THE OECD'S REPORT ON HARMFUL TAX COMPETITION:

Is 'Harmful Tax Competition' Actually Harmful?

Mark Blumberg
LL.M. Tax Program
Osgoode Hall Law School
International Taxation
For Professor Neil Brooks
and Scott Wilkie
January 24, 2001

THE OECD'S REPORT ON HARMFUL TAX COMPETITION:

Is 'Harmful Tax Competition' Actually Harmful?

Table of Contents

I. GLOBALIZATION AND HARMFUL TAX COMPETITION

Globalization and technology have lead to tremendous economic benefits for some but have also created many serious negative side effects for others. National boundaries are becoming less important. Multinational Enterprises ("MNEs") and wealthy individuals are more easily able to avoid taxation using tax havens.

The increasing use of tax havens have resulted in an erosion of many countries' tax bases as well as a shift in the structure of taxation from more mobile capital to immobile capital. The tax havens have also undermined the fairness and neutrality of many countries' tax systems, as well as the ability of modern governments to use the tax system to redistribute income and to provide public goods.

Some countries have regrettably responded to globalization by trying to become more 'efficient' and 'competitive' by reducing top marginal tax rates and the progressivity of their tax system, slashing government services, making government regulation of environmental matters more lax and weakening of social safety nets. This has resulted in what some have called a 'race to the bottom'.

In May 1998 the Organization for Economic Co-Operation and Development (the "OECD") issued a report entitled "Harmful Tax Competition: An Emerging Global Issue" (the "Report".)[1] The Report called for a concerted international effort to eliminate harmful tax practices and to adopt a series of recommendations.

The Report has been forcefully criticized by those who are concerned with the implementation of its recommendations. One critic stated that "this report is a disgrace, a travesty and unfit for consideration … The OECD report is a road map to confusion, conflict and revolution. We have to take it seriously. It has to be fought and discredited".[2]

In this paper I will describe the Report and its recommendations. I will discuss some more recent developments after the issuance of the Report and take a detailed look at twelve of the most substantial criticisms of the Report. It is my position that most of these criticisms are baseless. Only a few have any merit to them and the OECD is already addressing these problems issues with the Report. The Report was a positive first step in the process of eliminating the worst types of harmful tax competition that results in governments being forced to lower taxes and public services. The only real beneficiaries of the harmful tax competition are the MNEs and some wealthy individuals who avoid paying their fair share of tax. In terms of equity and neutrality if harmful tax competition is reduced the world wide public good will be enhanced. Furthermore, I will discuss the likelihood of the Report and its recommendations ever being implemented followed by a discussion of how the OECD can increase its chances of having the recommendations implemented. The OECD will probably eventually be successful in combating harmful tax competition and this will remove one of the most negative aspects of globalization.

---

[1] Organization for Economic Co-Operation and Development. "Harmful Tax Competition: An Emerging Global Issue". Paris: OECD, 1998

II. THE OECD'S REPORT ON HARMFUL TAX COMPETITION

Currently there are four different international organizations dealing with the issue of harmful tax competition.[3] In this paper I will only deal with the OECD's effort and Report. The Report is divided into three parts. Chapter 1 deals with the increasing globalization of economic activities and the need for tax policy to address these changes. The Report has embraced globalization and international competition which it argues is a major force behind base broadening and rate reductions. The Report, however, is concerned with certain negative side effects of globalization including the ease with which individuals and MNEs can minimize or avoid taxes by working in concert with tax havens, who are attempting to lure mobile capital.[4]

According to the Report the effect of tax havens and harmful tax competition is to erode other national tax bases; cause a shifting of the structure of taxation (from the mobile capital to immobile capital and from income tax to consumption taxes); to weaken the ability of individual nations to apply progressive income tax rates; and undermine the

---

[2] Charles A. Cain, "The Dampest squib can cause a big bang". *Offshore Investment*. November 1998, Issue 91 p. 2-3.

[3] The European Union in December 1997 published an EU Code of Conduct which initiated the recent activity with respect to harmful tax competition including the OECD's Report. As well the Financial Stability Forum, which was formed in 1999 and has about 40 members, most of whom are in the OECD, is currently reviewing the issue of harmful tax competition. The final forum is the Financial Action Task Force on Money Laundering set up by the G7. For a full discussion of the various lists compiled by the four different organizations and which countries are placed on each list see Jacqueline B. Manasterli "Offshore Financial Centers and Harmful Tax Regimes Trigger Flurry of International Developments" *Tax Notes International.* Vol. 21, Number 23, December 4, 2000 at p. 2541.

[4] The Report, p. 14.

neutrality, fairness and social acceptance of taxes and the ability of government to use the income tax system for a redistributive function.[5]

Chapter 2 of the Report deals with identifying tax havens and harmful competition. The Report makes a distinction between a tax haven and a country with a potentially harmful preferential tax regime. Most of the former are small islands in the Caribbean and the Pacific Ocean while the latter are mostly OECD members. The key factors used in the Report to identify tax havens are that they have no or only nominal taxes, they have secrecy rules, they lack transparency in their legal and administrative provisions and they encourage investments with no substantial business activity.[6]

On the other hand the Harmful Preferential Tax Regimes have either low taxes or no taxes on only certain income, the regime "ring-fences" these activities and the regime is non-transparent and does not exchange information.[7] The primary difference between the tax haven and the Harmful Preferential Tax Regime is that the tax haven would impose no or only nominal tax on mobile financial and service activities, whereas the Harmful Preferential Tax Regime collects substantial revenue from such activities in it's

[5] The Report, p. 14.

[6] The Report, pp. 22-23. The final requirement suggests that if the activity is not substantial then the primary reason for the activity may be tax driven. The Report identifies further factors which can be used to identify Harmful Preferential Tax Regimes including an artificial definition of tax base, failure to adhere to transfer pricing principles, negotiable tax rates or tax bases, the regimes are promoted as vehicles for tax avoidance and evasion and the regime encourages the establishment of operations that have no substantial activity. See the Report, pp. 30-34.

