



MULTISTATE TAX COMMISSION

Working Together Since 1967 to Preserve Federalism and Tax Fairness

**To: Wood Miller, Chair
Members of MTC Uniformity Committee**

From: Shirley Sicilian, General Counsel

Date: July 17, 2009

**Subject: Executive Committee Direction to Review Model Combined
Reporting Statute Tax Haven Provision in light of OECD Changes**

I. Background

Since November 2007, the Executive Committee has received public comment from representatives of the Isle of Man expressing concern with the MTC model combined reporting statute's definition of "tax haven," which refers to determinations made by the Organization for Economic Cooperation and Development. Until April of 2009, the Isle of Man was included on the OECD's list of cooperative tax havens. Since the spring of 2009, the Commission has also heard concerns from two additional jurisdictions, Guernsey and Jersey. Both of these jurisdictions were also included on the OECD's list of cooperative tax havens until April 2009. The jurisdictions' most immediate concern was that the OECD list had not been systematically updated since 2000 and did not reflect progress they had made toward OECD standards. (See attachment A – 3 statements from Isle of Man.)

In April 2009, the OECD met as part of the G20 conference in London, and produced a restructured and thoroughly updated list.¹ OECD also pledged to regularly evaluate the jurisdictions' progress through "robust reviews."²

At its May 2009 meeting, the Executive Committee directed the Uniformity Committee to consider whether changes to the model rule's provisions on "tax haven" are necessary in light of the OECD changes.

¹ See <http://www.oecd.org/dataoecd/38/14/42497950.pdf> ; See also attached list - Appendix C)

² *Following G20 OECD Delivers on Tax Pledge* (April 2009);
http://www.oecd.org/document/57/0,3343,en_2649_34487_42496569_1_1_1_1,00.html

II. Interaction between MTC Model and OECD Developments

- *The MTC Model*

The MTC's model combined reporting statute requires world-wide combination, but allows taxpayers to make a water's-edge election.³ The model statute's waters-edge election does not exclude foreign unitary affiliates from the combined group if the affiliate is "doing business in a tax haven..." (§5.A.vii.).

A "tax haven" is defined as any jurisdiction that "during the tax year in question":

- 1) "is identified by the Organization for Economic Co-operation and Development (OECD) as a tax haven ...", or
- 2) "exhibits the...characteristics established by the OECD in its 1998 report...as indicative of a tax haven...regardless of whether it is listed by the OECD as an un-cooperative tax-haven..." (§1.I.)

- *The OECD Developments*

Tax Haven Criteria: According to the 1998 OECD Report, a tax haven is a jurisdiction that imposes no or nominal direct taxes on financial or other mobile services income *and* also meets one of three criteria: (1) its regimes lack transparency; (2) it does not engage in effective information exchange; or (3) its regimes facilitate the establishment of entities with no substantial activities.⁴ These criteria, which are referenced in the MTC model (§1.I), have not changed since 1998. Indeed, they have become the internationally agreed standard. They were endorsed by G20 Finance Ministers in 2004 and by the UN Committee of Experts on International Co-operation in Tax Matters in 2008.

Tax Haven List: The OECD's 2000 Progress Report reviewed 41 non-OECD jurisdictions against the 1998 criteria. In 2002, the OECD characterized 39 of the 41 jurisdictions as tax havens. Of the 39, 32 were identified as "cooperative" tax havens and 7 were identified as "uncooperative" tax havens. Starting in 2005, the OECD published annual assessments showing the extent of each cooperative tax haven's progress in implementing its commitments. (See attachment B - summary of OECD tax haven reports.)

In April, 2009, the OECD re-evaluated the 41 jurisdictions on its original list. It also expanded its list from the original 41 non-OECD jurisdictions to include OECD

³ The MTC Model Combined Reporting Statute is available at http://www.mtc.gov/uploadedFiles/Multistate_Tax_Commission/Uniformity/Uniformity_Projects/A_-_Z/Combined%20Reporting%20-%20FINAL%20version.pdf

⁴ *Harmful Tax Competition, an Emerging Global Issue*; Organization for Economic Development and Co-operation (1998) <http://www.oecd.org/dataoecd/33/1/1904184.pdf>

countries and countries that participate as observers in the OECD Committee on Fiscal Affairs, or 84 jurisdictions altogether. The new list is also restructured into three categories: (1) jurisdictions that have substantially implemented the internationally agreed tax standard, (2) jurisdictions that have committed to the internationally agreed tax standard, but have not yet substantially implemented it, and (3) Jurisdictions that have not committed to the internationally agreed tax standard. The second category contains two sub-categories: (2)(a) tax havens, and (2)(b) other financial centers. “Tax havens” are the non-OECD jurisdictions that meet the 1998 tax haven criteria. “Other financial centers” are the OECD members and observers that have been identified as meeting the 1998 criteria. (See attachment C - copy of the new OECD list.).

