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HOME


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JACK'S CORNER
STOP TAX HAVEN ABUSE BILL...SOON TO BE ACT...REMAINS YUCKY-POOH!

In March 2007, I expressed my thoughts, mostly negative, regarding the "**Stop Tax Haven Abuse Act**" (*Jack's Corner, March 2007*). Now that "Mr. Change" has "descended" to the highest position in USA politics, he and his protectionist colleagues, primarily Senator Levin, are ready to pass this incredibly awful piece of legislation. I will not bore you with my comments again as, with the exception of a few additions, the Bill remains the same.

The only positive comments I have regarding Senator Levin's Subcommittee are (a) I support the desire to stop tax evasion and (b) I applaud their research, which is extensive and, for the most part, true. Alas, I am saddened that a noble objective supported by such extensive research can be steered so far off the road to success.

One final comment focuses on Senator Levin's statement introducing the Bill (March 2, 2009). Senator Levin wrote "Secrecy breeds tax evasion." With all due respect, I think he has it wrong. The parents of tax evasion are (a) bad tax policy and (b) inappropriate and ineffective use of taxpayers' money. The USA clearly and unfortunately can boast a leading position as both father and mother in this regard.

Secrecy or confidentiality is, arguably, a fundamental right of every member of society and does not, in itself, "breed" tax evasion.

WHILE YOU ARE AT IT, MR. CHANGE...

I wonder if "Mr. Change" and the others seeking to achieve a noble objective, i.e. eliminate tax evasion, via ill-advised legislation will use as much of their energy to enact the **Incorporation Transparency and Law Enforcement Assistance Act**, which was introduced by, yet again, Senator Levin to the USA Senate. This is a great Bill for the offshore company formation industry as it seeks to bring the USA **FINALLY** into line with international standards regarding due diligence and know your client procedures, an objective of the Financial Action Task Force dating back to July 2006. Many a cynic, including yours truly, doubts this Bill will ever become an Act, at least in its current form. This reflects the fact that the Bill would very likely adversely impact the coffers of States like Delaware as many non-USA persons engaging in legitimate (and illegitimate) business would no longer view the various States of the USA as sufficiently attractive to subject themselves voluntarily to the legal jurisdiction of the USA.

GANG OF 20

Cathy and Carlyle have quite a bit to say about the leaders of these welfare states seeking to use their power, be it economic or military, to force smaller nations also to become welfare states. I am reminded of my father saying to me that I never, ever should rely upon government for anything and politicians must lie because they have to pander to the people who don't want to work if they want to be elected.

Wash dishes, dig ditches, drop your standards and do whatever you can to survive the current economic downturn because, well, it ain't going away any time soon...and if it does, it will be another illusion inspired by politicians telling porkie pies!!!

THE OECD SPEAKETH...NONSENSE

We still have no idea what they are saying, which should be no surprise as the authors are well-versed in the art of deception, spin and, well, everything else that makes for good sound bites on CNN!!! All we can say is Hong Kong appears to be OkeyDokey while Singapore dangles in the arena called "Other Financial Centres", whatever that means!!! The USA, land of the dodgiest of dodgy company domiciles, remains OkeyDokey, which goes to show that such lists designed by people with no principles are worthy of little consideration except, of course, the USA has more guns and is willing to use them ☹!!! By the way, the geniuses decided just the other day that the "black listed jurisdictions" (Jurisdictions that have not committed to the internationally agreed tax standard) could all be elevated to the "gray list" (Jurisdictions that have committed to the internationally agreed tax standard, but have not yet substantially implemented). Inappropriate and ineffective use of taxpayers' money...hmmm...could we have a better example!!!

Jurisdictions that have substantially implemented the internationally agreed tax standard

| | | | |
|----------------|-------------|--------------------|----------------------|
| Argentina | Germany | Korea | Seychelles |
| Australia | Greece | Malta | Slovak Republic |
| Barbados | Guernsey | Mauritius | South Africa |
| Canada | Hungary | Mexico | Spain |
| China2 | Iceland | Netherlands | Sweden |
| Cyprus | Ireland | New Zealand Norway | Turkey |
| Czech Republic | Isle of Man | Poland | United Arab Emirates |
| Denmark | Italy | Portugal | United Kingdom |

| | | | |
|-------------------|-----------------|--------------------|------------------------------------|
| Finland France | Japan Jersey | Russian Federation | United States US Virgin Islands |
|-------------------|-----------------|--------------------|------------------------------------|

| Jurisdictions that have committed to the internationally agreed tax standard, but have not yet substantially implemented | | | | | |
|--|--------------------|----------------------|--------------------------|--------------------|----------------------|
| Jurisdiction | Year of Commitment | Number of Agreements | Jurisdiction | Year of Commitment | Number of Agreements |
| Tax Havens 3 | | | | | |
| Andorra | 2009 | (0) | Marshall Islands | 2007 | (1) |
| Anguilla | 2002 | (0) | Monaco | 2009 | (1) |
| Antigua and Barbuda | 2002 | (7) | Montserrat | 2002 | (0) |
| Aruba | 2002 | (4) | Nauru | 2003 | (0) |
| Bahamas | 2002 | (1) | Neth. Antilles | 2000 | (7) |
| Bahrain | 2001 | (6) | Niue | 2002 | (0) |
| Belize | 2002 | (0) | Panama | 2002 | (0) |
| Bermuda | 2000 | (3) | St Kitts and Nevis | 2002 | (0) |
| British Virgin Islands | 2002 | (3) | St Lucia | 2002 | (0) |
| Cayman Islands ⁴ | 2000 | (8) | St Vincent & Grenadines | 2002 | (0) |
| Cook Islands | 2002 | (0) | Samoa | 2002 | (0) |
| Dominica | 2002 | (1) | San Marino | 2000 | (0) |
| Gibraltar | 2002 | (1) | San Marino | 2002 | (0) |
| Grenada | 2007 | (0) | Turks and Caicos Islands | 2003 | (0) |
| Liberia | 2009 | (1) | Vanuatu | | |
| Liechtenstein | | | | | |