[7] The Report, pp. 25-27. "Ring fencing" occurs when the special regime is partly or fully insulated from the rest of the regimes tax system which protects the sponsoring country from the harmful effects of the tax incentive. Ring Fencing can be accomplished in a number of ways including restricting a particular benefit to non-residents or by denying the investor access to the local market.

tax system but allows for some mobile financial and service activities to be subject to little or no taxation.[8]

Chapter 3 discusses unilateral, bilateral and multilateral approaches to combating harmful tax competition with an emphasis on coordinated action. The first seven recommendations are for unilateral actions which include: changing domestic legislation to include controlled foreign corporation rules; adopting foreign investment fund rules; restricting exemptions of foreign income from tax havens; require reporting transactions; making public the conditions for advance rulings; adopting the OECD's 1995 Guidelines on Transfer Pricing; and removing the secrecy of banking transactions.[9]

The bilateral recommendations concern modifying tax treaties to promote the exchange of information, restricting the entitlement to treaty benefits to exclude income covered by harmful tax practices, clarification of anti-abuse rules, maintaining a list of specific exclusion provisions for tax treaties, terminating tax treaties with tax havens, consider undertaking coordinated enforcement including joint audits and training, and finally assisting in recovery of tax claims.[10]

The multilateral or international response encompasses recommendations 15-19 and includes setting up Guidelines For Dealing With Harmful Preferential Tax Regimes in Member Countries (the "Guidelines") and a Forum on Harmful Tax Practices (the "Forum").[11] The Guidelines call on OECD members to refrain from adopting new harmful measures, to review their existing measures and to remove the harmful tax measures by April 2003. There is a limited grandfather clause allowing tax payers who

---

[8] The Report, p. 19.
[9] The Report, pp. 40-46.
[10] The Report, pp. 46-52.

were benefiting from preferential treatment on December 31, 2000 to continue enjoying this treatment until no later than December 31, 2005. The Guidelines also call for the coordination of the OECD members' response to the tax havens. The Report calls for the Forum to produce a list of tax havens and for each country to examine its links to tax havens to ensure that those links do not contribute to the harmful tax competition. Finally, the report calls for the promotion of certain principles to guide tax administration and to promote the recommendations with non-OECD countries.

III. RECENT DEVELOPMENTS

In June 2000 the OECD Committee on Fiscal Affairs released a report "Toward Global Tax Cooperation" that listed 35 tax havens of the 47 jurisdictions being analyzed. Six jurisdictions who would have been included in the list provided the OECD with "advance commitments"[12] not to enhance or add to the harmful practices and were therefore not included in the list. In January 2001 a further two tax havens provided commitment letters.[13]

On November 24, 2000 the OECD published the "Framework for a Collective Memorandum of Understanding on Eliminating Harmful Tax Practices" ("the Framework"). With respect to the OECD members it listed specific elements of OECD member's tax regimes which are "potentially harmful".

---

[11] The Report, pp. 52-59.
[12] OECD Framework, p. 29. The advance commitments were made by Bermuda, Cayman Islands, Cyprus, Malta, Mauritius, and San Marino.
[13] The Commitment Letters were provided by Isle of Man and Netherlands Antilles according to the OECD according to the OECD Website at www.oecd.org.

The OECD has stated categorically that the list of 35 tax havens is not to be used for "co-ordinated defensive measures" but that instead another list entitled the List of Uncooperative Tax Havens will be completed by July 31, 2001 and it can be used for that purpose.[14] For a tax haven to avoid being included in the List of Uncooperative Tax Havens the tax haven simply has to make a "public political commitment by a jurisdiction to adopt a schedule of progressive changes to eliminate its harmful tax practices by 31 December 2005."[15] A tax haven that is not on the List of Uncooperative Tax Havens can be viewed as a co-operative jurisdiction. However, each year that co-operative jurisdiction status will need to be renewed. This annual renewal process will encourage compliance with the public political commitment made by the tax havens.

The OECD has set out a timetable which includes four stages to be attained by December 31, 2005. The first stage involves the tax haven preparing a plan. The second stage deals with the collecting of necessary information on beneficial ownership of shares, trust and partnership interests. The third stage is exchanging of information and the final stage is the tax haven having a fully transparent tax system.

IV. ANALYSIS OF THE CRITICISMS OF THE OECD REPORT

Numerous business groups, academics and governments have criticized the Report. For example The Business and Industry Advisory Committee (BIAC), an independent but official consultative body of the OECD, on June 8, 1999 released a harsh review of the

[14] OECD Framework, pp. 16-18.
[15] OECD Framework, p. 19.

Report.[16] BIAC condemned the OECD for attempting to set up a cartel, to limit freedom of choice for business, to attack "fiscal sovereignty", to impose artificial restrictions, and alleged that the OECD was turning back the clock on free trade. Academics such as Mason Gaffney[17] of UCLA and Arthur Wright of University of Connecticut, among others, have fiercely criticized the Report. Numerous governments, which represent countries that will be potentially adversely affected by the Report, have also criticized the Report.

There has been a litany of arguments used by different governments, organizations and academics to attack the OECD Report and I will deal with each of them. Some of the arguments which have little or no merit include the following: tax competition is a healthy phenomenon; there is no empirical evidence of tax competition causing harm; the OECD has not adequately consulted with Non-OECD Members; the importance of tax in location decisions has been exaggerated; the OECD lacks legitimacy; the lack of international law preventing tax havens from conducting business; the OECD's efforts are an attempt by large countries to dominate small countries; the OECD is attempting to force tax rates up; the Report is too narrow in its focus; and that the Report does not adequately define important terminology.

Some of the arguments have some merit including the following: that the Report will have a negative impact on the economies of tax havens and that the OECD members should clean up their own preferential tax regimes.

---

[16] See the BIAC Response reprinted at "A Business View of Tax Competition: Business and Industry Advisory Committee to the OECD". *Tax Notes International*, Vol. 19, Number 3, July 19, 1999, pp. 281 -287.

1) *Tax Competition is a healthy phenomenon*

Proponents of tax competition argue that it has an efficiency-enhancing role. The "Tiebout Hypothesis" originally propounded by Charles M. Tiebout in 1956 with respect to local governments argues that tax competition is welfare enhancing. Those who favour tax competition argue that taxes, just like any other expense, need to be minimized. Each country has its own competitive advantage which it should be able to exploit. Just as some countries have good soil and climate for growing grapes, other countries have low tax rates and MNEs will gravitate to these countries because lower taxes makes them able to compete and provide the greatest shareholder value.

There are many problems with the theories propounded by those who support tax competition.[18] As Jack Mintz notes, tax competition can introduce many inefficiencies in a nation's tax system because countries afraid of "tax-base flight" will lower tax rates to an artificially low point and all countries will be worse off as a result.[19] Furthermore, tax competition makes it difficult for countries to impose certain types of tax, like income tax and value added tax, and this results in a shift to other sources of income like payroll taxes and consumption taxes. Higher payroll taxes tend to increase unemployment. High

---

[17] Mason Gaffney has written a number of articles critical of the OECD initiative including "The Worldwide Benefit of International Tax Competition" and his writings appear at www.progress.org.

[18] For a full review of the tax competition literature see John Douglas Wilson. "Theories of Tax Competition". *National Tax Journal*, Vol. LII, No. 2, June 1999, p. 269.

[19] Jack Mintz. "Is National Tax Policy Viable in the Face of Global Competition". *Tax Notes International.* July 5, 1999, p. 99 at 102.

consumption taxes, as they are regressive, tend to affect in a disproportionate way those that are socio-economically disadvantaged.

