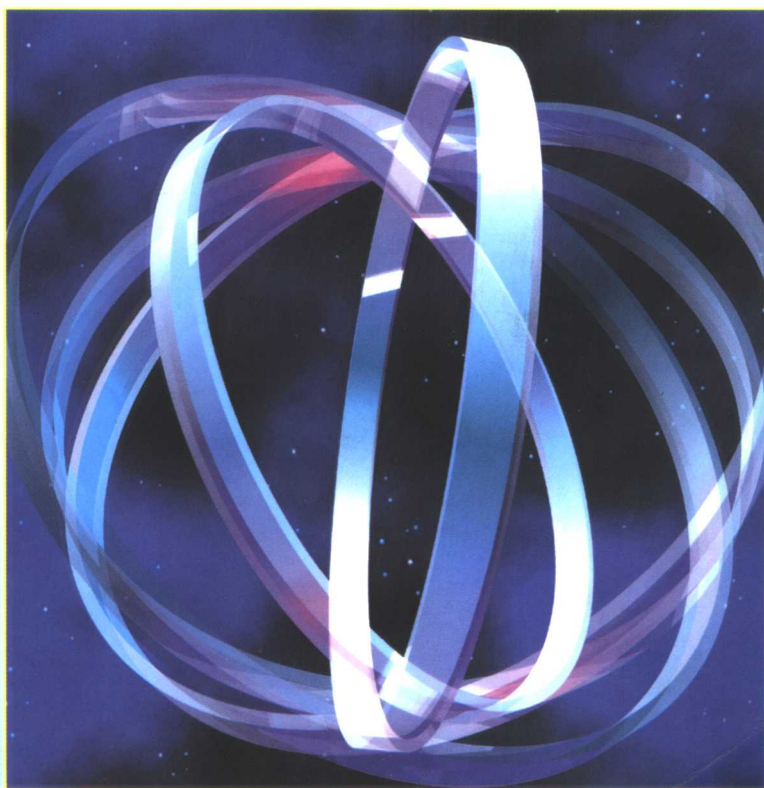


# 有害税收竞争

——经济合作与发展组织的两个研究报告

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# HARMFUL TAX COMPETITION

*An Emerging Global Issue*

ORGANISATION FOR ECONOMIC  
CO-OPERATION AND DEVELOPMENT

## **ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT**

Pursuant to Article 1 of the Convention signed in Paris on 14th December 1960, and which came into force on 30th September 1961, the Organisation for Economic Co-operation and Development (OECD) shall promote policies designed:

- to achieve the highest sustainable economic growth and employment and a rising standard of living in Member countries, while maintaining financial stability, and thus to contribute to the development of the world economy;
- to contribute to sound economic expansion in Member as well as non-member countries in the process of economic development; and
- to contribute to the expansion of world trade on a multilateral, non-discriminatory basis in accordance with international obligations.

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## INTRODUCTION

1. The Ministerial Communiqué of May 1996 called upon the Organisation to:

*“develop measures to counter the distorting effects of harmful tax competition on investment and financing decisions and the consequences for national tax bases, and report back in 1998.”*

2. This request was subsequently endorsed by the G7 countries, which included the following paragraph in the Communiqué issued by the Heads of State at their 1996 Lyon Summit:

*“Finally, globalisation is creating new challenges in the field of tax policy. Tax schemes aimed at attracting financial and other geographically mobile activities can create harmful tax competition between States, carrying risks of distorting trade and investment and could lead to the erosion of national tax bases. We strongly urge the OECD to vigorously pursue its work in this field, aimed at establishing a multilateral approach under which countries could operate individually and collectively to limit the extent of these practices. We will follow closely the progress on work by the OECD, which is due to produce a report by 1998.”*

At their 1997 meetings, OECD Ministers and the G7 Heads of State reaffirmed the importance of combating harmful tax competition.

3. The Committee on Fiscal Affairs (hereinafter referred to as “the Committee”) created the “Special Sessions on Tax Competition” in response to the Ministerial Communiqué. The Special Sessions prepared this Report under



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the joint Chairmanship of France and Japan. The Committee adopted the Report at its session on the 20th January 1998.

