

Since the financial crisis the pressure on offshore financial centres has increased significantly.

The US, the EU and organisations like the G20 and the OECD are pushing a growing list of regulatory demands, not least in terms of transparency and tax information exchange. At the same time most offshore jurisdictions, just like onshore jurisdictions, have face budget shortfalls, which added pressure on their low tax regime. The Cayman Financial Review requested responses from various offshore financial centres to the financial crisis and regulatory pressures.

Bermuda

by Peter Bubenzer

Business climate

The global financial crisis that originated in the US as a result of both regulatory and supervisory failures, has given rise to a new era of international focus. The crisis and the need to repair the damage caused by it brought attention to the issues of tax evasion, financial crime and bank regulation. Bermuda has long been a jurisdiction that puts its professional credibility first. Its historical efforts to combat financial crime and assist other jurisdictions combat tax evasion are well known. Bermuda signed its first tax information exchange agreement with the US in the early 1980's and has long had a system of ensuring that anyone doing business in Bermuda is known to the financial regulatory authority (the "BMA").

Notwithstanding the spate of unprecedented and sustained attacks on offshore financial centres ("OFCs") by the OECD and G20 member states in relation to issues of transparency, anti-money laundering ("AML") and tax reform, Bermuda continues amongst those financial centres that lead the way not only in cooperation but in determining the standards by which all jurisdictions are to be assessed going forward.

Long before the crisis, Bermuda was working hard with the OECD to develop international standards for the exchange of information in relation to issues of tax evasion. More recently Bermuda was appointed as a vice chair of the OECD Steering Group, which is tasked with setting out how the OECD Peer Review Group is to assess the success and rate of local implementation of the provisions contained in the tax information ex-

change agreements entered into by the jurisdictions being reviewed.

Any change in the business climate in Bermuda in the last several years has been due to the global economic downturn and consequently reduced onshore transactions rather than as a result of the very public and visual attacks on OFCs. Like all international financial centres, Bermuda is not immune to the vagaries of the international market place. The volatility associated with the 2008 US financial crisis which ultimately led to the global credit crisis which, in turn, created the global recession, still endures. In the wake of the global recession, stagnant capital markets, credit markets and merger and acquisition markets still persist. The convergence of unstable global financial markets with the emergence of a new international tax and regulatory order has created an air of uncertainty that is being felt by everyone. Although there has been a noticeable drop in new business, Bermudian based or registered businesses have continued



to keep the island's professionals busy.

The European Union's Alternative Investment Fund Managers Directive (the "AIFMD") is a significant issue that the funds sector has to confront, whilst the insurance sector is heavily focused on securing Solvency II equivalency. The issue with the AIFMD is not so much its content but the fact that the European Commission, Parliament and Council themselves are not in agreement over such fundamental issues as to whom the Directive will apply and how. The AIFMD is highly politicised within Europe and has been publicly criticised by a number of jurisdictions around the world, including the USA. Like the rest of the world, Bermuda will have to wait for Europe to agree on the final terms of the AIFMD before being in a position to assess its likely impact on the island's funds sector.

Tax competition

Bermuda's consumption-based tax model was developed a long time ago. Bermuda does not impose capital gains or income tax and has not needed to, thanks to the government's fiscal policy and approach over the past six decades. The government has also steadfastly held to the position that it has a sovereign right to adopt a tax system of its choosing, as the representation of the people, and has maintained a tax structure which is designed to attract foreign capital, which ultimately sustains economic growth.

Tax competition is a reality of the global business environment and is as much a political tool in onshore jurisdictions as it is in OFCs. One sys-

tem does not and will not fit all. The G20 themselves have, following a period of discussion over whether to introduce a form of global tax on financial transactions, admitted that the concept of a global level playing field is just not a reality when it comes to taxation. Further, most high taxing onshore nations realise and accept that OFCs are often an integral and important part of those countries' own financial and corporate markets. More and more reports are being published that evidence the benefits for onshore jurisdictions of welcoming companies from the OFCs to do business with companies based on their shores. In reducing access to OFC markets a country tends to make domestic businesses less competitive internationally.

