

Offshore lawyers feel unfairly targeted in the debate over tax evasion. But, finds **Charlotte Edmond**, advisers in 'whitelisted' markets hope to take advantage

UNDER SCRUTINY

Lend an offshore lawyer your ear for five minutes and they will give you a list of reasons why you should do your business through their jurisdiction. Give them 10 minutes and you have opened the floodgates for a tirade about how offshore communities are consistently targeted and attacked by their onshore counterparts, who are worried about loss of business and tax leakage.

And to an extent they have a point. When the global economy is on its knees and leaders are facing increasing pressure to be seen to be responding appropriately, vast sums of money lost through tax evasion and avoidance is an attractive target. Especially when the primary protagonists in this problem are not potential voters.

So when, at their meeting in London this April, the G20 leaders took up the baton of the Organisation for Economic

and Development (OECD) to crack down on so-called tax havens, no-one in the offshore world was much surprised.

Co-operation and Development (OECD) to crack down on so-called tax havens, no-one in the offshore world was much surprised.

As Conyers Dill & Pearman chairman John Collis puts it: "If G20 was the only thing digging at the offshore world then my life would be a lot easier. Every time there is an election someone is looking to score points and this is

Black and white

Among a series of measures signed up to in London by the G20 group of world leaders was a pledge to name and shame countries that fail to comply with internationally agreed tax standards.

Within hours of the agreement the OECD had issued a list of countries, which as far as it is concerned are not doing their bit to help cut down tax evasion and avoidance and are not complying with its guidelines (the OECD considers countries non-compliant if they have fewer than 12 bi-lateral agreements with foreign governments to exchange information on request). Among those countries on the blacklist were Switzerland and Luxembourg as well as a fair number of offshore jurisdictions including the Cayman

Islands, British Virgin Islands (BVI) and Bermuda. The OECD is aiming to introduce sanctions for non-compliant countries by the end of the year.

On the other hand, Guernsey, Jersey and the Isle of Man were placed on the list of jurisdictions "that have substantially implemented the internationally agreed tax standard".

Lawyers believe the issue primarily lies with corrupt individuals rather than the Fortune 500 and FTSE clients they advise. As one managing partner puts it: 'As a firm we weren't in the business of advising tax crooks in the first place'





While politicians, including Gordon Brown and Nicolas Sarkozy, were quick to celebrate the outcome of the summit as closing the doors on tax havens, understandably other governments, such as that of Switzerland, were less than impressed.

Shutting the doors

But how did the competitive offshore industry view this news? After all, favourable tax treatment is the mainstay of their business.

Since April efforts internationally to reach information-sharing agreements have certainly moved up a notch. At the time of writing, the BVI had signed agreements with 11 countries – up from three two months ago, and Bermuda had moved onto the ‘whitelist’.

Even reading between the lines it seems that as a whole advisers approve of the G20 measures. Lawyers are unanimous that the amounts of money being quoted as lost to criminal activities and tax evasion in tax havens is vastly inflated. Campaigning group the Tax Justice Network estimates that about \$11.5trn (£6.9trn) in funds is held offshore, with a resulting tax loss of \$250bn (£151bn). Whatever the real sum is, the network believes the issue primarily lies with corrupt individuals

‘Transparency contributes to greater global financial security, and the fact that countries are being required to contribute may well be seen as a good thing in principle by some clients’

David Walwyn, Ogier

rather than the Fortune 500 and FTSE clients it advises. As one managing partner puts it: “As a firm we weren’t in the business of advising tax crooks in the first place.”

For many, the establishment of a whitelist acts as an endorsement of the high standards operated by the offshore financial centres.

Geoff Cook, chief executive of Jersey Finance, is understandably positive about the light in which the OECD list puts his jurisdiction, which has emerged as one of the biggest beneficiaries of the new measures. “There is an acknowledgement that we are on the whitelist and we have seen an increased number of enquiries and



‘We see the OECD whitelist as a form of acceptance for certain jurisdictions. Ultimately it would have a negative effect for OECD non-compliant jurisdictions’

Peter Bubenzer, Appleby

more interest as a result.

“I do not think it will change the overall footprint of offshore business but it may lead to a different way it is sliced up.”

And while outright criticism of more secretive havens such as Switzerland, and Liechtenstein in particular, is only off the record, it is clear that law firms that operate in whitelisted centres are hopeful the measures will place them in a better light than firms working out of other tax-favourable locations.

Appleby managing partner Peter Bubenzer comments: “The exercise we have gone through has reinforced the continuing existence of a number of questionable

“There will be some jurisdictions in the greylist that will get left behind by some of the super players offshore, and the distinction between onshore and mainstream offshore jurisdictions could decrease. However, for most of the clients the big offshore firms deal with this won’t be an issue as they are major international businesses and will be disinclined to deal with marginal offshore jurisdictions.”