| Other Financial Centres | | | | | |
|-------------------------|------|-----|--------------------------|------|-----|
| Austria ⁵ | 2009 | (0) | Guatemala | 2009 | (0) |
| Belgium ⁵ | | | Luxembourg ⁵ | | |
| Brunei | 2009 | (1) | Singapore | 2009 | (0) |
| Chile | 2009 | (5) | Switzerland ⁵ | 2009 | (0) |
| | 2009 | (0) | | 2009 | (0) |

| Jurisdictions that have not committed to the internationally agreed tax standard | | | |
|--|----------------------|--------------|----------------------|
| Jurisdiction | Number of Agreements | Jurisdiction | Number of Agreements |
| Costa Rica | (0) | Philippines | (0) |
| Malaysia (Labuan) | (0) | Uruguay | (0) |

- The internationally agreed tax standard, which was developed by the OECD in co-operation with non-OECD countries and which was endorsed by G20 Finance Ministers at their Berlin Meeting in 2004 and by the UN Committee of Experts on International Cooperation in Tax Matters at its October 2008 Meeting, requires exchange of information on request in all tax matters for the administration and enforcement of domestic tax law without regard to a domestic tax interest requirement or bank secrecy for tax purposes. It also provides for extensive safeguards to protect the confidentiality of the information exchanged.
- Excluding the Special Administrative Regions, which have committed to implement the internationally agreed tax standard.
- These jurisdictions were identified in 2000 as meeting the tax haven criteria as described in the 1998 OECD report.
- The Cayman Islands has enacted legislation that allows it to exchange information unilaterally and has identified 12 countries with which it is prepared to do so. This legislation is being reviewed by the OECD.
- Austria, Belgium, Luxembourg and Switzerland withdrew their reservations to Article 26 of the OECD Model Tax Convention. Belgium has already written to 48 countries to propose the conclusion of protocols to update Article 26 of their existing treaties. Austria, Luxembourg and Switzerland announced that they have started to write to their treaty partners to indicate that they are now willing to enter into renegotiations of their treaties to include the new Article 26.

Onwards and upwards...and beware of welfarism and politicians...wherever they may ply their unseemly trade...



GCSL NEWS

"GLOBAL CONSULTANTS AND SERVICES (NEVIS) LIMITED", VANCE AMORY OR BERYL SEATON

I gather many of you received the notice that The GCSL Group of Companies Limited and related Group companies have ceased to have any relationship with the company known as "Global Consultants and Services (Nevis) Limited", Vance Amory or Beryl Seaton with IMMEDIATE EFFECT. It is what it is. By the way, I still think Nevis is a fine jurisdiction with good laws, strong regulatory body and a noteworthy planning option for practitioners. Many thanks to the many good people in Nevis, including the Regulator and marketing authority, for their support regarding this matter....onwards and upwards.

GCSL SAMOA WELCOMES VERONICA TIGAINA!!!

Laura had a beautiful baby girl in March. All members of the GCSL Family wish to welcome a new lovely liiputian to the Global Samoa Gals!!!

GCSL BELIZE EXCELS AT ACTEC CONFERENCE

GCSL Belize recently was invited to address the Asset Protection Committee meeting of the American College of Trust and Estate Counsel ("ACTEC") conference in Rancho Mirage, California. ACTEC



(www.actec.org) is a national organization of approximately 2,600 lawyers elected to membership by demonstrating the highest level of integrity, commitment to the profession, competence and experience as trust and estate counselors. These are the best of the best and I was exceedingly pleased to be informed by those who attended that Carlo Mason's presentation was considered "excellent" and "GCSL should be proud". Well-done, Little C!!!

GCSL ANGUILLA HITS FOR SIX IN SOUTH AFRICA

GCSL Anguilla recently was invited to speak to professionals in Johannesburg and Cape Town to extol the virtues of offshore, in general, and Anguilla, in particular. Our Carlyle Rogers was the perfect professor and I was, yet again, tickled pink to receive such excellent comments from those who attended. Well-done, Big C!!!

GCSL GROUP LEADS THE OFFSHORE CHARGE IN SHANGHAI

The Seychelles International Business Authority (www.siba.net) sponsored a seminar entitled *Offshore Planning for Chinese Companies in 2009*. Jack Chaired the event, which attracted nearly 150 local and international practitioners. Compliance was the overwhelming theme of the day as mainlanders venture out into the global economy.



GCSL GROUP SPEAKS TO BOND UNIVERSITY LAW SCHOOL GRADUATE STUDENTS

Jack spoke to David Tanzer's (www.davidtanzer.com) Laws of International Asset Protection class at Bond University Law School (www.bond.edu.au). More than 20 graduate students listened, asked questions and generally participated in an interesting two hour presentation. The Law School Dean, Geraldine MacKenzie, expressed her thanks. We also extend our thanks and well wishes to the Bond University Law School and its students.