4. The Report is intended to develop a better understanding of how tax havens and harmful preferential tax regimes, collectively referred to as harmful tax practices, affect the location of financial and other service activities, erode the tax bases of other countries, distort trade and investment patterns and undermine the fairness, neutrality and broad social acceptance of tax systems generally. Such harmful tax competition diminishes global welfare and undermines taxpayer confidence in the integrity of tax systems. The Report recognises the distinction between acceptable and harmful preferential tax regimes and carefully analyses the features of both residence and source country tax systems that may lead to the damaging impact of harmful preferential tax regimes. The Report recognises that there are limitations on unilateral or bilateral responses to a problem that is inherently multilateral and identifies ways in which governments can best establish a common framework within which countries could operate individually and collectively to limit the problems presented by countries and fiscally sovereign territories engaging in harmful tax practices. By discouraging the spread of tax havens and harmful preferential tax regimes and encouraging those countries which presently engage in harmful tax practices to review their existing measures, the Report will serve to strengthen and to improve tax policies internationally.

5. The Report and Recommendations address harmful tax practices in both Member and non-member countries and their dependencies.

6. The Report focuses on geographically mobile activities, such as financial and other service activities, including the provision of intangibles. Tax incentives designed to attract investment in plant, building and equipment have been excluded at this stage, although it is recognised that the distinction between regimes directed at financial and other services on the one hand and at manufacturing and similar activities on the other hand is not always easy to apply. The Committee intends to explore this issue in the future. The Committee also recognises that there are many economic, social and

institutional factors that affect the competitive position of a country and the location of economic activities. These factors, however, are not the focus of this study.

7. The Report examines provisions found in the general income tax systems, as well as those taxes levied on certain types of income. The Committee is undertaking work separately on the issues raised by tax competition in relation to consumption taxes.

8. This study needs to be seen in the context of the OECD's role in a world where the pace of globalisation is accelerating. The OECD believes that the progressive liberalisation of cross-border trade and investment has been the single most powerful driving force behind economic growth and rising living standards. The Organisation seeks to safeguard and promote an open, multilateral trading system and to encourage adjustments to that system to take into account the changing nature of international trade, including the interface between trade, investment and taxation. The Committee believes that the proposals set out in this Report, although not covering all aspects of tax competition, will further promote these objectives by reducing the distortionary influence of taxation on the location of mobile financial and service activities, thereby promoting fair competition for real economic activities. If governments can agree that these location decisions should be driven by economic considerations and not primarily by tax factors, this will help move towards the "level playing field" which is so essential to the continued expansion of global economic growth.

9. The Committee's view is that the problems addressed in this Report are already posing challenges for governments and will become increasingly important. Therefore, there is a need both for immediate measures and for an ongoing process to strengthen further internationally co-ordinated action in this area.

10. To address these problems the Report sets out a number of proposals:

- to establish Guidelines on Harmful Preferential Tax Regimes;

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- the creation of a Forum on Harmful Tax Practices;
- the development of a list of tax havens to be completed within one year of the first meeting of the Forum;
- a number of Recommendations for action at the level of national legislation and in tax treaties; and
- areas for follow-up work.

11. These proposals are a significant step in the on-going process of addressing the issue of harmful tax competition. The Recommendations deal with the most urgent and crucial aspects of the challenge to policymakers posed by geographically mobile financial and other service activities. The Committee accepts that more work will be required to implement some of these Recommendations and that in addition there will be other areas in which the issues of harmful tax competition must be explored.

12. The tax treatment of interest on cross-border saving instruments, particularly bank deposits, is not considered in this first stage of the project since the Committee is currently examining the feasibility of developing proposals to deal with cross-border interest flows, including the use of withholding taxes and exchange of information. It has given a mandate to its Working Party on Tax Evasion and Avoidance to examine how exchange of information and withholding taxes can be used to ensure that cross-border interest flows do not escape taxation. The Committee attaches considerable importance to this issue and a first report will be available in 1999.

13. The Committee recognises that since the problems discussed in this Report are of an inherently global nature, it is critical that as many countries as possible are involved in the dialogue. The broader the economic grouping of countries engaged in this dialogue, the greater the effectiveness of any solutions proposed, since this would minimise any displacement of activities to jurisdictions with harmful tax practices outside of the participating countries. Any displacement of activities may put more pressure on the implementation of counteracting measures if such activities are re-established in jurisdictions which operate non-transparent harmful tax practices. It is for these reasons that the

Committee has attached particular importance to associating non-member countries with its analytical and policy discussions on harmful tax competition.

