<u>SOME REMARKS ON THE OECD´S PROJECT ON HARMFUL TAX COMPETITION: THE 2004 PROGRESS REPORT</u>.

Since last March we have at the OECD website, the 2004 Progress Report on the 1998 Harmful Tax Competition Project. It is wortwhile to point out some remarks about the real progress has taken place according to this official document.

The Project´s main goals seems always to be the same. The OCDE members only seek to establish standards that encourage an environment for a fair competition in the tax area, through promoting principles that are designed to enable each country to apply its own tax laws without the interference of practices that operate to undermine the fairness and integrity of each country´s tax system. So their basic work is the pursuit of a level playing field among all countries and jurisdictions. That´s the business of a so called Forum on Harmful Tax Practices, a subsidiary body of the Committee on Fiscal Affairs. (paragrahs 1-2).

Paragraph 2 says the Committee´s work has achieved "significant and very positive results" since the last Report to Council in 2001 (p.3). Let us see some details.

In 2000, the Committee identified 47 preferencial tax regimes as potencially harmful under the four main criteria (low or no taxes; a ring-fenced regime from domestic economy; lack of transparency; and no efective exchanged of information). After the self-reviews were completed, a further peer review process was undertaken for each regime. So the Report offers a Table of Conclusions Reached on Potencially Harmful Regimes Identified in 2000. (p.6 & 11)

According to these Conclusions, Switzerland and Luxemburg harmful tax regimes have not been either abolished or amended to removed potencially harmful features. The Switzerland´s harmful tax regimes still in place are 50/50 Practice in Financing and Leasing and Headquarters regimes but it is noticed that Switzerland is ready to agree on efective exchanged of information in the context of bilateral treaties, with respect to holding companies. Luxemburg´s harmful tax regimes still in place are referred to Management companies; the Committee acknowledges the proposed modifications of the regime but "remains concerned" that the hamrful feature of lack of efective exchange of information has not been addressed.

However, the main point of this 2004 Report referred to the change that has taken place in terminology, which surely reflects the Bush Administration global policy on tax havens that has changed OECD Project course since 2000. Part III is entitled "Work of Participating Partners", while the equivalent Part IV in the 2001 Report was entitled "Tax Havens Work". Paragraph 19 states that "since the last report to Council in 2001, the number of *countries and jurisdictions outside the OECD that have committed to the principles of efective exchanged of information and transparency* has increased from 11 to 33, with the most recent commitments having been made by Vanuatu in May 2003 and the Republic of Nauru in December 2003". You should notice that in this OECD official document, tax havens are now called "countries and jurisdictions....", or "participating partners" and the 1998 identifying criteria are forgotten.

Officially, there are no tax havens any more. “The 33 *countries and jurisdictions outside the OECD that have made commitments to transparency and efective exchanged of information* have made progress in fulfilling their commitments”, so they say in p. 26. The remaining Un-cooperative Tax havens are Andorra, the Principality of Liechtenstein, Liberia, the Principality of Monaco, and the Republic of the Marshall Islands (p.27). For OCDE the term tax havens only applies to these five countries and jurisdictions - the remaining few.

Another interesting point to remark. In the Fiscal Committee view, a framework of co-ordinated defensive measures, which must remain flexible, should be guided by some stated principles. Above all, this framework of co-ordinated defensive measures –never called sanctions - “should be proportionate and targeted *at neutralising the deleterious effects* of harmful tax practices” (p.29). Again, a very meaningful language change : the defensive measures are not targetted any more at removing potentially harmful tax features as it was foreseen before but at *neutralising their deleterious effects.* Harmful tax practices are not enough for those defensive measures or sanctions to be taken, in fact, it is necessary for them to be harmful plus deleterious, that is to say - Webster´s Dictionary - *destructive.*

Remember time goes fast, the OECD Report against Harmful Tax Competition was approved in 1998, in the last century.

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