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The British Virgin Islands—Finding solutions offshore

Simon Owen considers the advantages and disadvantages of domiciling your captive offshore.



Offshore tax havens must be regulated as part of global plans to tackle the banking crisis, said Gordon Brown at the recent Scottish Labour Conference.

“The President fully supports the Stop Tax Haven Abuse Act and will not tolerate the offshore tax abuses that drain \$100 billion a year from the US Treasury,” added a senior representative of the Obama administration at a congressional hearing in Washington.

This is not the first time that so-called ‘tax havens’ have been used as a scapegoat in times of trouble, and it won’t be the last. This time, however, the entire offshore world seems to have been labelled by international financial heavyweights as some kind of economic ‘axis of evil’, an opponent that must be defeated at all costs.

From what I am able to decipher from their respective commentaries, it is clear that some of the G20 nations do not understand the nature of the business being transacted in offshore financial services jurisdictions and, more importantly, why they have become an integral part of the world’s free market economies. Therefore, for the purposes of providing a more realistic view of offshore jurisdictions, I give some key facts below:

- The offshore reinsurance industry has borne the brunt of US property catastrophe claims in recent years
- The offshore captive insurance industry encourages sound risk management practices and fiscal responsibility
- The offshore fund industry provides the US and Europe with trillions of dollars of overseas investment

- Offshore jurisdictions are subject to regulatory regimes that include strict due diligence procedures and are subject to extensive strict anti-money laundering and anti-terrorism financing laws
- The vast majority of offshore financial centres already have tax information exchange agreements (TIEAs) in place with the likes of the US and other European Union governments
- Offshore and low-tax jurisdictions encourage tax competitiveness and stimulate economic investment.

Probably the biggest myth about offshore jurisdictions is that they are a vehicle for tax evasion. Offshore financial services jurisdictions, particularly the British Virgin Islands, are actually extremely transparent and should not be confused with banking secrecy jurisdictions.

Fortunately, the negative publicity generated by the misguided rhetoric used by various G20 leaders has now, quite rightly, abated. In fact, the world’s most powerful nations have now finally acknowledged the co-operative status of crown dependencies and overseas territories such as the BVI.

Offshore v. onshore

So why have offshore jurisdictions continued to be so successful in light of new onshore competition? There are a number of reasons, but the primary advantages relate to cost and favourable legislation.

Firstly, from a Federal tax perspective, it is worth noting that most offshore captives with a US parent generally make a 953(d) election,

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meaning that they elect to be taxed as if they were domiciled in the US, creating an immediate level playing field. However, offshore regulations relating to initial capital requirements and the required margin of solvency are far less stringent when compared to those of our onshore counterparts.

It is obviously important for the regulators and insurance managers in any jurisdiction to ensure that capitalisation is sufficient to support the net written premium and exposure levels attributed to the captive, particularly when third parties are exposed. However, for the likes of smaller 831b captives, the non-discriminatory requirements of offshore domiciles can have a significant impact on a risk manager's feasibility assessment. Cost-efficient operating expenses and the absence of direct corporate taxes and premium taxes give us a clear and distinct advantage over our competitors.

The BVI advantage

The BVI has been one of the world's largest captive jurisdictions for a number of years. The legislative framework compares favourably with that of our longer-established competitors and enables us to offer our clients a wide range of products and structures. A recently enhanced Insurance Act, coupled with a close working relationship between the private sector and the regulators, has undoubtedly been a significant factor in the jurisdiction's unprecedented growth.

In addition, the BVI is not burdened by the restrictive regulations of other jurisdictions. For example, there are no requirements to appoint local directors, to hold annual general meetings in the BVI or to establish bank accounts here.

Our service providers include many of the big names you would expect to see in any of the world's financial centres, from both a management and audit perspective. Furthermore, we have a number of niche, independent managers that are able to assist with various innovative and sophisticated structures.

From a regulatory standpoint, the BVI is extremely well regarded by a number of international bodies. In fact, the BVI has never been blacklisted by any organisation or regulatory body. Our regulators remain active members of the Caribbean Financial Action Task Force (FATF) and played a prominent role in the working group that revised the FATF's anti-money laundering recommendations.

Captive trends

In a period of economic downturn, many commentators appear to be predicting a slowing in the use of captives. However, in the BVI, we are seeing a very different picture.

In the last six months, we have seen a significant increase in the number of captive formation enquiries, a trend that I put down to a number of factors that are inextricably linked to the current economic crisis. One of those factors is the concern developing among insurance buyers that their carriers may not be as creditworthy as they once were. Rating downgrades continue to occur on a regular basis. Furthermore, as the investments and reserves of commercial insurance carriers diminish, those same insurance buyers may have the additional problem of having surplus capital that they are no longer inclined to invest in the markets.

In such a scenario, from the insurance buyer's perspective, this creates a perfect situation to consider the formation of a captive. In an uncertain economic environment, one where short-term investment in US Treasury bills actually creates a negative return, where better to invest your funds that into the formation of a captive? Insurance premiums are already on the rise as the commercial market begins to harden, so now may well be the time to form your captive.

In summary, when deciding on the best timing to form a captive, you will need to assess both the long-term benefits to your organisation and the short-term financial cost. When comparing domiciles, it is important to remember that offshore centres are not 'tax havens'—they are financial services centres. What benefits do they offer over and above their US counterparts? None, other than cost-efficiency and professional service.

In many ways, the decision-making process when selecting a domicile for a captive insurance company is often not dissimilar to deciding whether to buy a Toyota or a Ford. You simply choose the one that offers greater performance and value for money.

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