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OFFSHORE PILOT QUARTERLY

Heavy Metal

It is hurricane season in the Caribbean again. On some islands, red flags will be raised whenever a hurricane is approaching. In the Bahamas at a recent conference a red flag should have been raised but because of heavy machinery, rather than heavy weather.

“There’s a steamroller heading along the road and we have 3 choices. We can stand still and be crushed; we can jump out of the way or we can get on board.” This blunt message was delivered by one of the speakers discussing the future of offshore financial services. He was reacting to comments made by Robin Cook, the British Foreign Secretary, in relation to those territories which are dependencies of European Union Members and must now, as Cook put it, fall in line with European Union standards of regulation and disclosure.

Tax evasion is a major European Union concern, and although in 1776 13 British colonies in America went to war over taxation, it is not expected that any of today’s 13 British Overseas Territories will do the same - despite some raised voices in these territories suggesting that independence is the answer. Donald Gelling, Chief Minister of the Isle of Man, probably struck the right tone when he said that his territory wants to remain a Crown dependency and sees independence as not being a “quick fix because of internal

pressure”. As if endorsing the inevitable, the Isle of Man government has declared a moratorium on the creation of any new non-resident companies. It gave no prior notice. Jersey, another Crown dependency just off the United Kingdom’s shores, is also giving conciliatory signals. A good will mission has recently travelled to the United States which included the head of Jersey’s police authority, the Island’s police chief and the deputy-general of Jersey’s Financial Services Commission. They have been in New York and Washington, visiting, amongst others, the Securities and Exchange Commission, the Federal Reserve and the FBI. John Moscow, deputy chief of the investigation division at the New York District Attorney’s Office, was very pleased with the message delivered by the visitors from Jersey. Praise from Mr. Moscow is not necessarily reassuring. Mr. Moscow featured in our article, “The Silence of the Scams”, now on our website, in which his position on the use of draconian extra-territorial powers against foreign banks and institutions was referred to. He argues that U.S. dollars wire-transferred from, say, London to Singapore, would most likely have passed through the New York clearing bank system and this momentary passage via a series of electronic blips should, therefore, subject the transaction to the



jurisdiction of the American courts. This is one post-cold war threat from Moscow that no foreign banker could have imagined. In the Caribbean a very tempestuous season is predicted this year. The weather, according to meteorologists, will not be much better.

Passport to Compromise

In the case of Britain's Overseas Territories, Robin Cook has tried to soften the blow of the forced changes by offering people in the territories full British citizenship; the message, however, seems to be: comply or die. They have been told that they must bring their regulation up to U.K. standards speedily. Moving too quickly, as I said in my March interview with the Wall Street Journal, could be very damaging for some of the territories. Nevertheless, several measures are expected to be in place by the end of this year. The Cayman Islands and the British Virgin Islands have already signed up to the Vienna Convention on money laundering. Anguilla and the Turks & Caicos Islands are standing in line. Meanwhile, a recent election in Bermuda has delayed legislation adding fiscal crimes to those covered by the Vienna Convention. Although unlikely, Bermuda, Britain's oldest and most populous dependency, would be the territory to go the independence route if measures proposed by Britain were unpalatable.

The British Foreign Office has warned that if it loses its fight against present European Union moves to tax non-resident savings or to provide information on that income to other states, then the Overseas Territories might find themselves having to follow any directives that are introduced by the European Union (see the next page).

A hint of what eventually might be in store for the Overseas Territories has been given in the Irish Finance Bill which was published in February. Confidentiality and taxation of Irish non-resident companies have been addressed in the bill and it is clear that the intention is to prevent the registration of Irish companies where only foreign business will be conducted. A bombshell for Dublin's expanding and popular offshore centre. As from 11th February, 1999, all companies incorporated are to be tax resident in Ireland (there is a transitional period for existing companies which ends this October) although there are provisions which state that companies may be subsequently exempted from this requirement in consultation with the Revenue Commissioners. That said, companies which are not classified as tax resident in Ireland will be required to declare where they are resident, whether they, or any related companies, are trading in Ireland and also reveal details of the beneficial owners. In future, non-resident companies will be required to have an Irish resident director or, alternatively, provide a bond to the value of IR GBP 20,000 as a compliance surety. Subject to certain exemptions, the general rule will be that the number of directorships that any one person can hold will be limited to 25. This could affect those professionals who offer such nominee services on a large scale.

Ironically, the White Paper that has produced such debate was presented by Robin Cook to the House of Commons on St. Patrick's Day, 17th March, 1999. Entitled, "Partnership for Progress and Prosperity: Britain and the Overseas Territories", it contains much of what this newsletter has touched upon in the past and its only attractive feature, as



far as the Overseas Territories are concerned, must surely be the alliteration in the paper's title. The theme throughout is similar to that of the Edwards Report which dealt with the Crown dependencies of the Channel Islands and the Isle of Man and it confirms that radical legislative and regulatory changes can be expected in the Overseas Territories. The British Government appears determined to honour its international obligations and Robin Cook has said that he wants the British offshore centres to co-operate more freely with outside law enforcement agencies as well. Passing on information will not be enough: they will be expected to conduct investigations on behalf of overseas regulators and compel citizens to produce evidence. Without this new approach, the British Government believes that it will be not only exposed to international criticism, but to potential liabilities as well.

In a recent poll conducted by the British Broadcasting Corporation, "Yesterday", by the Beatles, was voted the 20th century's top song, based on sales figures, combined with listeners' and songwriters' choices. A similar poll amongst practitioners in the British offshore centres would, I think, produce the same result for this song with its nostalgic message - although for different reasons.

