tax notes international

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Reprinted from *Tax Notes Int'l,* 29 January 2001, p. 523

TAX NOTES INTERNATIONAL

ISSN 1048-3306

Viewpoint

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A version of this paper was presented on January 7 at a public meeting cosponsored by the Center for Freedom and Prosperity in Bridgetown, Barbados, that preceded the OECD High-Level Consultations on harmful tax competition.

Issues have been raised about the international politics of the elaboration and implementation of the new OECD initiative on ending harmful tax competition.[1] For instance, the process of the OECD harmful tax competition, the Financial Action Task Force on Money Laundering (FATF), and the Financial Stability Forum (FSF) initiatives[2] suffered from: (1) exclusion from most of the decisionmaking process by the very countries that are the targets of the policy; (2) lack of adequate participation in policymaking and implementation by the private sector; (3) lack of transparency in the decisionmaking process; (4) the apparent use of economic sanctions and coercion in the way of blacklists without binding hard law; (5) differential and favorable treatment of its own members whose inadequacies have not resulted in blacklisting; (6) the apparent efforts to usurp critical policymaking from democratically elected governments without adequate participation by such governments; and (7) questionable substantive policy design, especially in the case of the OECD harmful tax competition (HTC) initiative.[3]

The proposed OECD multilateral framework agreement and the Barbados meeting reflect concessions by the OECD regarding the need to

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[1]This presentation is directed at all the targeted states. Obviously, each jurisdiction has a separate set of interests and circumstances that may result in a customized approach. For additional discussion of strategy, *see* Bruce Zagaris, "OECD Report on Harmful Tax Competition: Strategic Implications for Caribbean Offshore Jurisdictions," *Tax Notes Int'l*, Nov. 16, 1998, p. 1507, or *98 TNI 220-17*, or *Doc 98-33386 (24 pages)*; Bruce Zagaris, "OECD Harmful Tax Competition Report and Related Initiatives Leave the Caribbean Offshore 'in Irons,'" *Tax Notes Int'l*, Aug. 21, 2000, p. 879, or *2000 WTD 162-15*, or *Doc 2000-21806 (8 original pages)*.

[2]For additional discussion of the impact of these initiatives taken together, *see* Bruce Zagaris, "The Emergence of an International Money Movement Enforcement Regime in the New Economy: Implications for Practitioners and Policymakers," *Tax Notes Int'l*, Nov. 20, 2000, p. 2401, or *2000 WTD 224-10*, or *Doc 2000-29904 (6 original pages)*.

[3]For a critical discussion of the initial report, *see* Bruce Zagaris, "The Assault on Low Tax Jurisdictions: A Call for Balance and Debate," 28 *Tax Mgmt Int'l J*. 474-500 (Aug. 13, 1999).

reform the process. (For related coverage, see *Tax Notes Int'l,* Jan. 22, 2001, p. 355, or *2001 WTD 9-1,* or *Doc 2001-1411 (6 original pages).*)

While the OECD and its members characterize the initiative as only recommendations and speak in terms of potential countermeasures, they, in effect, have already acted to impose economic sanctions. The combination of the three blacklists and implementation of some of the blacklists, such as the issuance of warnings by the U.S. Treasury in the aftermath of the FATF listing of noncooperative countries, has restrained capital movement and has resulted in concrete steps by banks and financial institutions to close accounts or require depositors to visit in person to provide additional identification if they wanted to maintain their accounts. Other investors in the targeted countries have made decisions based on the potential for countermeasures by all three international organizations against the targeted countries. Clearly, in a practical and legal sense, the issuance of blacklists are not merely "naming and shaming," but the imposition of economic sanctions.

Under international law, the use of economic sanctions and economic coercion are reserved as a last resort to combat aggression or other similarly hostile acts that clearly violate international law and threaten the national security of a country. The missing element from the OECD HTC is that there is no black letter law or other agreed upon international law of tax policy. Indeed, even the one economic group that constitutionally is equipped to make binding law on tax policy and procedure, the European Union, has struggled in an effort to agree on the taxation of savings. It is also struggling to agree on enhanced tax enforcement cooperation, even in the context of a single market. Hence, it is not surprising that, among jurisdictions with dissimilar economies, legal systems, and tax structures, disagreement exists on some fundamental policies.

