CHAPTER 18

RELATIONS WITH THE ONSHORE WORLD: AN INTRODUCTION

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18.1 For some time prior to the 1980s, the relationship between the onshore and the offshore jurisdictions was somewhat ambivalent. The onshore jurisdictions happily accepted the funds flowing in from the offshore jurisdictions, whilst bemused at the source of those funds.

18.2 Jurisdictions like the United States, the United Kingdom, Switzerland and Austria saw their financial institutions swelling with cash arriving from the so-called tax havens, now euphemistically called international financial centres.

18.3 In the early 1980s, urged on by the United States, which saw tax evasion as a major concern, the international community woke up to the fact that although tax avoidance was an acceptable practice, places which offered not only sea, sand and an exotic holiday experience had become the repository of the funds of fraudsters, drug traffickers, terrorist financiers and tax evaders.

18.4 The OECD criteria for determining whether a jurisdiction is a tax haven are as follows:

- (i) whether the jurisdiction imposes no or only nominal taxes;
- (ii) whether there is a lack of transparency;
- (iii) whether there are laws or administrative practices that prevent effective exchange of information for tax purposes with other governments on taxpayers benefitting from no or nominal taxation;
- (iv) whether there is an absence of a requirement that the activity be substantial.

18.5 In the mid-1980s, pressure by the United States upon Bermuda was the impetus for a tax mutual assistance agreement between the two countries. Conventions, primarily emanating from the United States, were a mainstay for Bermuda's tourist industry and, as a result of the Caribbean Basin Economic Recovery Act, American firms could not obtain a tax write-off for conventions held there without Bermuda signing on. The business community was up in arms at what it considered an American attempt to destroy the economy of Bermuda, and drive away its international business. Notwithstanding those concerns, the USA-Bermuda Tax Convention, after lengthy and difficult negotiations, was executed on July 11, 1986. The USA-Bermuda Tax Convention Act 1986 was brought into force on December 2, 1988. The result was that the Convention business in Bermuda emanating from the US continues, and thankfully there has been virtually no exodus of US business because of the Convention.

18.6 Other steps have been taken and continue to be taken internationally to stem the flow of black money to and from tax havens.

18.7 In my article entitled 'Offshore Centres and Money Laundering'[1], I traced the early steps taken internationally against offshore jurisdictions, as follows:

> One of the first steps taken internationally was by the US in the 1980s, whereby as a result of pressure put upon a number of dependent territories through the UK, a series of IMLATs (International Mutual Legal Assistance Treaties) were entered into. For the most part those IMLATs dealt primarily with proceeds of narcotics trafficking, but in some instances have been extended to include other serious offences.
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> A major breakthrough came in 1988, with the Basle Committee on Banking Regulations and Supervisory Practices, adopted by most of the international banking community. Its principle was the doctrine of 'know your customer'. The committee, composed of central bankers from the G-10 nations, adopted a Statement on Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering. The committee was concerned with the negative impact upon financial institutions from the injection of 'dirty money'. They are reported to have stated:
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>> On 19th December, 1988, the United Nations adopted the Vienna Convention, which came into force in December 1990, obliging Member States to establish as criminal offences under their domestic laws, activities

1 Saul M Froomkin, 'Offshore Centres and Money Laundering' (1997) 1(2) *Journal of Money Laundering Control* 167.

> related to drug trafficking, laundering of drug money and conspiracy to commit a drug offence.
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> In July 1989, at the 15th Economic Summit of the G-7 countries, in Paris, there was established the Financial Action Task Force (FATF). The Task Force currently consists of 26 countries, and the European Commission, as well as the Gulf Co-operations Council. In 1990 the FATF completed its report and made 40 recommendations for further actions, involving national legal systems, financial institutions and international cooperation. In 1996, the recommendations were revised in order to reflect some of the problems encountered in the previous six years.
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> In 1992, the International Organisation of Securities Commissions (IOSCO) published its report on money laundering. The report analysed problems concerning the laundering of money on the securities, commodities and futures markets, and concluded by recommending proposals very much reflecting the FATF recommendations. The FATF is forming a number of regional sub-groups to assist in the implementation of its recommendations, with particular emphasis on regional requirements. The first of those is the Caribbean Financial Action Task Force (CATF).

18.8 Since those early days, pressures have continued to be exerted by the onshore jurisdictions, particularly as a result of scandals concerning financial institutions in Liechtenstein and Switzerland which raised the ire of the governments of the United States, France and Germany. It was discovered that many millions of dollars were secreted in the financial institutions of Liechtenstein and Switzerland, for the purpose of evading taxes in the home jurisdictions of the taxpayers.

18.9 At the G-20 meeting held in London in April 2009, the delegates agreed to ‘take action against non-cooperative jurisdictions, including tax-havens. We stand ready to deploy sanctions to protect our public finances and financial systems. The era of bank secrecy is over ...’[2].

18.10 In addition to various measures suggested at the London Meeting, the G-20 considered the three lists prepared by the OECD. The white list of the 40 jurisdictions that had substantially implemented the internationally agreed tax standard. The condition for listing required the jurisdiction to have concluded at least 12 bilateral information exchange agreements according to the OECD standard. The grey list included those jurisdictions which had committed themselves to the internationally agreed tax standard but which had

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[2] ‘Leaders’ Statement: The Global Plan for Recovery and Reform’, London, April 2, 2009, para 15, www.g20.org.

not yet substantially implemented them. It contained 30 tax havens and eight other financial centres, including Chile, Singapore, Belgium, Luxembourg, Austria and Switzerland.

18.11 The black list consisted of four jurisdictions that had not committed to the internationally agreed tax standard, namely Costa Rica, Malaysia (Labuan), the Philippines and Uruguay.

18.12 The publication of those lists caused much international consternation and within days after the London meeting, the black list had been emptied. In September 2009, the ministers of finance and central bankers from the G-20 gave tax havens until March 2010 to cooperate on tax evasion or face sanctions.

18.13 At the G-20 summit held in France in November 2011, the Group's members all agreed to cooperate in assessing and collecting individual and corporate income, value-added and property taxes. At that meeting French President Nicolas Sarkozy stated 'we don't want any more tax havens. Our message is clear'.

18.14 Whether or not tax havens or international financial centres will continue to exist remains to be seen. The following chapters will demonstrate the steps that have been taken by the offshore world to alleviate the expressed international concerns.