



**ASSOCIATION OF REGISTERED AGENTS**

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KM/CORR/misc/M3WB5PB

**BY FAX & BY  
HAND**

15 October 2002

Mr. Robert Mathavious  
Managing Director  
Financial Services Commission  
Government of the British Virgin Islands  
Pasea Estate  
Road Town  
Tortola

Dear Mr. Mathavious

**OECD: Accounts and Filing or Auditing requirements (“the draft Report”)**

Thank you for your letter dated September 24<sup>th</sup>.

The Registered Agent’s Association has some real reservations concerning the above draft Report and the potential for harmful disruption to legitimate business being conducted in the Territory. The Association has of course accepted and supports the efforts made to combat money laundering, ensure the availability of client identification and improve due diligence standards generally. These measures should we believe be sufficient to provide the information needed without resort to such a far reaching solution.

Of primary importance also is the concept of a “level playing field” whereby we believe the BVI should insist, as it has in other related initiatives, that all countries, including OECD countries, should be subject to the same rules as the various centres being targeted here. For example, we believe that some OECD jurisdictions (including at least two U.S. states) have standards well below those proposed.

What is proposed here seems to be an overly complicated effort to somehow assist the process of transparency, through the preparation of financial statements, in identifying a tiny percentage of clients who may be involved in illegal activity. If they are successful the OECD will have caused great inconvenience and cost to the vast majority of legitimate clients who have brought their business to the BVI, whose business may rightfully be considered private to them and who have no desire or personal need to involve accountants and independent auditors in their affairs.

To comment on specific points:

Para 1: We disagree that exchange of information procedures are only effective as described. There may be much more useful information available than financial statements. As a matter of principle we do not

believe that to be effective exchange of information necessarily requires that accounts be prepared and filed or audited as per the OECD draft Report. We believe an exchange of information is effective if it enables relevant onshore authorities to obtain financial information as and when it is properly required. That information could include details of the principal beneficial owners of entities, bank statements, etc. without imposing substantial financial reporting obligations in the offshore jurisdictions.

Para 2: The commitments provide that on the issue of account auditing and/or filing requirements the Government of the British Virgin Islands understands it will be invited to participate in the joint ad hoc group on accounts consisting of OECD Member countries and committed jurisdictions to address issues raised by the accounts and audit or filing requirements.

The commitment does not impose an obligation on all entities to be audited. For the OECD to suggest otherwise would obviously be contrary to the level playing field concept in that many OECD countries and prominent financial centres are not subject to such requirements. New Zealand for example does not require company accounts to be audited. Hong Kong does not require foreign branches registered in Hong Kong to audit nor file accounts.

Para: 6.: The suggested definition of “Accounts” is unnecessarily formal and restrictive. In many cases books and records, such as bank statements, will easily be able to show the company’s financial position without the inconvenience and expense of being formalised into income statements and balance sheets. Adopting a formalised and restrictive definition is not consistent with the intention to strike a balance as set out in paragraph 4 of the OECD draft. We believe it is sufficient to provide along the following lines:

“Such books or records as are necessary in order to reflect the financial position of a company, partnership, trust or other legal entity.”

Para 13: “Reasonably be expected” is vague and certainty is required. The number of situations that do not fit within the usual arrangement should be able to be ascertained and specifically addressed so there is certainty.

As to their specific example of a fund entity, we believe it would in fact be more appropriate for obligations to be imposed on the corporation that is the fund vehicle where investments are in the form of shares and on trustees in the case of unit trusts.

Para 18: This seems to wander between trusts and collective investment schemes and is quite complicated.

Paras 20 – 23: It is not clear why some activities e.g. “passive investing” are deemed to be more harmful than the activities listed in 23. If the funds and activities are subject to scrutiny why should these be exempt? The “level playing field” concept should of course also apply here in that all countries would be subject to these rules.

Paras 24 and 25: see Para 6 above.

Para 26: Even assuming for the moment that there are obligations these should not be imposed on resident persons. In many cases there will not be a resident director or other person with the ability to ensure compliance. Imposing the obligation on a corporate service provider or accountant is just not feasible as they cannot enforce compliance. The better solution would be refusal to continue providing accounting or corporate services.

Para 28: The same comment as regards natural persons as in point 26 above applies here. This is

very burdensome and clearly contrasts with paragraph 4 of the OECD draft.

Paras 30 – 39: This gives an indication of how easy it may be to avoid the intent of the draft Report. Who is going to police whether client A has companies with different Agents? Paragraph 39 admits that reliance will have to be placed on shareholders and beneficiaries, the very people whose activities are under scrutiny. How is it possible to have “effective means to ensure that such representations are accurate”?

Generally, we would ask where will the resources for all this work come from? The BVI is a small Territory and cannot reasonably be expected to have anything like the capacity for the obligations something on this scale would impose.


In summary we believe these proposals are unworkable and in fact represent a threat to the reasonable conduct of commercial activities. As we note above, it will be important that the “level playing field” concept is adopted and we believe that this must be a prerequisite. The BVI has recognised that accounting and audit play an important part in proper supervision by mandating that certain regulated activities are audited. This is a completely reasonable approach and recognises the areas of business which merit this. Going beyond this to the extent the draft Report envisages will be counterproductive and, as recent events in the U.S. have shown, simply having audited accounts does not necessarily imply that everything is correctly disclosed.

The OECD would be better served we believe by working to ensure a global compliance with their information availability efforts and in reducing as far as possible areas of the world where non-compliant activities can be carried on without consequences. Such an approach would increase their ability to gather data from as many countries as possible where the information they seek is available. Effective exchange of information mechanisms should therefore reduce the need for accounts preparation on the onerous scale proposed.

We would like to suggest to the Joint Ad Hoc Group that there be a substantial trial period during which the existing basic transparency and exchange of information requirements would be tested to see whether anything on the scale proposed is needed in practice. We suggest a minimum trial period of 3 years after the existing commitments relating to criminal tax matters become effective. During this period the relevant authorities can determine how often requests for information are made and whether the increased information available on beneficial owners under the new due diligence requirements, together with the information exchange arrangements, are sufficient to assist them in identifying and researching situations they feel warrant further action.

With kind regards.

Yours sincerely



KENNETH W. MORGAN  
Chairman

