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HOME


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JACK'S CORNER
YOU GO, GIRLFRIEND

If you missed this lady, then you have missed one of the best examples of what makes life worth living. You go, girlfriend!!!

<http://www.youtube.com/watch?v=9lp0IWv8QZY>

OUR MAN DAN!!!

Dan Mitchell's plain talk on corruption in Washington is gospel. Please have a listen...

<http://www.youtube.com/watch?v=SovALiOhSg8>

USA IS FISHING AGAIN...FILE PROPERLY OR YOU WILL BE REELED IN!!!

I was reading the recent petition for leave to serve an USA Internal Revenue Service "John Doe" summons on First Data Corporation based in Colorado and First Atlantic Commerce Limited in Bermuda regarding "...USA taxpayers who operate businesses, either online or from a physical location, and have some or all of their gross income from credit, debit, and other payment card sales deposited directly into a bank account maintained outside the USA" with First Data Corporation that allowed for processing such transactions via software provided by First Atlantic Commerce Limited since January 1, 2002. The "John Doe" summons focus on investigations of an ascertainable group or class of persons that are USA taxpayers who the IRS believes have failed, or may have failed, to comply with one or more provisions of the law. The IRS was successful several years ago with a similar "John Doe" summons served on various credit card companies regarding USA taxpayers with undisclosed offshore credit cards. Now, the IRS is going after businesses engaged in a similar practice. Many practitioners, particularly outside the USA, consider these "John Doe" summons to be little more than "fishing expeditions". Perhaps or perhaps not. Bottom line, file properly or you will be reeled in by the long fishing pole of the USA IRS!

"BAD FACTS MAKE BAD LAW"

This old adage known well to lawyers – "bad facts make bad law" – sums up what is happening to the offshore world. The bad facts include nationals of developed countries blatantly cheating on their taxes, geniuses creating financial instruments with no substance and an economic meltdown spurring on entitlement societies.

However, this is not new as onshore legislative attacks on the offshore world began in earnest in 1981, continue today and no doubt will be here tomorrow. Some of these efforts include the following non-exhaustive list:

- In 1981, the USA Internal Revenue Service conducted a year-long study that resulted in the publication of *Tax Havens and Their Use by United States Taxpayers—an Overview*. The study focused on the misuse of tax treaties with former British and Dutch colonies, suggested harsh sanctions and ultimately caused the unilateral termination of many such treaties by the USA.
- In 1990, the Financial Action Task Force developed *The 40 Recommendations to Combat Money Laundering*, which was later revised in 1996 and finally given teeth in 2003 subsequent to the terrorist attacks in New York in 2001. The 40 Recommendations set out principles for action and, although not a binding international convention, most countries in the world have made a commitment to combat money laundering by implementing The 40 Recommendations.
- In 1998, the Organization for Economic Co-operation and Development (the "OECD") published *Harmful Tax Competition – An Emerging Global Issue*. The report seeks to develop measures to counter the perceived distorting effects of harmful tax competition on investment and financing decisions and the consequences for national tax bases.
- In 2007, the USA Senate Permanent Sub-Committee of Investigations (the "Sub-Committee") tabled the *Stop Tax Haven Abuse Act*, which was revived in 2009 now that a former member of the Sub-Committee has become President of the USA. The Bill seeks to create a rebuttable presumption that taxpayers have engaged in tax evasion when engaging in financial transactions with nationals of certain "secrecy" jurisdictions.
- In 2008, the Sub-Committee introduced a report entitled *Tax Haven Banks and U.S. Tax Compliance*, which detailed the illegal conduct of several USA taxpayers and two non-USA banks.
- In April 2009, the Group of 20 largest economic nations in the world published lists of jurisdictions that have substantially implemented internationally agreed tax standards and jurisdictions that have committed to internationally agreed tax standards, but have not yet substantially implemented. The third list, which included jurisdictions that have not committed to the internationally agreed tax standard, was quickly erased when the four countries apparently complied in a last second effort to avoid being "black-listed".

During the past 25 years of such "bad law", the world has seen an explosion in the number of offshore jurisdictions including the following non-exhaustive list:

- The Isle of Man, Jersey and Guernsey, all self-governing UK Crown Dependencies, flourished with low or no tax systems for companies and individuals from the '70s.
- The various Dutch Antilles continue to attract international business people seeking tax planning opportunities.
- Hong Kong and Panama have thrived despite experiencing a hiatus due to the resumption of sovereignty by China and the downfall of Noriega, respectively.
- In 1984, the British Virgin Islands – or BVI - established the cheap 'n cheerful international business company and now boasts more than 500,000 such companies.
- A multitude of jurisdictions starting in the '80s, including Anguilla, Belize, Seychelles, Cook Islands and Samoa, have followed suit and sought to attract international business persons to their shores with the promise of low taxes, confidentiality and user-friendly regulatory regimes.
- Jurisdictions such as Singapore has positioned itself as a financial center combining all the best of the offshore world with the physical and human infrastructure usually reserved to onshore jurisdictions.
- Austria, Luxembourg, Liechtenstein, Switzerland and other "old" European nations have offered planning opportunities and confidential banking to a global audience for decades.
- Estonia, Cyprus, Malta and other "new" European nations have followed suit with low tax regimes.
- The various States of the USA have enjoyed the success of forming hundreds of thousands, if not millions, of companies for foreign nationals seeking the many advantages of being incorporated in a zero tax, credible environment while banks in New York and other cities offer foreign nationals the ability to pay no tax on interest earned.
- New Zealand, an OECD member, has developed innovative legislation that has made the jurisdiction a leader for international planners.

The success of these jurisdictions, which have continued to grow despite the previously mentioned attacks, reflects a growing, decades-old dissatisfaction with government policies ranging from excessive taxation, inappropriate use of taxpayers' money, stifling regulation and overall unwanted government intrusion in the lives of ordinary citizens.

Simply stated, the attack on offshore jurisdictions is nothing new and will never stop. Equally, the development by the offshore world of new legislation, products and solutions to meet the growing, legitimate demand of international business people will also move forward. More importantly, these onshore efforts have NOT and will NOT be the demise of the offshore world!

Why?

First, legitimate jurisdictions and practitioners who use them are in full agreement with the developed world that tax evasion is illegal, unacceptable and not the *raison d'être* of the offshore world. The offshore world understands "bad facts make bad law" and has been regulated to a level not even practiced in the onshore world.

Second, the hypocrisy of the onshore world will always ensure they cannot, with any sense of justice, eliminate the legitimate activities of offshore jurisdictions. As stated in the telling article *Haven Hypocrisy* (Economist, May 26, 2009), "The most egregious examples of banking secrecy, money laundering and tax fraud are found not in remote alpine valleys or on sunny tropical isles but in the backyards of the world's biggest economies." The article continues with the following revelation by the person who was conducted a min-study of global company formation and bank account setup:

"He tried to open anonymous shell companies and bank accounts 45 times across the world. These were successful in 17 cases, of which 13 were in OECD countries. One example was Britain, where in 45 minutes on the internet he formed a company without providing identification, was issued with bearer shares (which have been almost universally outlawed because they confer completely anonymous ownership) as well as nominee directors and a secretary. All was achieved at a cost of £515.95 (US\$753)."

Third, the hypocrisy also was highlighted in the proposed *Incorporation Transparency and Law Enforcement Assistance Act*. The Sub-Committee found, among other disturbing facts, that

- the various States do not require the disclosure of virtually any or in some instances any information, including beneficial ownership, to either the State or the company formation agent handling the formation; and
- dozens of Internet websites highlight the anonymity of beneficial owners allowed under the incorporation practices of some States, point to those practices as a reason to incorporate in those States, and list those States together with offshore jurisdictions as preferred locations for the formation of new corporations, essentially providing an open invitation to criminals and other wrongdoers to form entities within the USA.

Fourth, as noted by many a well-respected commentator, the largest "offshore" banking jurisdiction is, not surprisingly, an island. The surprise is the island is Manhattan where interest on bank deposits is earned tax free by foreign nationals.

Fifth, the Group of 20 always talks about free markets. Governments will continue to find it difficult to allow free markets while stifling tax competition. The very fact that Hong Kong, Macau, Mauritius and Seychelles with their low or no tax systems tends to suggest that, perhaps, some form of competition when backed with political muscle will result in tax competition.

Finally, the onshore jurisdictions cannot avoid the inevitable consequences of shutting down offshore jurisdictions including, but not limited to, an influx of offshore nationals seeking refuge onshore with the attendant social issues; and a need to give aid to the offshore jurisdictions to avoid the complete collapse of their economies.

It is true that "bad facts make bad law". Although these bad facts may make for bad **proposed legislation**, I remain confident that ultimately the shared objectives of eliminating tax evasion and terrorism; the intelligence of a powerful few who recognize hypocrisy and unintended consequences must not guide policy decisions and the adaptability of the offshore world to create legitimate solutions for law-abiding international business people will avoid the same becoming **law**.

ANOTHER REASON WHY "TAX HAVENS" ARE NOT GOING ANYWHERE

We recently read a report published by the USA Government Accountability Office entitled *International Taxation: Large US Corporations and Federal Contractors with Subsidiaries in Jurisdictions Listed as Tax Havens or Financial Privacy Jurisdictions* (December 2008) (the "Report"). The stated objectives of the Report were:

- "...to determine how many of the 100 largest publicly traded U.S. corporations in terms of revenue have subsidiaries in jurisdictions listed as tax havens or financial privacy jurisdictions and the amount of federal contract obligations these corporations have, if any.
- "...to determine how many of the 100 largest publicly traded U.S. federal contractors in terms of contract obligations have subsidiaries in jurisdictions listed as tax havens or financial privacy jurisdictions."