AOA

AOA BANGKOK STOPS TRAFFIC AGAIN!!!

We had another great event with provocative speakers, great networking, charitable work with Khun Nang and Khun Nit (Goodwill Foundation Group Ambassadors) peculiar to the AOA and great fun. Whether it was Martin's victory in the mango eating contest or stopping traffic on the Chao Praya River for fireworks, the AOA Bangkok conference was all that!!!



GREATER CHINA UPDATE

CHEK LAP KOK #1 AND CHANGI #2

Skytrax, which knows all about travel, voted Hong Kong's airport #1 and Singapore's airport #2 in the world. No surprise that GCSL has offices in both hubs!!!

CHINA TAX UPDATE

- According to the China State Administration of Taxation ("SAT") up until February 2009, the total amount of export tax rebate was USD970 million which was an increase of 20.8%. However, according to China State Administration of Customs, the total export amount was USD155.3 billion, which was a decrease of 21.1%.
- In addition, the SAT issued circular "GuoShuHan (2009) No.104" to simplify the process of export tax rebates. This is designed to increase cash flow and liquidity to exporters and factories in the current economic turmoil.
- For foreign investors investing into Chinese domestic entities through the Qualified Financial Investment Institution program ("QFII"), dividends, bonuses and interest issued by Chinese domestic entities are subjected to 10% withholding tax in China. According to the new China Enterprise Income Tax Act and recent circular of "GuoShuHan2009 No. 47", the Chinese domestic company shall pay the withholding tax amount before remitting funds.
- Based on the SAT "GuoShuHan (2009) No.81", China clearly stated the qualifications for entitlements to the benefits from double tax agreements ("DTA") with China. Four important points are listed below:
 1. If the withholding tax ("WHT") in the relevant DTA is higher than the current China tax rate (10%) on dividends, then the 10% shall apply, i.e. Thailand / China DTA's WHT on dividend is 15% and thus the applicable rate will be reduced to 10%.
 2. One must maintain the existing status of the entity for a minimum of 12 months before migrating to a jurisdiction or upgrading the qualification within the same jurisdiction to access better DTA rates.
 3. If accessing DTA preferential arrangement on dividends is the only reason for a transaction of investment structure, then the China tax authority has the right to adjust WHT rate.
 4. A local tax certificate must be provided.

CHINA MONOPOLY ACT TURNS DOWN HUIYUAN / COKE DEAL.

On September 18, 2008, the China Ministry of Commerce (MOFCOM) received an application from the USA giant beverage corporation – Coke Cola – to buy the biggest China beverage company – HuiYuan. On March 19, 2009, MOFCOM rejected the application. Since August 1, 2008 MOFCOM has received 29 applications with 23 approvals and 1 approval with conditions. Poor Coke Cola!!!

INVEST IN MID-WEST CHINA

The total foreign investment in ChongQing has increased in 2008 with 736 foreign investment entities with total registered capital of USD3.25 billion and paid up capital of USD 2.72.

*Contributed by Johnson Chien, Managing Director, GCSL Shanghai
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UPDATE ON CHINA TRANSFER PRICING

There are four pieces of legislation that make up the China Transfer Pricing Rules.

1. Enterprise Income Tax Law – Chapter 6 of Special Tax Adjustments. (2007)
2. Implementation Rules of EIT Law – Chapter 6 of Special Tax Adjustments (2007)
3. Annual Related Party Transaction Disclosure-Filing Forms as set forth in Circular 114. (2008)
4. Implementation Regulations for Special Tax Adjustment (“STA RULES”) which include documentation requirements, guidance on acceptable methodologies, audit procedures, application procedures for Advanced Pricing Arrangements (APA) and Cost Sharing Agreements (CSA), guidance on the cap, GAAR and CFCs.

Under Circular 114, the enterprises that are taxed on an actual profit basis are required to report all related party transactions by May 31 of each year. It is required that such reports contain information on associated enterprises and types of related party transaction. Chinese tax authorities ask for very detailed information on different types of related party transactions, including intangible asset transfers, debt financing, and thin capitalization. Most importantly, Chinese tax authorities pay close attention to outbound investments and CFCs.

As part of the regulatory mechanisms on companies using transfer pricing to minimize tax liability, Chinese tax authorities impose severe penalties on companies that failed to follow the standards as set forth by its agencies. Such penalties include interest on underpaid tax and fines imposed at the discretion of the auditing agent. There are however, acceptable transfer pricing methods that the Chinese tax authority will accept, provided that it complies with all requirements, they are comparable uncontrolled price method, resale price method, cost-plus method, transactional net margin method, profit split method, or other methods that strictly comply with the arm's length principle.

Offshore structure planning can be utilized if it is planned properly.

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BEIJING TO LAUNCH NASDAQ-STYLE EXCHANGE

After nine years of preparation, the China Securities Regulatory Commission (CSRC) is expected to issue rules for a Nasdaq-style stock market for start-up companies after the meeting of the National People's Congress ends on March 13th, the [Wall Street Journal](#) reported. The Growth Enterprise Market (GEM) could be launched on the Shenzhen Stock Exchange as early as May. The Shenzhen Stock Exchange set up a small- and medium-sized enterprise board in 2004, but its listing requirements were the same as the main board, discouraging start-up companies. The draft rules for the GEM state that companies must have an accumulated net profit of at least US\$1.5 million for the two years before listing. This compares with an accumulated net profit of US\$4.39 million over three years to be listed on Shenzhen's main board. However, analysts said that the CSRC could favor mature high-tech firms as the first companies to list on the GEM. The companies' stocks would diminish market risks and protect China's largely inexperienced retail investors.

