

U.S. Department of Justice
Washington, DC 20530

Supplemental Statement
Pursuant to Section 2 of the Foreign Agents Registration Act
of 1938, as amended

For Six Month Period Ending 08/31/2007
(Insert date)

I - REGISTRANT

1. (a) Name of Registrant (b) Registration No.

Bruce Zagaris 5299

(c) Business Address(es) of Registrant

Berliner, Corcoran & Rowe, LLP
1101 17th Street, NW, Suite 1100
Washington, D.C. 20036

2. Has there been a change in the information previously furnished in connection with the following:

- (a) If an individual:
 - (1) Residence address Yes No
 - (2) Citizenship Yes No
 - (3) Occupation Yes No
- (b) If an organization:
 - (1) Name Yes No
 - (2) Ownership or control Yes No
 - (3) Branch offices Yes No

(c) Explain fully all changes, if any, indicated in items (a) and (b) above.

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IF THE REGISTRANT IS AN INDIVIDUAL, OMIT RESPONSE TO ITEMS 3, 4 AND 5(a).

3. If you have previously filed Exhibit C¹, state whether any changes therein have occurred during this 6 month reporting period.

Yes No

If yes, have you filed an amendment to the Exhibit C? Yes No

If no, please attach the required amendment.

¹ The Exhibit C, for which no printed form is provided, consists of a true copy of the charter, articles of incorporation, association, and by laws of a registrant that is an organization. (A waiver of the requirement to file an Exhibit C may be obtained for good cause upon written application to the Assistant Attorney General, Criminal Division, U.S. Department of Justice, Washington, DC 20530.)

4. (a) Have any persons ceased acting as partners, officers, directors or similar officials of the registrant during this 6 month reporting period? Yes No

If yes, furnish the following information:

Name	Position	Date connection ended
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(b) Have any persons become partners, officers, directors or similar officials during this 6 month reporting period? Yes No

If yes, furnish the following information:

Name	Residence address	Citizenship	Position	Date assumed
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5. (a) Has any person named in item 4(b) rendered services directly in furtherance of the interests of any foreign principal? Yes No

If yes, identify each such person and describe his service.

(b) Have any employees or individuals, who have filed a short form registration statement, terminated their employment or connection with the registrant during this 6 month reporting period? Yes No

If yes, furnish the following information:

Name	Position or connection	Date terminated
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(c) During this 6 month reporting period, has the registrant hired as employees or in any other capacity, any persons who rendered or will render services to the registrant directly in furtherance of the interests of any foreign principal(s) in other than a clerical or secretarial, or in a related or similar capacity? Yes No

If yes, furnish the following information:

Name	Residence address	Citizenship	Position	Date assumed
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6. Have short form registration statements been filed by all of the persons named in Items 5(a) and 5(c) of the supplemental statement? Yes No

If no, list names of persons who have not filed the required statement.

II - FOREIGN PRINCIPAL

7. Has your connection with any foreign principal ended during this 6 month reporting period?
Yes No

If yes, furnish the following information:

Name of foreign principal

Date of termination

8. Have you acquired any new foreign principal² during this 6 month reporting period?
Yes No

If yes, furnish the following information:

Name and address of foreign principal

Date acquired

9. In addition to those named in Items 7 and 8, if any, list foreign principals² whom you continued to represent during the 6 month reporting period.

Government of Barbados

10. EXHIBITS A AND B

(a) Have you filed for each of the newly acquired foreign principals in Item 8 the following:

Exhibit A³ Yes No
Exhibit B⁴ Yes No

If no, please attach the required exhibit.

(b) Have there been any changes in the Exhibits A and B previously filed for any foreign principal whom you represented during the 6 month period? Yes No

If yes, have you filed an amendment to these exhibits? Yes No

If no, please attach the required amendment.

² The term "foreign principal" includes, in addition to those defined in Section 1(b) of the Act, an individual organization any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign government, foreign political party, foreign organization or foreign individual. (See Rule 100(a)(9).) A registrant who represents more than one foreign principal is required to list in the statements he files under the Act only those principals for whom he is not entitled to claim exemption under Section 3 of the Act. (See Rule 208.)