Guess what? Eighty-three of the 100 largest publicly traded U.S. corporations in terms of 2007 revenue reported having subsidiaries in jurisdictions listed as tax havens or financial privacy jurisdictions and 74 of the 83 had federal contracts in fiscal year 2007. Tax havens, given the support of large companies, are not going anywhere!!!

ANOTHER TWO CHARGED AND ONE VOLUNTARILY BITES THE DUST!

Another high-flying Yank has bit the dust as a result of the UBS debacle. This yacht broker got on his bicycle after his initial appearance before a magistrate to change his plea to guilty as he admitted filing a false tax return to conceal more than US\$3 million in a secret account at [UBS in Switzerland](#). Another member of the yacht industry, who is an accountant, has also been charged for failing to report income and assets in other UBS accounts. Disclose, comply and pay...or yucky-poooh things are in your futures!!!

Onwards and upwards...and beware of breaking the law...really, bankrupt governments like the USA take the same quite seriously!



GCSL NEWS

CARLYLE CELEBRATING HIS SWEET 16TH IN HONG KONG

Photo says it all as Big C was throwing down in HonkeyTown!!!



MORE KUDOS FOR CARLYLE

Our Carlyle Rogers was elected as STEP Anguilla Branch Chair and the Anguilla representative to the STEP Caribbean Conference Steering Committee.

JACK + MARINA AT PIERRE'S WITH SOME NEW FRIENDS

Pierre Gagniere and his friend, Harvey This, rustled up one humdinger of a meal that we enjoyed with some fun people!!!



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AOA BEIJING CONFERENCE MARCH 7-9, 2010

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GREATER CHINA UPDATE

THE UNDERLYING DANGER OF CHINA'S ECONOMY

On April 16, the Chinese National Statistical Bureau announced its "report card" for first quarter performance. On the positive side, the Chinese economy continued to enjoy 6.1% growth in GDP. In addition, the indexes of industrial value added and the overall average income both indicate a continuing growth. While the 6.1% growth is considered low since China began its economic reform some 30 years ago, it is still a very positive sign given the overall global financial downturn. There is no doubt that this result has everything to do with the Central government's economic policy and its timely adjustments. However, as good as it looks today, there are some very significant underlying dangers that may greatly affect the Chinese continuing economic performance in 2009.

During the first quarter,

- 24.9% decrease in export;
- negative growth in both CPI and PPI indexes for the first time in recent years;
- 3.6% net growth in retail sales, another all time low in recent years;
- 162,000 new employment opportunities created in the first quarter, a decline of 210,00 in comparison to the first quarter of 2008; and
- 37% decrease in industrial profitability.

Despite the positive results in the overall economic growth as shown in the first quarter report, the above statistics represent some very significant areas of concern that one must pay close attention in analyzing the future of China economy. So far, the success of the Chinese economic reform is closely related to the policies and decisions made collectively in the Central government in Beijing. The current economy growth can be categorized as a direct result of the Central government's firm decisions in response to issues and subsequently produced miraculous results. It is critical for the Chinese central leadership to recognize that along with the short-term encouraging results, there are as many long-term effects if they are not corrected in a timely manner. These areas of concern or long-term effects can be summarized into the following four categories:

- Focus on foreign direct investments and light on consumption
- Focus on the reform of state-owned-enterprises and light on private-owned enterprises
- Focus on economic policy and light on related issues
- Focus on planning and light on execution efficiency

For over 30 years, China's economic reform has religiously followed the same formula in encouraging foreign direct investments and high technology that has shown significant success. However, oversight on the management of these "new" businesses has also hampered growth in a significant way. The large savings accounts in China have although produced a huge financial resource and wealth to the people, yet the failure to encourage entrepreneurial investments and private enterprises has also created a relatively low domestic consumption power in comparison to its economic growth, which includes capital investment in the private sector as well as consumer spending; at least, it has been true for the past five years. Indeed, many of the burning issues in China are not necessarily economy related, but social and culturally related; nevertheless, they are closely intertwined and need to be addressed with equal importance. Such issues include the aging population to the gradual depletion of labor; to the switch from labor-intensive industries to high value technology industries; from being export dependent to domestic market needs and consumption; from the need of unskilled labor to the need of educated skilled labor, along with it, blue-collar to white-collar job creation.

The announcement of the injection of RMB400 billion into domestic infrastructure created significant response and excitement both internally and externally. Contrarily, the Government's announcement on April 15 regarding the priority in improving and encouraging consumer spending, focusing on assistance in entrepreneurial and small businesses, and encouraging private investments and job creation; representing a long-term fix to a serious economic issue has met little or no attention in both domestic and foreign markets is a dangerous indication of a misguided and short-sighted approach to the China market.

