



The Corpag Group

Corporate Management & Fiduciary Services

Recent Regulatory Changes in the Offshore Scene

TTN Hong Kong
18 November 2013



General Trends

1) Transparency

“The Transparency Dividend”

The end of secrecy will generate an economic windfall for practitioners delivering tax advice in line with multi-jurisdictional exposure*

2) Substance

3) Risk analyses, risk mitigation, reviewing

* STEP Report “Offshore Evolution”



Transparency

- Transparency
 - Information exchange treaties
 - Keeping of financial records
 - (Semi) public UBO reporting
- Action 5 OECD Action Plan BEPS*
 - *“transparency and substance”*
- Tax Justice Network – Secrecy Index (Nov 13)**

* OECD Action Plan on Base Erosion and Profit Shifting, July 2013

** www.financialsecrecyindex.com



Secrecy Index – Hong Kong

- One of the world's fastest growing secrecy jurisdictions or tax havens today
- Spirit of extreme *laissez-faire* and anti-tax
- ‘the freest economy in the world.’
- On a par with Panama and Singapore in size and secrecy, but:
 - “In Hong Kong what is not expressly forbidden is permitted;
In Singapore, what is not expressly permitted is forbidden.”
- \$1.9 trillion in nominal inward investment into China in 2011, over \$850 billion was sourced (nominally) from Hong Kong.
 - 15 times the size of US investment in China
 - 2nd largest investor in China after Hong Kong

..... British Virgin Islands (USD 298 bln)



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Financial Records Keeping

- British Virgin Islands (nov 2012)
 - Maintain records and “underlying documentation” for at least five years from the date of completion of the transaction
 - Ensure that the records are sufficient to illustrate a company’s transactions and determine its financial position
 - Keep these records and underlying documentation
- The requirement to keep “accounts” does not mean that BVI Business Companies have an obligation to produce and maintain financial statements.

➔ Belize (oct 2013), more to follow



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(Semi) Public UBO Reporting

- United Kingdom: Registry of Public Ownership of Companies:

“For too long a small minority have hidden their business dealings behind a complicated web of shell companies and this cloak of secrecy has fuelled all manners of questionable practice and downright illegality.

“Illegality that is bad for the developing world – as corrupt regimes stash their money abroad under different identities. And illegality that is bad for Britain’s economy too – as people evade their taxes through untraceable trails of paperwork.

“Not only is this hugely unfair to the millions of hardworking people in Britain who pay their tax but it’s also bad for business. To keep corporate taxes low, you’ve got to keep corporate taxes coming in. As I’ve put it, no tax base – no low tax case.

“So that’s why we need to shine a spotlight on who owns what and where money is really flowing.

“This summer at the G8 we committed to do just that – to establish a central register of company beneficial ownership. And today I’m delighted to announce that not only is that register going to go ahead – but that it’s also going to be open to the public.

- B.V.I: it will only create a central registry of beneficial owners when international money-laundering standards require all countries to do the same.



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Substance (Netherlands – draft decree)

To be confirmed in tax returns that:

- 50% board members in Netherlands.
- Board required professional knowledge vs. their duties.
- Qualified employees for proper implementation and registration
- The management decisions are taken in the Netherlands.
- The main bank accounts of the tax payer are held in the Netherlands.
- The books are kept in the Netherlands.
- The business address in the Netherlands.
- Not considered dual tax resident
- Runs real risks with respect to its financing, licensing or leasing activities.
- At minimum an appropriate equity with regard to the functions performed by the legal entity.



Substance (Netherlands – draft decree)

If requirements not met, than:

1. Indicate which requirements are not met
2. Provide all necessary information for the tax authorities to determine which of the substance requirements are met
3. Provide an overview of all interest, royalty and similar payments for which a reduction of (withholding) tax has or could be claimed under any tax treaty or EU Directive

This information will be spontaneously provided to the relevant treaty partner.



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Risk Analyses, Mitigation, Audit

1) Identify

- PEPs
- Funds with undisclosed participants
- UBO from high risk country
- Feeder from high risk country
- Subsidiary in high risk country
- External directors
- Negative press
- World-check “hit”
- External signatory on bank account

2) Mitigate

3) Audit

- Little equity, bankruptcy risk
- Board Powers or Attorney
- Minority shareholder, outside directors
- People on payroll
- Operational business
- Operational subsidiaries
- Branch or permanent establishment
- Real estate development
- Back to back loans



Specific Regulation changes

- BVI
- Netherlands
- Cyprus
- New Zealand



British Virgin Islands

Financial Services Committee October 2013

- No more “Introducer Agreements”: Full KYC will need to be kept by the Registered Agent
- No sympathy and significant fines and sanctions for sanction busting (Iran / North Korea in particular)
- Risk Rating and reviews are crucial
- Certifications of documents must be done properly per the code (UD 75,000 fine)



British Virgin Islands - Certifications

- Address verification (utility bills)

“I certify that I have seen and compared the original document verifying the identity and residential address of the individual to whom this certification relates”

- Passport or photo ID copies

“I certify that I have seen and compared the original document and the photograph bears a true likeness to the individual to whom this certification relates”

- Other documentation

“I certify that I have seen and compared the original document and confirm this is a complete and accurate copy of the original”

- All certifications should bear:

- the name of the certifying person; the seal of the certifying person; the original signature of the certifying person; the date of certification; and details to contact the certifying person, such as company name, capacity, address, telephone number, email address.



Netherlands

- Regulator is targeting its audits:
- “ISI” Reporting
 - “Transfer-in’s”
 - Consultancy fees
 - Pass through partnerships
 - PEP’s, high risk subsidiaries, high risk feeders....



Cyprus

“New” Fiduciary Law (Regulator: CySec)

- All “trust companies” to notify presence (Feb 2013)
- Submit license application (June 2013)
 - In house lawyer
 - In house compliance officer
 - 2 principals
 - All with prior CySec approval
- Lawyers and accountant still “exempt”
- No license applied for?

=> up to EUR 1 mln fine + 5 years imprisonment



New Zealand

- AML/CFT Act (June 2013)
- “Reporting entity”
 - Compliance Officer
 - Compliance Programme
 - Risk Assessment
 - Review, reporting, audit (annual)

http://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Services-Anti-Money-Laundering-List-of-Reporting-Entities?OpenDocument



Others

- United Kingdom?
- United States?
- Belgium?
- Spain?



Final notes

- Big differences in Regulators' approach
- Differences between tax authorities and Regulators getting smaller
- Common grounds:
 - Transparency
 - Substance
 - Risk analyses, mitigating, audit
- Next stop: Offshore 2020





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