But unfortunately higher payroll taxes and consumption taxes are not the panacea for collecting more taxes in the age of globalization as they will also be more difficult to enforce. There will be more inducement for "employees" to become "independent contractors" to avoid payroll taxes. There will be more difficulty in determining which country or jurisdiction can impose consumption taxes on international goods and transactions.

Those who support the Report and are concerned with the impact of tax competition argue that in certain circumstances tax competition is wasteful and counterproductive. They argue that those who favour tax competition have an idealized view that does not take into account "interregional externalities" whereby one region's government action increases the welfare of its own residents at the expense of the residents of a different region.

Furthermore, the studies supporting tax competition do not take into account 'fiscal externality' whereby one region's policies affect the budget of another region.[20] As Joann M. Weiner has argued, fiscal externalities can occur when one government does not "fully account for the total social marginal costs or benefits of their actions … The first country does not 'internalize' externality it causes, so that the relevant social

[20] John Douglas Wilson, p. 272.

marginal costs and benefits are not equated - tax rates or public good may not be at the optimal levels".[21]

As one commentator notes "The general thrust of much of the tax competition literature is that tax competition leads to inefficiently low taxes".[22] However, even if tax competition is "inefficient", it can still benefit one region over another or some individuals in one region over other individuals. Therefore, even if tax competition is inefficient and harmful, it is not difficult to see why some individuals, businesses and countries would support it and attempt to justify the tax competition.

2) *No empirical evidence of tax competition causing harm*

Some critics of the OECD report have complained that the OECD has made the issue of harmful tax competition seem large and dramatic but has not provided empirical evidence that tax competition actually causes harm. The OECD has also not clarified which states are being harmed by tax competition and in what proportion they are being harmed. After all, if only a few large wealthy nations are being affected by tax competition then presumably the public opinion and other governments would be less sympathetic or interested than if the pain is being more broadly felt.

It is correct that the OECD has not provided firm numbers on exactly what damage has been caused by harmful tax competition. The OECD has argued that because of the secrecy of many tax havens it is difficult to obtain accurate data on the effect of the

[21] Joann M. Weiner. "The OECD's Forum on Harmful Tax Practices and the New Spirit of International Cooperation". *The 2000 World Tax Conference Report*. Canadian Tax Foundation, pg. 37:1-37:9 at 37:6.

tax regimes. Furthermore, as Timothy Goodspeed argues there are many reasons that empirical measurements of tax competition will probably be flawed including the complexity of tax systems, factors other than harmful tax competition that can affect tax bases, difficulty in being able to determine the benefits of public services to industry and other government policies that operate in tandem with harmful tax competition but that cannot easily be separated from the effects of harmful tax competition.[23]

Recently the OECD in response to this criticism has estimated that over $1 trillion dollars are being held in tax-free environments.[24] According to the OECD in 1986 there were 450 offshore funds operating in tax free environments. That number had grown to just under 6000 by 1997. According to the OECD, the newer funds also had far greater assets under management than the older funds. Whether or not the OECD figures are correct almost all commentators agree that there has been an exponential growth in investments in tax havens.

The reluctance of the OECD to estimate the impact of harmful tax competition has not stopped others from making estimates. According to a 1994 study, tax havens accounted for 1.2% of the world's population, 3% of the worlds GDP and 26% of the global assets.[25] A recent Globe & Mail article reported that Canadians invested over $14.3 billion Canadian dollars in Barbados in 1998.[26] This amount is greater than the

---

[22] John Douglas Wilson, p. 289.
[23] See Timothy Goodspeed, "Tax Competition, Benefit Taxes, and Fiscal Federalism". *National Tax Journal.* Vol 51, No. 3, 1998 p. 579-586.
[24] OECD. "Select Figures on Offshore Investment Activities". The article can be found at www.oecd.org.
[25] James Hine and Eric Rice. Fiscal Paradise: Foreign Tax Haven's and American Business". *Quarterly Journal of Economics*, 1994.
[26] The Globe & Mail article appeared July 5, 1999 as cited by Bruce Zagaris in *Tax Notes International*, Vol. 19, No. 4, July 26, 1999 at p. 325.

amount of Canadian combined direct investment in France, Germany, Japan and Mexico for the same year. The OECD may not be able to precisely estimate which countries are being harmed and exactly by how much but that does not mean that it is not happening.

3) *Tax is not a deciding factor*

The BIAC Response, among others, has criticized the OECD's emphasis on taxation as a determinant of business location decisions. BIAC asserts that "There are many other, non-tax, factors that are of an equally high or higher priority in business location decisions".[27] BIAC cites the importance "appropriately-trained workers, relative labour costs, a developed and efficient infrastructure to support specific activities (electricity, water, roads, airport capacity and proximity, etc.) proximity to suppliers and market, and a favourable government attitude toward foreign investment."[28] Although these factors may be very important in location decisions with respect to factories or exploiting natural resources the argument, as it relates to highly mobile capital, is questionable. Presumably if taxation is not the most important factor in location decisions for highly mobile capital then removing the tax preferences in tax haven countries should have little adverse impact on the decision by MNEs to locate in the tax havens.

It seems incredible to believe that mobile capital moves from Canada to a tax haven in the Caribbean because there is better electricity, water, roads, airport capacity and proximity? The reference to appropriately-trained "workers" is somewhat disingenuous as most of the appropriately-trained workers are lawyers and accountants

[27] BIAC Response, p. 282.

formerly from OECD member countries who are now temporarily or permanently working in the tax havens and not 'local' workers.

4) *The OECD lacks legitimacy*

The Report and the OECD have been criticized for trying to set up a new "tax cartel" and for "colonialism and imperialism as the means to protect their turf".[29] As the OECD is an organization with approximately thirty member countries, almost all of which have developed economies, and not all countries can join the OECD, some have argued that it does not have any right to impose its will on non-member sovereign states.[30] Some critics have framed the argument as being ‘No taxation without representation’.

The criticism of the Report is somewhat misguided in that the OECD is not imposing any tax or undertaking any sanctions. Instead, the OECD is recommending to its members that they adopt certain measures against a list of uncooperative regimes. Each sovereign member of the OECD has the right to take action in domestic law against the tax havens, either with or without, the multilateral consultations that have taken place.

Critics of the Report have deliberately tried to delegitimize the OECD precisely because the OECD is a relatively respected organization with a long track record of dealing with tax issues that are of concern to business and individuals alike such as

---

[28] BIAC Response, p. 282.
[29] Denis A. Kleinfeld. *Offshore Investment*. Issue 109, September 2000. Pg 67-68 at 67.
[30] Apparently the 14-member Caribean Community is planning on taking the OECD report to the World Trade Organization according to a Financial Times article cited in *Tax Notes International*, Volume 21, Number 2, p. 106, July 10, 2000.

double taxation, and also the OECD has some very powerful members. Presumably if a less effective and respected organization were to have prepared a report on harmful tax competition or tried to implement similar recommendations that organization would probably have been ignored. The vast majority of countries will benefit from the recommendations and most of the beneficiaries are not even members of the OECD. The OECD is acting in both its own self-interest and that of ninety-nine percent of the world's population in making these recommendations.