*Contributed by Stephen Tsih, Business Development Director –Greater China, The GCSL Group of Companies Limited.
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THE TWO LOCAL TAX BUREAU CASES

The first case was issued on 27 November 2008. It involves the Chongqing tax bureau and the sale to a PRC purchaser of a sole purpose Singapore holding company of a PRC entity. When the PRC purchaser sought the required authorisations to transfer the purchase price abroad to the foreign seller, the tax authorities reviewed the matter and concluded that the Singapore entity should be disregarded because it lacked economic substance. On that basis, they treated the gain on the disposition of the Singapore entity as a gain on the disposition of the PRC entity itself and imposed withholding tax on the outbound purchase price. As justification to disregard the Singapore entity, the authorities noted specifically (i) its minimal capital and (ii) the lack of business activities other than holding the interest in the PRC entity.

The other case was officially reported on 30 December 2008¹. It deals with the PRC-Barbados tax treaty and its exemption for capital gain on the disposition of an interest in a PRC company. Barbados is one of the few remaining PRC treaties where a complete exemption is offered irrespective of the level of ownership in the PRC entity². The transaction involved the sale by a Barbados entity controlled by a US parent of its interest in an entity in the PRC. Upon its request for the treaty exemption for capital gains, the Xinjiang tax bureau reviewed the transaction thoroughly, even requesting assistance from the Barbados government under the exchange of information provisions of the treaty. It eventually concluded that the Barbados seller was not eligible to treaty benefits as it was not a resident of Barbados for the purposes of the agreement. In doing so, they disregarded a "certificate of residency" endorsed by the PRC embassy in Barbados, arguing that the certificate merely established that the seller was registered in Barbados, not that it was necessarily a resident for the purposes of the treaty. As justification, the authorities expressed the view that the transaction amounted to treaty abuse given its lack of legitimate business purpose.

There is much to be concerned as a result of the two cases (and perhaps others which have yet to surface).

- Although the decisions were issued by local tax bureaus, they have undoubtedly been endorsed by the SAT and therefore they reflect the basic approach of the central authorities towards tax avoidance and tax-driven structures using treaty jurisdictions
- The scope of the attack shows that the PRC authorities are learning the theories of high tax jurisdiction authorities around the world to attack tax-driven structures. Arguing on the basis of economic substance or legitimate business purpose are lines of argument not previously encountered from the PRC tax authorities
- It is disturbing that the PRC authorities would frame their attack on the basis of business or economic substance even in cases involving newly negotiated treaties where, in the negotiations leading to the conclusion of the treaty, the PRC authorities eschewed the vast arsenal of anti-avoidance provisions available in the model OECD/UN treaty (the usual starting point in tax treaty negotiations)
- What do you need to have sufficient economic substance? Both cases highlighted the low capital of the entities. Would a substantial capital have changed the result? What if the entity held interests in more than one entity? Does the entity need an office? Employees? A bank account? At this stage, the required threshold is very much unclear, which leaves a high level of uncertainty in devising appropriate structures for PRC based investments
- With government's revenues depleted by the economic crisis, offshore holding structures become a low hanging fruit for the authorities to extract additional taxes

It is virtually certain that, in the months and years to come, we will see more and more challenges from the authorities of tax-driven treaty-based structures.

*Contributed by Patrice Marceau, Partner - Hong Kong and Regional Taxation , DLA Piper,
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UPDATE ON CHINA TRANSFER PRICING

The Chinese Central Government is expected to launch another stimulus investment in domestic infrastructure projects in the second quarter to further boost its economy growth. Chinese government so far has invested more than RMB230 billion (approximately USD33.8 billion) of the

RMB4 trillion stimulus package that it announced earlier. The money will continue to be invested into projects that would benefit several sectors such as infrastructure, housing projects, and rural improvements. The second quarter investment is expected to be larger than the previous investments as the economic crisis is not recovering at the speed that the government would like. Additionally, summer time is usually a good time for construction work. As the economy continues to get worse during the first half year, Chinese central government is also seriously considering additional stimulus plans if the four trillion yuan package did not work as expected. Third batch of the cash will likely to be distributed quickly to various projects as Premier Wen stated in public. However, it is likely that the China might be recovering soon as the first asset investment picked up in the first quarter with an increase of 28.8%, which outperformed the annual rate of 25.5% last year.

*Contributed by Henry Chen, General Manager – Fiduciary Services, GCSL Shanghai
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BECOMING A CHINESE CITIZEN – SOME QUICK THOUGHTS

As Jack pointed out in the last newsletter, being a USA citizen is growing more onerous with the passage of each new cleverly titled piece of legislation. How much time do you think the staffers spent coming up with the "Stop Tax Haven Abuse" Title? For this and many other reasons, both political and economic, many Americans are considering obtaining citizenship elsewhere, and Hong Kong offers a viable alternative.