³ The Exhibit A, which is filed on Form CRM-157 (Formerly OBD-67), sets forth the information required to be disclosed concerning each foreign principal.

⁴ The Exhibit B, which is filed on Form CRM-155 (Formerly OBD-65), sets forth the information concerning the agreement or understanding between the registrant and the foreign principal.

III - ACTIVITIES

11. During this 6 month reporting period, have you engaged in any activities for or rendered any services to any foreign principal named in Items 7, 8, and 9 of this statement? Yes No

If yes, identify each such foreign principal and describe in full detail your activities and services:

For the Government of Barbados, Mr. Zagaris monitored developments in the U.S. list of countries eligible for reduced dividend withholding, the U.S. executive and legislative branches concerning the World Trade Organization decision on the Foreign Sales Corporation/Export Trade Initiative, and U.S. income tax, investment treaty, and free trade policies. Mr. Zagaris also monitored proposed U.S. legislation targeting "tax havens."

12. During this 6 month reporting period, have you on behalf of any foreign principal engaged in political activity⁵ as defined below? Yes No

If yes, identify each such foreign principal and describe in full detail all such political activity, indicating, among other things, the relations, interests and policies sought to be influenced and the means employed to achieve this purpose. If the registrant arranged, sponsored or delivered speeches, lectures or radio and TV broadcasts, give details as to dates and places of delivery, names of speakers and subject matter.

Mr. Zagaris participated in discussions with staff persons of Senators Levin (Julie Davis), Obama (Ian Solomon), Grassley (Chris Javens), Sen. Baucus (Matt Jones) and Rep. Christiansen with respect to the Stop Tax Haven Abuse Act and related legislation, including the Dogett provisiosn in the Agriculture Bill, proposing to blacklist Barbados as an "offshore secrecy" and "tax haven" jurisdiction. Mr. Zagaris also met with Jonathan Fried, Executive Director for the Caribbean at the IMF.

On April 12, 2007, Mr. Zagaris sent to J. Fried, IMF, enclosing the Barbados Aide-Memoire with respect to the U.S. anti-tax haven bills.

On May 14, 2007, B. Zagaris prepared a letter to Rep. Christensen and her staff person, S. Modeste about the U.S. anti-tax haven laws.

On May 14, 2007, B. Zagaris prepared a letter to G. Dalley, Rep. Charles Rangel's office, re the U.S. anti-tax haven laws.

On June 28, 2007, B. Zagaris prepared a letter to Matt Jones and J. Odintz, Sen. Baucus' office, re the U.S. anti-tax haven laws.

13. In addition to the above described activities, if any, have you engaged in activity on your own behalf which benefits any or all of your foreign principals? Yes No

If yes, describe fully.

As a member of the Tax Section, American Bar Association, Mr. Zagaris participated in a proposed resolution on the U.S. anti-tax haven bills.

Mr. Zagaris wrote a Commentary on the U.S. anti-tax haven bills that appeared in the June 2007 issue of Offshore Investment Journal.

⁵ The term "political activities" means any activity that the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party.

IV - FINANCIAL INFORMATION

14 . (a) RECEIPTS-MONIES

During this 6 month reporting period, have you received from any foreign principal named in Items 7, 8, and 9 of this statement, or from any other source, for or in the interests of any such foreign principal, any contributions, income or money either as compensation or otherwise? Yes No

If no, explain why.