III. Possible MTC Model Revisions to Reflect OECD Developments

The Executive Committee has asked the Uniformity Committee to review and report back on whether there is a need for a project to amend the model statute in light of the OECD’s changes.

One question might be whether jurisdictions that fall within the second and third categories of the new OECD list (jurisdictions that have committed to the internationally agreed tax standard but have not yet substantially implemented it, and jurisdictions that have not committed to the internationally agreed tax standard) now comprise what the model intends to include as “tax havens.” If so, it is not clear that the language of the model accomplishes that. The model defines “tax haven” to include a jurisdiction that “is identified by the [OECD] as a tax haven ...” Under the new OECD structure, a “tax haven” is only one of two types of jurisdictions that fall under the second category (jurisdictions that have committed to the internationally agreed tax standard but have not yet substantially implemented it). “Other financial centers” also fall within category 2, but may not be clearly included as a “tax haven” under the language of the model.

If clarification is necessary, options include a technical correction to the language or, as recommended by the Isle of Man, elimination of the list provision altogether.⁵ If the list is eliminated, the model would define “tax haven” based only on whether the jurisdiction meets the OECD criteria. The Executive Committee asked whether the OECD criteria should be augmented with additional requirements to reflect state combined reporting concerns that might not exist at the national level. For example, if a jurisdiction adopts the transparency measures required by the OECD standards, this would allow federal tax authorities to identify entities where it may need to apply transfer pricing rules to address income shifting. But identification of those entities may not be as much help to the states where the entities are now excluded from the waters-edge combined report.

⁵ The Isle of Man cautions that if the list provision is not eliminated, then only the most recently issued OECD list should be used. *See* Statement from Isle of Man, dated July 2009 (attached).

November 2007 Statement



Isle of Man
Government

Reillys Ellan Vannin

Isle of Man Mission To Washington DC

November 2007

Multistate Tax Commission Proposed Model Statute For Combined Reporting

The Multistate Tax Commission ("MTC") has drafted model legislation ("Proposed Model Statute") that state lawmakers can use as a template to enact "combined reporting" tax legislation. The Proposed Model Statute permits corporations to make a "water's-edge election" that limits the businesses issuing the combined report to domestic and certain other corporations, including corporations doing business in tax havens. The Proposed Model Statute defines a tax haven as a jurisdiction that "is identified by the Organisation for Economic Co-operation and Development ("OECD") as a tax haven or as having a harmful preferential tax regime" or which exhibits certain characteristics "established by the OECD in its 1998 report entitled Harmful Tax Competition: An Emerging Global Issue." This definition of "tax haven" relies on outdated information and would create a blacklist that includes countries like the Isle of Man, which cannot be accurately classified today as a tax haven.

In 2005, the OECD advised that its tax haven list "should be seen in its historical context and as an evaluation by OECD member countries at a particular point in time of which countries met the criteria set out in the 1998 Report, Harmful Tax Competition: An Emerging Global Issue. More than five years have passed since the publication of the OECD list contained in the 2000 Report and positive changes have occurred in individual countries' transparency and exchange of information laws and practices since that time. The list has not been updated to reflect such changes." The OECD further noted that if a country chooses to create a list of tax-haven countries, "it should do so based on the relevant current facts. Thus, progress made in the implementation of the principles of transparency and effective exchange of information in tax matters should be taken into account by such countries and their legislatures. This statement does not reflect any judgment on the tax or other policies underlying country lists."

Jeffrey Owens, the Director of the OECD's Centre for Tax Policy and Administration, summed up the issue in testimony before the Senate Finance Committee this year, noting that "Offshore tax evasion is not about small islands that do not impose income taxes: it is about all countries that lack transparency and that are not prepared to cooperate to counter tax abuse."

