



## OFFSHORE

Gemma Westacott, features editor

The offshore market slowed down a notch in the first half of 2007 after the flurry of mammoth mergers that typified the past two years.

Slow and steady growth became the name of the game, with firms looking to consolidate their offerings through lateral hires, such as Conyers Dill & Pearman's

hire of Nigel Meeson QC from Quadrant Chambers to head its Cayman Islands litigation practice.

Mourant du Feu & Jeune and Ogier have, however, kept up some of the expansionary heat. Ogier is looking to join the influx of offshore law firms launching in Dubai, while Mourant made legal history when it became the

first offshore firm to launch in New York in April.

This Offshore Special Report examines the latest legal developments impacting the gamut of offshore markets, from the Isle of Man to Mauritius, including continuing international criticism for allegedly aiding money laundering and tax evasion.

# The Yankee collar



ILLUSTRATIONS: THOMAS HILBERT

Some offshore financial centres have a reputation as being havens of financial irregularities, but these accusations are unfair, say Christian Hay and Gareth Bell

**O**ffshore financial centres (OFCs) are regularly subject to criticism from around the world for various reasons, with accusations ranging from aiding money laundering to tax evasion. Indeed, OFCs have historically often been referred to as 'tax havens'.

The US has tended to be the most vociferous critic and the most capable of inflicting damage, but now it is seeking to significantly up the ante with the proposed introduction of potentially hard-hitting legislation by various senators, including Barack Obama, the Democratic Party presidential candidate, who aims to stop offshore tax haven and tax shelter abuses.

The Stop Tax Haven Abuse Act is a strengthened version of a tax reform bill that Obama and others introduced in the last meeting of Congress and seeks primarily to offer innovative ways to combat supposed 'offshore secrecy' that it claims enables "offshore tax havens to hide \$100bn [£50.46bn] in US tax revenues which are needed to protect our troops, fund health care and education, and meet the other needs of American families".

The legislation contains numerous striking provisions aimed at achieving those aims, some of which are of real concern to OFCs already seeking to cope with the US's long-arm use of the draconian powers provided by the Patriot Act. For example, the US Treasury will be given authority to take 'special measures' against foreign jurisdictions and financial institutions that impede US tax enforcement.

It is as yet unknown exactly what those 'special measures' will be, but any law that provides a US governmental body with extraterritorial powers must be greeted with caution, particularly if those powers are exercisable without prior judicial consent.

So why are OFCs the subject of continual attack? Are the criticisms merited? And what can OFCs do to prevent them?

### The accusation

Historically it was probably true that regulatory standards among OFCs were less rigorous than those of leading onshore financial centres. The emergence of a stream of new OFCs in less developed regions of the world arguably recreates conditions that are more vulnerable to criminal exploitation.

However, many well-established OFCs such as Guernsey, Jersey, the Cayman Islands and Bermuda do not deserve the broad-brush criticisms levelled by the detractors of OFCs. Quite simply, not all OFCs are the same and the current standards exercised by those in the premier tier are remarkably high, a fact recognised by the UK Government's Edwards Report in 1998.

Accusations that OFCs actively enable money laundering or turn a blind eye to it are almost entirely without merit, certainly as far as the

leading jurisdictions are concerned. The reality is that you would not be able to get away with much in the Channel Islands these days.

Any place that sees as much capital passing through it as the Channel Islands will inevitably see instances of money laundering. It would be naive to believe that no customers cross the line between legitimate tax planning and tax evasion.

However, the idea that it is easy to hide assets or launder money in the Channel Islands is far from the truth. A jurisdiction such as Guernsey depends so heavily on its finance industry that the threat of tax evasion and money laundering is taken very seriously.

### OFC attraction

There is a significant element of hypocrisy on the part of the same major countries that complain bitterly about losing revenues to OFCs when they themselves offer tax incentives to attract businesses and that allege OFCs enable money laundering when they themselves do not take obvious steps to prevent it.

Of course, one of the reasons for doing business in a location such as the Channel Islands is because they are tax neutral in most respects, but it is certainly not the only reason.

### Many well-established OFCs such as Guernsey, Jersey, the Cayman Islands and Bermuda do not deserve the broad-brush criticisms levelled by the detractors of OFCs

Major OFCs are sophisticated, well-run financial centres in their own right. They offer political and financial stability, security, quality professional resources and innovative products, and it is for these reasons that most businesses and investors continue to do business in OFCs.

Guernsey, for example, has long been at the forefront of the development of captive insurance companies and introduced the concept of protected cell companies. The fact that the new markets developed around service innovations tend to gravitate to just one or two of the major OFC jurisdictions also gives lie to accusations that tax rate is the overriding consideration of users of OFCs. Experience, infrastructure and professional credibility count far more heavily.

In any case, the Channel Islands have never considered themselves to be tax havens and their rates of income tax have remained unchanged since before the finance industry was an important part of the islands' income.

Guernsey retains relatively low rates of taxation and social security contributions primarily because of its extremely high rate of employment and relative lack of bureaucracy, not as part of an attempt to attract assets from

onshore and then to help hide them.

However, for some critics of OFCs, any jurisdiction offering lower tax rates is culpable, as this is assumed to have a damaging effect on its higher-tax peers, and so is to be combated. The attempt to blur the distinction between tax efficiency and tax evasion and to stigmatise OFCs with criminality – even with a role in the funding of terrorism, an accusation apparent in some of the commentary around the Obama proposals – might be seen as an attempt to exert leverage in this debate.

### Defensive measures

One of the best practical responses to accusations of bad practice lies in a jurisdiction's regulatory regime. For example, Guernsey's anti-money laundering legislation is similar to that in place in the UK and is vigorously enforced. It is extensive and places numerous onerous duties on financial businesses, breach of which may be punishable by a custodial sentence.

The Guernsey Financial Services Commission, the regulator of the finance industry, has also published guidance notes on the prevention of money laundering and countering the financing of terrorism, which promote high levels of vigilance, record keeping, staff training and liaison with the law enforcement agencies.

The law enforcement agencies themselves are regularly called upon to assist foreign jurisdictions in obtaining documents and information. And the courts are prepared to grant injunctive relief such as freezing orders to assist the recovery of assets. There is probably not a great deal that any OFC jurisdiction can do to affect directly the course of the Stop Tax Haven Abuse Act and alter the views of OFCs' most ardent critics, but they can try to take the edge off the attacks.

In order to maintain and improve its reputation, an OFC must continue to develop its legislation and enforcement processes in order to reduce the scope for tax evasion and money laundering. To borrow a US saying, the price of liberty is eternal vigilance.

The jurisdiction may eventually earn the respect of its doubters. In the case of Guernsey, further robust anti-money laundering legislation is already making its way through the legislative process and Guernsey's authorities have made it abundantly clear that the preservation of the Island's international reputation with organisations such as the Financial Action Task Force and International Monetary Fund are of paramount importance.

International finance is the lifeblood of the Channel Islands and they will do their utmost to maintain their reputation as legitimate business jurisdictions that offer a wealth of benefits to businesses, including stability and first-class innovation. Other OFCs in the premier tier will no doubt do the same. ■

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