If yes, set forth below in the required detail and separately for each foreign principal an account of such monies⁶

Date	From whom	Purpose	Amount
03/26/2007	Government of Barbados	Payment for Services	\$7,525.12
03/29/2007	Government of Barbados	Payment for Services	\$8,708.99
05/24/2007	Government of Barbados	Payment for Services	\$19,078.42
07/23/2007	Government of Barbados	Payment for Services	\$1,757.46
			<u>\$37,069.99</u>
			Total

(b) RECEIPTS – FUND RAISING CAMPAIGN

During this 6 month reporting period, have you received, as part of a fund raising campaign⁷, any money on behalf of any foreign principal named in items 7, 8, and 9 of this statement? Yes No

If yes, have you filed an Exhibit D⁸ to your registration? Yes No

If yes, indicate the date the Exhibit D was filed. Date _____

(c) RECEIPTS – THINGS OF VALUE

During this 6 month reporting period, have you received any thing of value⁹ other than money from any foreign principal named in Items 7, 8, and 9 of this statement, or from any other source, for or in the interests of any such foreign principal? Yes No

If yes, furnish the following information:

Name of foreign principal	Date received	Description of thing of value	Purpose
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^{6, 7} A registrant is required to file an Exhibit D if he collects or receives contributions, loans, money, or other things of value for a foreign principal, as part of a fund raising campaign. (See Rule 201(e).)

⁸ An Exhibit D, for which no printed form is provided, sets forth an account of money collected or received as a result of a fund raising campaign and transmitted for a foreign principal.

⁹ Things of value include but are not limited to gifts, interest free loans, expense free travel, favored stock purchases, exclusive rights, favored treatment over competitors, "kickbacks," and the like.

15. (a) **DISBURSEMENTS – MONIES**

During this 6 month reporting period, have you

(1) disbursed or expended monies in connection with activity on behalf of any foreign principal named in Items 7, 8, and 9 of this statement? Yes No

(2) transmitted monies to any such foreign principal? Yes No

If no, explain in full detail why there were no disbursements made on behalf of any foreign principal.

If yes, set forth below in the required detail and separately for each foreign principal an account of such monies, including monies transmitted, if any, to each foreign principal.

Date	To whom	Purpose	Amount
03/31/2007	Government of Barbados	Office Expenses	\$328.42
04/30/2007	Government of Barbados	Office Expenses	\$127.77
05/31/2007	Government of Barbados	Office Expenses	\$34.89
06/30/2007	Government of Barbados	Office Expenses	\$1,790.52
07/31/2007	Government of Barbados	Office Expenses	\$28.56
08/31/2007	Government of Barbados	Office Expenses	\$21.70

\$2,331.86

Total

(b) DISBURSEMENTS – THINGS OF VALUE

During this 6 month reporting period, have you disposed of anything of value¹⁰ other than money in furtherance of or in connection with activities on behalf of any foreign principal named in Items 7, 8, and 9 of this statement?

Yes No

If yes, furnish the following information:

Date disposed	Name of person to whom given	On behalf of what foreign principal	Description of thing of value	Purpose
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(c) DISBURSEMENTS – POLITICAL CONTRIBUTIONS

During this 6 month reporting period, have you from your own funds and on your own behalf either directly or through any other person, made any contributions of money or other things of value¹¹ in connection with an election to any political office, or in connection with any primary election, convention, or caucus held to select candidates for political office?

Yes No

If yes, furnish the following information:

Date	Amount or thing of value	Name of political organization	Name of candidate
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^{10, 11} Things of value include but are not limited to gifts, interest free loans, expense free travel, favored stock purchases, exclusive rights, favored treatment over competitors, "kickbacks" and the like.

V - INFORMATIONAL MATERIALS

16. During this 6 month reporting period, did you prepare, disseminate or cause to be disseminated any informational materials ¹²?
Yes No

IF YES, RESPOND TO THE REMAINING ITEMS IN SECTION V.

17. Identify each such foreign principal.

Government of Barbados

18. During this 6 month reporting period, has any foreign principal established a budget or allocated a specified sum of money to finance your activities in preparing or disseminating informational materials? Yes No

If yes, identify each such foreign principal, specify amount, and indicate for what period of time.

