Globalisation and Tax-related Issues: What are the Concerns?[1]

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On behalf of a small independent Pacific State, Samoa, I would like to highlight our concerns about the OECD's Harmful Tax Competition Initiative on globalisation and tax-related issues.

The history of the people in the Pacific Forum island countries has for centuries been shaped by various processes through which concepts and ideals were imposed from afar. Pacific people have confronted and struggled with the processes of colonisation, decolonisation and independence, and most recently globalisation.

Small Pacific Forum island states like Samoa have economies which are fragile, being typically based on agriculture. Because of its vulnerability to natural disasters, dependence on foreign aid and difficulty in becoming competitive in the manufacturing sector, owing mainly to smallness in size, Samoa made a critical economic assessment and decided, after much deliberation, to establish its Offshore Finance Centre in 1988 as an alternative source of government revenue. Such revenue is vital for the development of our economy to meet the increasing expectations and demands of our growing population. We need to continuously improve our education system and health services. We need to provide the necessary infrastructure to assist our private sector to grow. We need to provide employment for an increasing number of school leavers. Our export sector needs to be made more competitive in order for us to earn the much-needed foreign exchange to meet our rising import costs and other overseas payments.

So, just as countries in the developed world (for example, Ireland) and the developing world (for example, Malaysia and Singapore) provided incentives to specific sectors to encourage economic growth, the same was done in Samoa to encourage the growth of our Offshore Finance Centre. As one of the jurisdictions which offers offshore financial facilities, Samoa in a relatively short period of time has had to confront various international initiatives, including the Financial Stability Forum, the

1 This paper is based on a speech given by Papali'i T. Scanlan, Governor of the Central Bank of Samoa, to the OECD-Pacific Island Forum Countries Consultations on the OECD Harmful Tax Competition Initiative in Tokyo in February 2001.

Financial Action Task Force on Money Laundering and the OECD Harmful Taxation Report. Such initiatives bring with them many complex challenges which seem insurmountable, given the fact that they place exceptional demands on already scarce and limited human and other resources available to small economies. Samoa acknowledges the laudable objectives of the Financial Action Task Force on Money Laundering and the general principles sought to be achieved by the various initiatives, such as protecting financial centres from illicit activity, strengthening supervisory skills and the gathering of information on volatile assets. We are, however, deeply concerned about the OECD Initiative on Harmful Tax Competition for the following reasons.

Limited Consultation

Firstly, the OECD has, without much consultation with non-OECD member countries, gone to great lengths to identify criteria as to what constitutes a 'tax haven'. Yet there appears to be little economic theory to support the idea that tax competition is harmful. And it is notable that the OECD Report on Harmful Tax Competition did not take into account a substantial body of literature which supports the notion that such competition is essentially beneficial. Nonetheless, the OECD has directed an internationally identified list of such countries to move away from being 'tax havens'. Whilst we acknowledge the principles being promoted, we are seriously concerned about the manner in which the OECD and other member organisations have sought to achieve their proposed objectives. The lack of, or inadequate, consultation undertaken by the Harmful Tax Practices Group with the non-OECD countries affected is a classic example. In Samoa's case, the bilateral consultative process consisted of a request to respond to questionnaires and a one-day country visit in June 1999. To date, as a listed jurisdiction, we have not been offered any coherent vision of how the OECD views our jurisdiction and how our obligations and relationship should evolve, if we were to commit to OECD's requirements. We believe there are many issues inextricably linked to the OECD Initiative which require careful examination and definition. To date, Samoa has not participated in any multilateral discussions, and we would welcome the opportunity to become involved at all levels in an open and transparent consultative process which should reflect the interests of all stakeholders, including academic experts, taxpayers and the international business community. As with other initiatives spearheaded by the Financial Stability Forum and the Financial Action Task Force, we urge the OECD, for the sake of fairness and transparency, to pursue a global process in which economically and legally sound international standards on taxation are established by which all jurisdictions are assessed.

Sovereignty

Secondly, we firmly believe that the power to tax is a sovereign right. The 1998 OECD report appears to concede that a jurisdiction should be free to devise its own tax system as a matter of sovereignty. However, the OECD went on to qualify such right of sovereignty, by placing a condition on such freedom, stating that it existed only 'as long as they abide by international standards'. Several questions come to mind about this condition. These include questions such as:

✍What are internationally acceptable standards?

✍Who determines these standards?

✍Will they apply equally to all jurisdictions, non-OECD and OECD?

✍What is an optimal global tax system anyway?

