaged for tax havens in internal OECD discussions, in other words, for countries with no income tax and standards not comparable to those in Switzerland. This requirement has been dispensed with. The agreement precisely regulates the conditions under which revisions can be made. *Decisions with regard to improvements of a purely technical nature can be made on a regular basis.*

    "Consultations on substantive changes can only ensue after the agreement has been fully implemented and sufficient experience has been gained on the tax rate of 35% valid from 2011 onwards, or if both parties agree to have consultations of this nature. In this regard, international developments could also be taken in to consideration. ***The results of such consultations are in no way prejudiced by the agreement. In addition, the commitments of both parties are established in the memorandum of understanding, in terms of which the agreement should be implemented in good faith and not circumvented via unilateral measures.***

"An element of the agreement reached on 6 March in the three-party meeting is also Switzerland's participation in the directives on the zero-taxation of dividend, interest and royalty payments between related companies in the source state.

"Overall the stability of the agreement sought by Switzerland is sufficiently assured. It has been possible to uphold key concerns."

31. There can be no doubt, given the total absence of any contrary public statement by any person representing any OECD country, that Switzerland and the other non-cooperative countries are to be granted what amounts to indefinite immunity from any pressure to adopt exchange of information upon request according to the March 2002 Model Agreement.

32. The Finance Ministers of the European Union Member States, which together with Switzerland make up a majority of the OECD countries, have committed themselves to assisting in negotiations with a number of other countries to ensure that this EU proposed minimum standard is adopted by this larger group. It is noted that such negotiations in respect of the proposed new EU standard are intended to take place with countries which have refused to make any commitments to the OECD's Harmful Tax Competition initiative and further, that such negotiations are intended to exclude most non-OECD countries and many OECD countries which did make commitments to the OECD initiated process. As was stated in the Ecofin press release of 3 June 2003:

"The Council of the European Union and the representatives of the governments of the Member States, acting within the Council, will do their utmost to assist the Commission in ensuring that appropriate agreements with the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco and the Principality of Andorra are concluded in sufficient time to enable the provisions of Council Directive 2003/ /EC of ..... on taxation of savings income in the form of interest payments to be applied from 1 January 2005 in accordance with Article 17 thereof, and in particular that the said agreements provide for the application of measures equivalent to those contained in the Directive not later than 1 January 2005."

33. From the perspective of the non-OECD participating partners, it is significant and troubling that the countries which refused to make any commitment to the OECD's Harmful Tax Practices project are now being offered **coordinated rewards** in the form of less onerous exchange of information standards and greater trade in services access by the majority of OECD member countries, on the basis of such refusal.

OECD Model Agreement for Exchange of Tax Information Upon Request

34. The background to the commitments given by a significant number of small and developing countries in respect of the OECD Harmful Tax Competition Initiative is well known.

35. The commitments given by the non-OECD countries and territories were conditional on the existence of a level playing field which would apply to both OECD and non-OECD countries, in respect of the standards and time lines for implementation of new protocols for the exchange of information upon request as well as a level playing field in terms of consequences for OECD and non-OECD countries which did not cooperate in implementing such standards.

36. A significant amount of resources in terms of time, effort and money were devoted to the creation of a Model Agreement which contained standards which could be implemented by all concerned on a defined time line. The ongoing work of the participating partners in respect of the accounts requirements, (including the ongoing work with respect to trusts and partnership accounts), which would be utilised by all participating partners, has similarly consumed valuable resources.

37. The subsequent proposals agreed as among the majority of the OECD Member States need not necessary render the work on the Model Agreement without utility.

38. Developments subsequent to the publication by the OECD of its Model Agreement and within the context of the European Union, have merely shown that many countries including both OECD and non-OECD countries are not yet ready to adopt exchange of tax information upon request and that many others consider that the proposal in respect of exchange of information upon request which Switzerland together with the EU Member States have acceded to, is the most appropriate next step toward a "level playing field" at the present time.

39. Consistent with this view, the OECD has deferred the publication of the list of "actually harmful tax practices" carried on by its Member States that was to have been published by the end of April 2003.

