



## Bermuda's stand on 'offshore secrecy jurisdictions'

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Bermuda's Minister of Finance and industry organisations, such as the Association of Bermuda Insurers and Reinsurers (ABIR), have aggressively made the case in Washington that Bermuda cannot credibly be included in a United States list of so-called "Offshore Secrecy Jurisdictions" said to profit by enabling evasion of taxes otherwise payable "onshore." Advocates for Bermuda point to the fact that Bermuda has a longstanding commitment to transparency and the effective exchange of information in relation to tax matters. Moreover, they are also seeking to sway US opinion by highlighting the fact that Bermuda has not adjusted its tax base to attract mobile capital from other jurisdictions and emphasizing the role that the Bermuda insurance industry has played in providing coverage for US-based disasters such as Hurricane Katrina and the World Trade Center after the September 11, 2001, terrorist attacks.

Bermuda has never sought to develop an off-shore banking industry or to market itself as place where wealthy individuals can be assured that details of their finances will be kept secret from the tax authorities in their home jurisdiction. Indeed, as long ago as 1986, Bermuda signed the USA-Bermuda Tax Convention to promote mutual assistance in tax matters including, "relating to the prevention of tax fraud and the evasion of taxes."

The Minister and industry groups have emphasized that Bermuda's insurance and reinsurance market supports global economic stability through the efficient spread and diversification of insurance risks. Unlike some other offshore jurisdictions, Bermuda's success is not dependent upon national secrecy laws but instead upon the fact that it is home to an efficient and competitive insurance and reinsurance market.

Of course, most of Bermuda's largest insurers are publicly traded companies (with US listings) and, as such, already provide considerable transparency concerning their finances.



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In the face of early suggestions that the Obama administration would have too much on its plate (such as preventing the economic downturn from turning into a depression) to make headway with the Stop Tax Haven Abuse Act, the administration has demonstrated that it is capable of multitasking. During the first week of March, Senator Carl Levin reintroduced a revamped version of his 2007 bill which is intended to launch an all-out attack on what he categorizes as "Offshore Secrecy Jurisdictions," stating:

"If offshore jurisdictions make a decision to enact secrecy laws and support industry practices furthering corporate, financial, and tax secrecy, that's their business. But when US taxpayers start using those offshore secrecy laws and practices to evade US taxes to the tune of \$100bn per year, that's our business. We have a right to enforce our tax laws and to expect that other countries will not help US tax cheats achieve their ends."

The original 2007 bill, which was co-sponsored by then-Senator Barack Obama, failed to garner sufficient support to become law. However, given the comfortable majorities enjoyed by the Democrats in both the House and Senate, and the fact that the bill is endorsed by not only the President but also by other political heavyweights such as the Treasury Secretary, there may be sufficient support and impetus to guarantee a different outcome this time around.

Although observers in Bermuda were pleased to see no mention of the Island in Senator Levin's 18-page statement introducing the Act (with Switzerland and the Cayman Islands attracting the most attention), if passed in its current form the Act is nevertheless expected to identify Bermuda and 33 other financial centres (including such established centres as Hong Kong and Singapore) as "Offshore Secrecy Jurisdictions", purportedly on the basis that they unreasonably restrict the ability of the United States to obtain information relevant to US tax matters. Of note, the Act will, if passed:

- create a rebuttable presumption that a US taxpayer who "formed, transferred assets to, was a beneficiary of, or received money or property" from an offshore company or trust is in control of that entity for tax purposes;
- automatically treat any benefit received by a US person from an offshore company or trust as unreported income;
- automatically require that details of any account held offshore be reported to the IRS;
- prescribe penalties for failing to disclose offshore holdings;
- set a deadline by which time hedge funds and private equity firms will need to establish anti-money laundering programs; and
- seek to strengthen summonses used in connection with Offshore Secrecy Jurisdictions.

The US is not alone in this endeavour. G20 and OECD member countries have in recent weeks increased pressure on so-called tax havens, most notably with the publication of the OECD's progress report on the implementation of internationally agreed tax standards. The report's publication was timed to coincide with the G20 summit held in London. To its surprise, Bermuda found itself included on the OECD's "grey list"; it failed to make the "white list" because it had not signed 12 Tax Information Exchange Agreements ("TIEAs") as required by the OECD. The Island has to date signed 11 TIEAs and should have well in excess of the minimum required for inclusion on the "white list" by the next G20 summit.

As the aim of the Stop Tax Haven Abuse Act is to prevent wealthy individuals from evading tax by exploiting bank secrecy laws and tax avoidance structures, like tax shelters, it is unlikely to have a significant adverse impact on the Island's insurance and reinsurance industry. That is not to say that the proposed statute will not present the Bermuda insurance market with challenges. The areas most likely to come under scrutiny include the captive insurance industry and the use of internal reinsurance by Bermuda (re)insurers with US subsidiaries whereby US sourced premium income is ceded back to the Bermuda parent. Outside the insurance sector, Bermuda's trust and hedge fund industries are also likely to be impacted and financial service providers will likely need to refine (and aggressively implement) their Know Your Client regimes to identify individuals who may be utilizing their services for the purpose of evading on-shore tax authorities.

Bermuda has a history of responding and adapting to challenges and there is every reason to suppose that it will respond to this latest challenge in a manner that promotes the Island's long-term viability as a financial centre. It is perhaps worth noting that it is not the objective of the Stop Tax Haven Abuse Act to interfere with the right of a self-governing nation to establish its own tax regime, but to prevent the "abuses" that are prevalent in many other offshore jurisdictions. Bermuda, with a deserved reputation as a responsible offshore jurisdiction, should have little to fear from this and, indeed, may benefit from a "flight to quality" as businesses relocate to Bermuda from other less responsible and less transparent jurisdictions.

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