Samoa is an independent constitutional democracy which cherishes the common law rights of its citizens. It considers its Parliament to be supreme, its laws effective and the choices it makes for its citizens to be determinative. With the OECD process which has been promoted to date, we feel that sometimes this fact may be overlooked or, if not overlooked, then certainly discounted. Indeed, we wonder whether the work of the OECD Harmful Tax Practices Group has had sufficient regard to the sovereignty of the Parliaments of affected countries.

What Standards are being Applied?

It can be argued that the idea that tax competition is 'harmful' is empty of logical content and totally contradictory to the generally accepted conclusion of most economists and organisations (including the OECD) that competition is a means to maximise world economic welfare. It contradicts the modern trend advocated by many developed countries to encourage competition and allow capital to move globally without national restrictions. Indeed, small island states in the Pacific (like Samoa) are presently striving to comply with initiatives to encourage financial liberalisation. In the case of Samoa, we are in the process of seeking accession to the WTO, despite the impact on local tariffs, levies and taxes which this implies. Moreover, the criticism of tax havens being harmful or carrying on harmful tax practices, in our view lacks the benefit of dialogue, co-operation and peer review by academic and other experts. Yet it remains an allegation which has had, and will continue to have, a negative impact on our international reputation in some quarters, though those who know us are aware that Samoa is a responsible and reputable member of the family of nations. In this context, countries which find themselves in the position that we face with such a body as the OECD, must seek a return to basics and ask the following questions:

✍What specifically are the tax laws of our country which are harmful?

✍To whom are these laws harmful?

✍According to what measure and to what extent does our tax regime provide tax havens?

✍To whom and to what are we, as a sovereign country, accountable?

✍Are there solutions to any alleged harm which do not involve loss of any country's sovereignty?

In this context, we would like to learn of the evidence, if any, of the harm that we are causing as a 'tax haven', and to whom?

Samoa as Part of the International Community

My fourth point is that Samoa is, and wishes to remain, a responsible and respected member of the international community. Being mindful of the responsibilities which come with that reputation, Samoa has made considerable efforts to comply with international standards on offshore supervision. As a consequence, we recently enacted comprehensive anti-money-laundering legislation which is based on a model originally prepared by the Commonwealth Secretariat. As a result of its efforts to combat money laundering, Samoa did not feature on the list of unco-operative countries compiled by the Financial Action Task Force.

On this initiative, it is implied from the text of the OECD report that 'tax havens' are failing to take sufficient responsibility and to consider the effect of their legal and fiscal regimes on other countries. We would suggest that this is not so in Samoa's case.

Being a prominent organisation, charged with promoting economic co-operation and development, we ask the OECD to acknowledge the hardships of the less privileged small island states already disadvantaged by other economic and geographical factors. Yet, we are now faced with a threat to our international reputation and status in a process which appears to us to be the case of the strong dictating to the weak, the rich to the poor and the big to the small. As with the English Civil War and the American Revolution, history shows that attempts to impose coercive taxation measures may be misguided.

I would hazard a guess that many of the OECD member countries have felt this way in some dealings with other more powerful economies, perhaps in areas such as lamb, bananas and leather to use some current examples, and felt a threat to their sovereign status in those cases as we do to ours now.

Our Offshore Financial Centre, like those operated by other Pacific Forum island countries, not only provides an alternative to earning foreign revenue, but constitutes an important component of the Samoan economy, by promoting economic diversification and a highly-skilled industry. Revenue earned directly by our government from the fees paid by offshore companies has continued to increase over the years. There are other economic spin-offs such as telecommunication revenues, value added tax and income tax which also benefit our domestic fiscal position. The loss of such revenue will be highly detrimental to our Government's present focus on improving the health, education and overall welfare of our people.

Last, but not least, if the OECD wishes these discussions to be regarded as advancing efforts to achieve global understanding of international taxation issues, then the threats of defensive measures that are being suggested should be removed as a sign of its good faith and a reflection of its willingness to encourage review by outside experts. At the same time, we ask the OECD to consult with and respond to the concerns expressed by other parties, be they governments, businesses, taxpayer organisations or legislators from member and non-member countries.

Like most Pacific Forum island countries represented around this table, Samoa's Offshore Financial Centre was not set up to facilitate the laundering of proceeds of crime. Nor was it set up to deprive OECD countries of tax revenue. Rather, our Offshore Financial Centre was established to provide our Government with much needed revenue for the development of our country, in order to improve the living standards of our people.

In concluding, I would like to point out that most of the tax and legal practices adapted in offshore financial centres are based on British and European precedents. Among those guiding precedents is a respect for the rule of law and a rejection of despotism.

Governments are instituted to protect the property and liberties of their citizens, and not to destroy them. In the event, we urge that the OECD recognise and respect the rights of individuals as well as those of sovereign nations, even those of small Pacific Forum island countries.