19. During this 6 month reporting period, did your activities in preparing, disseminating or causing the dissemination of informational materials include the use of any of the following:

- Radio or TV broadcasts
- Magazine or newspaper articles
- Motion picture films
- Letters or telegrams
- Advertising campaigns
- Press releases
- Pamphlets or other publications
- Lectures or speeches
- Internet
- Other (specify) Emails

20. During this 6 month reporting period, did you disseminate or cause to be disseminated informational materials among any of the following groups:

- Public Officials
- Newspapers
- Libraries
- Legislators
- Editors
- Educational institutions
- Government agencies
- Civic groups or associations
- Nationality groups
- Other (specify) international organization official

21. What language was used in the informational materials:

- English
- Other (specify) _____

22. Did you file with the Registration Unit, U.S. Department of Justice a copy of each item of such informational materials disseminated or caused to be disseminated during this 6 month reporting period? Yes No

23. Did you label each item of such informational materials with the statement required by Section 4(b) of the Act? Yes No

¹² The term informational materials includes any oral, visual, graphic, written, or pictorial information or matter of any kind, including that published by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or any means or instrumentality of interstate or foreign commerce or otherwise. Informational materials disseminated by an agent of a foreign principal as part of an activity in itself exempt from registration, or an activity which by itself would not require registration, need not be filed pursuant to Section 4(b) of the Act.

VI – EXECUTION

In accordance with 28 U.S.C. §1746, the undersigned swear(s) or affirm(s) under penalty of perjury that he/she has (they have) read the information set forth in this registration statement and the attached exhibits and that he/she is (they are) familiar with the contents thereof and that such contents are in their entirety true and accurate to the best of his/her (their) knowledge and belief, except that the undersigned make(s) no representation as to the truth or accuracy of the information contained in the attached Short Form Registration Statement(s), if any, insofar as such information is not within his/her (their) personal knowledge.

(Date of signature)

(Type or print name under each signature¹³)

Sept 14, 2007

Bruce Zagaris
BRUCE ZAGARIS

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CRIMINAL JUSTICE TRAINING UNIT

¹³ This statement shall be signed by the individual agent, if the registrant is an individual or by a majority of those partners, officers, directors or persons performing similar functions, if the registrant is an organization, except that the organization can, by power of attorney, authorize one or more individuals to execute this statement on its behalf.

UNITED STATES DEPARTMENT OF JUSTICE
FARA REGISTRATION UNIT
NATIONAL SECURITY DIVISION
WASHINGTON, D.C. 20530

NOTICE

Please answer the following questions and return this sheet in triplicate with your Supplemental Statement:

1. Is your answer to Item 16 of Section V (Informational Materials – page 8 of Form CRM-154, formerly Form OBD-64-Supplemental Statement):

YES _____ ✓ _____ or NO _____

(If your answer to question 1 is "yes" do not answer question 2 of this form.)

2. Do you disseminate any material in connection with your registration:

YES _____ or NO _____

(If your answer to question 2 is "yes" please forward for our review copies of all material including: films, film catalogs, posters, brochures, press releases, etc. which you have disseminated during the past six months.)

Bruce Zabalys
Signature

Sept 14, 2007
Date

BRUCE ZABALYS

Please type or print name of
Signatory on the line above

PARTNER

Title



U.S. Department of Justice

Criminal Division

Washington, DC 20530

THIS FORM IS TO BE AN OFFICIAL ATTACHMENT TO YOUR CURRENT SUPPLEMENTAL STATEMENT -
PLEASE EXECUTE IN TRIPLICATE

SHORT-FORM REGISTRATION INFORMATION SHEET

SECTION A

The Department records list active short-form registration statements for the following persons of your organization filed on the date indicated by each name. If a person is not still functioning in the same capacity directly on behalf of the foreign principal, please show the date of termination.

Short Form List for Registrant: Berliner Corcoran & Rowe, LLP

<u>Last Name</u>	<u>First Name and Other Names</u>	<u>Registration Date</u>	<u>Termination Date</u>	<u>Role</u>
Zagaris	Bruce	02/02/1999		



U.S. Department of Justice

National Security Division

Washington, DC 20530

SECTION B

In addition to those persons listed in Section A, list below all current employees rendering services directly on behalf of the foreign principals(s) who have not filed short-form registration statements. (Do not list clerks, secretaries, typists or employees in a similar or related capacity). If there is some question as to whether an employee has an obligation to file a short-form, please address a letter to the Registration Unit describing the activities and connection with the foreign principal.