The Isle of Man is transparent and cooperative on all international legal matters, including tax enforcement. The Isle of Man has signed and implemented a Tax Information Exchange Agreement ("TIEA") with the United States. It has no bank secrecy laws and requires that persons forming a corporation or trust in the Isle of Man obtain information on the beneficial owners of these accounts.

On 30 October 2007, the Isle of Man signed seven new TIEAs with each of the members of the Nordic Council (Denmark, the Faroe Islands, Finland, Greenland, Iceland, Norway and Sweden) and has received commendation from the OECD for "forging ahead in implementing its commitment to international standards." The OECD observed that: "The latest agreements bring to nine the number of such agreements entered into by the Isle of Man, thus enhancing its international standing and strengthening its integration into the international financial system. The Isle of Man has played a leading role in the OECD's initiative to improve transparency and exchange of information in tax matters."

In addition, the Financial Action Task Force ("FATF") reviewed the Island's defences against money-laundering and concluded that the Island is a co-operating jurisdiction with measures in place that adhere to the FATF's recommendations. Finally, an International Monetary Fund ("IMF") report, dated October 2003, states that the regulatory and supervisory system of the Isle of Man complies well with the assessed international standards. The IMF commended the Isle of Man for the attention it has given to upgrading its financial, regulatory and supervisory system to meet international supervisory and regulation standards.

The Proposed Model Statute's reference to the 1998 OECD designation of "tax havens" does not reflect current facts and should be omitted from the model language.



**Isle of Man Statement for the Multistate Tax Commission
Executive Committee Meeting
May 7, 2009**

Executive Director Huddleston, Chairman Cordi and members of the Multistate Tax Commission (“MTC”) Executive Committee, the Isle of Man last met with the MTC Executive Committee on May 8, 2008 to discuss the MTC’s Model Statute for Combined Reporting (“Model Statute”), which would blacklist the Isle of Man by reference to the list of “tax havens” issued in 2000 by the Organisation for Economic Co-operation and Development (“OECD”). The Isle of Man appreciates the MTC’s willingness to continue this dialogue regarding the Model Statute and is pleased to provide new information concerning the OECD list.

On April 2, 2009, the OECD issued a progress report on the jurisdictions surveyed by the OECD Global Forum. The Isle of Man is pleased to inform the MTC Executive Committee that the Isle of Man is listed alongside the United States and the United Kingdom as having substantially implemented the internationally agreed tax standard as now determined by the OECD (copy attached).

Given this latest evaluation by the OECD, the Isle of Man respectfully suggests that if the Model Statute must refer to a list of “tax havens,” the April 2, 2009 OECD list, which does not include the Isle of Man, be used.

I. About the Isle of Man

Located in the middle of the Irish Sea at the centre of the British Isles, the Isle of Man has a total land area of 227 square miles. The resident population is just over 80,000 (2006 interim census).

Constitutionally, the Isle of Man is a self-governing British Crown Dependency with its own ancient parliament (Tynwald), government and laws. The United Kingdom, on behalf of the Crown, is ultimately responsible for the Isle of Man’s international relations, although in recent years, reflecting significant differences in UK and Manx law and policies, the Isle of Man has – in agreement with the United Kingdom and its international partners¹ – represented its own interests internationally, notably by concluding a significant number of bilateral tax agreements. The Isle of Man is financially autonomous and receives no financial assistance either from the United Kingdom or the European Union (“EU”). The Isle of Man is not represented in the United Kingdom or European Parliaments.

¹ The Isle of Man has, for example, signed agreements giving effect to the European Commission’s Taxation of Savings Interest Directive with all 27 Member States. Likewise, it has so far negotiated and signed 14 TIEAs with partner countries inside and outside the EU.

The Isle of Man's relationship with the EU is set out in Protocol 3 to the United Kingdom's Act of Accession (1972). In essence, in accordance with Article 299(6)(c) of the treaty establishing the European Community, the Isle of Man is outside the EU except for EU law and policy on the customs union and the free movement of goods. In all other matters, including tax and financial services, the Isle of Man is in the position of a "third country" or non-Member State with respect to the EU.

II. The Isle of Man Is Well-Regulated, Co-operative and Transparent

The Isle of Man takes seriously its role as a world-class location for financial services and investment.