5) *The Pot Calling the Kettle Black*

Opponents of the Report argue that there is substantial harmful tax competition being practiced by almost all the OECD countries and that until the OECD members eliminate harmful tax practices the OECD members should not be preaching to other states as to how they should implement their tax systems.

Although the argument has some resonance, as it makes the OECD seem like hypocrites, it is flawed in a number of respects. First, the OECD has in fact encouraged its members to eliminate preferential tax regimes. The OECD has not exclusively looked at the conduct of the tax havens. In its the Framework the OECD has documented that almost all of the OECD nations have elements of their tax regime which are potentially harmful. The OECD has been extremely critical of its own member’s practices. For example, Canada's International Banking Centres, international shipping and Non-resident owned Investment Corporations, were all cited by the OECD as being potentially harmful and if Canada is to be in compliance with the OECD actions they will all presumably have to be removed or modified.[31] The OECD has required that its own members clean up their practices on a time line that is in many cases quicker than those for non-members.

Second, in large part, the OECD members that have preferential tax regimes, have instituted those regimes in response to harmful tax competition from other countries, especially the tax havens. The causation should not be ignored or forgotten.

Third, there is a catch-22 in that although almost all countries can benefit from these changes no one country wants to be the first to be the one to remove the preferential or harmful tax regimes. The first country to eliminate harmful tax preferences would put itself at a substantial disadvantage, would potentially lose a large amount of mobile capital and would in fact suffer tremendous losses. The best way to minimize any losses and displacement would be for all countries simultaneously to eliminate the harmful tax practices. This will not happen by unilateral or bilateral actions. For this to happen there is a need for multilateral action which requires the support of an organization with the stature of the OECD.

6) *No International Law Preventing Tax Havens from conducting business*

Another argument put forth by the tax havens is that there is no international law which prevents them from the practices in which they are engaged. As Bruce Zagaris, a commentator who is supportive of the tax havens reluctantly notes "Although many legitimate reasons can be asserted to justify the need for financial confidentiality,

---

[31] OECD Framework, pp. 12-14.

international treaty and customary law increasingly requires governments to abide by transparency requirements in operating financial services and overriding confidentiality against serious crimes."[32] Furthermore, the individual members of the OECD are also entitled to protect their "fiscal sovereignty". This is not an issue of international law but instead multilateral cooperation to affect domestic law and bilateral treaties.

7) *Big countries vs. Small countries*

Tax havens tend to be smaller and they have argued that larger countries are bullying smaller countries when it comes to harmful tax competition. The argument is that smaller economies do not have the access to markets and the resultant economies of scale that larger countries enjoy. Furthermore, smaller countries are also more severely affected by capital flows and currency fluctuations.

This argument against the Report is rather weak. If 'small' tax havens should be allowed to basically poach foreign tax bases then what other unfair practices, both within and outside the tax area, should small countries be allowed to undertake. Should small countries be excluded from other international attempts at regulation including promoting more vigorous environmental standards? As globalization increases and trade barriers are removed, the cost of transportation will decrease, technology such as the internet will bring people closer together and the arguments in favour of the smaller nations having a competitive disadvantage will increasingly become less convincing. With globalization the whole world is potentially a market for smaller nations.

[32] Zagaris, 1512.

8) *OECD Trying to force tax rates up*

The BIAC Response notes that over the last twenty five years "the total tax revenues collected by governments have increased steadily and substantially."[33] BIAC calls the increase in taxes collected as a percentage of the GDP "astounding". BIAC believes that increased international tax competition will force the OECD countries, and others, to lower their tax rates. However, BIAC asserts that "The end result of wholesale adoption of the Report's recommendations (or a majority of them) will be to raise the effective tax rates of the OECD based multinationals…".[34]

The OECD has repeatedly denied that it is attempting to force tax havens to increase their corporate tax rates. Although undoubtedly the OECD would not have a problem with tax havens increasing their corporate tax rate, the OECD accepts that some countries will have low or no marginal tax rates. What the OECD is not prepared to accept is that MNE and individuals, that do not have substantial activities in the tax haven, will be allowed to pay no or low taxes and be exempt from paying taxes within OECD countries. The OECD's view seems to be that if the tax bases of OECD and non-OECD members countries are eroded they will have no choice but to increase domestic tax rates, run huge deficits or dramatically cut social services. If the OECD's initiative results in a reduction of harmful tax competition and an increase in tax bases, non tax haven countries would have greater flexibility with respect to increasing spending, cutting tax rates or paying down deficits.

[33] BIAC Response, p. 283.

9) *Narrow Scope of the Report*

The Report has been criticized for focussing on geographically mobile financial activities and ignoring many other forms of tax competition including tax incentives designed to attract investment in plant, building, and equipment. The BIAC Response notes that "countries do compete in other ways to attract business to their territories, so why single out taxation of one relatively limited activity as harmful."[35]

The Report acknowledges that there will be topics, other than geographically mobile activities, that should be discussed.[36] The Report acknowledges that it does not tackle the issue of cross-border savings instruments, including bank deposits.[37]. Furthermore, the Report does not touch on harmful tax competition between different provinces or states within a particular country. Some other issues that are not dealt with include economic and political factors which may affect decisions about locating enterprises and variations in consumption, property and labour taxes which may affect competition.[38]

The OECD has tackled mobile capital because it is the source of the greatest erosion of tax bases and urgency. Furthermore, except for Switzerland and Luxembourg all of the OECD countries, and most non-OECD countries, agree with the limited recommendations made by the OECD. If the report were to be broader then the OECD

---

[34] BIAC Response, p. 284.
[35] BIAC Response, p. 281.
[36] The Report, pg. 8.
[37] The Report, pp. 9-10.

would probably have to spend many more years consulting and there would be less support for implementing the changes. Presumably, that is in part what the opponents of the Report would like to achieve.

10) *Inadequate definition of terminology*

Critics of the Report argue that the OECD does not adequately provided an objective definition of either "harmful tax competition" or "tax havens" and that this is a major shortcoming of the Report. For example with respect to harmful tax competition critics wonder what is the difference between tax competition and 'harmful' tax competition? Arthur Wright notes "all tax-preference schemes have those effects [as described in the Report]. Alas, the trick by which to decide when they inflict harm and when they do not is left unexplained."[39]

The Report does not suggest that all preferential tax regimes are harmful. If a preferential tax regime causes a small incidental harm to another country but has substantial benefits to the host country then that preferential tax regime may be justifiable. The Report focuses on "poaching" of tax bases or "bidding aggressively for the tax base of other countries". When one country sets up a special regime to attract investment or savings that originate elsewhere or to assist MNEs or individuals in avoiding another country's taxes then according to the Report this is harmful tax

---

[38] Joann M. Weiner and Hugh Ault. "The OECD's Report on Harmful Tax Competition" *National Tax Journal* Volume LI, No. 3, September 1998, p. 601- 608 at 602.
[39] Arthur Wright, p. 462.

competition.[40] The OECD's definition of harmful tax competition is clearly subjective and the OECD readily admits that.