Tax systems are based upon national boundaries whilst multinational businesses are not limited to those boundaries. An objective of business everywhere is to maximise profit, which will create a need for ways in which to minimise costs. Tax is one of those costs and accordingly multinational companies will structure themselves to maximise the benefits of tax competition around the world. International attempts to change transfer pricing laws or rules on the treatment of controlled foreign corporations may well not resolve the problem faced by those countries which need high tax revenue in order to balance their books. The risk they face is that the higher the tax rate they place on businesses, the more businesses will want to leave, which in turn results in a reduction rather than an increase of taxable revenue.

It has been suggested that developing countries lose out on millions of dollars of tax revenue because of the use of OFCs by companies and individuals who have invested in those countries, or by corrupt governments which steal such money and hide it in OFCs. Opponents of such claims have pointed out that many of those investments would not have occurred had the ability of investing through an OFC not been available. Further, the systems and structures used to divert funds away from being taxed by developing countries can just as easily be used by onshore companies. Misapplied funds from corrupt officials usually end up onshore, safe in the anonymity of large numbers. OFCs like Bermuda offer a unique opportunity for investors to come together from all corners of the world and develop relationships in a tax-neutral, politically stable and legally sound environment. The results are the direct and indirect investment of many billions of dollars in both developed and developing countries.

Bermuda's tax model works for Bermuda and there is no indication that the Government is going to change something that works, simply because other countries use a different system. Tax competition is not a new issue and it is certainly not one that is going to disappear. It has allowed

small countries like Bermuda to thrive and develop into sophisticated financial centres which, in turn has provided more employment, an increase in taxable consumption and overall a better quality of life for Bermudians.

Efforts and existing regimes relating to transparency

Bermuda has never had special secrecy laws and accordingly does not have the issues of some other countries such as Switzerland and Luxembourg, where business and, indirectly, the economy have relied heavily on the ability to offer secrecy.

Bermuda assisted in the development of the OECDs international standard on tax information exchange and now sits as a vice chair on the OECD Steering Group tasked with, inter alia, ensuring the proper implementation and operation of the provisions of the many tax information exchange agreements ("TIEA") signed by countries the world over. Bermuda itself has been negotiating, signing and implementing the provisions of TIEAs since the early 1980s after its first TIEA with the US. Cooperation between the US and Bermuda (and other countries with whom Bermuda has signed TIEA) in relation to requests for information is just one of the ways in which Bermuda has shown its commitment to lead the way in the fight against tax evasion and wider financial crime.

Bermuda has never been and is not interested in becoming a haven for tax evaders or financial criminals and has long taken the stance that unscrupulous businessmen and financial crime should be avoided. Bermuda has never permitted bearer shares to be issued. Further the BMA requires that, other than in exempted circumstances like when a company is listed on a recognised stock exchange, the identity of the ultimate beneficial owner of all Bermuda companies, together with the people and entities between them and the company itself, be known upon incorporation and as and when these parties change. Bermuda's continued development of its own regulatory framework and the adoption of new international standards in regulation and legislation covering matters such as anti-money laundering is clear evidence that Bermuda is not a "light-touch" jurisdiction. Bermuda takes these matters seriously and continues to cooperate and assist its key jurisdictional partners in combating financial crime and tax evasion. Its focus is on offering legitimate business strategy opportunities in an internationally recognised regulated environment.

Vision for the future

OFCs are recognised as valuable conduits for the efficient and secure investment of sig-

nificant capital into and out of onshore economies. They are also effectively acknowledged as being an integral part of the efficient deployment of capital throughout the global financial system. OFCs like Bermuda are more often than not seen as necessary partners to onshore businesses and economies. We should expect to see a continued growth and strengthening of those OFCs that take no part in the support of financial crime and tax evasion together with an increase in the cooperation between them and all other legitimate jurisdictions to further enhance the tax, regulatory and legal frameworks within which they allow business to be transacted.

The investment of funds from the likes of the US, the UK and Europe into jurisdictions like Brazil, China, India and Russia will continue and such investment will continue to be assisted by the stable, secure, reputable and reliable OFCs which are accepted in the global marketplace. The uncertainties created by the AIFMD and the myriad of legislative initiatives making their way through either the US Senate or House of Representatives will no doubt have some effect on Bermuda. The extent of that will not be known until certainty on the provisions of each separate piece of legislation and regulation has been reached. Bermuda is certainly well placed to make the most of the changing global markets and will no doubt continue to be a leader in each of its key market sectors. As history has shown, whilst one market closes, others open up.

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