*Contributed by Ooi Hoay Beng, Business Development Director – Asia, The GCSL Group of Companies Limited.
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MEXCHAM IN HONG KONG

I attended the Opening Ceremony of MEXCHAM, the Mexican Chamber of Commerce China Branch last week. The event included a good mix of Mexican food, wines, beers, tequilas (sipped with a tomato juice chaser – none of that dangerous stuff one would normally expect), and strong attendance by a wide variety of business and government people. Held at the FCC, the event was standing room only and was the second after a previous opening in Shanghai. One of the very nice ladies working as a coordinator for the organization informed me that there are close to two hundred Mexicans working and living in Hong Kong. While this may seem a tiny number compared to the thousands of North Americans and Europeans living in the city, the number has grown significantly in recent years. And not only Mexicans attended. MEXCHAM is receiving sponsorship from prominent local law firm Robertsons – one of their lawyers, Mr. Evaristo Treviño Berlanga, is president and co-founder of the Hong Kong branch – as well as a prominent local accounting firm. The attendees included Mexican nationals working for leading multinational companies, entrepreneurs involved in a range of industries and dignitaries from Hong Kong, Mexico and a number of Central and South American countries.

As with all such events, the speakers evoked a pioneering spirit noting the great as yet unrealized business opportunities between the Spanish and Chinese speaking worlds (I was told by one attendee that if I learned Spanish to go along with my Chinese and English, I would be able to have a conversation with three quarters of the seven billion people on the planet). But as typical as it was, I have to admit the event made me nostalgic for the days, many years ago, when I first arrived in Asia. The mix of nationalities, ages, and backgrounds of the attendees; the crowded room; the infectious optimism; all were reminiscent of the early '90s when waves of US and Europeans poured into Hong Kong and the major cities of China, themselves envisaging huge windfalls for their efforts.

The big difference between then and now came from one of the keynote speakers. Even with such a small representative population in Hong Kong, Mexico still had over HK\$3 billion worth of trade with the city last year. That's a fantastic real world base on which to build.

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**SINGAPORE UPDATE****OECD “BLACKLIST” AND SINGAPORE**

Recently, it was reported that Singapore may have made it to the ranks of an OECD "hit list" of nations deemed non-cooperative tax centers. Swiss newspaper Tages Anzeiger had reported that Singapore was one of 46 countries and territories criticized by the Organization for Economic Cooperation and Development ("OECD") for "insufficient progress" in meeting standards on tax cooperation and banking secrecy. It was further reported that OECD chief Angel Gurría provided British Chancellor of the Exchequer Alistair Darling with such a list earlier this month with Switzerland, Costa Rica, Chile, Hong Kong, Panama, the Philippines, San Marino and host of Pacific and Caribbean islands included. The world's major industrialized nations – the Group of 20 – have examined a proposal to blacklist these countries at a meeting in London on April 2.

Singapore appears to have been included on the gray list announced by the Group of 20.

However, financial experts in Singapore do not seem too perturbed by this development. Private bankers and others in the financial sector dismiss the lists as largely academic exercises. They said that even though Singapore is on the list, it should not be worried. "Everyone is on a blacklist. It would mean something only if Singapore is one of the very few to be on the list. That would be damaging from a reputation point of view.

Singapore recently endorsed an OECD standard aimed at preventing international tax dodging. It will implement the standard to assist only bona fide requests for information and not "information fishing" for no good reason. The ministry said in a statement that it is signing up OECD Standard through Avoidance of Double Taxation Agreements, adding that the decision is in keeping with Singapore's role as a trusted center for finance and a responsible jurisdiction, with strong and consistent regulatory policies and a firm commitment to the rule of law. The Standard is consistent with Singapore's system of banking confidentiality, which does not shelter criminals.

Switzerland, Liechtenstein, Austria, Luxembourg, Andorra and Hong Kong have also announced similar moves.

Despite these changes, it appears that Singapore will have plenty to gain. Singapore's endorsement of the OECD standard will not make the country a less attractive private banking center, but will only make life difficult for tax evaders. Singapore could even see a larger inflow of funds from places like Switzerland. While both Switzerland and Singapore have eased up on rules to cooperate on cases of international tax evasion, the Swiss face a steeper uphill battle.

*Contributed by Lawrence Fong, Managing Director, GCSL Singapore
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INTERNATIONAL UPDATE

USA IRS AMNESTY PROGRAM

For USA Federal tax purposes, you are considered a USA person if you are (a) an individual who is a USA citizen or USA resident alien (or a non-resident, from a practical perspective, green card holder), (b) a partnership, corporation, company, or association created or organized in the USA or under the laws of the USA, (c) an estate (other than a foreign estate) and (d) a domestic trust. USA persons worldwide are required to file (a) annual tax returns reporting global income and gains and (b) a report of foreign bank and financial accounts under specific circumstances ("FBAR"). The USA government has indicated only approximately 30% of USA persons file annual tax returns and only 20% file the FBAR. Given the significant interest and penalties, not to mention criminal prosecution, that can be levied, I am shocked at these statistics. Of equal importance, I am shocked at the failure of the USA Internal Revenue Service ("IRS") to enforce the law!!!