14. Over the last 18 months, the Committee has used its extensive outreach programme to engage in a dialogue with non-member countries. Three regional seminars have been organised. The first seminar took place in Mexico and was attended by Argentina, Bolivia, Brazil, Chile, Colombia, Jamaica, Peru and Venezuela. A second seminar was held in Istanbul with participants from Albania, Azerbadjian, Estonia, F.Y.R.O.M., Georgia, Latvia, Lithuania, Moldova, Mongolia, Romania, Slovak Republic and Ukraine. The third regional seminar was held in co-operation with the Asian Development Bank in Singapore and was attended by China, India, Indonesia, Malaysia, Philippines, Singapore, Sri Lanka, Chinese Taipei and Thailand.

15. An important aspect of the work of the proposed Forum will be to intensify this dialogue, with the aim of encouraging interested non-member countries to become more closely associated with the Recommendations set out in Chapter 3. The Committee also recognises that some non-member countries may not agree with some of these Recommendations. These potential differences in country positions are another reason to engage in a dialogue. The Committee proposes that in early 1999 a high level meeting should be organised by the Forum which would be open to all interested non-member countries.

16. The Committee notes that many tax havens have chosen to be heavily dependent on their tax industries. To the extent that a tax haven provides a clear signal that it wishes to curtail its harmful tax practices, the Committee would be prepared to engage in a dialogue with such tax havens taking into account the need to encourage the long term development of these economies.

17. Work on harmful tax competition has also been carried out in the European Union (EU). The EU Council agreed on 1 December 1997 to a package of measures to tackle harmful tax competition in order to help to reduce distortions in the Single Market, to prevent excessive losses of tax revenue and to develop tax structures in a more employment-friendly way. The package

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includes a Code of Conduct on business taxation, taxation of savings income and the issue of withholding taxes on cross-border interest and royalty payments between companies. The Code of Conduct identifies potentially harmful regimes in the field of business taxation and gives factors for the assessment of harmful regimes. It includes a commitment not to introduce new harmful tax regimes and to rollback existing regimes.

18. Whilst the EU Code and the OECD Guidelines are broadly compatible, Particularly as regards the criteria used to identify harmful preferential tax regimes, and mutually reinforcing, the scope and operation of the two differ. The OECD Guidelines are clearly limited to financial and other service activities, whereas the Code looks at business activities in general, although with an emphasis on mobile activities. The review procedure reflects the different institutional frameworks within which each Organisation operates and the OECD Guidelines are explicitly aimed at a much broader geographical grouping. The OECD work also goes beyond harmful preferential tax regimes to encompass tax havens and also focuses on exchange of information. In addition, as noted above, the EU Code is part of a package of measures whereas the OECD Guidelines are accompanied by 19 detailed Recommendations relating to the specific issues of harmful tax competition. For all of these reasons, the Committee considers that each Organisation is responsible independently for the interpretation and application of its respective instruments.

19. The Report is in three parts. Chapter I provides an overview of the basic principles underlying the existing international taxation arrangements and the ways in which the process of globalisation has put pressures on these arrangements. Chapter 2 analyses the factors that can lead to conclusions that tax havens and certain preferential tax regimes are harmful and presents the concerns that governments have about the impact of such regimes on the integrity of their tax systems. Both transparent and non-transparent regimes are covered. Chapter 3 recommends some measures that can be used to counteract tax havens and harmful preferential tax regimes. These measures can be taken through domestic legislation, in tax treaties and in the context of

intensified international co-operation. The Chapter also sets out the Guidelines on Harmful Preferential Tax Regimes and a procedure to identify tax havens and proposes the creation of a Forum on Harmful Tax Practices under the auspices of the Committee.