To be clear, when one applies in Hong Kong for Naturalisation as a Chinese National, this includes the right of abode in Hong Kong.

However, it is not only Americans seeking greener pastures. One of Hong Kong's most famous immigrants is Allan Zeman, an entrepreneur from Canada known for his development of Hong Kong's most famous entertainment district, Lan Kwai Fong, and more recently, as the chairman of Ocean Park, a once dilapidated government run amusement park that, under Zeman's leadership, has developed into a leading regional tourist destination. Zeman, after nearly four decades in Hong Kong recently gave up a Canadian citizenship and passport for Chinese nationality and a passport issued by Hong Kong.

And why wouldn't he? Hong Kong has low corporate and personal tax rates (based on territorial taxation no less!), is one of the safest cities in the world, and offers beautiful scenery of both the natural (mountains and oceans everywhere) and manmade (probably the most famous harbor skyline in the world) variety.

Although it would seem that Mr. Zeman would have a fairly easy time obtaining his Hong Kong passport – he does own a good sized chunk of central Hong Kong and has most of the leading political figures on speed dial – the process for obtaining China citizenship in Hong Kong is not necessarily reserved for the well heeled.

In fact, foreign nationals can apply for Chinese citizenship so long as they meet one of the following criteria:

1. They are near relatives of Chinese nationals (think foreign spouses of Chinese citizens)
2. They have settled in China (many expats came to Hong Kong on limited contracts but never left)
3. They have other legitimate reasons (that pretty much opens the door to everyone else)

Further, outside of requiring that all past criminal records be revealed, the immigration service will take any and all comers.

A successful applicant will of course need to provide reasonable justification to the immigration department, but showing some tie to Hong Kong, including family, "habitual residence", having been employed and paid taxes in the territory, and intention to continue living in Hong Kong would all be helpful.

Hong Kong has already proven one of the more attractive business destinations, even ranked by the Wall Street Journal as the freest economy in the world, and with the ease of application, perhaps more will consider making the city their permanent home.

*Contributed by Jason Geber, Business Development Manager, GCSL Hong Kong
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SINGAPORE UPDATE

NEW RULES FOR SALE OF INVESTMENT PRODUCTS IN SINGAPORE

Arising from the financial crisis and the mini bond scandal, and the bloodshed from investments losses, the Monetary Authority of Singapore ("MAS") recently issued specific guidelines on how consumers may be treated fairly in the realm of the sale of financial products.

The guidelines detail five fair dealing outcomes which provide for the MAS to assess the success of financial firms in promoting good market conduct practices. These guidelines, which supplement the Financial Advisers' Act, are meant to raise the standards of, and restore consumers' confidence in, financial firms.

The guidelines provide that:

- Fair dealing is central to a financial firm's culture;
- Products and services offered are suitable for a firm's target customer segments;
- Financial firms have competent representatives providing quality advice and appropriate recommendations;
- Customers receive clear, relevant and timely information to make informed decisions; and,
- Financial firms handle customer complaints in an independent, effective and prompt manner.

The MAS said that it will take into account a firm's ability to observe the guidelines in assessing whether it can stay in business. The MAS will also carry out random checks and interview a financial firm's board and senior staff on compliance.

With these new guidelines, many tactics now used by financial firms on consumers will be watched over by the MAS. These include commission-driven advice not necessarily to the best interest of the consumer, aggressive power-sale tactics, failure to provide full disclosure on products and attendant risks. Ultimately, it is all about good faith and fair play.

Another lesson from Lehman Brothers?

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

HOW TO CATCH WILD PIGS

Today, we are witnessing drastic changes at home and abroad. We are not just seeing a crisis in the economy, but we are also experiencing significant changes in many other components of our Western cultures. Each of us is living witness to America and the West's fading power, and a cultural shift to the other non-western cultures.

The free movement of people and property we took for granted during our lifetime – and expected for our children – will not be the same picture for the future. But if you take steps today – while there is still time – you can maintain control over the impact that tomorrow will bring.

While trying to keep a current perspective on your freedoms, here's a story sent to me by a colleague that provides a reminder of what's occurring today.

A new, young, male immigrant to the local community asked his professor if he knew how to catch wild pigs. Thinking it was a joke, the professor asked for the punch line. The young man said this was no joke.

"First," the man explained, "You catch wild pigs by finding a suitable place in the woods and place corn on the ground. The pigs find it and begin to come everyday to eat the free corn. When they're used to coming every day, you put up a fence on one side of where they are used to finding the corn. When the wild pigs get used to the fence, they begin to eat the corn again, and then you put up another side of the fence. They get used to that fence too, and continue to eat again.