A. Isle of Man Regulation of Financial Services

Business is attracted to the Isle of Man by local expertise in professional services, a supportive government, a world-class telecommunications infrastructure, sound financial regulation and a competitive tax system. New growth areas include e-commerce, the film industry, international shipping, aviation, and space and satellite businesses, whilst traditional sectors, like tourism (including the famous Tourist Trophy motorcycle races) remain important.

The Isle of Man has enacted legislation covering all financial services sectors, as well as related areas such as audit, accounting, company law and anti-money laundering. The Isle of Man's legislation in these fields is modern and based on the highest international standards. Although the Isle of Man is outside the EU for financial services and related fields, its legislation in all these areas is based broadly on corresponding EU secondary legislation.

The Isle of Man's Financial Supervision Commission ("FSC") was established in 1983 as an independent statutory body to license and regulate financial activities in the Isle of Man. The FSC regulates and supervises all deposit-taking, investment business, services to collective investments, trust services, company services, fiduciary services and money transmission services in or from the Isle of Man. These powers include the maintenance and development of the regulatory regime for regulated activities, the oversight of directors and persons responsible for the management, administration or affairs of commercial entities, and the operation of the Companies Registry.

A number of international organisations have assessed the Isle of Man's regulatory practices against global standards and have determined that the Isle of Man is well regulated, co-operates fully in the pursuit of international financial crime and that its money laundering legislation complies with the highest global standards, including those applied by the EU and its Member States.

B. Isle of Man Co-operation in Tax Matters and Financial Crime

The Isle of Man's co-operative approach is based on openness and "constructive engagement" with its partners around the world. As a non-sovereign Crown Dependency of the United Kingdom, an important G20, OECD and EU Member State, the Isle of Man cannot represent its own interests on a basis of sovereign equality, either with G20, OECD or EU Member States.

Formally, therefore, the Isle of Man must rely on the United Kingdom to represent and defend its interests and reputation in these organisations of sovereign states.

Increasingly, however, by agreement with the United Kingdom under a “framework for developing the international identity of the Isle of Man” signed in May 2007, the Isle of Man is “entrusted” to represent and defend its own laws and policies internationally, in full consultation and co-operation with the United Kingdom.² It is in this context that the Isle of Man has adopted a policy of constructive engagement with all its major international partners, including the EU and the United States.

Within the context of the OECD’s work on transparency and effective exchange of information, the Isle of Man is at the forefront of the development of a comprehensive network of Tax Information Exchange Agreements (“TIEAs”), based on mutual economic benefit.

To date, the Isle of Man has 14 TIEAs, based on the OECD’s Model Agreement on exchange of information on tax matters, 12 of which are with OECD Members, including the United States. These agreements are ratified by Tynwald, the Isle of Man’s parliament. The Isle of Man is in TIEA negotiations with a number of other countries, including members of the OECD and the G20, in respect of further TIEAs.

The Isle of Man believes its consistent and long-standing actions in respect of tax agreements and its commitment to adhering to internationally accepted standards of financial regulation provide tangible evidence of its co-operation with the international community. This is supported by the statement of Jeffrey Owens, Director of the OECD’s Centre for Tax Policy and Administration, who welcomed the Isle of Man’s TIEA with Germany (March 2009) as a further step in efforts to bring greater transparency and fairness to cross-border financial transactions. “The time has now come for all jurisdictions that have made commitments to the international standards of transparency and exchange of information to follow the Isle of Man’s lead in implementing them,” Owens said. “I am particularly pleased with the excellent progress the Isle of Man has made in extending its network of these agreements.”

C. Isle of Man Transparency

The Isle of Man has no bank secrecy laws, customs or practices that impede the ability of the United States or other TIEA partners to request and receive tax information. The Isle of Man has access to the beneficial ownership information that makes tax information exchange an effective tool for other countries to enforce their domestic tax laws. The Isle of Man has successfully responded to all requests for information by the United States under the TIEA between the Isle of Man and the United States.

As noted earlier, all company and trust service providers are licensed and regulated pro-actively to ensure that high levels of due diligence are applied in all areas of the business. The Isle of Man’s customer due diligence (“CDD”) regulations as set forth in its Anti-Money Laundering and Countering the Financing of Terrorism Handbook require both identification and relationship information. Licenceholders must collect relevant CDD information to identify: (i) the customer; (ii) the beneficial ownership and control of the customer; (iii) the nature of the customer’s business and the customer’s economic circumstances; (iv) the anticipated relationship

² <http://www.gov.im/lib/docs/cso/iominternationalidentityframework.pdf>

with the licenceholder; (v) and the source of funds. Licenceholders must, in all cases, know the identity of underlying principals and/or beneficial owners at the outset of a business relationship. This is irrespective of the geographical origin of the client, or of any introducer or fiduciary, or of the complexity of a legal structure.

