OFFSHORE

British Virgin Islands passes OECD Phase I peer review

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On 26 October 2011, the Organisation for Economic Cooperation and Development (OECD) announced that the British Virgin Islands (BVI) had passed the OECD Phase I peer review process on global transparency and exchange of information for tax purposes.

In the aftermath of the global financial crisis in 2009, the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) was restructured to create a global organisation for member countries to participate, on an equal footing, in the work on international exchange of information for tax purposes. The Global Forum comprises 105 member countries plus the European Union and nine international organisations and is mandated by the G20 leaders to ensure that all jurisdictions adhere to the same 'high standard of international cooperation in tax matters.'

The internationally agreed tax standard (the Standard) which was developed by the OECD in cooperation with non OECD countries as endorsed by the G20 Finance Ministers & the UN committee of Experts on International Cooperation in Tax Matters, requires exchange of information on request in all tax matters for the administration and enforcement of a jurisdiction's domestic tax law, regardless of bank secrecy or the requirement for a corresponding domestic tax interest.

Under the Standard, a jurisdiction must enter into at least 12 Tax Information Exchange Agreements (TIEAs) in order to be on the 'white list' and be considered to have substantially implemented the relevant TIEA. To date, the BVI has signed 21 TIEAs with the USA, the UK, Sweden, Portugal, Norway, New Zealand, the Netherlands Antilles, the Netherlands, Ireland, India, Iceland, Greenland, Germany, France, Finland, the Faroes, Denmark, China, Czech Republic, Australia and Aruba.

Safeguards

Whilst all foreseeably relevant tax information can be exchanged, fishing expeditions under TIEAs are not authorised and information can only be used for the purposes stated in the agreements. Additionally, a country is free to decline a request for information in a number of situations such as where requested information relates to a state secret or where a tax investigation in another country is motivated by racial or political persecution.

Where we are now

Today, on a worldwide basis, more than 700 TIEAs have been signed, 81 peer reviews have been launched, 379 recommendations made and 32 jurisdictions have introduced changes to their laws to implement the standard.

Notably, on 2 November 2011, in a public statement released by the Financial Stability Board (an international body separately founded to promote international financial stability), the BVI joined the ranks of 40 other jurisdictions including the USA, the UK, Australia, Singapore, Ireland, the Cayman Islands and Jersey to have demonstrated sufficiently strong adherence to internationally agreed information exchange.

Implications on the use of offshore trusts in the Asian context

Not surprisingly therefore, with the move towards global transparency, Cayman and BVI trusts continue to dominate the offshore trust market in Asia. For many Asian clients, tax planning is not usually the primary motivation for using a trust since tax burdens in Asia tend to be relatively low. More importantly, clients from emerging Asian economies use offshore trusts as a means to hedge against political and social unrest, future creditors and to hold complex assets that would not otherwise be compatible with direct ownership. The fact that these two jurisdictions are well regulated and fully compliant with international standards of transparency and exchange of information is critical to their usage. As far as trends go, bespoke trust structures such as the non-charitable purpose trust, the STAR trust and the VISTA trust, made available through the statutory framework of select offshore trust laws, will continue to be a compelling proposition for wealthy Asian families with long term legacy needs.

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