"You continue until you have all four sides of the fence up with a gate in the fourth side. All the pigs – accustomed to the free corn - start coming through the gate to eat; and then once inside, you slam the gate shut and catch the whole herd.

"Suddenly the wild pigs have lost their freedom. They run around and around –squeal and whine - inside the fence, but they are trapped. Eventually they go back to eating the free corn and become content again. By now they are so used to the free corn that they have forgotten how to forage in the woods and fend for themselves, so they accept their entrapment."

The young immigrant went on to tell the professor that is exactly what he sees happening in America and other Western cultures. The government keeps pushing people towards socialism, and keeps spreading free corn in the form of social programs, tax credits, subsidies, welfare, medicine, drugs, etc. etc.

Along the way, each one of us lose a little more of our freedoms every day - just a little more at a time."

As homeland freedom diminishes, asset protection and international planning become increasingly relevant to protect the free movement of people and their money. This is how smart people avoid getting trapped inside a system, and avoid getting conned by the free corn.

Contributed by David Tanzer, who is an international lawyer and author of *How to Legally Protect Your Assets and Offshore Living & Investing*.
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OFFSHORE UPDATE

ANGUILLA: GLOBAL FINANCIAL CRISIS AFFECTS US AND SOME GOOD NEWS FOR ME.

It goes without saying that the global economic crisis is affecting Anguilla. But recent evidence has brought it home. Besides the closure of the Flag Tenemos project and the stoppage of work on the Rendezvous and Conch Bay projects, all of which occurred prior to September 2008, further pain is being felt in the hotel and tourism industry specifically and the economy in general. Some hotels have laid off workers, cut down hours and days of work and restaurants have reported steep declines in patronage. To cope with this, the recently launched Anguilla Community College, of which more will be written later, has announced programmes to train laid off workers to upgrade their skills for future potential employment or resumed employment for which they will be better trained.

Government revenues from all sectors are down and March saw a year to year decline of nearly 40 percent from 2008 in receipts from customs duties. The Financial Services Commission has also indicated that it is seeing a decline in business including renewals while renewals of company annual fees and new incorporations are all down. The Government is seeking to implement austerity measures including a potential reduction in salaries paid to civil servants, a voluntary reduction in rent paid to landlords and a reduction in proposed capital expenditures.

It goes without saying that consumer spending is down though no precise figures are available to date. There are no signs of deflation yet but it is safe to assume that the economy will contract in the first quarter and probably for the rest of year.

But while this will come as news to no one given the global economic downturn, in a small economy the signs are more visible and spoken about. Equally however, is the fact that the resilience of the Anguillian people who have suffered far worse than the pain from this economic downturn is enough to sustain us.

Now for some good news. On 28th April I received my letter of appointment for the Governor to the Board of Governors of the Anguilla Community College effective 1st March 2009 for a period of 3 years. As a board member, I am tasked with exercising oversight of the operations of the College but more importantly, as the institution is at a nascent stage, my role is more that of a builder than an overseer. I look forward to the challenge and will explore avenues to bring specific education of financial services into the academic programs of the College.

It is a challenge I relish and my GCSL work will also serve to assist me in executing my board duties.

I look forward to discussing potential areas of academic study with all and sundry and hopefully my two roles will complement each other.

Contributed by Carlyle Rogers, Managing Director, GCSL Anguilla
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BELIZE: IBCS AND REAL ESTATE

For those of you who know anything about Belizean law, this title must come as a surprise to you. After all, it is common knowledge for all of you that Belize IBC legislation does not allow for IBCs to own land. That is something that has been in place for too long. However, many of you have also had the opportunity to visit Belize, and have you fell in love with it.

When you step into this country, you realise that there is more to life than the messages on your BlackBerry, there is more to life than the emails that you have to respond to. There is no reason for you not to come to Belize after you have bought an IBC from here. It is absolutely breathtaking.

Belize has proven itself to be more than the typical vacation spot. There is something for everyone here. If you want to engage in the sand, sea and sun that so many tourists opt for when choosing a destination, Belize has got that for you, with the white sand beaches of San Pedro Town on Ambergris Caye, or the more laid back Caye Caulker.

That has its following, but there are some of us who are more philosophical, or better yet, anthropological in outlook. If so, Belize has something for you. As you can see from the photos, which were taken by my very own camera, not airbrushed or Photoshopped or anything like that, there are wonderful Mayan Ruins for you to visit. The one you are seeing are the ruins of Xunantunich, and is still to date the tallest structure in Belize. Apparently hurricanes never used to hit that frequently when the Mayans were in force around here (not to mention that the structures are all made of stone, unlike Belizeans of old, who made their houses of lumber). People may not be aware, but Belize covers the majority of the area that comprised the Mayan civilization whilst it was in force. You can still get Mayan calendars for sale, which has been proven to be more accurate than even the Gregorian calendar that most of the world uses.

