

Haven forbid



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Jonathan Betts and Ernest Morrison relate how Bermuda sprang into action to escape the OECD grey list and rid itself of its 'tax haven' label

At the end of the G20 meeting in London in April 2009 Bermuda and 29 other jurisdictions, including other leading offshore jurisdictions such as the British Virgin Islands and the Cayman Islands, found themselves in the unenviable position of being placed on the grey list of countries that had committed to international tax transparency standards but had not yet implemented them.

At the same time the Organisation for Economic Cooperation and Development (OECD) blacklisted four countries.

It is fair to say that the government of Bermuda was caught a little off-guard by this and the related stigma of being unfairly labelled a 'tax haven', with a number of local commentators suggesting that complacency had led to a risk that Bermuda's business reputation could be tarnished.

However, since that time the island that is renowned for its ability to react quickly and positively to adverse circumstances has demonstrated this by not only getting itself promoted to the OECD's white list, but also being appointed as vice-chair of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes steering group.

Standard bearing

To consider the implications of this achievement it is important to understand what standards the OECD is looking to establish as well as the criteria for being placed on its grey list.

In 2009 Jeffrey Owens, director of the OECD Centre for Tax Policy and Administration, explained that the organisation was aiming to create a world in which “on-shore and offshore financial centres compete not on the basis of what secrecy they provide, but what services they provide”.

In order to do this the OECD required countries to enter into Tax Information Exchange Agreements (TIEAs) with other member countries.

TIEAs set out a framework for exchanging information between countries to help administer and enforce tax laws as a way of preventing tax evasion when there are no comprehensive tax treaties in place between the countries concerned.

Countries on the grey list had signed TIEAs with fewer than 12 other countries. It should be noted that this was not considered a magic number by the OECD and was described by Owens as “merely a sign of satisfactory progress”. At the time of its placement on the grey list Bermuda only had TIEAs with the US, the UK and Australia.

Although not directly as a result of the shock of having been labeled a tax haven (at the time of being placed on the list the government of Bermuda was in advanced negotiations with a number of countries to agree TIEAs), there is no doubt that it increased its efforts to ensure the country was promoted to the white list as swiftly as possible.

Within two months of being greylisted Bermuda had signed an additional nine TIEAs, crossing the threshold for inclusion on the white list in June 2009 when it signed a TIEA with the Netherlands.

Bermuda’s progress was demonstrated by the fact that in September 2009 it was elected vice-chair of the steering group, the policymaking body of the OECD’s global forum. This achievement was praised by France, chair of the peer review group.

More recently Bermuda was included in the first wave of the OECD’s peer review process. This resulted in it being one of only two countries recognised as having all the elements in place in relation to its legal and regulatory framework for transparency and exchange of information.

Bermuda now has 23 TIEAs, having concluded negotiations with all of the G7 major industrialised nations.

Of particular interest is the TIEA signed with Canada (the first entered into by that country), as the effect of this is that a Canadian corporate receiving income from an affiliate residing in and carrying on business in Bermuda will now not be required to pay Canadian tax on that income, a benefit previously provided only to countries with which Canada had comprehensive tax treaties.

In addition, the TIEA signed with Mexico - the first between an offshore jurisdiction and a Latin American nation - is expected to lower the Mexican withholding tax rate applicable on certain revenues from transactions and other payments made from persons or entities deemed to be resident in Mexico to related entities in Bermuda.

These international agreements have helped secure Bermuda’s position as a premier international financial centre, reinforcing its reputation for supporting real businesses offering services worldwide and not being a jurisdiction whose growth is based on non-transparency or secrecy.

There is still much work to be done by many countries, with a further 54 peer review reports scheduled to be submitted for adoption by the OECD forum this month. However, it is clear from Bermuda’s ascendancy to the top table of the OECD forum that the territory is at the forefront of the transparency process and will continue to be so.

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