The White List

Offshore centres came under attack this year as "tax havens." The creation of the White List was designed to ensure these jurisdictions meet high standards of transparency when dealing with tax. Timothy Faries of Appleby spoke to Tristan Blythe about the White List and its effects.

Tristan Blythe, editor Private Client Practitioner

It was inevitable, and arguably only natural, that people would look for somebody to blame for the financial crisis and resulting global economic slowdown. Bankers very quickly became the butt of jokes and were widely attacked in the mainstream media.

However many Governments of larger economies took a different route. They were seen to attack the practices of offshore jurisdictions, or "tax havens" as they quickly became labelled. Blame for the economic situation was laid at the door of these financial centres and the impression was fostered that all those that use them do so purely to evade paying taxes in their home nation.

This theme was picked up by the mainstream media and propagated amongst the wider public. It grouped all these offshore centres in one category, regardless of how well regulated they were or the quality of work carried out from them.

There were perhaps signs that these attacks were coming. In early 2007 the then Senator Barack Obama was one of those behind the Stop Tax Haven Abuse Bill, a theme that continued throughout his presidential election campaign.

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However the global economic crisis brought things to a head and the pressure on the offshore world stepped up. It became the main focus of meetings of the OECD and the G20.

This led to the creation of the so-called "White List." This was a list of those offshore centres that were deemed by the OECD to have "substantially implemented the internationally agreed tax standard." A second list, the "Grey List" contained "jurisdictions that have committed to the internationally agreed tax standard, but have not yet substantially implemented it." The third and final list, the "Black List" contained "jurisdictions that have not committed to the internationally agreed tax standard."

The criteria to make it onto the White List was to have signed at least twelve Tax Information Exchange Agreements. This meant a number of jurisdictions were in this top tier as soon as the system was announced and launched. Others were able to gain entry onto the list as the year progressed.

Not the first time

One multi-jurisdictional firm that has seen all its locations enter the White List, either immediately or soon after its inception, is offshore law firm Appleby.

Timothy Faries, group head of private client and trusts at Appleby, said that the attacks on the offshore world this year were not surprising. Nor were they the first time these jurisdictions have come under the international spotlight.

"It is something that anybody who has been operating in the offshore financial centre world has become accustomed to over the last fifteen years or so," he said. "Various organisations, such as the OECD and the Financial Action Taskforce, have looked at the low tax jurisdictions from a perspective of an onshore high tax jurisdiction and have come out with negative comments."

Mr Faries believes that this time around politicians, whose voting public had been hit by the economic crisis, were looking "for scapegoats, they are looking for blame to be laid and heads to roll."

"From a political point of view it is very expedient to point the finger at somebody who is outside the pale of the political processes of your own country," he said. "The offshore centres being politically fairly weak, given that most of them are not independent states with a seat in the arena of nations, means that they are pretty easy pickings to vilify."

By playing on the image of "sun drenched atolls" as being the cause of, at least, some of the financial instability, Mr Faries said that some of the scrutiny is taken off the internal practices of the financial minister of the major economies, which he believes had a "much greater role" in the events of late 2008 and early 2009.

What criteria?

Many have previously argued that the offshore centres could be unofficially spilt into two tiers, those that were reputable and those that were not. Private client practitioners certainly knew the jurisdictions which had a good reputation were transparent and well regulated. These were where they sent their work and avoided those that did not have such a strong reputation.

Whilst this may be the case, Mr Faries believes that the White List does not completely formalise this view as the method it uses to differentiate between jurisdictions is not as robust as it could perhaps be.

"It was a bit of an arbitrary way to achieve a two tier system," he said. "Many of the states that were White Listed had just TIEAs and no double tax agreements, and built their numbers to get over the twelve required by signing agreements with relatively small economies that are on the margins of the OECD. They were not with the large economies such as Germany or France.

"It was simply having 12 trophies on the wall with no real qualitative assessment of the importance and quality. If somewhere has 14 agreements but all with small and minor economies and elsewhere has 6 but all with G7 economies, which is more impactful?"

However a number of jurisdictions have since continued negotiations with larger economies, some even getting as far as signing the agreements.

Mr Faries accepts that the system does give a method of demarcation between quality centres and those with lower standards, but argues it was probably not the fairest method of achieving this.

New standards

What appears to be clear though is that signing 12 TIEAs, regardless of whether they are with major economies or not, is unlikely to be the end of the matter. Already a large number of jurisdictions have moved from the Grey List onto the White List, including Liechtenstein, which it can be argued had one of the worst reputations of all. Some have asked if

everybody makes it onto the White List then what is the point? Surely it will invalidate the process and put the offshore world back to where it started with all jurisdictions categorised together?

Mr Faries believes that the standards will change and that new targets will be set by the OECD and larger economies. Indeed the OECD has already indicated that this may well be the case, as the 12 TIEAs measure was a reflection of the situation of the offshore world rather than a standard set in stone that would not evolve.

"Certainly I do not think that any of the Governments in the centres Appleby operate from are thinking that now they have this sorted they can kick their heels back and relax," he said. "They are all continuing to press forward and focusing on quality to get some of the larger economies to sign agreements. They are all assuming that the target is going to move and they do not want to get caught behind."

Client reaction

Unlike many of the issues which private client professionals deal with, the crackdown on "tax havens" and the creation of the White List was quite high profile and broke through into the mainstream media. This meant that clients were fully aware of the progress of events.

"In every office clients were very interested in the situation," said Mr Faries. "The OECD is a high profile organisation and these types of organisations have an impact on public opinion. We are a firm of quality and we want quality clients, so naturally they would be taking note of a development like this.

"Clients of Appleby who were in jurisdictions that were immediately White Listed were pleased that their choice of where to set structures up had been underscored. For those that were in jurisdictions that were Grey Listed initially it certainly was a topic of discussion. There was no panic or people wanting to leave a jurisdiction simply because it was not immediately on the White List, but there was a 'wait and see' view. Subsequent events rectifying this, as all our jurisdictions became White Listed, meant we saw no fallout."

Appleby was proactive in communicating with its clients over the issue, as well as responding to their concerns.

"It was important to us to ensure that when messages were picked up from the financial media by clients, particularly those from Grey List jurisdictions, we were able to give them our perspective too, or the perspective of the relevant jurisdiction."

It is obvious that keeping clients informed is key for firms and that trying to keep one step ahead of events is vital, albeit difficult, for the offshore jurisdictions. What the next steps will be and what changes to the required standards will be is difficult to know. However Mr Faries certainly knows one area that he would like to see improved.

"It would be good to have a robust model TIEA that is agreed by a number of offshore financial centres and ideally the OECD," he said. "This would help prevent the differences that are cropping up in agreements, which you would expect as a multiplicity of negotiations between various governments with various offshore financial centres."

It would appear that the White List has gone some way to recognising the differences between offshore financial centres, however a more qualitative and standardised approach would make it even more meaningful and useful in choosing a jurisdiction in which to do business.

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