



## Office of the President

“Maure”

Yaren, Nauru.

3<sup>rd</sup> December, 2003

Mr. Donald J. Johnston  
OECD Secretary-General  
2 Rue Andre Pascal  
75775 Paris CEDEX 16  
France

Dear Mr. Johnston

### **RE: OECD Harmful Tax Initiative**

I am writing on behalf of the Government of Nauru concerning the OECD's Project on Harmful Tax Competition, as set out in its 1998 Report entitled “Harmful Tax Competition: An Emerging Global Issue.”

In the adoption of the 1998 Report and the subsequent 2001 Progress Report (together hereinafter referred to as the “Reports”), OECD member countries have themselves agreed to abide by the principles enunciated in the Reports.

The Nauru Government notes however, that two OECD member countries have specifically abstained from adopting the 1998 Report and that an additional two other countries have abstained from adopting the 2001 Report.

Notwithstanding the above, the Nauru Government has engaged constructively in a series of bilateral and multilateral consultations with the OECD. These meetings have served to clarify a number of issues.

The Nauru Government attaches fundamental importance to the view expressed by the OECD itself that fair tax competition is not to be discouraged.

In its decision making process, the Nauru Government has consulted widely with all the major stakeholders in the offshore finance industry as well as within Government.

These commitments will have significant adverse cost and revenue implications on the small economy of Nauru. Taking into account the need to pursue the long-term development of its economy and the need to maintain its fiscal autonomy, Nauru makes these commitments in the hope that OECD Member countries and other international organisations take these adverse revenue effects into account in determining the development assistance they provide.

Areas of possible assistance could include improving existing revenue systems and their administration and generally assistance in strengthening capacities in financial services and diversification of the economy.

Attached is a schedule of commitments which have been the subject of discussions between us and which I am now authorised to make on behalf of the Government of Nauru. These commitments, which should be read in conjunction with this cover letter are offered on the basis that:

- Nauru is removed from the OECD list of Uncooperative Tax Havens;
- Nauru will not be subject to any framework of coordinated defensive measures by OECD member states;
- Nauru will protect its sovereignty, economic interests and fiscal autonomy in all negotiations with the OECD. Nauru considers the establishment of a level playing field among all OECD member countries, and those non-member jurisdictions with which it is materially in competition with in the provision of cross border financial services, to be critical to its economic interest;
- Those jurisdictions, including OECD member countries and other countries and jurisdictions yet to be identified, that fail to make equivalent commitments or to satisfy the standards of the 1998 Harmful Tax Competition Report, will be the subject of a common framework of coordinated defensive measures;
- Nauru is invited to participate on an equal basis in any discussions in the Global Forum on the design of internationally accepted standards for the implementation of these and any similar commitments. Nauru will also be invited to participate in the ad hoc accounts group consisting of OECD Member States and committed jurisdictions to address issues raised by the accounts and audit or file requirements.
- Nauru will receive, upon request, technical assistance, as required, for amending and/or implementing laws, regulations, practices and procedures, and negotiating such agreements as may be necessary to comply with the commitment herein.

The detailed implementation of any commitments not already provided for under Nauru law is subject to the approval of the Parliament of Nauru.

With Highest Consideration,

A handwritten signature in black ink, appearing to read 'Rene R. Harris', with a large, stylized flourish above the name.

His Excellency,  
Honorable Rene R.Harris, M.P  
PRESIDENT

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## Attachment

This Attachment, which is to be read in conjunction with the cover letter, sets out the manner in which Nauru will implement its commitment and outlines the measures that the Government of Nauru is prepared to take on a phased basis by 31 December 2005 in cooperation with the OECD.

### **A. Establishing a Process for an Effective Exchange of Information.**

1. Nauru stands ready to negotiate effective exchange of information agreements for criminal tax matters which shall become effective for the first tax year after 31 December 2003. As regards effective exchange, of information, Nauru stands ready to negotiate agreements for civil tax matters which will become effective for the first tax year after 31 December 2005. Such exchanges shall be achieved under bi-laterally negotiated tax information exchange agreements that require the effective exchange of information on specific tax matters pursuant to a specific request. The tax information exchange agreements will define the tax matters covered and include protection against unauthorized disclosures, unauthorized use of information and “fishing expeditions”.
2. In a case involving information required for the investigation and prosecution of criminal tax matters, information shall be provided without the requirement that the conduct being investigated must constitute a crime in Nauru. However, such information may not be provided where the party requesting it cannot, under its own laws for purposes of enforcing its own tax laws, obtain such information.
3. In the case of information requested in the context of a civil tax matter, the absence of a Nauru tax interest in the case or in obtaining the information shall not be a bar to the provision of such information. However, such information may not be provided where the party requesting it cannot, under its own laws for purposes of enforcing its own tax laws, obtain such information.
4. The incidence of costs incurred in providing assistance in criminal and civil tax matters shall be agreed in the context of the exchange of information agreements or arrangements entered into by Nauru in satisfaction of its commitment. Flexibility is expected in determining the incidence of costs to take into account factors such as the likely flow of information requests

between the two parties to the agreement or arrangement, whether both Parties have income tax administrations, the capacity of each party to obtain and provide information, and the volume of information involved.

**B. Transparency**

Nauru will ensure that information on beneficial ownership of companies, partnerships, and other legal entities and on trustees and beneficiaries of trusts established in Nauru is available to its authorities. This will include companies and other entities having a place of business in Nauru provided that the information is present within Nauru or in the possession or control of a person subject to the jurisdiction of Nauru. Nauru agrees that such information will be subject to exchange agreements referred to in paragraph A.1.

2. Subject to de minimis and other exceptions to be developed in the Joint Ad Hoc Group on Accounts, the Government of Nauru will require that companies, partnerships, trusts, and other legal entities established or having a place of business in Nauru keep accounts in accordance with the standards being developed by the Joint Ad Hoc Group on Accounts. Nauru agrees that such accounts will also be subject to exchange under the tax information exchange agreements referred to in paragraph A. I.
3. Nauru agrees that its regulatory authorities, or such other authority as it may designate, will have access to bank information to the extent necessary to perform obligations under a tax information exchange agreement concluded pursuant to paragraph A. I.

**C. Standstill**

The Government of Nauru will ensure that:

- No new regime or practice is introduced that fails to comply with the principles of transparency and effective exchange of information: and
- No existing regime or practice is modified in such a way that, after the modification, it would not comply with the principles of transparency and effective exchange of information.