When requested, regulated intermediaries must provide relevant information to the regulators and law enforcement authorities who have appropriate powers to assist in domestic and cross-border investigations. Access to this beneficial ownership information ensures that the Isle of Man can provide the United States with accurate and usable information under the TIEA.

The regulation of corporate and trust service providers is also a clear example of the Isle of Man's proactive effort to identify a potential threat to its reputation and enact pioneering legislation to prevent financial fraud. In so doing, and in regulating business that still remains unsupervised in most major jurisdictions, the Isle of Man has acted to ensure that its reputation as a well-regulated and transparent jurisdiction is protected.

III. International Assessments and Recognition of the Isle of Man

A number of international organisations have assessed the Isle of Man's regulatory practices against global standards and have determined that the Isle of Man is well regulated, co-operates fully in combating international tax evasion and financial crime, and that its anti-money laundering legislation complies with the highest global standards, including those applied by the EU and its Member States.

On April 2, 2009, the OECD issued a detailed progress report on jurisdictions' efforts to implement the OECD's internationally agreed standard requiring the exchange of information on request in all tax matters for the administration and enforcement of domestic tax law without regard to a domestic tax interest requirement or bank secrecy for tax purposes. In this report, the Isle of Man was listed alongside the United States as having "substantially implemented the internationally agreed tax standard."

Just prior to the publication of this new OECD report, Jeffrey Owens, Director of the OECD's Centre for Tax Policy and Administration, issued a statement on March 27, 2009 further commending the Isle of Man's co-operative efforts. "At a time when many countries have been promising change, Guernsey, Jersey and the Isle of Man have been delivering," Owens said. "I am particularly pleased that the Isle of Man now has 12 TIEAs with OECD countries in accordance with the OECD standard. This is an important milestone in implementing its commitment to international co-operation."

In 2003, the IMF conducted a full assessment of the Isle of Man's compliance with all of the international standards referred to above. The Isle of Man was found to have a "high level of compliance." The IMF report commended the Isle of Man for its attention given to: "upgrading the financial regulatory and supervisory system to meet international supervisory and regulation standards in banking, insurance, securities, and anti-money laundering and combating the financing of terrorism."

A further review by the IMF was undertaken in September 2008 as part of its ongoing programme of assessment. The results are to be published shortly, and the Isle of Man is confident that the IMF will again confirm positive findings.

Under the auspices of the FATF, the Isle of Man has been assessed on two occasions in respect of anti-money laundering measures and has been found to be co-operative and in compliance with all key FATF recommendations. The Isle of Man has never been listed as non co-operative by the FATF. All anti-money laundering actions on the Isle of Man are co-ordinated through an industry-wide Joint Anti-Money Laundering Advisory Group.

The Financial Stability Forum (“FSF”) has considered the effect that offshore centres generally can have on global financial stability. The Isle of Man was placed in the top group of centres reviewed based on responses from FSF members (Group 1 Category of offshore jurisdictions).

The Isle of Man Financial Supervision Commission is a member of the International Organisation of Securities Commissions (“IOSCO”) and is a full signatory to the benchmark IOSCO Multilateral Memorandum of Understanding. As such, the Isle of Man has been judged fully competent in having the legislative ability to provide full co-operation in dealing with market manipulation and abuse, insider dealing and other securities malpractices. The Isle of Man Financial Supervision Commission has established a strong track record of co-operation in this area.

The Isle Man Financial Supervision Commission is a member of the Enlarged Contact Group, which is a discussion forum for global regulators of collective investments that considers policy developments and market issues and is a member of the Offshore Group of Banking Supervisors (of the Basel Committee on Banking Supervision).

The Isle of Man Insurance and Pensions Authority is a member of the International Association of Insurance Supervisors (“IAIS”) and the Offshore Group of Insurance Supervisors. Its regulation has been assessed against the IAIS Insurance Core Principles, as part of the IMF’s assessment. In addition, the Isle of Man has made contributions to the development of IAIS guidance papers.³

The Isle of Man’s regulators have also exchanged individual memoranda of understanding (“MOUs”) with international regulators in a number of international jurisdictions which underpin its ability to co-operate on supervisory, regulatory and enforcement matters, including in the cross-border supervision of international financial services groups.