The OECD has made new tax policy and is attempting to impose such policy on the rest of the world, particularly the targeted countries, even though it has no mandate to act beyond its group. The targeted countries have appropriately questioned the legitimacy, as a matter of public international law, of the efforts by the OECD and its members, which used propaganda and threatened sanctions to violate the absolute sovereignty of states over their fiscal affairs. The targeted countries believe that the combination of threatened sanctions and propaganda has breached the principles of nonintervention and international law.[4]

Although the OECD has conceded some missteps in process and has changed the emphasis of its harmful tax practices policy, the draft agenda for the High Level Consultations on HTC and the OECD Framework on Collective Memorandum of Understanding (OECD Collective MOU) on Eliminating Harmful Tax Practices indicate that it intends to continue to impose the basis of its policy, including the economic sanctions or countermeasures, notwithstanding the illegality and unfairness of its actions. (For related coverage, see *2001 WTD 8-16* or *Doc 2001-1140 (2 original pages).*)

The draft agenda focuses on explaining the concerns behind the HTC policy, explaining their essence, and addressing major policy and legal issues. Thereafter, the draft agenda will discuss the economic impact of the

[4]Albert Brandford, "AG: What's Our Sin?" *Daily Nation* (Barbados), Jan. 10, 2001, at 22A, col. 1. In connection with the use of adverse propaganda and threatened sanctions, the targeted countries have asked the OECD to identify the precise rule of international law (e.g., the international standard, established by law, as contradistinguished from the proposed guidelines and soft law in the OECD HTC initiative) that it alleges the targeted countries have violated.

proposals on small and developing states, administrative and resource implications, and, finally, building confidence and a shared perspective.

I. Strategic Issues

The targeted countries may want to focus on some strategic issues concerning the potential memorandum of understanding between themselves and the OECD.

- Making the commitment and participating in the harmful tax practices (HTP) process should be conditioned on the agreement by the OECD countries to refrain from engaging in practices to name and shame or impose countermeasures, both in the OECD and in the related fora, including specifically the FATF and FSF. In the future, all parties (OECD and targeted countries) should agree to utilize the United Nations as the appropriate forum to determine issues of tax policy, including the so-called HTP, and any consequences of noncompliance with such tax policy.
- Making the commitment and participating in the HTP process should be conditioned on the agreement by the OECD countries to sign or make the same commitments, especially because they have the economies and resources to absorb any necessary restructuring.[5] Already, at least one authority has documented the fact that the United States, Britain, and other OECD countries are serious tax havens and have tax incentive laws that are in serious breach of the HTC requirements. Nevertheless, the OECD has not documented those incentive laws and has not required these OECD countries to commit to changing those laws.[6] At least one legal opinion takes the view that, while the content and form of the OECD Collective MOU indicate that it is meant to be a political and not a legally binding document, it could still have legal consequences.[7] Each of the targeted jurisdictions, and any other interested jurisdiction of the world, should have an opportunity to fully participate in the formulation of the tax policy (for example, HTC), the application of the policy to each country (determining which policies and laws meet or violate the HTC or alternative policies), and any implementation of such policies or enforcement (such as countermeasures).
- Making the commitment and participating in the HTP process should be conditioned on obtaining, on a most-favored- nation basis, an exemption from or reduction in withholding rates, both in tax treaties and through the operation of statutory law, and the exemption from capital gains tax in the OECD countries.
- Making the commitment and participating in the HTP process should be conditioned on obtaining, on a most-favored-nation

[5]Similarly, commitments in the Uruguay Round of the World Trade Organization (WTO) and the General Agreement on Trade in Services (GATS) are made on the basis of reciprocity. The targeted countries contend that the nature of the propaganda and threatened sanctions violates the principle of reciprocity within GATS and the WTO. Brandford, *supra*.