The OECD recognized in a 1987 report that it is extremely difficult to define what is a tax haven.[41] The OECD at that time concluded that whether a country had been recognized as a tax haven or whether the country markets itself as a tax haven were good indicators of whether in fact the country is a tax haven. The "reputation test" has been replaced in the Report by the series of factors discussed in Chapter 2 of the Report that indicate that a country is a tax haven.[42]

In the Report the OECD instead used a four part test to describe tax havens and a slightly different four part test to discuss harmful preferential tax regimes. The OECD has come about as close as possible to providing a concise definition of the factors that will result in a country being considered as a tax haven.

Critics of the Report seem to want the OECD to commit to succinct definitions of either harmful tax competition or tax havens. This will then provide all of the tax havens with the opportunity to fall outside of the definition by slight modification to their tax system or legislation and consequently the tax haven would not be considered a "tax haven" or a state practicing harmful tax competition and would not be subject to the sanctions of the OECD members. As one editorial notes "Tax haven countries have been jostling around, trying to come up with certain provisions in their legal and economic

[40] The Report, p. 16.
[41] International Tax Avoidance and Evasion, Four Related Studies No. 1 p. 22 (OECD, 1987).
[42] The Report, p. 22.

system which cause it to fail the definition of a 'tax haven'".[43] This aforementioned approach has not worked precisely because the OECD did not use a strict objective definition of either harmful tax competition or tax haven and the OECD is more concerned with the results of the tax regime and not a formalistic definition.

11) *Negative Impact on the Third World*

Many commentators have criticized the Report arguing that implementation of the Report's recommendations will be detrimental to developing countries specifically the tax havens. The timing of the Report could not have been worse for many the tax havens, especially in the Caribbean. These small island states, some of which have only recently become independent, have suffered through tremendous economic hardship, high unemployment, cuts to foreign aid (except to finance the U.S. war on drugs), and low commodity prices for the products they export.[44] The tax havens scoff at the notion that the Report is leveling a playing field that is slanted in favour of the tax havens. They believe that, in fact, the developed OECD countries already enjoy substantial competitive advantage, that the playing field is slanted in favour of the OECD countries, and this Report will further prejudice the tax havens' position.

Although the economic effect on the development of the tax havens is probably the strongest argument against the Report there are many flaws with this criticism and to

---

[43] The editorial can be found at "Mistrust of the OECD inquiry into tax havens" Offshore Investment May 2000, Pg. 8.

[44] Bruce Zagaris in "OECD Report on Harmful Tax Competition: Strategic Implications for Caribbean Offshore Jurisdictions". *Tax Notes International.* Volume 17, No. 20, November 16, 1998, 1507 at p. 1508-1509.

the extent that it is legitimate it can, should and will be addressed by the OECD. Firstly, a number of the regimes who are tax havens are hardly developing nations: Isle of Man, Guernsey, Sark, Alderney, Gibraltar, Monaco, Liechtenstein come to mind.

Secondly, tax havens tend to have small populations and cumulatively account for only about 1 percent of the world's population. There are many far more populous and needy developing countries whose interests need to also be taken into account.

Thirdly, although the dollar amount of losses by the OECD countries is great, it is in fact the rest of the developing world that has been hardest hit by tax havens. Developing nations have far greater problems in collecting revenue than developed nations. As Vito Tanzi and Howell H. Zee note, that in the developing world "tax policy is often the art of the possible rather than the pursuit of the optimal".[45] Corporate taxation in OECD countries is proportionately less important than other forms of taxation like income tax whereas in most of the developing world corporate taxation is far more important. This view is supported by scholars like De Jantscher who argue that

> The irony of this situation will not escape the reader. Developing countries, generally have less sophisticated tax administrations, rely more heavily than industrialized countries on the most complex tax of all - corporate taxation … If the trend to reduce corporate taxes persists, those most at risk may turn to be developing countries.[46]

[45] Vito Tanzi and Howell H. Zee in "Tax Policy for Emerging Markets: Developing Countries". *National Tax Journal*, Vol. LIII, No. 2, June 2000 p. 299-322, at 300. Tanzi and Zee cite the large share of agriculture, large informal sector activities, many small businesses, that wages are only a small part of national income, little consumer spending in modern establishments, the economic and political power of top the wealthy who are able to prevent reform, as some of the reasons that taxation, especially personal income taxation, is difficult in developing nations.

[46] Milka Casanegra De Jantscher, "Major Tax Trends in the 21st Century", pg. 44:1

Harmful tax competition is undermining the ability of developing nations to collect corporate taxes. With greater trade liberalization there has been a lowering of import duties. Import duties are an important source of revenue for developing nations and this reduction in import duties is harming along with tax competition the national revenue of developing nations.

The OECD in its November 24, 2000 Framework noted that "Tax base erosion as a result of harmful tax practices can be a particularly serious threat to the economies of developing countries".[47] This argument was supported by an Oxfam report which suggested that the developing countries are losing approximately US$50 billion per year due to the tax havens.[48]

Fourth, the Report anticipates a concern for the economic well being of the tax havens and acknowledges the heavy dependence of certain tax havens on their tax industries and suggests that with those tax havens who are prepared to enter into a dialogue that the OECD needs "to encourage the long term development of these economies".[49] This is further emphasized in the Framework as the OECD has encouraged its members to examine bilateral and multilateral assistance programs to offset the anticipated initial reduction in certain activities and the potential adverse economic consequences[50].

Fifth, the Report may in the end be beneficial for the tax havens. If tax havens eventually adopt higher rates on mobile activities than the current zero (or low) rates and

---

[47] OECD Framework, pg. 5.

[48] The Oxfam report was cited in Robert Goulder’s article "OECD Tax Symposium Looks to Outside Governments for New Era of International Cooperation" *Tax Notes International*, Volume 21, No. 2, July 10, 2000, pp. 91-93 at p. 92

[49] The Report, pp. 10-11.

these rates are still lower than the standards of the OECD countries, some of the tax havens will be able to achieve far higher tax revenues while being able to blame the increased rate of taxation on the OECD. Indeed, some of the tax havens are undoubtedly wondering about whether their special tax regimes are actually providing much to their citizens and whether there is actually some trickling down of the benefits. It is the governments of the developing nations who will in the future, more than any other countries, require greater public expenditures to create public goods including better education and health care. The only real losers will be the free riding MNE's who have been able to avoid paying much tax over the last few decades.