Given the increased number of enforcement staff at the IRS, USA government pursuit of foreign banks for information regarding USA persons with accounts at such institutions (witness UBS), higher rewards being paid to informants and the fact the USA will require a lot of revenue to finance bailouts, I believe USA persons who have failed to report in the past should start thinking very hard about becoming compliant...or face losing a lot of sleep thinking about losing all their money and sharing a cell with Bubba!!

Now is the perfect time to rectify past wrongs as the IRS recently announced an amnesty program for USA persons who fail to file annual tax returns or report foreign bank accounts. USA persons would be wise to take advantage of this program, which will last for six months and has the following key attributes:

- Closing agreements will be concluded with USA persons who voluntarily file or amend USA tax returns for the past six years, as well as filing or amending all information returns – including the foreign bank account report ("FBAR").
- Taxpayers will have to pay all taxes due for the past six years plus interest and either a penalty of 20% of tax owed or a 25% penalty for filing returns late.
- The 50% penalty for the FBAR form will be assessed only once for the year in which foreign accounts had the highest annual value over each of the past six years. The rate of penalty will be reduced to 5% to 20%, depending on partly if the money was inherited.
- The IRS will not assess many other penalties such as the 35% penalty on transfers to foreign trusts and the US\$10,000 penalty for failing to disclose ownership of a controlled non-US company.
- USA persons who have been contacted by the IRS or already are being criminally prosecuted are not eligible.
- A taxpayer's timely, voluntary disclosure of unreported tax liability will be an important factor in determining whether the taxpayer will be subjected to criminal prosecution.

*Contributed by Jack W. Flader, Jr., Chairman & CEO, The GCSL Group of Companies Limited.
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THE UNEQUAL PLAYING FIELD OF WELFARISM

Thanks to the USA's latest fiscal and social woes from excessive corporate and individual welfarism and credit to those who could never afford it, offshore industry professionals have become targeted to be almost as popular as bankers or AIG executives. This is despite the USA itself having a large offshore industry based in its own borders, notably in New York, Delaware, Nevada and Wyoming. The USA is also easier than most places to open a bank account. The Economist recently examined this hypocrisy in more detail http://www.economist.com/finance/displayStory.cfm?story_id=13382279. President Obama can call for an end to protectionism all he likes during these times of crisis but in his own backyard he will not apply the same rules to his own people as he will to foreigners. That's the very definition of protectionism.

Fortunately most of us traveling are used to placing the words "consultant" or "lawyer" next to our name when asked to fill in customs and immigration forms. I have been told that the words "offshore industry" trigger red alert status at airports so traveling on a passport where most customs officials have to look on a list to work out where it is, I am too chicken to try any red alert trigger points. Especially in the USA where I am often targeted in the 9/11 racial profiling for being single, white female traveling alone with a funny passport and asked to waste half an hour of my life having air blown at me in a portaloos style chamber. When dining out with friends everyone knows us now as lawyers, accountants or financial planners. We explain our traveling down to enjoying sunny spots for beach vacations and hating the cold.

With the current G-20 ("Gang of 20") summit unraveling, countries such as the USA and France were looking to tighten regulations and China's Hu Jintao was the one left standing up against excessive tax haven OECD listings for "Internationally Accepted Tax Standards". The Communists have effectively become the new free-marketeers standing up for sovereignty and fair competition. Ironically the easiest way to get rid of tax havens is to lower taxes, have a fairer tax system and use tax money wisely so people feel happy to pay them. While the developed world has forgotten, the developing world would know how hard it is to earn a dollar and don't wish to throw it away. Even the French are outshining the USA's tax, borrow and spend policies. When the French have better ideas to fix the world's economic crisis than the Americans you know that there is something drastically wrong.

This brings us to why G-20 nations are so sensitive at present. Welfare. All forms of welfare, corporate and individual. If you look at G-20 nations you will find that the so called "developing nations" do not have substantial welfare programs for which they need to fork out billions and trillions for, i.e. China, India and Indonesia. These potential economic powerhouses have looked at so called "developed countries" such as the USA, United Kingdom and Australia and realised that excessive welfarism is the path to ultimate national poverty. Indeed getting something for not working is not in the Chinese vocabulary. While Americans keep swiping their credit cards, China and India prosper and get wealthier. Do they share that wealth among their people with welfarism? No. Do they pay top-up benefits to the working poor so they can buy the latest consumable? No. Do they pay people to sit around waiting for a job to be created for them? No. What are they doing with the money? They are not, like their developed nation counterparts buying elections through ever increasing popular welfarism that's for sure!

They are accumulating massive USD reserves, that's what they are doing. Latest statistics show that Mainland China has the most with USD1.92 trillion, India are 5th with USD248,724 million, Brazil are 6th with USD203,201 million.

These nations could afford far more extensive welfare as their GDP's are large enough, so are their reserves and industry. But they won't introduce a welfare culture because they know it destroys wealth creation and would make them internationally uncompetitive. So the new capitalism and free market order is effectively being driven from the stars of the developing world and it is the developed world that is showing shrinkage back towards high tax and spend socialist money printing economic policy.