[6]Marshall J. Langer, "Harmful Tax Competition: Who Are the Real Tax Havens?" *Tax Notes Int'l,* Dec. 18, 2000, p. 2831, or *2000 WTD 243-17,* or *Doc 2000-33531 (9 original pages).*

[7]It is possible that the international law principle of estoppel or preclusion in the context of MOUs between states may apply and prevent the signatories from deviating from their undertakings. *See, e.g.,* "Placing the OECD Initiative Within a Legal Context," 1 *Barbados Global e-Letter* 1 (Jan. 2001), referring to a legal opinion by Professor William Gilmore of the Univ. of Edinburgh.

basis, the right to visit OECD countries without the need for visas.

- Making the commitment and participating in the HTP process should be conditioned on exclusion from the blacklists.
- Making the commitment and participating in the HTP process should be conditioned on the agreement by the OECD countries to sign or adhere to precisely the same commitments, especially since they should undertake the same legal obligations and they have the economies and resources to absorb any necessary restructuring.[8]

II. OECD Harmful Tax Competition Policies

A. Level Playing Field

Most importantly, the introduction to the OECD Collective MOU expresses the goal of ensuring jurisdictions have a “level playing field.” As stated above, the problem is that a level playing field requires that all of the participating countries start, from the beginning, on formulating policy. The OECD has already formulated the HTC policy and is deciding, presumably due to some unanticipated implementation difficulties, to sprinkle ad hoc democracy into the process, if it will not unduly interfere with the goals of the HTC. If the OECD really intends to have a level playing field, it will transfer the process to an international organization that has universal representation (such as the United Nations). Thereafter, the international organization will undertake policy formulation, including, if it believes circumstances warrant, the goals of the HTC. Alternatively, the OECD will reform its own processes with respect to HTC to start anew with representation for all affected jurisdictions. Unless the OECD transfers or reforms its process, the entire exercise lacks legitimacy, notwithstanding its diplomatic representation of the goal of a “level playing field.” (For related coverage, see *Tax Notes Int’l,* Dec. 25, 2000, p. 2866, or *2000 WTD 244-2,* or *Doc 2000-33638 (4 original pages).*)

Insofar as it seeks a level playing field, the OECD and its member countries must realize that their superior resources and their control of the major international organizations provide obstacles to a level playing field.

B. Tax Evasion and Tax Avoidance

From the beginning, the OECD has blurred its stated goal of limiting tax evasion and illegal tax avoidance, referring in the 1998 HTC report to “tax escape.” One problem is that not all countries are able to harmonize their legislation so that they can agree to cooperate over criminal tax conduct. Some countries have no taxation, other countries rely on tax authorities to assess, and still other countries utilize tax self-assessment, whereby taxpayers have an obligation to comprehensively report their assets, income, and expenses, and to pay the appropriate tax. An additional problem in recent years has been the excessive penalization of transnational investment. Increasingly, countries have established elaborate information gathering and reporting requirements for international transactions and for ownership of companies, trusts, and other entities, as well as for expatri-

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[8]For a review of the OECD members’ preferences, those of tax havens, and other strategic issues arising from the June 26, 2000 OECD report, *see* Bruce Zagaris, “The OECD Report Identifying Harmful Tax Practices and Tax Havens Solidifies the Momentum of the Harmful Tax Competition Initiative,” *Tax Mgmt Int’l J.* 521-30 (2000).

ates. All of these regimes have draconian consequences for noncompliance, including criminal and quasicriminal penalties.

Not surprisingly, many jurisdictions have difficulty agreeing to recognize, let alone provide active assistance for, conduct that some OECD countries characterize as wrongful or even criminal. In some cases, the cooperation has been reached in the context of a mutual assistance in criminal matters treaty outside of an income tax treaty or other tax arrangement. In other cases, countries provide for cooperation in tax matters in the tax information exchange article of an income tax treaty to facilitate more orderly procedure and to protect their nationals and companies from unilateral enforcement of the extraterritorial provisions (for instance, the Dutch-U.S. tax treaty provides for resort to the treaty prior to allowing the application of the U.S. provisions under IRC, section 6038).