Sixth, the Report, anticipating criticism from some of the tax havens who are developing nations, notes that there are developing countries that have "specific structural disadvantages" or they are in a particular stage of their development which may require tax incentives to promote a particular industry or facet of the economy.[51] The Report is not critical of this type of tax incentive that may have incidentally negative tax effects. Instead the Report focuses on special tax provisions that deliberately or primarily targets the tax base of other countries and attempt to "poach" the tax base of the other countries.[52]

Unfortunately, the developing nation tax havens are being used as pawns by the MNEs. Many of the tax havens are receiving little or no benefit compared to the resources and effort being spent on providing services for the MNEs. Furthermore, the artificial reliance by some tax havens on temporary poaching opportunities may not be

---

[50] OECD Framework, pp. 20-21.
[51] The Report, pg. 15.
[52] The Report, pg. 16.

sustainable and may damage the long term interests of the tax havens and will certainly cause tremendous harm to other developing nations. The OECD has recognized that the economic plight of the tax havens may be the best argument against harmful tax competition. The OECD is placing greater prominence on the negative effect of harmful tax competition on non-tax haven developing countries and the provision of financial support to the tax havens.

12) *Lack of consultation with Non-OECD Members*

Many of the organizations, governments and businesses that have opposed the Report have complained that they were not consulted prior to the issue of the Report or that the consultations that produced the Report were not broad enough. The loudest criticism of the lack of consultation has been from the tax havens.

The OECD held a number of meetings with non-OECD member countries to discuss harmful tax competition including three meetings, for Latin America, Asia and former Soviet regions before the completion of the Report in 1998. After the Report was tabled many of the tax havens have rebuffed any attempts to discuss the issue of harmful tax competition with the OECD.

It is not surprising that the OECD did not have exhaustive discussions with many of the groups who are now complaining most bitterly about not being consulted. They have consistently denied that there is a problem to begin with or if there is a problem that nothing substantive should be done to resolve the problem. Many critics of the lack of consultation seem to want to endlessly drag on the consultative process or delegitimize the OECD's efforts unless everyone gets to have their unlimited input.

V. IGNORING EQUITY AND NEUTRALITY

The above are some of the criticisms of the Report. Many individuals and entities have worked very hard to undermine the Report and its recommendations. Some of the other less useful arguments included that all taxation is expropriation and some commentators have even criticized the writing style in which the Report was written.[53] The only arguments cited above which have any real credibility or staying power are the potential impact of these recommendations on the economic well being of the tax havens as developing nations, questions about the sufficiency of OECD consultations and accusations that OECD members need to live up to the recommendations.

The public policy issues of equity and neutrality need to be taken into account. From the point of view of horizontal equity, tax havens allow some taxpayers who use the tax havens to avoid paying taxes while other similarly situated taxpayers who do not use the tax havens end up paying far higher levels of taxation. From the point of view of vertical equity, almost all of the people or businesses who benefit from the use of tax havens are part of the highest income levels of the OECD and non-OECD countries.

---

[53] One author notes the format and style "are late twentieth-century bureaucratic" and further notes that "Stripped of boilerplate and needless repetition, the core of the argument and the conclusions would occupy perhaps 30 pages. " As noted by Arthur Wright in a footnote in "Review: OECD Harmful Tax Competition Report Falls Short". in *Tax Notes International* Volume 17, No. 7. at p. 461.

An ideal tax system in terms of neutrality is a tax system which does not affect taxpayer behaviour. The non-existent or marginal tax systems in the tax haven are not tax neutral. They encourage wealthier individuals and businesses in the OECD countries to shift, usually artificially, their assets to the tax havens.

VI. WILL THE OECD REPORT BE A FAILURE OR A SUCCESS?

Opponents of the Report are hopeful that the recommendations in the Report will not be implemented, while the OECD is pretending that the implementation of the recommendations is inevitable. I will first discuss the factors that augur toward the failure of the Report and its recommendations and then discuss those factors that augur toward the recommendations being adopted and the success of the OECD harmful tax competition initiative.

a) FAILURE

There are a number of reasons why the seemingly inevitable OECD recommendations may not come to fruition.

First, there are powerful forces arrayed against the OECD initiatives. There are some very large MNEs, wealthy individuals, and some governments who are benefiting from tax competition and banking secrecy. There are large amounts of money involved and some MNEs and individuals could end up paying in the future substantially greater amounts of taxes.

Secondly, for the OECD to be successful it has to eliminate all tax havens. Harmful tax competition cannot be eliminated by only reducing the number of tax havens. If there are even one or two left then all the capital may simply end up consolidating in those remaining tax havens.

Thirdly, the relative unity of the OECD may not last. The scope of the Report was narrow to maintain the support of as many OECD countries as possible. Even then Switzerland and Luxembourg dissented. As Arthur Wright notes Switzerland and Luxembourg were allowed to opt out of the Report and the inability of the OECD to even include these members makes the whole enterprise a "fool's errand".[54]

Thirdly, nations, even friends like Canada and the US, often act in a selfish fashion with little regard for friend or foe alike. Do American politicians concern themselves with the negative effects that their tax cutting agenda is having on the Canadian tax base?

Fourthly, tax havens can play a game of cat and mouse with the OECD. One commentator has openly called for "guerrilla warfare" against the OECD by using loopholes and exemptions.[55]

The final hope of the OECD's detractors is the election of George W. Bush. The new U.S. president appears to favour U.S. isolationism and is pro-business and tax cuts. Despite Bush’s stance on business and taxation opponents of the OECD's efforts should remember the following: the new U.S. president is probably very concerned with the tax havens being used for drug smuggling and money laundering which would be reduced by

---

[54] Arthur Wright at p. 462.

[55] Maarten Ellis "Are Measures to Curb Harmful Tax Competition Necessary." *European Taxation*. March 1999 p. 78 at p. 79.

greater exchange of information and less bank secrecy; U.S. Republican presidents seem to have little respect for the sovereignty of Caribbean and Latin American nations as demonstrated by the U.S. invasion of Grenada and Panama; and furthermore, a reduction in tax evasion by U.S. companies and individuals will allow the U.S. to reduce corporate and individual income tax rates while maintaining the same revenue.

b) SUCCESS

There are a number of reasons that the OECD will probably be successful in its attempt to curb harmful tax competition including lack of unity among havens; the harmful tax competition within the tax havens that renders offshore banking of questionable economic value; the private sector MNE who benefits from tax havens wanting to take a free ride off other peoples efforts; the limited focus of the Report; and the growing importance of the problem.

