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Cayman Islands

Fiscal Transparency in the Cayman Islands

Executive Summary

The Cayman Islands have an extremely open, accountable and transparent government and regulatory system. Despite the dated stereotype, the Cayman Islands have promoted transparency regulations and initiatives for many years.

1. In May 2000, the Cayman Islands made commitments to the OECD to introduce measures for the exchange of tax information and were one of the first non-OECD jurisdictions to adopt the principles of transparency and information exchange.
2. These commitments continue to be honoured today with legislation (Tax Information Authority Law 2005) and tax information exchange agreements with 18 jurisdictions, including: Australia, France, Germany, the United States and the United Kingdom.
3. Negotiations are underway to sign many more tax information exchange agreements, with another 12 agreements due to be concluded, several with G-20 countries of economic significance to the Cayman Islands.
4. The Cayman Islands enacted the Reporting of Savings Income Information (European Union) Law, 2005 in relation to the reporting of savings income information.
5. The Cayman Islands Monetary Authority (CIMA) shares information under Memoranda of Understanding with a number of overseas authorities and prominent regulators such as the UK FSA and the US SEC.
6. The Bank & Trust Companies Law (2009) Revision (originally enacted in 1966 as the Bank & Trust Companies Regulations Law) gives CIMA supervisory and investigative powers over banking practices.
7. The Mutual Legal Assistance (United States of America) Law (1999 Revision) was enacted in 1986 for the purposes of obtaining information for use in criminal investigations or proceedings.
8. The Proceeds of Crime Law (2008) (originally enacted in 1996 as the Proceeds of Criminal Conduct Law) deals with money laundering and terrorist financing.
9. The Proliferation Financing (Prohibition) Bill seeks to identify and prevent money being transferred to countries or entities suspected of involvement with nuclear weapons.
10. The Anti-Corruption Law (2008) and the Freedom of Information Law (2007) aim to reinforce and give further effect to the fundamental principles underlying constitutional democracy.
11. The Confidential Relationships (Preservation) Law (2009 Revision) was first enacted in 1976 to protect bona fides business dealings but recognising the necessity of permitting disclosure under certain circumstances.
12. The Cayman Islands has been elected a member of the OECD Steering Group to assist in the restructuring of policy for the Global Forum on Transparency and Information Exchange.
13. The latest OECD Progress Report confirms the Cayman Islands as a jurisdiction which has substantially implemented the internationally agreed tax standard.

Open and accountable

Demand for an increasingly open, accountable and transparent government and regulatory system is equally as strong in the Cayman Islands as it is in the United States and other G-20 nations. Despite the dated stereotype clung to by critics, the Cayman Islands have promoted transparency regulations and initiatives for some time and negative accusations against the Islands are undeserved. A proper analysis of the compliance legislation, guidance and policies in place and the international co-operative agreements which promote extra-territorial assistance in legal proceedings and information sharing reveals why the Cayman Islands are highly regarded by international standard setting bodies such as the OECD¹, FATF² and IMF³. The Cayman Islands are also on the G-20's⁴ "white list" of compliant jurisdictions. It is generally accepted that investors and financial institutions are entitled to a legitimate degree of privacy in their affairs whether they are doing business in New York, London or the Cayman Islands. However, the reason that the Cayman Islands continues to be such a successful centre for financial services is because the Islands provide a pro-business, cost efficient, tax neutral platform for international payment flows, all within a regulated environment that meets international standards.

The Cayman Islands are at the forefront of shaping international standards for tax transparency. Legislation has been enacted and various measures implemented to facilitate the exchange of relevant information. The Cayman regulatory authority has access to comprehensive and reliable data from any person with relevant information. Stringent anti-money laundering legislation has been in place for many years and has outpaced many other major onshore financial centres. Tax payers' rights are protected by legislation that supports government accountability, transparency and public participation in decision making. Confidentiality laws strike the right balance of protecting privacy in business dealings while providing a mechanism for information to be passed to law enforcement and regulatory authorities inside and outside the Cayman Islands.

It is clear that the Cayman Islands embrace the need to foster global standards and the desire for transparency is no exception. The following analysis demonstrates the responsible and professional manner that the Cayman Islands have approached these issues.

OECD crusade for transparency

The OECD is spearheading the international fight against cross-border tax evasion with a three year plan to improve tax transparency and the exchange of information. The Cayman Islands fully supports this mission and was part of the Global Forum that met in Mexico last year to discuss the progress of implementing international standards. The Cayman Islands, with 13 other countries, were also elected as a member of the OECD Steering Group to assist in the restructuring of policy for the Global Forum.

The Global Forum is the final decision making body for OECD matters. This is an important fact to grasp. It means that the Cayman Islands are actively involved in helping to shape international standards for tax transparency. Their work includes participation in key initiatives such as reviewing the findings of a Peer Review Group tasked with reviewing, publishing and monitoring the development and adequacy of regulatory regimes on a country by country basis. Jurisdictions who fail to implement the standards will be provided with guidance on what changes are needed and a deadline to report back on the improvements they have made.

¹ The Organisation for Economic Co-operation and Development.