Name	Function	Date Hired

Signature: *Paul Zupow*

Date: Sept 14, 2007

Title: PARTNER

BERLINER, CORCORAN & ROWE, L.L.P.

ATTORNEYS-AT-LAW

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THOMAS G. CORCORAN (1900-1981)
JAMES H. ROWE, JR. (1909-1984)

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RICHARD LANDFIELD
BENJAMIN H. FLOWE, JR.
BRUCE ZAGARIS
JOHN A. ORDWAY
JAMES L. MARKETOS
THOMAS C. VILES
JAY A. ROSENTHAL
RAY GOLD
DANIEL FISHER-OWENS
KARL W. ABENDSCHEIN
LAINA C. WILK
JASON A. McCLURG

May 15, 2007

By Post and Email

George A. Dalley, Esq.
Chief of Staff
Representative Charles B. Rangel
2354 Rayburn House Office Building
Washington, D.C. 20515-3215

Dear George:

It was a pleasure to see you, albeit briefly, last weekend. This letter concerns the anti-tax haven legislation pending in Congress, especially the bills that name specific jurisdictions. I am writing to you with respect to my work for Barbados.

As written, the bills are clearly discriminatory and will likely lead to more WTO litigation and another unfavorable decision for the U.S. In addition, the designation of Barbados as a "tax haven" is unfair. As you know, it now takes at least two months to secure a license for an international entity in Barbados, whereas in most U.S. states it takes 24 hours. Barbados is establishing a Financial Services Commission to license all of its service providers, while most U.S. states have no oversight requirements for incorporating and managing companies. IMF reviews of Barbados' financial services regulatory requirements and anti-money laundering regimes have been laudatory; in contrast, the FATF recently rated U.S. corporate vehicle transparency non-compliant.

Please find attached:

1. a reprint of my article, *Treaties Propel Barbados Financial Services*, which discusses, *inter alia*, the regulatory steps Barbados has taken and continues to take to regulate international financial services;

2. a draft copy of my article *The U.S. Anti-Tax Haven Bills: Discriminatory and Ill-Timed*; and

BERLINER, CORCORAN & ROWE

George A. Dalley, Esq.
May 15, 2007
Page 2

3. a draft resolution of the American Bar Association's Tax Section's Committee on Civil and Criminal Penalties opposing the bills (the chair is now sharing the resolution with other interested groups in the ABA to ascertain if they want to support it).

The Commonwealth Secretariat has just released a 44-page report noting the lack of fair opportunities for small jurisdictions to have access to financial services. In particular, the report advocates affording small countries access to TIEAs and income tax treaties. Attached is my summary of the report. If you are interested, I can send you the entire report.

Finally, on May 10, 2007, the media reported a decline in foreign investment due in part to a growing international belief that the U.S. does not welcome foreign investment and a sense that doing business in the U.S. might come with unnecessary burdens. According to the report, President Bush was expected to release a statement hailing foreign investment as the key to creating jobs, stimulating growth, and boosting U.S. productivity. (See Deborah Solomon, *White House Makes Push to Draw Foreign Capital*, WALL ST. J., May 10, 2007, at A4, col. 1.) The proposed tax haven legislation illustrates how Congress is exacerbating an adverse environment that is undercutting U.S. foreign investment.

I think one of our short-term goals should be to develop an informal support group or coalition of interested staff persons and members of Congress. We will try to develop this group and find one or two persons in each chamber that can lead its efforts.

Thank you again for your interest. If you have any questions, please feel free to contact me.

Best regards,



Bruce Zagaris

cc: Representative Charles B. Rangel

Enclosures

BERLINER, CORCORAN & ROWE, L.L.P.