“Transparency contributes to greater global financial security, and the fact that countries are being required to contribute may well be seen as a good thing in principle by some clients.”

Certainly, no-one is expecting non-compliant Switzerland to suddenly lose its power and attraction as a major financial centre, but offshore countries on the whitelist are certainly using it to fly the flag to businesses.

“Standards matter. The Isle of Man is proud of the fact that it gave the OECD a commitment in 2000,” says head of income tax for the Isle of Man Government Malcolm Couch.

“If we went back to the beginning businesses saw information-sharing agreements as controversial and potentially damaging. You have to have evidence as well as slogans and we now have that.”

A club for rich countries

However, the Isle of Man Government and its lawyers level one major criticism at the OECD and its efforts, which is echoed around the offshore community: they don’t have a voice.

While the OECD and G20 do not
Continued on page 20

Continued from page 19

in themselves have any legislative power, there is no denying that they do have clout. The member countries represented in the OECD's global forum are all rich, developed nations – and not one of them is offshore.

One idea mooted by the offshore community is the establishment of an international tax cooperation body similar to the International Organisation of Securities Commissions (IOSCO) which looks after the views of a huge swathe of the world's securities regulators.

As Collis comments: "When people see businesses using an offshore structure they automatically think 'oh, they must be trying to avoid tax', and people are reluctant to give the offshore world a voice. Realistically though, anything that involves as many international agendas as the G20 is likely to take a really long time and so alterations in onshore domestic regimes will have more of a knock-on

Major offshore jurisdictions and their compliance

Source: OECD

Major offshore players	Year of commitment to OECD standard	Number of agreements signed*	List
Bermuda	2000	12	Joined whitelist in June 2009
British Virgin Islands	2002	11	Greylist
Cayman Islands	2000	10	Greylist
Guernsey	2002	13	Whitelist
Isle of Man	2000	14	Whitelist
Jersey	2002	14	Whitelist
Liechtenstein	2009	1	Greylist
Luxembourg	2009	7	Greylist
Switzerland**	2009	0	Greylist

*As at 25 June, 2009 **Switzerland has no agreements signed to the OECD standard but has intialled agreements (ie the text has been agreed at officials' level) with seven countries.

effect in the immediate term."

Firms in particular are keeping a close eye on what will come out of the new administration in the US, with President Obama, prior to his election, having pledged to cut back on tax abuse and backed the Stop Tax Haven Abuse Act.

A different perspective on international moves to cut back on tax havens is given by Jonathan Hart, general counsel of Guernsey-based Hansard Trust Company. "Primarily we place money in the branches of UK banks here in Guernsey.

Estimates put total deposits at about £1.43bn

– so if we have that here, there must be other jurisdictions with easily £10bn.

The money doesn't stay in

Guernsey; it goes back to the City and gives liquidity."

"Perhaps sterling would remain [the currency of choice], but I do not think the UK Government has considered the liquidity consequences if the G20 keeps pushing offshore funds."

Onshore view

However, for all that politicians are giving the offshore jurisdictions a bashing, whether via the OECD/G20

Hodkin believes that greater cooperation in areas such as tax will not only help strengthen the financial services industry, but will also lead to an improvement in legislation. He cites the UK's adoption of a new process for securitisation in 2006 as a prime example. The UK Government believed it was losing business to Jersey, which had a more attractive regime, and so subsequently updated its own. A downside, however, is a risk

'When people see businesses using an offshore structure they automatically think 'oh, they must be trying to avoid tax', and people are reluctant to give the offshore world a voice' John Collis, Conyers Dill & Pearman

or the proposed banking code of conduct, onshore business lawyers are far less critical.

"It's about expertise", says Matthew Hodkin, a tax partner at Norton Rose. "When you use an offshore structure the issue is less about tax avoidance and more about having a jurisdiction with light-touch regulation and with corporate law that is more flexible. There are

very valid reasons to go offshore such as neutrality and simplicity."

that money could flow to non-compliant jurisdictions if they do not all play ball.

"A major issue, though, is the OECD requires everyone to play by the same rules," he warns. "It is a bit like a flood – you can raise everything up but if there is just one part below the level of the flood everything will flow to that point."

With more tax information exchange agreements being signed weekly, it is clear that the OECD way is the way forward at the moment.

As Bubenzer summarises: "The only way to get rid of offshore as an attractive destination is to change domestic tax law. And that would require a co-ordinated effort across all of the major players, which is about as likely as me walking on the moon."



'A major issue though is the OECD requires everyone to play by the same rules. It's a bit like a flood – you can raise everything up but if there is just one part below the level of the flood everything will flow to that point'