² The Financial Action Task Force, an inter-governmental body developing and promoting policies to combat money laundering and terrorist financing.

³ The International Monetary Fund, an organisation of 186 countries developing and promoting global monetary co-operation.

⁴ The Group of Twenty Finance Ministers and Central Bank Governors (known as the G-20 and also the G20 or Group of Twenty) is a group of finance ministers and central bank governors from 20 of the world's largest economies: 19 countries plus the European Union.

Cayman's participation at this level is not only evidence of its active commitment to the cause, but puts it in the ideal position to continually monitor its own compliance. The latest OECD Progress Report (dated 22 March 2010) confirms the Cayman Islands as a jurisdiction that has "substantially implemented the internationally agreed tax standard", and as a member of the Steering Committee, Cayman will be at the forefront of developments in this area and can ensure that it continually remains conversant and compliant with internationally agreed standards.

There are five OECD standards for tax co-operation⁵ and they provide the model for bilateral tax conventions between OECD and non-OECD states. They have become the international "norm" for tax co-operation, adopted by the G-20 in 2004 and by the UN Committee of Experts on International Cooperation in Tax Matters in October 2008. These standards, and how the Cayman Islands comply with them, are discussed below.

Standard 1: Exchange of information

The OECD expects exchange of information on request where it is "foreseeably relevant" to the administration and enforcement of the domestic laws of the requesting party. Relevance is key and "fishing expeditions" will not be tolerated.

In May 2000, the Cayman Islands made commitments to the OECD to introduce measures for the exchange of tax information and were one of the first non-OECD jurisdictions to adopt the principles of transparency and exchange of information. As a result of this commitment, the Cayman Islands were omitted from the OECD's "tax haven" list published in June 2000. Ten years on, the Cayman Islands continue to honour those commitments with legislation (*Tax Information Authority Law, 2005*) and tax information exchange agreements ("**TIETAs**") or arrangements currently in place with 18 jurisdictions: (Aruba, Australia, Denmark, Faroe Islands, Finland, France, Germany, Greenland, Iceland, Ireland, the Netherlands, Netherlands Antilles, New Zealand, Norway, Portugal, Sweden, the United States and the United Kingdom). Negotiations are underway to sign up to many more, with an 'agreement in principal' reached recently with the government of Japan and another 12 agreements due to be concluded, several of them with G-20 countries of economic significance to the Cayman Islands, such as; Canada, Italy, Mexico and South Africa.

In addition, the Cayman Islands enacted the *Reporting of Savings Income Information (European Union) Law, 2005* to effect the implementation of bilateral agreements between 27 member states of the European Union in relation to the reporting of savings income information.

Similarly, the Cayman Islands have a history of sharing information under Memoranda of Understanding between the Cayman Islands Monetary Authority ("**CIMA**") and a number of overseas authorities⁶, as well as prominent regulators like the UK FSA and the US SEC. Indeed, the *Monetary Authority Law (2008 Revision)* clearly states that one of the principal functions of CIMA is to "provide assistance to overseas regulatory authorities".

It is clear from the actions and agreements concluded over the last ten years, that the Cayman Islands are no stranger to the concept of or compliance with international tax information exchange standards.

⁵ These standards were adopted from Art 26 of the OECD Model Tax Convention and the 2002 Model Agreement on Exchange of Information on Tax Matters.

⁶ Including Jamaica, Bermuda, Isle of Man, Panama, Malta and Brazil.

Standard 2: No restrictions from bank secrecy or local tax requirements

The Cayman Islands have a long standing history of co-operation to increase transparency in the banking system and to tighten banking regulation. There are various provisions under Cayman Islands' law which compel or require banks to disclose information.

The *Bank & Trust Companies Law (2009 Revision)* gives CIMA supervisory and investigative powers over banking practices, including reasonable access to books, records, vouchers, documents, cash and securities. Similarly, the *Mutual Legal Assistance (United States of America) Law (1999 Revision)* was enacted over 20 years ago in 1986⁷ for the purposes of obtaining information from individuals and entities (including banks) for use in criminal investigations or proceedings. The information that can be requested includes that concerning the willful or dishonest receipt of benefits relating to tax laws and regulations, and making false statements in relation to taxes.

The *Proceeds of Crime Law, 2008* deals with money laundering and terrorist financing. For some time now, the Cayman Islands have maintained anti-money laundering legislation which is among the most stringent in the world. Changes⁸ were made to this legislation in 2008 in response to further CFATF⁹ recommendations and the Cayman Islands continues to rank alongside other major jurisdictions complying with international anti-money laundering standards. Further, in common with other major financial centres around the world, the Cayman Islands has recently published legislation (the *Proliferation Financing (Prohibition) Bill*) which seeks to identify and prevent money being transferred to countries or entities which are suspected of building or dealing with nuclear weapons in contravention of international mandates.

Standard 3: Accessibility and reliability

The OECD expects information requested by another jurisdiction to be obtainable and reliable. This means having regulations and systems in place that:

1. impose an obligation on private and governmental bodies to collect and store relevant information and ensure it is kept up to date; and
2. give power to an appropriate authority to gain access to that information and forward it to the requesting country in appropriate circumstances.