Meanwhile I leave you with a cautionary tale about what the USA is battling to keep their standard of living:

Skip Jones started the day early having set his alarm clock (MADE IN JAPAN) for 8am . While his coffeepot (MADE IN CHINA) was perking, he shaved with his electric razor (MADE IN HONG KONG). He put on a dress shirt (MADE IN SRI LANKA), designer jeans (MADE IN SINGAPORE) and tennis shoes (MADE IN KOREA). After cooking his breakfast in his new electric skillet (MADE IN INDIA) he sat down with his calculator (MADE IN MEXICO) to see how much he could spend today. After setting his watch (MADE IN TAIWAN) to the radio (MADE IN INDIA) he got in his car (MADE IN GERMANY) filled it with petrol from the Middle East and continued his search for a good paying job in the USA. At the end of yet another discouraging and fruitless day checking his computer (Made In Malaysia), Skip decided to relax for a while.. He put on his sandals (MADE IN BRAZIL) poured himself a glass of wine (MADE IN FRANCE) and turned on his TV (MADE IN INDONESIA), and then wondered why he can't find a good or even bad paying job in ... the U.S of A.....

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OFFSHORE UPDATE

ANGUILLA: THE G20 SUMMIT - AN ANGUILLIAN PERSPECTIVE

The leaders of the G20 countries met in London recently to address the global financial crisis. I have fond memories of London having spent 5 years there studying in the 90s and early early 00s and thus I still follow events intermittently. Of course, like most other people involved in the provision of offshore financial services, focusing on London this month was not driven solely by sentimental reasons but was a necessary part of my work.

In its final communique, the G20, following the line posited by the OECD, published a list of countries which were either compliant with the OECD criteria, somewhat compliant or non-compliant. Anguilla was listed in the "somewhat compliant" group. This grouping referred to jurisdictions which had committed themselves to adhering to the OECD principles including "transparency and exchange of information" but had not implemented fully the mechanisms to adhere to these principles.

When I started my career in offshore finance in August 1999 with the Government of Anguilla at the Financial Services Department, now the Financial Services Commission, one of the first documents I had to read was the 1998 OECD Harmful Tax Competition report. As someone who was involved in the OECD process, including attending two OECD Global Forums in Ottawa in 2003 and Berlin in 2004, where I met with OECD officials to discuss these issues, I am well versed in its tactics and thinking and it comes as no surprise to me that it would use this opportunity to push forward its agenda. While most readers of this newsletter would likely argue that George W Bush was a disastrous President of the United States, we in the industry should be grateful that he was in the White House for the previous 8 years prior to 20th January 2009 since his administration's refusal to support the OECD's push towards eliminating tax competition in 2001 stopped it in its tracks. It is safe to say that had there been a President Al Gore in 2001, what the OECD is now doing in 2009 would have been done back then.

From an Anguillian point of view, the G20's list was disappointing but expected. Anguilla committed itself, under duress from the UK, to adhering to the OECD's principles and will likely be pressured, like Bermuda, BVI and Cayman Islands, along with the Crown Dependencies of Jersey, Guernsey and the Isle of Man, to sign the multiplicity of exchange of information agreements which are likely to be presented to local government over the next couple of months. While neither the Government of Anguilla nor the Financial Services Commission has commented publicly on the G20's publication to date, it is likely that compliance with the OECD will be impressed upon the jurisdiction.

But while this may seem like bad news, events are likely to overtake the OECD in its quest. "Chairman" Brown is likely to see the exit from No. 10 Downing Street by May 2010 and if, as I suspect, "Comrade" Obama's spending spree fails to reduce unemployment significantly in the US by the summer of 2010, then it is likely that the Democrats in the Congress are likely to suffer severe losses and might even lose both or either Chamber. Since the US is the largest funder of the OECD, hostile Republicans are likely to put the squeeze on both the Obama administration and OECD to water down or slow down the process. This was the strategy which free-market Republicans used in the 90s to tweak the OECD during their last period of muscle-flexing.

It will also be interesting to see what transpires next week when Obama, along with US Secretary of State Hillary Rodham Clinton, attends the Summit of the Americas in Port-of-Spain, Trinidad, at which some of the countries which are on the OECD's tiers 2 and 3 categorisations of the list such as Antigua, Belize, Uruguay, Panama and others are supposed to be represented at "Head of Government/State" level. I would posit that this issue is likely to be raised within the broader context of trade liberalization and the creation of a free trade zone from the northern tip of Alaska to the southern-most tip of South America, the free movement of capital, and of course the global financial crisis.

As someone who has been through this before and around the block on with the OECD on this issue in my previous job, my advice therefore to readers is as follows:

Firstly, ensure that you are currently fully compliant with the rules/laws of your country of citizenship and/or residence/domicile at all times. It is important that you don't expose yourself to legal action by the tax authorities to which you are subject.

Secondly, remember that the use of many offshore structures is tax neutral and thus tax should not be your prime motivation for going offshore unless of course this is provided for through the use of a double taxation agreement.

Thirdly, seek and obtain sound advice from experts who understand your domestic situation and offshore professionals who can assist you in your structuring needs and goals.

Fourthly, now is the time to protect your assets and ensure that your structuring takes advantage of the laws as they are now and in anticipation of the changing landscape.

Fifthly, ignore much of what you read in the press or hear on television about the jurisdictions listed by the G20. The press is ignorant about offshore finance across the board and this includes publications which are supposedly "free-market" in orientation like the Wall Street Journal and Financial Times.