The tax havens have very different laws, policies, cultures and products and they will have a difficult time coordinating an attack on the OECD and the Report. The "offshore industry" does not have either a powerful organization to represent it, like the OECD, or for that matter a history of taking collective action. There is little likelihood that the tax havens will be able to come up with one unified strategy to deal with the Report. As one commentator noted "the competitive nature of the offshore business makes full cooperation difficult".[56] Some of the tax havens already have transparency and exchange some financial information. Some tax havens have legislation that allow assistance to foreign governments in the case of tax fraud, while others do not. Those tax havens with more open systems would probably welcome the implementation of some of the Report's recommendations. This would force other tax havens, who are their competitors, to have greater transparency and require them to exchange financial information which will improve the competitive position of the tax havens who currently have transparency and exchange information.

Furthermore, some of the tax havens receive minimal benefit from the offshore financial activities, while for others it is a staple of their economy. Tax havens have become so competitive that the amount of revenue they are receiving from taxes and administrative charges is not necessarily increasing even though the amount of the investments may be dramatically increasing. One study suggests that "competition for mobile firms causes the countries to compete their tax rates down to zero".[57] Presumably the same applies to administrative charges. Furthermore, tax competition between tax havens will be vigorous as the MNEs have no attachment to the tax haven and they may have 'commitment problems'. As soon as another tax haven offers more benefits the MNEs will leave.

Except for BIAC, some other industry trade groups, and some accountants and lawyers who are involved with the offshore industry, there have been few visible private sector opponents of the Report. Presumably, some businesses and wealthy individuals who use tax havens, and have the most to benefit by torpedoing the Report, do not want

---

[56] Bruce Zagaris in "Skirmishes and Jockeying Ensue over Harmful Tax Competition Measures" in *Tax Notes International*, Volume 19, Number 4, July 26, 1999.

[57] John Douglas Wilson citing a study by Eckhard Janeba "Tax Competition in Imperfectly Competitive Markets" *Journal of International Economics* 44 (1998a): 135-53.

to draw attention to themselves by publicly opposing the OECD's efforts. As well perhaps one can argue also that the same "free rider" instincts that promoted businesses to use tax havens, combined with little or no concern for the 'public good', have also meant that few corporations or business are prepared to stand up and attack the Report and the OECD's efforts.

The Report is deliberately narrow in its focus. It does not include a discussion of tax preferences when there is substantial economic activity, unlike the EU's Code of Conduct, and focuses exclusively on capital flows without substantial economic activity. One author notes that the OECD has chosen a safer course of action than for example the EU because it is difficult for most ordinary citizens to get too excited about paper companies and benefits that they will never have a chance to use.[58]

Unfortunately, the problem of tax competition is growing exponentially and therefore the incentive for the OECD to continue with its campaign will also grow. The tax havens are arrayed against some of the most powerful countries in the world. As one supporter of the tax havens has noted, intellectually and politically it can be risky for many developing countries to attack the basic premises of the Report but that the most that they can hope to accomplish is to delay the implementation of any substantive action.[59]

---

[58] Maarten Ellis, p. 79.

[59] Bruce Zagaris in "OECD Report on Harmful Tax Competition: Strategic Implications for Caribbean Offshore Jurisdictions". *Tax Notes International.* Vol. 17, No. 20, at 1507 November 16, 1998.

Globalization and technology has clearly made it easier for individuals and corporations to hide money offshore. These same trends have in some ways also made it easier for law enforcement to catch those who are evading taxes.[60]

VII. THE OECD'S SUCCESS WILL BE THE WORLD'S SUCCESS

There is no certainty that the OECD will be successful in its attempt to reduce the impact of harmful tax competition although it appears to be more than likely the case. In order for the OECD to have a greater chance of success, the OECD must minimize opposition to their efforts. This can be accomplished by the OECD focusing on certain issues which include: the economic well being of tax havens as developing nations; the even more important concerns of other non tax-haven developing nations; improve the OECD

[60] There have been a number of high profile cases involving senior tax haven bank officers who have provided U.S. law enforcement with voluminous amounts of computer information on customers and their transactions. Presumably, if these bank officers never left their tax havens then the U.S. or other OECD members would have little chance of being able to arrest them, even if it is for violations of domestic law. However, it seems that many individuals who work in the tax havens need to travel outside of the tax havens and in OECD member countries, whether for business reasons or personal matters such as visiting relatives or receiving higher quality health care services. Once the executives are in the OECD member countries those countries can easily assert jurisdiction over them. It seems that executives when faced with a decision of spending time in jail or providing information on their clients have little difficulty in choosing. See Barton Massey "Convicted Bank Chairman is Key to Dozens of New Tax Haven Cases". *Tax Notes International*, September 13, 1999 at p. 959. Furthermore see Paul Stibbard and Jo Goldby "Changing attitudes to Offshore Private Banking: A More Hostile Environment". *Offshore Investment*. February 1998 Issue 93. P. 13-16, at p. 15 in which they cite the weakness of banks who have affiliates in OECD countries. Stibbard and Goldby give the example of the Bank of Nova Scotia, which had a branch in Miami, and the Miami branch was hounded into providing details about certain customers of its Bahamian branch even though the Bank of Nova Scotia argued that providing the information would be contrary to Bahamian law. The court levied a fine of $25,000.00 per day and after two months the Bank of Nova Scotia gave in and provided the information.

consultations with all non-OECD members; and make a concerted effort to make sure that OECD members eliminate their own harmful tax competition.

The OECD needs to enhance its current carrot and stick approach by increasing both the size of the carrot and the size of the stick. The OECD needs to offer the tax havens guarantees that those tax havens who cooperate with the OECD will receive compensation for any reduction in their financial services sector. Currently the tax havens are charging almost no corporate taxes on the mobile income while many OECD countries are charging between 20-40%. It is not difficult to work out that there is ample room for improvement by both the tax havens and the OECD at the expense of the free riding MNEs. If the OECD could potentially gain hundreds of billions of dollars in additional taxes per year then the OECD should be prepared to share at least a small part of this wealth with the tax havens and the non-tax haven developing countries.

The OECD is making sure that it keeps its stick. The Framework noted that most of the Report is a discussion of countering harmful tax competition by using the tax system but also non-tax measures, without elaborating on which non-tax measures, would be used. Some governments have advocated blocking all financial transactions with tax havens if they do not agree to eliminate their harmful practices.[61]

The OECD needs to reformulate the discussion from being perceived as wealthy developed nations imposing their will on poor small developing nations to the reality that many large and small developing countries that are not tax havens have suffered significantly at the hands of harmful tax competition perpetrated by a few comparatively wealthier tax havens. These tax havens are callously undermining the efforts the developing nations, who represent almost all of the most poor and disadvantaged people, to deal with both economic development as well as health issues such as the AIDS pandemic. In the Framework, the OECD has begun to shift the debate and has called on non-OECD members who are suffering from the consequences of harmful tax competition to support the OECD effort and to organize regional meetings to promote the elimination of harmful tax competition.