Under the *Monetary Authority Law*, CIMA is granted operational independence and is empowered with rights of access to relevant client information held by financial institutions. If requests are not complied with within three days, CIMA can obtain a court order compelling the disclosure. Importantly, compliance with such a request will not be treated as a breach of any legal restriction on disclosure or give rise to any civil liability. This safeguards the holder of the client information and encourages co-operation. It is worth noting that the Registrar of Companies does not have the ability to share information with overseas regulatory authorities, but CIMA is empowered to obtain information from any person reasonably believed to have information relevant to an enquiry, and this includes the Registrar of Companies.

The Financial Reporting Authority ("FRA") deals with money laundering and terrorist financing matters and, under the *Money Laundering Regulations, 2009*, financial service providers are obliged to comply with various administrative requirements to ensure that they have systems in place to identify suspicious activity and that their staff are trained in and comply with the money laundering regulations. Clear guidelines and

⁷ to give effect to the Mutual Legal Assistance Treaty between the United States and the UK.

⁸ The changes were based on the UK Proceeds of Crime Act 2002 and the Serious Organised Crime & Police Act 2005.

⁹ Caribbean Financial Action Task Force, an FATF-style regional body which has observer status with the FATF.

expectations together with tough sanctions (failure leads to criminal offences) mean that financial service providers take this responsibility seriously, and as a result, client records and KYC¹⁰ checks in the Cayman Islands are well established, thorough and kept up to date, allowing CIMA access to comprehensive and reliable data to assist overseas regulatory bodies with investigations as is necessary.

The Tax Information Authority ("TIA") is the competent authority in the Cayman Islands tasked with dealing with all tax co-operation matters. It has the power to make written requests for information, apply to a Judge to give effect to a request, apply for a court order to produce the requested information and apply for a search warrant to search for and seize specified information. These powers provide the TIA with effective access to information to pass on to an overseas authority once it is satisfied that the request for information is both reasonable and relevant. The process evidently works: an IRS official (quoted in the US Government Accountability Office report on the Cayman Islands released in July 2008) advised that the Cayman Islands' government had provided requested information in a timely manner for all TIEA requests.

Standard 4: Respect for taxpayers' rights

The rights of the people of the Cayman Islands and elsewhere are respected and protected in a number of ways. Two primary pieces of legislation are the *Anti-Corruption Law, 2008* and the *Freedom of Information Law, 2007*. The objectives of these laws are to reinforce and give further effect to the fundamental principles underlying the system of constitutional democracy, namely:

1. government accountability;
2. transparency; and
3. public participation in national decision making.

In addition to protecting citizens from corruption within the Cayman Islands, the protection extends to other jurisdictions. For example, a Cayman company involved in corruption outside the Cayman Islands commits an offence under the Anti-Corruption Law. Cayman is the only offshore centre with this type of legislation in place. These laws serve to promote openness and transparency and to root out corruption - "whistleblowers" are protected to encourage the disclosure of any wrong doing. Qualifications to absolute transparency are required however to protect the unreasonable disclosure of personal information and information given in confidence by foreign governments and international organisations.

Standard 5: Confidentiality

The OECD is seeking to strike a balance between the need for jurisdictions to enforce their tax laws, and the legitimate desire for confidentiality and privacy in business and financial affairs. Consequently, it requires strict confidentiality to be applied over any information exchanged between international and domestic authorities and stipulates that information obtained by such authorities should only be used for the purpose for which it was originally requested. The Cayman Islands addresses this balance in a number of ways.

The *Confidential Relationships (Preservation) Law (2009 Revision)* (the "**CRPL**") was first enacted in 1976 with the intention of protecting bona fides business dealings but recognised the necessity of permitting disclosure under certain circumstances. The CRPL codifies the English common law of confidentiality and recognises the duty of lawyers, bankers, accountants, government officials and financial professionals to maintain the confidentiality of the identity and business of their clients. This duty is qualified in a number of circumstances, including where disclosure is made under compulsion by the CRPL or another law of the Cayman Islands.

¹⁰ Know Your Client – the name given to the identification and verification checks carried out by regulated service providers on individuals and entities seeking to enter into a business relationship with that service provider

Conclusion

The Cayman Islands have clearly taken a positive and co-operative approach to international co-operation and the flow of information. They take a tough stance on tax evasion and corruption and have been proactive in the global fight against money laundering for many years. There are laws, procedures and a regulatory regime in place that embrace transparency and co-operation, as well as bilateral agreements with over 30 countries and a key advisory role at the heart of the OECD. This demonstrates just how actively involved the Cayman Islands really are, as the recent global economic crisis, combined with the ever increasing complexity of cross border financial structures and transactions has shifted everyone's focus and served as a reminder of the importance of international co-operation and transparency.

This memorandum provides a summary only of the laws and regulations in place that deal with transparency and international co-operation. Walkers have published separate memoranda on individual aspects of this topic.

For further information please refer to our website www.walkersglobal.com or your usual Walkers' contact or:

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