One of the largest transformations of law that the OECD is attempting to make is to bring the target countries to the lake to be baptized and go to heaven, even though only a handful of countries have ratified and implemented the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters, which entered into force on April 1, 1995. Indeed, the ratifying countries have reservations regarding several parts of the agreement. Hence, the effort to impose similar obligations overnight, with countermeasures, against smaller countries is illegal, unreasonable, and big-stick diplomacy. The OECD/COE countries should first take the medicine they prescribe for smaller countries.

C. Exchange of Information

Similar conceptual and legal disagreements have served as insuperable barriers to more meaningful multilateral consensus on tax information exchange agreements (TIEAs). In the 1980s, the U.S. government, pursuant to the Caribbean Basin Economic Recovery Act, offered various carrots to jurisdictions that would conclude TIEAs: eligibility for convention deductions; eligibility for Section 936 of the Internal Revenue Code financing benefits; and eligibility for hosting foreign sales corporations. The U.S. Congress has since phased out section 936 benefits. The World Trade Organization has also ruled that U.S. foreign sales corporation tax benefits are an illegal trade subsidy, although the United States is appealing that determination. The alternative minimum tax (AMT) has diminished much of the benefit of the convention deductions, because U.S. high-net-worth persons can only deduct so much from gross income on their income tax return (IRS Form 1040) due to the AMT.[9]

Additionally, many eligible Caribbean countries did not have sufficient convention facilities to take advantage of the convention deduction benefits. Some of the countries that did have sufficient convention deductions, such as the Bahamas and Panama, decided the costs outweighed the benefits. The attempt by the United States to ride the OECD Trojan horse into the targeted countries' jurisdictions and impose economic sanctions, in lieu of the U.S. treaty obligation to provide carrots, so to speak, underscores the

[9]For a discussion of the politics behind TIEAs in the Caribbean, *see* Bruce Zagaris, "The Caribbean Basin Tax Information Exchange Agreements Program of the United States: Eat Softly and Carry a Big Stick," *Bull. Int'l Bur. of Fiscal Doc.* 115-18 (Mar. 1989).

lack of legal basis and the beggar-thy-neighbor diplomacy underpinning the exchange of information provisions.[10]

Indeed, paragraph 21 of the OECD Report on Improving Access to Bank Information for Tax Purposes shows the lack of agreement on efforts to provide bank information in the context of information exchange.[11] Paragraph 21 states that the Committee on Fiscal Affairs *encourages* member countries to:

> (1) undertake the necessary measures to prevent financial institutions from maintaining anonymous accounts and to require the identification of their usual or occasional customers, as well as those persons to whose benefit a bank account is opened or for whom a transaction is carried out. The committee will rely on the work of the Financial Action Task Force in ensuring the implementation of these measures by member countries;
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> (2) re-examine any domestic tax interest requirement that prevents their tax authorities from obtaining and providing to a treaty partner, in the context of a specific request, information they are otherwise able to obtain for domestic tax purposes, with a view to ensuring that such information can be exchanged by making changes, if necessary, to their laws, regulations, and administrative practices. The Committee suggests that countries take action to implement these measures within three years of the date of approval of the report;
>
> (3) re-examine policies and practices that do not permit tax authorities to have access to bank information, directly or indirectly, for purposes of exchanging such information in tax cases involving intentional conduct which is subject to criminal tax prosecution, with a view to making changes, if necessary, to their laws, regulations, and administrative practices. The Committee acknowledges that implementation of these measures could raise fundamental issues in some countries, and suggests that countries initiate a review of their practices with the aim of identifying appropriate measures for implementation. The Committee will initially review progress in this area at the end of 2002, and periodically thereafter.