## **CHAPTER I**

### **TAX COMPETITION: A GLOBAL PHENOMENON**

20. Historically, tax policies have been developed primarily to address domestic economic and social concerns. The forms and levels of taxation were established on the basis of the desired level of publicly provided goods and transfers, with regard also taken to the allocative, stabilising and redistributive aims thought appropriate for a country. Whilst domestic tax systems of essentially closed economies also had an international dimension in that they potentially affected the amount of tax imposed on foreign source income of domestic residents and typically included in the tax base the domestic income of non-residents, the interaction of domestic tax systems was relatively unimportant, given the limited mobility of capital. The decision to have a high rate of tax and a high level of government spending or low taxes and limited public outlays, the mix of direct and indirect taxes, and the use of tax incentives, were all matters which were decided primarily on the basis of domestic concerns and had principally domestic effects. While there were some international spillover effects on other economies, those effects were generally limited.

21. The accelerating process of globalisation of trade and investment has fundamentally changed the relationship among domestic tax systems. As noted in paragraph 8 above, the removal of non-tax barriers to international commerce and investment and the resulting integration of national economies have greatly increased the potential impact that domestic tax policies can have on other economies. Globalisation has also been one of the driving forces behind tax reforms, which have focused on base broadening and rate reductions, thereby minimising tax induced distortions. Globalisation has also encouraged countries to assess continually their tax systems and public expenditures with a view to making adjustments where appropriate to improve the “fiscal climate” for investment. Globalisation and the increased mobility of capital has also

promoted the development of capital and financial markets and has encouraged countries to reduce tax barriers to capital flows and to modernise their tax systems to reflect these developments. Many of these reforms have also addressed the need to adapt tax systems to this new global environment.

22. The process of globalisation has led to increased competition among businesses in the global market place. Multinational enterprises (MNEs) are increasingly developing global strategies and their links with any one country are becoming more tenuous. In addition, technological innovation has affected the way in which MNEs are managed and made the physical location of management and other service activities much less important to the MNE. International financial markets continue to expand, a development that facilitates global welfare-enhancing cross-border capital flows. This process has improved welfare and living standards around the world by creating a more efficient allocation and utilisation of resources.

23. As indicated in paragraphs 8 and 21 above, globalisation has had a positive effect on the development of tax systems. Globalisation has, however, also had the negative effects of opening up new ways by which companies and individuals can minimise and avoid taxes and in which countries can exploit these new opportunities by developing tax policies aimed primarily at diverting financial and other geographically mobile capital. These actions induce potential distortions in the patterns of trade and investment and reduce global welfare. As discussed in detail below, these schemes can erode national tax bases of other countries, may alter the structure of taxation (by shifting part of the tax burden from mobile to relatively immobile factors and from income to consumption) and may hamper the application of progressive tax rates and the achievement of redistributive goals. Pressure of this sort can result in changes in tax structures in which all countries may be forced by spillover effects to modify their tax bases, even though a more desirable result could have been achieved through intensifying international co-operation. More generally, tax policies in one economy are now more likely to have repercussions on other economies. These new pressures on tax systems apply to both business income in the corporate sector and to personal investment income.



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24. Countries face public spending obligations and constraints because they have to finance outlays on, for example, national defence, education, social security, and other public services. Investors in tax havens, imposing zero or nominal taxation, who are residents of non-haven countries may be able to utilise in various ways those tax haven jurisdictions to reduce their domestic tax liability. Such taxpayers are in effect “free riders” who benefit from public spending in their home country and yet avoid contributing to its financing.

25. In a still broader sense, governments and residents of tax havens can be “free riders” of general public goods created by the non-haven country. Thus on the spending side, as well, there are potential negative spillover effects from increased globalisation and the interaction between tax systems.

26. The Committee recognises that there are no particular reasons why any two countries should have the same level and structure of taxation. Although differences in tax levels and structures may have implications for other countries, these are essentially political decisions for national governments. Depending on the decisions taken, levels of tax may be high or low relative to other states and the composition of the tax burden may vary. The fact that a country has modernised its fiscal infrastructure earlier than other countries, for example by lowering the rates and broadening the base to promote greater neutrality, is principally a matter of domestic policy. Countries should remain free to design their own tax systems as long as they abide by internationally accepted standards in doing so. This study is designed, in part, to assist in that regard.

27. Tax competition and the interaction of tax systems can have effects that some countries may view as negative or harmful but others may not. For example, one country may view investment incentives as a policy instrument to stimulate new investment, while another may view investment incentives as diverting real investment from one country to another. In the context of this last effect, countries with specific structural disadvantages, such as poor geographical location, lack of natural resources, etc., frequently consider that