The Magnificent 7

On taxes, the British Government is supportive of all the initiatives taken by the EU, OECD and G7 Group in respect of tax evasion and, to the dismay of many, tax avoidance. Once there was a distinct barrier between evasion and avoidance and this development is ominous. In the White Paper, reference is made to the EU Code of Conduct for taxation of

businesses and each Member State's commitment to ensure that any of its associated or dependent territories adopt the code also. The White Paper refers to the EU's draft directive which would require Member States to operate a withholding tax on cross border income from savings by individuals or, alternatively, to provide information on savings income to other Member States. The consequences of this for the European offshore centres could be dire. The G7, acting more like the Magnificent 7, have stepped forward with blazing guns and are pushing the OECD to develop a system that would lead to the exchange of information between tax authorities, not only in cases of evasion, but avoidance also. Not satisfied with blending avoidance with evasion, the G7 Group wants tax offences to fall under the definition of a suspicious transaction: that would mean that the reporting requirements for money laundering would apply.

A former United States Federal Reserve Governor has spoken out against his own government's desire for 24 hour monitoring of bank accounts in order to detect suspicious transactions. In Europe, governments are trying to achieve the same thing, their target being non-cooperative European offshore centres. So far, the success rate of this policy in the United States has been dismal. Between 1987 and 1995 banks filed around 77 million reports on currency transactions involving large cash deposits. As a result, 3,000 money laundering cases were opened, resulting in 580 guilty verdicts. A ratio of 25,000 reports to one case, producing 0.2 convictions. As far as laundering goes, it just doesn't wash.



Talking Dirty

The UK White Paper also looks at the way financial structures are created and managed in British offshore centres. Complexity can serve as camouflage for criminal activities and there is concern that some companies which are formed are often a staging post for such activity. Bearer shares are seen as bad enough, but the ubiquitous IBC (International Business Company) which has done for the British Virgin Islands what Mickey Mouse did for Disney, sticks out like a sore thumb and its fate must now be in the balance. Minimal details are available from the public records on IBCs and only one director is needed; public disclosure of the Register of Directors is not mandatory and this opaqueness causes many banks to refuse to open accounts for IBCs. What is proposed is that company formation agents should be more closely regulated and that they should hold key information which can be disclosed to any regulator on request. In the Channel Islands they have targeted trust companies for tighter regulation as well, a development which I readily agree with. Our views on the operation of offshore trust companies can be found on our website (Charged with Magic). There must be anxious practitioners hoping that some of the features of the Irish Finance Bill are not eventually included in their own legislation. Robin Cook says that those Overseas Territories offering offshore financial services should have similar regulation and licensing requirements to each other for the sake of fair competition. Cynics might say that it is not a level playing field, but a *levelled* playing field, that might be the end result. There is talk of greater international co-operation, but, as usual, consensus cannot be found in government circles.

The Financial Action Task Force's head, Patrique Moulette, has shunned G7 overtures for his organisation to consider tax issues – despite his organisation having been created by the G7. He is concerned with money laundering only and says that the OECD's drive against harmful tax competition and the G7's worries over tax evasion are not part of his brief. In any event, he disagrees with those countries that see money laundering and tax evasion as being similar. When talking about dirty money – unlike tax evasion – no one disputes that it is internationally recognised as a crime. The United Nations does not challenge the existence of offshore centres and sees their role as being that of low tax areas that ease international capital flows. UN officials believe that these centres will survive because of this role. It would be far better to cooperate with them, UN officials say, and, at the same time, distinguish between the money laundering issue and the arguments about taxation and its harmonisation. It just might be that the UN is mindful of the fact that under UN – and also European Union – human rights conventions there is a right to privacy.

Confidentially Speaking

Meanwhile, the attractions of Panama as an offshore centre are growing. Visitors coming for the first time are amazed at the level of sophistication found in the banking and other commercial sectors. The social and economic climate of the jurisdiction is also helping. According to the United Nations Economic Commission for Latin America and the Caribbean, Panama was only one of 3 countries in the region (Chile and Brazil being the other two) that were successful in reducing poverty levels between 1990



and 1997. Salomon Smith Barney reports that Panama is one of its favourite choices in the region because of its dollarized economy, lack of dependence on external financing, conservative fiscal policy and low correlation with the economic cycles of the rest of Latin America. Added to this, a very smooth and peaceful general election took place on 2nd May this year when Panama elected its first-ever lady President, Mireya Moscoso. Evidence of the orderliness of the election could be found in the fact that the event attracted very little international newspaper or television coverage.

Panama is being discovered by those who were once sceptical about the Cayman Islands. In 1979, when I went to work in the Cayman Islands, more people had difficulty locating it precisely on a map. Now, the Cayman Islands are synonymous with offshore banking. Today, unlike the Cayman Islands and other regional

dependencies, Panama is being helped along by the new philosophy and policies being declared by the OECD. Here, there is a clear boundary between dirty money – as understood by the G7's Task Force – and foreign fiscal crimes. The confidentiality laws are clear and unambiguous. Cardinal Richelieu said that "secrecy is the first essential in affairs of state". It should be so for an individual's affairs as well. A *mélange* is being created of money laundering, confidentiality, drug trafficking and taxation. Perhaps it's based on a belief that because criminals use money, all use of it should be suspect? George Orwell would have appreciated this reasoning. Our speaker in the Bahamas reminded us that in the British Overseas Territories all roads lead to Whitehall, if not Rome, and steamrollers can travel along them without hindrance. How comforting to watch their progress from the sidelines here in Panama.

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