



## TRUST SERVICES, S.A.

*Fiduciary and Corporate Services to  
Professional Firms, Institutions and Individuals since 1981*

June, 1998.

# OFFSHORE PILOT

### *Countdown for Tax Havens*

In the last two editions of Offshore Pilot I have emphasised just how important Panama's sovereignty might become in the future as America, Britain and the European Union join forces in breaking down the financial benefits of doing business in offshore financial services centres. I had no intention of returning to the topic again but, thanks to the May meeting of the Organisation for Economic Co-operation and Development (OECD) in Switzerland, more comment is warranted. A majority of the 29-member OECD agrees that a campaign should be launched to stamp out tax havens, with a target of 7 years in which to achieve the goal. Switzerland and Luxembourg were the dissidents who argued that an accompanying report entitled, "Harmful Tax Competition, an Emerging Global Issue", was unfair. Switzerland described the report as partial, unbalanced and too narrow. Luxembourg said that the OECD was trying to abolish bank secrecy. What a preposterous thought! Jeffrey Owens, an OECD official, said that the crackdown was primarily aimed at "islands in the sun", which dovetailed nicely with the comments of the British Foreign Secretary, Robin Cook, who had stated a few months ago that Britain's 5 Caribbean islands in the sun were expected to review their financial services legislation with a view to having it more in harmony with Europe's regulatory regime. I hope they do not become islands on the run.

### *The Beatles, the Pelicans and the Fishermen*

Shortly after reading about the OECD report, I found myself watching two large fishing boats hauling in their catch, surrounded by what appeared to be a virtual blanket of

pelicans, frantically attempting to snatch the fish from the fishermen's nets. In the background a Beatles song from the Sixties, "Taxman", was playing as I indulged myself in a fit of nostalgia. George Harrison was delivering the pungent lyrics of the song, reminding people they were really working for the taxman and to be thankful that the taxman didn't take every penny. Continuing to gaze out at the azure Pacific, I began to see a correlation between taxes and the frenetic activity taking place around the fishing boats. I imagined the boats as offshore financial centres and the pelicans as anxious tax collectors endeavouring to pluck whatever they could from the nets.

The pressures being exerted, particularly on the Caribbean, are a consequence of events which date back a long time. During the Sixties, before most of us had been made aware of the scourge that drug trafficking was to become (now with an annual turnover from global trade alone of \$400 billion) many ordinary people with wealth began using offshore financial centres in increasing numbers with the intention of hiding their income and not declaring it to tax authorities. The evaders and the offshore financial centres continued to grow in number until a global tax-dodging public was adequately catered for. But back in the Sixties, with swingeing tax regimes, the British and American nationals mainly gravitated towards the British West Indies in their search to escape from the taxman. The reasons for choosing the Caribbean were varied, but shared common law, proximity (in the case of the Americans) historical links (in the case of the British) and hospitable legislation were probably large magnets. Admittedly, the Channel Islands and other traditional centres were also receiving a



sizeable share of the market at this time. Untaxed income could safely and (most importantly) secretly nestle in the hands of bankers, lawyers and accountants in locations apparently oblivious to the bilateral and multilateral tax treaties being negotiated elsewhere. It seems as if the islands had erected a wall of conch shells, impenetrable by tax collectors. Both the United Kingdom and America were affected emotionally by this denial of access to tax information, but each for its own special reasons. Obviously, both were equally galled by the situation, which was the fiscal equivalent of applying sand paper to the reproductive parts of a tax collector's anatomy, but what upset the Americans in particular was a disregard of laws and what embarrassed the United Kingdom was the responsibility it had for the Caribbean territories.

America has a reputation, amongst some academics, for parochialism when it comes to observance of the law. Whilst fully understanding its own laws (and expecting the rest of the world to be interested in them) America, it is felt, has a shallow knowledge and appreciation of other legal systems. In consequence, the ubiquitous offshore confidentiality laws were – and still are – an anathema. Law is big business in America, with ten times more lawyers per head of population than the Netherlands and whilst it might be socially acceptable to sometimes see the law as an ass in much of Europe, the tendency is less so in America. The fact that most of the offshore havens did not impose income tax made them indifferent to the tax laws of other countries, including those of America. To add insult to injury, these islands were but a coconut's throw away from the American coastline. The United Kingdom for its part was not only losing tax revenues, but was responsible for those dependent territories (previously known as colonies) in the Caribbean.

Although many of the wrinkles have been smoothed over the years, the truce is an uneasy one. There is no easy answer to the competing interests of developed economies and island offshore financial services centres, and I have a hunch that the Beatles will have been forgotten and the

pelicans will have stopped bothering the fishermen before a solution is found.