40. Also consistent with the fact that the 2002 Model Agreement is ahead of its time, it is noted that although the 2002 Model Agreement was published more than a year and one half ago, treaties which the OECD Member countries have entered into or updated since that time do not use the 2002 Model Agreement. By way of examples, it is noted that the United Kingdom has concluded new or amended treaties with countries which have been participating partners throughout the process and otherwise, which do not use the 2002 Model Agreement:

    a) UK – Mauritius March 2003
    b) UK – Chile July 2003
    c) UK – Canada May 2003
    d) Canada – Peru 2003

41. The recently published revised UK – Australia treaty (August 2003) does set out at Article 27 an exchange of information protocol which more closely resembles the 2002 Model than the earlier version. These countries should be commended for such a step. However it is noted that although these countries made this step, the new DTA still contains the old OECD Article 26 "carve out" which obviates any obligation in respect of administrative matters at variance with domestic practice. Further, although both countries have revised other treaties with OECD Member States during the period since the publication of the 2002 Model, this is the only example of the use of 2002 Model language found.

42. The OECD's ongoing work to encourage all international financial services centres, and in particular those which compete with the non-OECD participating partners such as Singapore and Hong Kong, is also to be commended and encouraged. It is to be hoped that these countries and territories will also agree to implement the same standards as accepted by all of the participating partners and on such same time lines as may be agreed.

43. The OECD is also to be commended for the transparency of its 2003 Improving Access to Bank Information for Tax Purposes update. This document also clearly sets out that the standards which are set out in the 2002 Model have not been uniformly achieved by its own members as at August 2003. The 2003 update also confirms that the current EU proposals are the closest to a common standard among OECD Member States.

44. The EU's proposal for a common standard in respect of exchange of information upon request by 2011 or such later date as should be agreed as among the relevant countries may therefore be viewed as a clarifying transitional step toward the eventual global adoption of the 2002 Model Agreement.

D. Conclusions and Recommendations

45. Subsequent to the publication in March 2002 of the Model Agreement on the exchange of information upon request, the majority of OECD participating partners, as a result of negotiations with "non-cooperative tax havens", have endorsed a new standard and time line for the exchange of tax information upon request. This new standard is scheduled to come into effect at a point in time yet to be determined, but likely to be after 1 January 2011. This standard is to apply as between the majority of OECD Member States and competitors of non-OECD participating partners including countries identified by the OECD as "non-cooperative".

46. The level playing field principle requires that no participating partner should be obliged to enter into any agreement for the exchange of tax information on more onerous terms than are offered to other participating partners and uncooperative countries.

47. The participating partners in the Global Forum should therefore agree to monitor ongoing events jointly, with the deferral of implementation until a level playing field comes into existence.

48. It is recommended that participating partners consider deferring any implementation of the standard set out in the 2002 Model Agreement until the point in time at which ideally all participating partners and other relevant countries, and at least all OECD Member States will also implement such standards.

49. It also follows that participating partners should continue to monitor developments outside of the Global Forum process and should continue in their Global Forum participation and bilateral dialogue.

50. It is therefore proposed that the Global Forum adopt the following resolution:

"All participating partners, recognizing that the proposed new standard for tax information exchange upon request, as set out in the Model Agreement published by the OECD in March 2002 and further clarified in the Global Forum Meeting held in the Cayman Islands in October 2002, has significant value as a guide for the future evolution of tax information exchange upon request, and further recognizing that the conditions precedent for the implementation of any commitments given by either OECD countries or non-OECD countries as part of, or in response to, the OECD's Harmful Tax Competition Initiative have not been met, and further recognizing that there is at present no ascertainable date at which such conditions precedent will be met, therefore recommend that:

(i) participating partners continue to be at liberty to engage in bilateral dialogue on all matters of mutual interest including tax information exchange;

(ii) with a view to advancing the Global Forum process through documenting the existing global norms and facilitating the work on the current global status of tax information exchange upon request, each participating partners should compile from each tax treaty or tax information exchange agreement or other relevant agreement or arrangement to which that participating partner is a party, the language which sets out the requirements for tax information exchange upon request as well as any legal (including constitutional) or administrative constraints in respect of any such exchange and to share that compiled information with all other participating partners at the earliest opportunity and in any event no later than 1 January 2006;

(iii) participating partners will meet periodically in the Global Forum to review whether as a matter of fact, the conditions precedent to the implementation of commitments made in the context of the OECD's Harmful Tax Competition Initiative have been fulfilled, bearing in mind the three year following 1 January 2005 timeline set out for review in the EU's arrangements with, Switzerland, Luxembourg, Austria, Belgium, San Marino, Andorra, Liechtenstein, and Monaco, and therefore commencing no later than 1 January 2009, the fourth anniversary after the 1 January 2005 proposed implementation date as set out in the EU Tax Package agreement of 3 June 2003; and

(iv) the Global Forum be expanded to include the non-cooperative countries and territories which have been instrumental in the development of the new proposed standard and time line which have supplanted those developed in the existing Global Forum."