The alternative options and the use of words, such as "the Committee encourages its members to re-examine," indicate the lack of agreement among the countries. Nevertheless, the OECD Collective MOU leapfrogs to seemingly binding legal language: "Each party will ensure that its regulatory or tax authorities have access to bank information that may be relevant for the investigation or prosecution of criminal tax matters." Solid legal and economic reasons exist behind the reluctance of countries, such as Luxembourg and Switzerland, to go further. In this regard, clearly, there is no hard law basis, even within the elite cartel. There is also no universal agreement. Therefore, the effort to impose economic sanctions or countermeasures is a brazen violation of international law, but one that may work, given the disproportionate balance of power. The OECD countries should make the

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[10]For background on the tax provisions of the Caribbean Basin Initiative, *see* Bruce Zagaris, "The Caribbean Basin Initiative," *Tax Notes,* Aug. 26, 1985, p. 1021; B. Zagaris and C. Papavizas, Statement, *Review of the Impact and Effectiveness of the Caribbean Basin Initiative* (Hearings Before the Subcommittee on Oversight, Committee on Ways and Means, U.S. House of Representatives (Feb. 25-27, 1986)).

[11]*See, e.g.,* Richard J. Hay, *Offshore Financial Centres: Response to the Supranational Initiatives*, delivered to the IBC Conference, in mid-December, 2000.

same commitment in the OECD Collective MOU or should allow the targeted countries to adhere to the more liberal language of paragraph 21 of the OECD Report on *Improving Access to Bank Information for Tax Purposes* or, better yet, establish a standard vetted by an international organization with universal standing and membership.

There are a host of technical issues relating to both criminal and civil tax matters. They are beyond the scope of this short discussion.

D. Transparency

The OECD Collective MOU requires that each party ensure that "there are no nontransparent features of its tax systems, such as rules that depart from accepted laws and practices, secret rulings, or the ability of investors to "elect" or "negotiate" the rate of tax to be applied."

On a related matter, the OECD Collective MOU addresses *Beneficial Ownership Information Available*. It would require each party, by December 31, 2002, to "ensure that its regulatory or tax authorities have access to information regarding beneficial owners of companies, partnerships and other entities organized in its jurisdiction, including collective investment funds," and to provide information on the identity of the principal (as opposed to agent or nominee) of those establishing trusts (settlers) and foundations under their laws and those benefiting from trusts and foundations.

This requirement has adverse tradeoffs on privacy. Additionally, many jurisdictions would question whether the utility of the requirement would be worthwhile, given the resources required to establish the information regime and the diversion of investment caused by the information requirement. Most importantly, to have a level playing field, the OECD countries, which have many of these requirements and a disproportionate amount of resources to implement them, should have the same legal requirement. In other words, the United States must override, if applicable, the seven states that have bearer shares and nominees and the offshore banking laws of states, such as Montana and Colorado. The United States must also enforce, by December 31, 2002, legislation to override the use of limited liability companies with bearer shares and nominees. Similarly, each OECD country must take immediate steps to change their laws, and a neutral evaluating mechanism must be created. Until now, the OECD countries have examined themselves and the targeted countries simultaneously.

Financial Books & Records. The OECD Collective MOU demands that the targeted countries "require that financial accounts be drawn up in accordance with generally accepted accounting standards, and will ensure that such accounts be either audited or filed for all entities (banks, insurance companies, collective investment funds and managers, trusts, foundations, etc.) organized or operating in the jurisdiction (subject to possible *de minimis* exceptions or exceptions for entities that are not engaged in offshore activities and do not have foreign ownership, beneficiaries, management, or other involvement). Each party must ensure that there is access by its regulatory or tax authorities to such accounts."

These sweeping requirements have beneficial tax and regulatory implications. They will require significant regulatory resources, much new work by the private sector in some cases, and will result in a diversion of investment in some cases. If the targeted countries accept this obligation, they should ensure that the OECD countries have at least the same legal obligation. This type of obligation should be discussed from the start by an international organization with universal standing and participation, so that the targeted countries have equal opportunity to discuss the goals and, if they agree to such goals, the best procedure to accomplish the same.