### ***Building Blocks***

On 12<sup>th</sup> March this year, Panama's new banking law was passed. The National Banking Commission has been replaced by an autonomous Supervisory Board which will comprise five Directors and a Superintendent and which will decide all material issues. These Directors appointed to the Supervisory Board cannot be practising bankers, directors of banks or hold more than 5% of the stock of a bank, so that conflicts of interest can be avoided. This independent Supervisory Board will be funded by fees charged to the Banks and the Superintendent has been given new powers to demand information and reports from bankers. Foreign banks operating in Panama will be treated as domestic banks and will be subject to the requirements of the new law. A very pleasing development is the revision of minimum capital requirements which have been raised from \$1 million to \$10 million.

This strengthening of banking supervision is just one more building block in the development of Panama as a full-service offshore financial services centre. Even the Companies Law which has operated for over 70 years has been reviewed and improved to meet the needs of the international businessman and investor. Here is a selection of some of the improvements which have been made: A company incorporated under a foreign law can now elect to be re-domiciled in Panama, regardless of the provisions of its law of origin. Shareholders and directors can now conduct meetings via e-mail, internet, telefax or telephone and the resolutions recorded in the supporting minutes will be valid. A company can have corporate entities serve as its subscribers, directors and officers.

When the millennium arrives and the attractions of some of today's leading offshore financial services centres begin to be eroded, Panama's improved banking law, efficient corporate law, well-established trust law, modern captive insurance legislation and foundation law



will be even more attractive. Surely, however, what will truly make Panama a safe haven will be its sovereign independence. Miami is the stepping stone for the Caribbean offshore financial services centres and Panama being within easy competitive radius of it will be an added plus.

#### ***Honesty and the 7 Deadly Offshore Sins***

Earlier on, some of the background to the hostilities between the onshore and offshore governments was mentioned and although much of the publicity and propaganda would have you believe that taxes and money laundering were the sole motivating forces behind offshore bank accounts, corporations or trusts, there are less sinister reasons which would not provide the drama and intrigue that is grist to the mill for many magazine writers and journalists. Privacy is a strong reason, a simple and honest expectation that one wants to fulfil in many aspects of one's life. Some people want it and expect it when it comes to their financial affairs, for example. The same applies often in the commercial world. In neither case does this bear any remote relationship with nefarious activities, but there is a prejudicial body of thought ready to tar these seekers of privacy with the same brush used for the criminals. Individuals might wish to have certain testamentary arrangements kept private from some family members and companies might want to trade in markets without disclosing their long-term plans to competitors, for instance. These types of objectives are all legitimate and we at Trust Services, S.A. meet and deal with such situations constantly. Most professionals in

the offshore industry have developed an early-warning system (instinct and experience) that will detect the criminal intentions of some enquiries. Admittedly, once in a while a shark slips through the net and is able to deceive a reputable bank, lawyer or trust company, but that is a hazard and a cost those of us engaged in the offshore financial services business have to risk. But it is certainly no reason to go overboard and accuse offshore practitioners of being co-conspirators in criminal operations. That said, we must all accept there are offshore practitioners who willingly aid and abet criminals and it is obviously in your best interests to tread carefully when choosing an offshore practitioner. Here are 7 Deadly Offshore Sins to avoid:

1. Deal with a company that isn't licensed in the jurisdiction from which its head office operates.
2. Do business with a company that isn't audited annually, preferably by an international firm.
3. Don't consider obtaining references or find out how long the company has been operating.
4. Take no account of the calibre of management, particularly their qualifications and experience.
5. Give no thought to meeting the company's senior personnel before conducting business.
6. Base your choice of company on the lowest fees tariff.
7. Ignore taking tax and legal advice when necessary.

No checklist is foolproof, but these days you need all the help you can get.

---

*Offshore Pilot is published by Trust Services, S. A. which is a British-owned and managed trust company licensed by the National Banking Commission of Panama. We shall be pleased to provide you with details of our qualifications, experience and services.*



*Engaging an offshore representative is an important decision and we advise all persons to seek appropriate legal and tax advice from professionals licensed to render such advice before making offshore commitments.*

**Bankers**

*HSBC Bank plc*

*Dresdner Bank Lateinamerika AG*

**Auditors**

*Deloitte & Touche*

*Physical Address: Suite 522, Balboa Plaza, Avenida Balboa, Panama, Republic of Panama.*

*Mailing Address: Apartado 6-2495, Estafeta El Dorado, Panama, Republic of Panama.*

*Telephone: (507) 263-5252 and 269-2438 – Telefax: (507) 269-4922*

*E-mail: [marketing@trustserv.com](mailto:marketing@trustserv.com) Web site: [www.trustserv.com](http://www.trustserv.com)*