But should all of that not be of interest to you, please, take out your cameras, prime them and get ready for the wildlife adventure of a lifetime. Belize boasts some of the most diverse wildlife found in any one place or country. From harpy eagles and tapirs, to the Jesus lizard that runs so fast that it skips across water, Belize can easily wear out your little point and shoot or even your DSLR. Once here you should get a look see at the Belize Zoo, which allows you to capture some of the most interesting wildlife without necessarily having to go out into the wild.

Why do I make mention of all this? I firmly believe that you need to know who is responsible for dealing with your affairs. If you have a trust, you need to come and visit the trustee, see who we are, know our faces. If you are buying an IBC from us, shouldn't you at least know that we aren't in the back-room of someone's house, stealing electricity from the government so we can print your documents. You should know that we are in fresh new offices, with space to accommodate you when you visit. Plus, if the unfortunate time should come where you need to be deposed, at least you can say for sure that you have been able to not only speak with us, but you have also visited the country and know something about it. Come, make it a working vacation, if anything. We are more than happy to host you in this humble country that some refer to as Mexico's footstool. Thankfully, our northern border has been essentially closed, so now there is no worry of swine flu. Just come to us and enjoy our company, and incorporate your own company, and we will continue to work well for you.

*Contributed by Carlo Mason, Managing Director, GCSL Belize
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COOK ISLANDS: REPORT OF FOREIGN BANK AND FINANCIAL ACCOUNTS (FBAR)

In conjunction with Michael Nelson Esq, an Attorney out of San Ramon, California, we continue our discussion on various issues that confront offshore practitioners who deal with USA citizens, USA Green Card Holders, USA Resident Aliens and USA legal jurisdictions.

The Bank Secrecy Act gave the Department of Treasury authority to establish recordkeeping and filing requirements for United States persons with financial interests in or signature authority, or other authority over financial accounts maintained with financial institutions in foreign countries. This provision of the law requires that a Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts be filed if the aggregate balances of such foreign accounts exceed US\$10,000 at any time during the year.

On April 10, 2003, the Financial Crimes and Enforcement Network delegated enforcement authority to the Internal Revenue Service (IRS). The IRS is now responsible for:

- Investigating possible civil violations.
- Assessing and collecting civil penalties.
- Issuing administrative rulings.

Purpose of the FBAR

The FBAR rules were established because of the utility of the information required in criminal, tax, and other regulatory matters and in the conduct of intelligence or counterintelligence activities including analysis to protect against international terrorism. The reports filed as a result of this regulation provide leads to investigators that facilitate the identification and tracking of illicit funds or unreported income, as well as providing additional prosecutorial tools to combat money laundering and other crimes.

Who Must File the FBAR?

A United States person must file an FBAR report if that person has financial interest in, signature authority or other authority over any financial account (s) in a foreign country and the aggregate value of these account(s) exceeds US\$10,000 at any time during the calendar year.

Definition of a United States Person

A "United States person" is:

- A citizen or resident of the United States.
- A person in and doing business in, the United States.

The term "person" includes individuals and all forms of business entities, trusts, and estates.

Definition of Foreign Financial Accounts

- Bank accounts such as savings accounts, checking accounts, and time deposits.
- Securities accounts such as mutual funds, brokerage accounts, and securities derivatives accounts.
- Accounts where the assets are held in a commingled fund and the account owner holds equity interest in the fund.
- Any other account(s) maintained in a foreign financial institution or with a person doing business as a financial institution.

Penalties

The following chart highlights the civil and criminal penalties that may be asserted for not complying with the FBAR reporting and recordkeeping requirements.

Violation	Civil Penalties	Criminal Penalties	Comments
Negligent Violation	Up to US\$500	N/A	31 U.S.C. § 5321(a)(6)(A) 31 C.F.R. 103.57(h).
Non-Wilful Violation	Up to US\$10,000 for each negligent violation	N/A	31 U.S.C. § 5321(a)(5)(B)
Pattern of Negligent Activity	In addition to penalty under § 5321(a)(6)(A) with respect to any such violation, not more than US\$50,000	N/A	31 U.S.C. 5321(a)(6)(B)
Wilful - Failure to File FBAR or retain records of account	Up to the greater of US\$100,000, or 50% of the amount in the account at the time of the violation.	Up to US\$250,000 or 5 years or both	31 U.S.C. § 5321(a)(5)(C) 31 U.S.C. § 5322(a) and 31 C.F.R. § 103.59(b) for criminal. The penalty applies to all U.S. persons.
Wilful - Failure to File FBAR or retain records of account while violating certain other laws	Up to the greater of US\$100,000, or 50% of the amount in the account at the time of the violation.	Up to US\$500,000 or 10 years or both	31 U.S.C. § 5322(b) and 31 C.F.R. § 103.59(c) for criminal. The penalty applies to all U.S. persons.
Knowingly and Wilfully Filing False FBAR	Up to the greater of US\$100,000, or 50% of the amount in the account at the time of the violation.	US\$10,000 or 5 years or both	18 U.S.C. § 1001, 31 C.F.R. § 103.59(d) for criminal. The penalty applies to all U.S. persons.
Civil and Criminal Penalties may be imposed together. 31 U.S.C. § 5321(d).			