To the extent that international tax enforcement and money laundering overlap, many OECD countries have huge gaps. The United States and Canada have failed to sign or ratify the most important international convention on anti-money-laundering — the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime — notwithstanding that more than 20 countries now have ratified it.

E. Stand-Still

The problem with the stand-still provisions is that the OECD has dictated the definition of a harmful tax practice. If the targeted countries agree to these provisions, the OECD members must undertake the same legal obligation if there is to be a level playing field. The targeted countries must have equal participation in any group that will evaluate the compliance with the stand-still provisions. If the executive, legislative, and judicial branches of the OECD member countries are willing to undertake the same obligations, and to compromise their own sovereignty and revenue-raising policy, at least the targeted countries will be able to approach the enjoyment of a level playing field. In most OECD countries, the laws and oversight inherent in their systems will require a diligent airing of such decisions. In many OECD countries, agreement to adhere to such policies may be very difficult to achieve.

III. Summary

Clearly, the OECD HTC initiative is based, primarily, on raw power and has very limited hard-law bases to draw upon. Nevertheless, international law is rather new and is very dynamic in these areas.[12] The existence of a forum to effectively adjudicate any disputes is not clear, or at least would not afford an easy or economic resolution. The potential fora include the WTO, the IMF, the ICJ, or some ad hoc international arbitration. Meanwhile, unless the OECD agrees firmly to a stand-still, the targeted countries may suffer adverse economic harm.

The OECD relies heavily on the support of its members, especially the United States and France, for this initiative. The ability of the OECD to continue the initiative depends on their continued support. It remains to be seen whether the incoming Bush administration will continue to support the initiative, especially if American firms realize that, rather than achieving the OECD marketed "level playing field," they will face higher taxes, expanded information regimes, reduced privacy, and more bureaucracy.[13]

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[12] One commentator has opined that the imposition of coordinated countermeasures against a country because it has not fulfilled international standards is not a matter that has come before international courts. However, the right to impose countermeasures in a bilateral context has been considered. The International Court of Justice has found that countermeasures must: be taken in response to an unlawful act; be preceded by a demand for compliance by the injured state; be proportionate to the injury suffered, considering the rights in question; and have as their goal inducing the misbehaving state to comply with its obligations under international law. Hence, the imposing state must withdraw the countermeasure once the facts so justify. *See Placing the OECD Initiative Within a Legal Context, supra*. Until now, the targeted states have not acted unlawfully, because there exists no binding standards and the states do not participate in the OECD. Indeed, the HTC initiative is an effort to induce the targeted countries into undertaking such obligations.

[13] *See* Daniel J. Mitchell, "An OECD Proposal to Eliminate Tax Competition Would Mean Higher Taxes and Less Privacy," *Tax Notes Int'l,* Oct. 16, 2000, p. 1799, or *2000 WTD 200-15*, or *Doc 2000-26564 (23 original pages)*; *see also* letter from Majority Leader Dick Armey to Treasury Secretary Lawrence Summers, Sept. 2000; see *2000 WTD 177-22* or *Doc 2000-23604 (2 original pages)*.

The potential for higher taxes may be illustrated by the likely elimination of the FSC and its successor regimes; the imposition of a VAT on electronic commerce; the imposition of energy and consumption taxes; and new indirect taxes. Some OECD members, such as the U.S., have developed and prospered on the basis of tax competition.

Similarly, Americans and many people throughout the world are concerned about the growing incursions into their privacy, and are especially concerned about the increasing powers of tax authorities. This concern is magnified when information is increasingly shared with diverse governments.

The agenda for the OECD Barbados meeting included "administrative and resource implications" and "economic impact of proposals on small and developing states." The economic impact of the proposals, I suggest, will be devastating to revenue and to macroeconomic status and prospects, particularly considering the lack of economic alternatives. These considerations should precede the formation of the HTC goals in the first instance rather than being discussed after the *fait accompli*.