And finally, hold your nerve, hold on to your seat and hold on to the sound advice that you have or will receive from professionals. This too shall pass.

GCSL Anguilla is fully prepared to discuss with clients what the G20's recent actions mean and how best to pursue your offshore planning needs and goals.

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BELIZE: DUE DILIGENCE...THE BANE OF OUR EXISTENCE.

In this day and age of bank failure, people almost don't know where to turn when it comes to deciding which bank to work with, in the investment of their moneys. The multiple bank failures and virtual nationalization of institutions previously thought of as invincible, have left people in a quandary, not sure where to put their money.

Despite all this, the fact remains that there are banks out there still in the business of banking. And as they are open for business, they require certain documentation from the persons who desire to do business with them. Now it is necessary to understand that this is not as simple as walking into the local branch of your bank, show the bank officer your drivers' license, and then open an account. No, in our business, where people are from all different walks of life, and different jurisdictions, the banks with which we do business are under the spotlight by their financial regulators. Therefore, they do require information for the persons involved in the account.

Let us take the example of a trust account being set up. The usual due diligence required is a colour copy of the passport of the individual, notarized, as well as a professional reference letter. This letter would come from an accountant or an attorney with whom the individual has had at least an eighteen month professional relationship. Also, there is need to provide a bank letter. This letter will indicate the date of the commencement of the account, the present balance, the average balance, and whether or not the account has been operated by the individual to the satisfaction of the bank.

The next question is: who is affected by this due diligence requirement? Who is required to provide this information? In the example of the Trust Account being set up, some of the banks have indicated that this applies to the Trustee, the Settlor, the Protector, and any adult beneficiaries of the Trust.

Why is it so far reaching, why is it that so much is required of so many persons connected with or named in, the trust? The fact is that the manager of the bank no longer has the final say in relation to what is required of the trust to set up the account. It is the compliance officer, the man in the backroom, if you will, that decides what happens. There have been instances where the bank manager has given assurance that certain things will be done, yet later on has to backtrack and renege on promises made, simply because the compliance officer has refused to accept an incomplete set of documents.

While we appreciate the need of the bank to protect itself in these times, from any problems, we do see the need to be flexible with clients with whom the bank has had a long-standing or a good working relationship. There is always a happy medium that can be struck with negotiations. The only issue is whether or not the compliance officer will be willing to play ball.

We try to do a good job of cultivating good relationships with the banks, but even we have our difficulties sometimes. As such, we advise our clients that this documentation requirement is a necessary evil. Such is the nature of the business we are in.

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COOK ISLANDS: DO YOU HAVE A PLAN?

In conjunction with Michael Nelson Esq, an Attorney out of San Ramon, California, we will over the next few months discuss various issues that confront offshore practitioners who deal with USA citizens, USA Green Card Holders, USA Resident Aliens and USA legal jurisdictions (collectively "USA Persons"). These articles are a sharp reminder of the compliance issues that are looming for many persons who are caught under the above categories. If you have clients that choose to ignore or who have not woken up to the realities of the world we now live in, then be on notice that there's a new sheriff in town, and that sheriff is Uncle Sam.

Some of us in the international community, have worked for years to build a robust and compliant business representing clients and their needs for security, privacy, confidentiality, superior service and trustworthiness. Transactions with USA Persons are complicated and filled with civil and criminal perils for the inexperienced and their clientele. If you or your clients fit into this category, then you must seek competent legal counsel as a matter of priority. If your clientele are not in a protected position, then the question is how to proceed to resolve past acts that now carries extremely heavy civil and criminal penalties with the USA Treasury.

Following 911, the Patriot Act was enacted on 26 October 2001 increasing law enforcement agencies search powers and significantly expanded the USA Treasury's authority to regulate financial transactions, particularly those involving foreign individuals and entities.

Some of the countries that have enacted Stimulus Plans and are vigorously looking for money include:

| | | |
|-----------|---------------|----------------------|
| China | November 2008 | US\$586,000,000,000. |
| Germany | November 2008 | US\$40,000,000,000. |
| Canada | January 2009 | US\$24,000,000,000. |
| France | February 2009 | US\$34,000,000,000. |
| USA | February 2009 | US\$789,000,000,000. |
| Australia | February 2009 | US\$27,000,000,000. |

The list goes on, but the point is that various Governments will be seeking revenue and will not take kindly to those that choose either willingly or by ignorance to forego their tax responsibilities. The inevitable course of action is that G-20 countries will scramble to find the funding needed for the Stimulus Plans, seeking to find tax revenues outside of their own jurisdictions by piercing tax haven jurisdictions in search of lost tax revenues.

On March 3, 2009 OECD Secretary-General Angel Gurría stated, "Moves by a number of financial centers over recent weeks in favor of transparency and exchange of information on tax matters have given a welcome boost to efforts to counter international tax evasion. While many jurisdictions still maintain arrangements that prevent them from assisting foreign authorities in tax investigations, recent actions and statements consistent with the OECD standards in this area on the part of some show that real progress is being achieved."