The Financial Supervision Commission, which regulates financial services activities in and from the Isle of Man (with the exception of insurance and pensions) has entered into MOUs with equivalent regulators in Bahrain, Bermuda, Cayman Islands, Cyprus, Czech Republic, Dubai, Gibraltar, Guernsey, Iceland, Ireland, Jersey, Malta, Mauritius, Qatar, South Africa, United Arab Emirates, United Kingdom and the United States.

The IPA has entered into MOUs with regulators in Bahrain, Dubai, Hong Kong, Malta, Qatar, and the United Kingdom. In addition, the IPA will, in due course, also become a signatory to the IAIS Multilateral Memorandum of Understanding, which is currently in the early stages of implementation.

³ Particularly the IAIS Guidance Paper on the Regulation and Supervision of Captive Insurers.
http://www.iaisweb.org/temp/17_Guidance_paper_No_3_6_on_regulation_and_supervision_of_captive_insurers.pdf

In addition, the Isle of Man's financial services legislation includes extensive powers for its regulators to exchange information with other regulators' relevant organisations. These powers ensure that information can be exchanged whether or not specific MOUs are in place.

The UK Treasury has granted the Isle of Man "designated territory" status, which provides the legal basis for the marketing and sale of Isle of Man investment funds in the United Kingdom. This status is subject to regular review by the UK Financial Services Authority ("FSA") on behalf of the UK Treasury.

The Isle of Man has been placed on a list of jurisdictions approved by the U.S. Internal Revenue Service under its Qualified Intermediary ("QI") program. Broadly speaking, the legislation requires local financial institutions to apply for QI status if they wish to invest in U.S. securities and claim exemption from U.S. withholding tax for their clients.

The Isle of Man operates compensation programs for depositors, investors and policyholders, as well as a financial services ombudsman program within the Isle of Man's Office of Fair Trading.

IV. Suggested Revision to the Model Statute

As discussed above, the Isle of Man is not a "tax haven," is so acknowledged by the OECD and should not be identified as such in the Model Statute issued by the MTC. The Isle of Man again respectfully requests that if the Model Statute decides to refer to a list of "tax havens," the April 2, 2009 OECD list, which does not include the Isle of Man, be used.

Respectfully submitted by:

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May 6, 2009



July 2009

**Multistate Tax Commission Model Statute
For Combined Reporting Should Be Revised in Light of Recent Organisation
for Economic Co-operation and Development ("OECD") Developments**

The Multistate Tax Commission's Model Statute for Combined Reporting (the "Model Statute") generally requires reporting on a worldwide combined basis, but allows a "water's edge election" that generally applies to unitary members incorporated in the United States. The water's edge election, however, would also include unitary members incorporated outside the United States that are "doing business in a tax haven." The Model Statute defines a "tax haven" to mean a jurisdiction that during the taxable year in question either:

- (i) is identified by the Organisation for Economic Co-operation and Development (the "OECD") as a tax haven or as having a harmful preferential tax regime;" or
- (ii) exhibits certain specified characteristics of a tax haven or a jurisdiction having a harmful preferential tax regime.

In 2000, the OECD published a list of 41 jurisdictions that exhibited the characteristics of a tax haven set forth in the OECD's 1998 Report entitled "Harmful Tax Competition: An Emerging Global Issue." Since 2000, the OECD has not updated this list to reflect changes in the tax laws or practices of these jurisdictions. In 2005, the OECD acknowledged that the 2000 list is an evaluation of which countries met the criteria of a tax haven in 2000 and that the list has not been updated. The OECD further noted that if a country chooses to create a list of tax havens, it should do so based on the relevant current facts.

On April 2, 2009, the Organisation for Economic Co-operation and Development ("OECD") issued a progress report on the jurisdictions surveyed by the OECD Global Forum, utilizing the current OECD tax standard that requires the exchange of information on request in all tax matters for the administration and enforcement of domestic tax law without regard to a domestic tax interest requirement or bank secrecy for tax purposes. This report lists the Isle of Man alongside the United States and the United Kingdom as having substantially implemented the internationally agreed tax standard as now determined by the OECD. The report also lists those jurisdictions that have not substantially implemented the tax standard. (See OECD Progress Report on Implementing the Internationally Agreed Tax Standard in Exhibit 2 of the attached background materials.)