To whom do these rules apply?

Although there are legitimate reasons why a [USA person](#) might create a [foreign trust](#), or have transactions with a [foreign trust](#), they can have tax consequences and result in filing responsibilities as well. Regardless of your motivation, failure to meet these reporting and filing requirements can result in very significant penalties, now with both civil and criminal penalties.

In general, the reporting rules apply to a [USA person](#) who:

- Creates a [foreign trust](#)
- Transfers any money or property to a [foreign trust](#)
- Receives a distribution from a [foreign trust](#)
- Is treated as the U.S. [owner](#) of a [foreign trust](#).

Tax consequences can apply to the USA [owners](#) and [USA beneficiaries](#) of [foreign trusts](#), and to the [foreign trust](#) itself.

*Contributed by Puai Wichman, Managing Director, GCSL Cook Islands
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SAMOA: UPDATED LEGISLATION

The Samoa International Finance Authority (www.sifa.ws) has announced amendments to the International Companies Act & Trustee Companies Act 1987. The most important part of the amended legislation deals with Court proceedings relating to confidential information. If you would like copies of the amended legislation, please contact me!

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TIDBITS

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

OUR MONTHLY QUOTE THAT MADE US SMILE

"It is clear that everything in life is transient -- nothing can last forever. Permanence just doesn't exist -- even the tallest mountains are slowly crumbling down. So you have to stop thinking that what you have right now is going to last forever. Remind yourself that the only thing you can count on is change. Rather than try to preserve what you love right now, just enjoy it. Value it and treat it respectfully instead of trying to keep it exactly the way you want it to be." - Anon

BEWARE THE COURIER COMPANY

We recently heard a story that must be true because not even John Grisham could weave such a tale. A Russian fella in Moscow visited the office of an international courier company, provided them with documents all in English, which he had signed but could not read, gave the friendly courier company employee English language details of the addressee (one of the sender's closest relatives), paid and went on his merry way secure in the belief all would be well regarding the safe delivery of these important papers. A week later, the intended addressee learned that the documents had been sent mistakenly (???) to an upstanding member of the community, i.e. Russian fella serving five years in a USA prison for making/selling fake passports and, according to online reports also is under investigation for arranging a gangland style murder in Thailand. Yes, folks, it happened...beware the courier company!!!

BREACH OF CONTRACT!?

We recently read about the sterile German fella who paid his next door neighbor US\$2,500 to impregnate his former beauty queen wife...the ole fashion way. After 72 attempts, the sterile German fella demanded his neighbor be tested and discovered the obviously tired best mate also was sterile. The now first sterile fella is suing the now second sterile fella for breach of contract. Hey, US\$2,500 for 72 attempts works out to be a pretty cheap date so we reckon the second sterile fella should return the bucks. **SIDEBAR:** The next door neighbor's wife had to confess he was not the father of their two kids. Those wild 'n crazy Germans!!!

NAKED HIKING IS DANGEROUS?

We recently read about the beautiful Alpine countryside of Appenzell Innerrhoden where hiking in the nude was previously hugely popular, but has offended Appenzellers' sensitivities to the point where they voted to require clothes when strolling through the hills. We were not surprised to learn that Mammut, a Swiss manufacturer of hiking equipment and clothes, commented that exposing certain delicate areas of the body to the sun's UV-rays was dangerous. So, was it concern for public morality or the lobbying influence of a large company that resulted in these geniuses deciding naked hiking is dangerous? Lighten up folks!

BE CAREFUL WHAT YOU SAY IN THE LAND OF FREEDOM OF SPEECH

We were disappointed to read that the USA Supreme Court recently upheld a USA government crackdown on profanity on television, a policy that subjects broadcasters to fines for airing a single expletive blurted out on a live show. C'mon folks!!! We subject our youth to seeing Hanna Montana swinging her groove thing all over the pitch, Rambo killing several thousand people, Power Rangers taking out all sorts of evil creatures, CNN broadcasting bombs landing in the school yards of unknowing children all sponsored by USA taxpayers' money and idiot politicians, as well as idiot newscasters, talking nonsense on Fox, but we can't say the "F word" because it will be bad for the kids? Justice Scalia, who is brilliant but just right of Atila the Hun, commented that "Even when used as an expletive, the F-word's power to insult and offend derives from its sexual meaning." So what...whatever happened with parents restricting their children's viewing habits!? Grow up, folks!!!

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