Among other recent moves, Mr. Gurría noted:

- [Singapore has announced that it endorses the principles and standards for transparency](#) and exchange of information agreed by a majority of OECD countries and several dozen non-OECD countries and territories and will introduce legislation by mid-2009 that will allow it to implement them.
- [Hong Kong, China, has announced that it will introduce a bill in mid-2009](#) to allow it to negotiate agreements implementing the OECD standard for effective exchange of information.
- [Andorra has announced its willingness to enter into tax information exchange agreements](#) and its intention to eliminate strict bank secrecy for tax purposes by November 2009.
- [The Isle of Man has signed a tax information exchange agreement](#) with Germany, raising to 13 the number of such pacts that it has with other economies.
- Liechtenstein, which has already signed a tax information exchange agreement with the United States, has [announced its acceptance of the OECD standards](#) and its willingness to negotiate agreements that provide for effective exchange of information in all tax matters.
- The Cayman Islands has announced that it will sign tax information exchange agreements with seven Nordic economies on 1 April, 2009, bringing to eight the number of such agreements that it has with other economies.

Altogether, since G-20 leaders signaled their determination at their summit in Washington last November to combat cross-border tax evasion, more than 20 bilateral tax information exchange agreements have been signed between different partners. The message is very clear to offshore practitioners, get your clients compliant while there is still time.

Next month we will provide an in-depth look at reporting requirements of foreign bank and financial accounts showing the very serious ramifications of failing to file the appropriate forms.

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SAMOA: SOUTH PACIFIC POWERHOUSE

Laura is tending to her new liliputian. In the meantime, we thought you might like to view the Samoa International Finance Authority's video clip about all that Samoa has to offer. Please click on the following:

http://www.sifa.ws/index.php?option=com_xevideogal&Itemid=55

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TIDBITS

The things that make us smile, frown and generally make life interesting...

OUR MONTHLY QUOTE THAT MADE US SMILE

"I was angered, for I had no shoes. Then I stumbled across a man who had no legs." Chinese Proverb

WORLD PEACE IN MAINE

We recently read about the Grand View Topless Coffee Shop in Maine where, well, coffee is served by well-endowed women who are making more money - without engaging in the three letter word - than most professionals in the neighborhood. The creative coffee-pour-entrepreneurs made the news when some residents objected. Fortunately, the ladies and freedom of expression won the day. As mentioned by Rodney Carrington in his song Show Them To Me "no one wants to fight when they see a topless girl." Let's face it, humans - particularly men - are not good members of the animal kingdom. If a relaxing coffee will help us to achieve World Peace, then we are all for it!!!

WE LOVE PATTAYA AND THE WSJ!!!

We visited our house in Thailand earlier this month to watch the wind blow while sipping wine in the pool and came across the WSJ. Nope, not the Wall Street Journal, but the Walking Street Journal. For those in the know, the only similarity between the two is a passion for free markets!!! Great rag for those who believe freedom of speech, free markets and telling it like it is should be the way the world works. That 1% should visit Pattaya where freedom reigns!!! The rag's disclaimer says it all: "The Walking Street Journal is intended to satirize expat life in Pattaya...WSJ is not meant to be taken seriously and certainly not meant to offend anybody. If you are offended by this material, please exercise your right to not read this newspaper, but allow others to make up their own minds and read WSJ if they choose.". We love Pattaya and the WSJ!!!

YEAH, BABY, MAY I BE YOUR APPRENTICE?

We recently read about 36 year old artist dubbed Mr. Lucky of Rio's Carnival and immediately revised and emailed our CV to reflect our latent, painting talents in a bid to be an apprentice (without pay is fine) to this legendary painter of nude Carnival models. Fifty women each year become even more dazzling under the steady - how does he manage - brush of a fella who swoops down on all parts of some of the most beautiful women in the world. Yeah, baby, he is our idol!!!

RELIGION GONE A BIT TOO FAR

We were pleased to read about a Tunisian pilot, who paused to pray instead of taking emergency measures before crash-landing his plane and killing 16 people, has been sentenced to 10 years in jail by an Italian court. Sorry, folks, but when we get in a plane we expect the pilot to follow his airplane not religious training. We wonder if this religion stuff has just gone a bit too far!!!

WE USUALLY ENCOURAGE HANDCUFFS, BUT THIS IS A BIT MUCH!!!

We were impressed by the Yank woman who handcuffed herself to her sleeping husband in an effort to reconcile their differences and save their marriage. Hubby was unimpressed, dragged her to his mobile, endured her kicking and biting, called the cops and had her arrested for assault. Handcuffs, used for more appropriate purposes related to the most pleasant form of exercise, are usually encouraged...but this Yank went a bit too far even for us!!!

SINGAPORE MAKES US SMILE

We recently read about the Singapore Kindness Movement ("SKM"), which is a government-funded charity, has a chairman, is recruiting "kindness troopers" and will promote the idea that people should be "nicer". The SKM's slogan is "Kindness, Bring It On!". We already are smiling and, as frequent visitors to the Republic, we welcome the idea of people being more gracious...an intriguing use of taxpayers' money...better than dropping bombs on other countries like some do!!!

GOVERNMENT PONZI SCHEME

The Government has learned so much from Mr. Madoff that they decided to implement their own form of ponzi scheme.

1. Joe the Investor buys shares in hedge funds.
2. Joe submits redemption request, which is delayed.
3. Joe pays his taxes.
4. AIG receives Joe's bailout \$ as, well, Joe is also Joe the Taxpayer.
5. AIG pays \$ to hedge funds, which were counterparties to AIG's financial foolishness.
6. Hedge funds meet Joe's redemption request.

All under the guise of law...

Oh my...

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