The OECD also needs to continue its diplomatic efforts and reach out to those tax havens that are willing to cooperate and offer them closer ties with the OECD, the possibility of concluding tax treaties, and provide valuable economic and administrative assistance. It will be politically difficult for any tax haven to enter into agreements with the OECD if it is perceived by the tax haven that they are sacrificing their autonomy and capitulating to the OECD. It is important that not only there be a win-win situation but that the public and politicians perceive it as such.

The OECD needs to focus on their recommendations relating to transparency, access to banking information and foreign information reporting rules. This will turn the debate from a discussion of erosion of tax bases to what MNEs and other individuals have to hide? It seems likely that if the OECD is successful in obtaining access to tax information that this should substantially reduce the flows of capital from OECD nations to tax havens.

The OECD needs to place a greater emphasis in its public relations campaign on the issue of tax evasion. The OECD should never have used the terminology harmful tax competition, as, in some people's narrow-minded view, competition can never be

---

[61] French Finance Minister Dominique Strauss-Kahn comments on June 23, 1999 as

harmful. The OECD seems to be refining its approach. In fact, Mr. Seiichi Kondo, Deputy Secretary General of the OECD, in a recent speech in Barbados, never once used the term 'harmful tax competition' but instead now refers to 'harmful tax practices'.[62] Kondo called for "transparency, integrity and stability of the international financial system" through the principles of "transparency; non-discrimination; effective exchange of information". He also showed tremendous empathy with the Caribbean nations in the difficult task facing them in dealing with these issues.

On July 31, 2001 if the OECD keeps to its current schedule they will publish a List of Uncooperative Tax Havens. The OECD can, through the cooperation of its member states, use defensive measures as outlined in the Framework for transactions involving tax havens including disallowing deductions, exemptions and credits related to these transactions; requiring comprehensive reporting rules for these transactions; to impose withholding taxes on these transactions; to enhance audit and enforcement of these transactions; to terminate all tax treaties with tax havens and to impose charges or levies on transactions with tax havens among other ideas.[63]

Perhaps one of the best indications of the success of the OECD's initiative against harmful tax practices has already accomplished is the fact that eight tax havens have signed commitments to the OECD to eliminate the harmful aspects of their tax regimes by December 31, 2005. Furthermore, according to the OECD, 23 of the 35 previously

---

discussed in Tax Notes International Volume 19, No. 4, dated July 26, 1999 at p. 325

[62] The full text of his speech is located at http://www.oecd.org/daf/fa/harm_tax/harmtax.htm.

[63] Framework, pp. 26-27.

identified tax havens, plus six countries that have already provided advance commitment letters, are now in discussions with the OECD's Forum on Harmful Tax Practices.[64]

[64] These figures were cited by the official organ of the OECD the OECD Observer in an article entitled "Improving the process in the harmful tax practices work" dated October 20, 2000 located at their web site at www.oecdobserver.org.

BIBLIOGRAPHY

BIAC. "A Business View of Tax Competition: Business and Industry Advisory Committee to the OECD". *Tax Notes International*, Vol. 19, Number 3, July 19, 1999, pp. 281 -287.

Cain, Charles A. "The Dampest squib can cause a big bang". *Offshore Investment*. November 1998, Issue 91 p. 2-3.

De Jantscher, Milka Casanegra. "Major Tax Trends in the 21st Century", pg. 44:1

Ellis, Maarten. "Are Measures to Curb Harmful Tax Competition Necessary." *European Taxation*. March 1999 p. 78 at p. 79.

Goulder, Robert. "OECD Tax Symposium Looks to Outside Governments for New Era of International Cooperation" *Tax Notes International*, Volume 21, No. 2, July 10, 2000, pp. 91-93 at p. 92

Gaffney, Mason. "The Worldwide Benefit of International Tax Competition" at www.progress.org.

Hine, James and Eric Rice. Fiscal Paradise: Foreign Tax Haven's and American Business". *Quarterly Journal of Economics*, 1994.

Kleinfeld, Denis A. *Offshore Investment*. Issue 109, September 2000. Pg 67-68 at 67.

Goodspeed, Timothy. "Tax Competition, Benefit Taxes, and Fiscal Federalism". *National Tax Journal.* Vol 51, No. 3, 1998 p. 579-586.

Manasterli, Jacqueline B. "Offshore Financial Centers and Harmful Tax Regimes Trigger Flurry of International Developments" *Tax Notes International.* Vol. 21, Number 23, December 4, 2000 at p. 2541.

Massey, Barton "Convicted Bank Chairman is Key to Dozens of New Tax Haven Cases". *Tax Notes International*, September 13, 1999 at p. 959.

Mintz, Jack. "Is National Tax Policy Viable in the Face of Global Competition". *Tax Notes International.* July 5, 1999, p. 99 at 102.

OECD. "Select Figures on Offshore Investment Activities". http://www.oecd.org/media/release/offshore_dataOct2000.pdf

OECD. "Framework For a Collective Memorandum of Understanding on Eliminating Harmful Tax Practices". http://www.oecd.org/media/MOUrev20novR1.pdf

OECD. Briefing Paper: OECD Project on Harmful Tax Competition http://www.oecd.org/media/release/hrmfltaxbriefingpaper.pdf

OECD. Promoting Fair Tax Competition by Jeffrey Owens http://www.oecd.org/daf/fa/harm_tax/PromotingFairTaxComp.pdf

OECD. "Harmful Tax Competition: An Emerging Global Issue". Paris: OECD, 1998

Stibbard, Paul and Jo Goldby "Changing attitudes to Offshore Private Banking: A More Hostile Environment". *Offshore Investment*. February 1998 Issue 93. P. 13-16.

Tanzi, Vito and Howell H. Zee in "Tax Policy for Emerging Markets: Developing Countries". *National Tax Journal*, Vol. LIII, No. 2, June 2000 p. 299-322, at 300.

Weiner, Joann M. and Hugh Ault. "The OECD's Report on Harmful Tax Competition" *National Tax Journal* Volume LI, No. 3, September 1998, p. 601- 608 at 602.

Weiner, Joann M.. "The OECD's Forum on Harmful Tax Practices and the New Spirit of International Cooperation". *The 2000 World Tax Conference Report*. Canadian Tax Foundation, pg. 37:1-37:9 at 37:6.

Wilson, John Douglas. "Theories of Tax Competition". *National Tax Journal*, Vol. LII, No. 2, June 1999, p. 269.

Wright, Arthur. "Review: OECD Harmful Tax Competition Report Falls Short". in *Tax Notes International* Volume 17, No. 7. at p. 461.

Zagaris, Bruce. "OECD Report on Harmful Tax Competition: Strategic Implications for Caribbean Offshore Jurisdictions". *Tax Notes International*. Volume 17, No. 20, November 16, 1998, 1507 at p. 1508-1509.

Zagaris, Bruce. "Skirmishes and Jockeying Ensue over Harmful Tax Competition Measures" T*ax Notes International*, Volume 19, Number 4, July 26, 1999.