The administrative and resource implications are significant. Indeed some OECD members hope that the unavailability of administrative and regulatory resources will force some targeted countries out of the financial services market. These same OECD members have not focused on the consequences of the instability caused by the forced restructuring. Many of the targeted countries have depended heavily on sugar, bananas, rum, and tourism. With the preferences on sugar, bananas, and rum having been dropped and the countries having been encouraged to diversify into financial services by the international financial institutions and the OECD countries (e.g., Lomé IV provided for technical and financial assistance to services, including financial services), now the OECD is inventing, overnight, new standards and marketing the standards as being hard and longstanding law. This push is couched in new age terms of "national security," "money laundering," "transnational crime," and even "transnational organized crime" to justify "defensive" or "counter" measures.

The best shield against this behavior is to ensure a level playing field, so that the democracies in the OECD are put to the same test. Meanwhile, the targeted countries' tax officials should increase their dialogue with their counterparts in the OECD countries so that their counterparts understand the medicine that they may be forced to take if the rhetoric surrounding the level playing field becomes a reality. If these matters really rise to the level of a national security threat, the executive and legislative branches in the OECD countries can agree to the stand-stills and to all the new erosions of sovereignty and constitutional freedoms on which their societies are based.

In the meantime, the targeted countries should reexamine and consider fortifying their internal provisions, insofar as they concern tax and money movement, so that the rights of targets and third-parties have ample protection. They should encourage and foster nongovernmental organizations, whose goals include the protection of those rights. Simultaneously, if the OECD believes in a truly fair and democratic policymaking process, it will expand dramatically its own opportunities for participation by the private sector on the HTC and related issues, so that it has input, not only from the Business and Industry Advisory Committee, but from a wide range of private sector groups. Only then will the OECD and its members gain the legitimacy they seek in this and other initiatives.

The most appropriate confidence-building measures are for the OECD members, which have the most resources compared to the targeted countries, to cede the process to an international organization with universal membership, and, if the international organization agrees to the HTC policy, the OECD members should fully implement and thereafter allow the targeted countries to phase-in the policies over a transitional period. (For related coverage, see *Tax Notes Int'l,* Jan. 15, 2001, p. 228, or *2001 WTD 7-1,* or *Doc 2001-1139 (3 original pages).*)

An issue is raised for the Bush administration as to whether it wants to yield its own fiscal sovereignty to an international organization, such as the OECD, at a time when another international organization has already undercut the country's ability to determine and employ its fiscal policy. The OECD might limit its future authority to make fiscal policy over items including sales tax on electronic commerce, energy, and environmental taxes.[14] Perhaps, because the American people and their representatives have not focused yet on the reciprocal nature of the HTC initiative and the limitations it will place on U.S. tax policy formulation, they have not participated actively in the policy debate over the HTC initiative. In this connection, a number of supporters of the new administration have urged that the United States should take a more cautious view toward unleashing the "new" international law that tends to transform the traditional law of nations governing the relationship among states into something similar to an international regulatory code. They argue that the dynamic use of this "new" international law constitutes a real and immediate threat to U.S. national interests.[15] During the last decade or so, the United States has increasingly focused on the importance of economic policy in its national security. ✦

OECD Source Material (www.oecd.org)

OECD, *Harmful Tax Competition: An Emerging Global Issue* (April 1998)

OECD, *Improving Access to Bank Information for Tax Purposes* (April 2000)

OECD, *Towards Global Tax Co-operation* (June 26, 2000)

OECD, *Framework on Collective Memorandum of Understanding on Eliminating Harmful Tax Practices, with Introductory Letter*

[14]Stephen D. Krasner, "Sovereignty," *Foreign Policy* 20-29 (Jan.-Feb. 2001) (an article discussing the relevance of sovereignty in an era of globalization).

[15]David B. Rivkin, Jr. and Lee A. Casey, "The Rocky Shoals of International Law," 62 *The National Interest* 35 (Winter 2000/01).