Although not a member of the European Union (“EU”), the Isle of Man has entered into agreements with the EU member countries to comply with the EU Directive on the Taxation of Income from Savings (the “EU Directive”). Currently, non-resident account holders who are residents of an EU member country can elect to have the Isle of Man report savings income information to the EU member country in which the account holder is a resident or withhold tax on such savings income for remittance to the EU member country in which the account holder is a resident. On June 24, 2009, the Isle of Man announced that beginning July 1, 2011, the withholding tax option currently available to residents of the EU with accounts in Isle of Man banks will be withdrawn and the Isle of Man will provide automatic savings income information with respect to all such accounts. Thus, the Isle of Man, which is not a member of the EU, has voluntarily chosen to adopt the EU automatic exchange of information standard. (See Isle of Man press release on automatic exchange of information and press release of U.K. Government in Exhibit 3 of the attached background materials.)

We were very pleased to learn that the Executive Committee of the Multistate Tax Commission has referred to the Uniformity Committee the matter of whether the Model Statute should be revised in light of the recent OECD developments. We suggest that the Model Statute be revised to define a “tax haven” as a jurisdiction that has defined characteristics of a tax haven or is a jurisdiction with a harmful preferential tax regime, as specified in the current version of the Model Statute. The Isle of Man would not be included under such a revised definition.

If it is determined that it is necessary for the Model Statute to also define a tax haven by reference to whether the OECD has identified the jurisdiction as a tax haven, we suggest the only appropriate list to use is the list most recently issued by the OECD, the leading global authority on international tax practices, of jurisdictions that have not substantially implemented the OECD standard for the effective exchange of tax information.

OECD Tax Haven Reports: Time-line and Summary of Findings

- 1998 Report - <http://www.oecd.org/dataoecd/33/1/1904184.pdf>
Established factors for identifying tax havens.
- 2000 Progress Report - <http://www.oecd.org/dataoecd/9/61/2090192.pdf>
41 jurisdictions reviewed
 - 35 identified as tax havens (including Isle of Man, Guernsey, Jersey)
 - 6 which made advance commitments were not included on that list
- 2001 Progress Report – <http://www.oecd.org/dataoecd/60/5/2664450.pdf>
40 tax havens listed (Tonga no longer a tax haven).
 - 29 tax havens
 - 11 committed tax havens (including Isle of Man, Guernsey, Jersey)1 jurisdiction no longer considered tax haven
- 2002 OECD List of Uncooperative Tax Havens -
http://www.oecd.org/document/19/0,3343,en_2649_37427_2082323_1_1_1_37427,00.html
39 tax havens listed (Maldives, Tonga no longer considered tax havens)
 - 7 uncooperative tax havens
 - 32 cooperative tax havens (including Isle of Man, Guernsey, Jersey)2 jurisdictions no longer considered tax havens
- 2004 Progress Report - <http://www.oecd.org/dataoecd/60/33/30901115.pdf>
39 tax havens listed (Maldives, Tonga no longer considered tax havens)
 - 5 uncooperative tax havens
 - 34 cooperative tax havens (including Isle of Man, Guernsey, Jersey)2 jurisdictions no longer considered tax havens
- 2005 Assessment - <http://www.oecd.org/dataoecd/28/55/35670025.pdf>
Provides outcomes and next steps from a 2-day global forum on taxation.
- 2006 Progress Assessment -
http://www.oecd.org/document/60/0,3343,en_2649_33745_36791868_1_1_1_1,00.html
Provides tables showing progress for each jurisdiction
- 2007 Progress Assessment –
http://www.oecd.org/document/29/0,3343,en_2649_33745_39473821_1_1_1_1,00.html
Provides several tables showing progress for each jurisdiction.
- April 28, 2008 Web Site-
http://www.oecd.org/document/19/0,3343,en_2649_33745_1903251_1_1_1_1,00.html
39 tax havens listed.
 - 3 uncooperative tax havens (Andorra, Liechtenstein, Monaco)
 - 35 cooperative tax havens (including Isle of Man, Guernsey, Jersey)
 - 1 effectively treated as cooperative2 jurisdictions no longer considered tax havens.
- April 2009 - Restructured and Updated List -
http://www.oecd.org/document/57/0,3343,en_2649_34487_42496569_1_1_1_1,00.html
4 jurisdictions not committed to internationally agreed standards
30 tax havens, plus 8 financial centers, committed but not substantially implemented
40 jurisdictions substantially implemented (including Isle of Man, Guernsey, Jersey)
- See also, Overview of the OECD's Work on Countering International Tax Evasion -
<http://www.oecd.org/dataoecd/32/45/42356522.pdfv>

A PROGRESS REPORT ON THE JURISDICTIONS SURVEYED BY THE OECD GLOBAL FORUM IN IMPLEMENTING THE INTERNATIONALLY AGREED TAX STANDARD¹

Progress made as at 16th July 2009 ([Original Progress Report 2nd April](#))

Jurisdictions that have substantially implemented the internationally agreed tax standard			
Argentina	Finland	Jersey	Russian Federation
Australia	France	Korea	Seychelles
Bahrain	Germany	Luxembourg	Slovak Republic
Barbados	Greece	Malta	South Africa
Belgium	Guernsey	Mauritius	Spain
Bermuda	Hungary	Mexico	Sweden
Canada	Iceland	Netherlands	Turkey
China ²	Ireland	New Zealand	United Arab Emirates
Cyprus	Isle of Man	Norway	United Kingdom
Czech Republic	Italy	Poland	United States
Denmark	Japan	Portugal	US Virgin Islands

Jurisdictions that have committed to the internationally agreed tax standard, but have not yet substantially implemented					
Jurisdiction	Year of Commitment	Number of Agreements	Jurisdiction	Year of Commitment	Number of Agreements
Tax Havens³					
Andorra	2009	(0)	Marshall Islands	2007	(1)
Anguilla	2002	(0)	Monaco	2009	(2)
Antigua and Barbuda	2002	(7)	Montserrat	2002	(0)
Aruba	2002	(4)	Nauru	2003	(0)
Bahamas	2002	(1)	Neth. Antilles	2000	(7)
Belize	2002	(0)	Niue	2002	(0)
British Virgin Islands	2002	(11)	Panama	2002	(0)
Cayman Islands ⁴	2000	(11)	St Kitts and Nevis	2002	(0)
Cook Islands	2002	(1)	St Lucia	2002	(0)
Dominica	2002	(1)	St Vincent and the Grenadines	2002	(0)
Gibraltar	2002	(2)	Samoa	2002	(0)
Grenada	2002	(1)	San Marino	2000	(1)
Liberia	2007	(0)	San Marino	2002	(0)
Liechtenstein	2009	(1)	Turks and Caicos Islands	2002	(0)
			Vanuatu	2003	(0)
Other Financial Centres					
Austria ⁵	2009	(2)	Malaysia	2009	(0)
Brunei	2009	(5)	Philippines	2009	(0)
Chile	2009	(0)	Singapore	2009	(1)
Costa Rica	2009	(0)	Switzerland ⁵	2009	(0)
Guatemala	2009	(0)	Uruguay	2009	(0)

Jurisdictions that have not committed to the internationally agreed tax standard			
Jurisdiction	Number of Agreements	Jurisdiction	Number of Agreements
All jurisdictions surveyed by the Global Forum have now committed to the internationally agreed tax standard			

¹ The internationally agreed tax standard, which was developed by the OECD in co-operation with non-OECD countries and which was endorsed by G20 Finance Ministers at their Berlin Meeting in 2004 and by the UN Committee of Experts on International Cooperation in Tax Matters at its October 2008 Meeting, requires exchange of information on request in all tax matters for the administration and enforcement of domestic tax law without regard to a domestic tax interest requirement or bank secrecy for tax purposes. It also provides for extensive safeguards to protect the confidentiality of the information exchanged.

² Excluding the Special Administrative Regions, which have committed to implement the internationally agreed tax standard.

³ These jurisdictions were identified in 2000 as meeting the tax haven criteria as described in the 1998 OECD report.

⁴ The Cayman Islands have enacted legislation that allows them to exchange information unilaterally and have identified 12 countries with which they are prepared to do so. This approach is being reviewed by the OECD.

⁵ Austria and Switzerland withdrew their reservations to Article 26 of the OECD Model Tax Convention and announced that they have started to write to their treaty partners to indicate that they are now willing to enter into renegotiations of their treaties to include the new Article 26.