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LAINA C. WILK
JASON A. McCLURG

June 29, 2007

By Post and Email

Matthew J. Jones
Director for Economic Development
and Field Director
Office of Senator Max Baucus
1821 South Avenue West, Suite 203
Missoula, MT 59801

Dear Matt:

It was a pleasure to meet with you and speak about S. 681. As we discussed, I am supplementing our meeting by attaching the following:

1. A copy of my article from the INTERNATIONAL ENFORCEMENT LAW REPORTER, *New U.S. Tax Legislation Targets Offshore Jurisdictions*;
2. An informal outline of the bill by Celia R. Clark, Esq., a New York practitioner with whom I cooperate in the ABA tax section;
3. The Barbados' government's memorandum on the bill; and
4. A copy of my OFFSHORE INVESTMENT comment, *The United States Anti-tax haven bills: a discriminatory and ill-timed effort*, for your colleague Josh Odintz.

Donna Forde, in the Barbados Embassy, or I will contact Mr. Odintz to try to arrange an appointment to discuss the bill. In the meantime, I look forward to keeping in touch.

Sincerely,



Bruce Zagaris

BERLINER, CORCORAN & ROWE

Matthew J. Jones

June 29, 2007

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Enclosures

cc: Joshua Odintz (by e-mail only)

From - Thu Apr 12 16:50:03 2007

BCC: Francoise_Hendy@BARBADOSBUSINESS.GOV.BB,
Mia Mottley <mamottley@caribsurf.com>,
"Michael I. King" <MichaelIKing@aol.com>,
Donna Forde <donna_michie@att.net>,
Jed Borod <ielr@bcr-dc.com>
Date: Thu, 12 Apr 2007 16:49:51 -0400
From: Bruce Zagaris <bzagaris@bcr-dc.com>
To: Jonathan Fried <jfried@imf.org>
Subject: US Anti-Tax Haven Bills -- Barbados Government Response

Jonathan:

It was a pleasure to speak with you. I unfortunately only attended a couple social events at the ASIL meeting. Sorry to have missed your panel and you.

Attached is the Aide Memoire for the Barbados government on the anti-tax haven bills.

Also attached are two articles I have authored on the anti-tax haven bills and the contrasting position of the Canadian government as set forth in its last budget statement.

Insofar as the IMF is engaged on these issues and you represent the Caribbean, I thought you may be interested in these documents and may want to consider whether the IMF should weigh into the discussion.

If you have time, I'd enjoy catching up. I'm participating in a symposium in Montana this weekend, but return next week.

Cheers,

Bruce Zagaris



The United States Anti-tax haven bills: a discriminatory and ill-timed effort

By Bruce Zagaris,
Berliner Corcoran & Rowe LLP,
Washington D.C., USA



United States legislators have recently introduced three new pieces of legislation targeting transactions involving "tax haven" or "offshore secrecy" jurisdictions as part of efforts to close the growing US tax gap.¹ The bills - S. 396, which has been incorporated in S. 554, the 'budget resolution', and S. 681, the 'Stop Tax Haven Abuse Act' - target "offshore secrecy jurisdictions" and include lists of specifically named countries. As Congress searches for revenue to fund international and domestic projects in the current budget environment, legislators are trying to limit the ability of US citizens and companies to obtain tax benefits from doing business abroad. However, the bills violate international trade and US tax treaties.

Limiting deferral

As proposed, S. 396 (incorporated as Sec. 212 in S. 554), would deny deferral benefits to companies that locate subsidiaries in "tax haven" jurisdictions to avoid US taxes. Introduced 25th January 2007 by Sen. Byron Dorgan (N.D.), Chairman of the Senate Budget Committee, and Sens. Carl Levin (D-Mich.) and Russ Feingold (D-Wis.), S. 396 would treat controlled foreign corporations (CFCs) established in "tax haven countries" as domestic companies for tax purposes. The bill lists 40 "tax haven countries," including a range of jurisdictions in the Caribbean, Europe, Asia, and Africa.

The bill would exempt CFCs only if they earn "substantially all" of their income for the tax year from active trade or business activities in the jurisdictions where they were organised or created. The measure does not define "substantially all." The provisions also give the treasury secretary the authority to add or remove jurisdictions from the list.

The Stop Tax Haven Abuse Act

On 17th February 2007, Senators Levin, Barack Obama (D-Ill.), and Norm Coleman (R-Mn) introduced the Stop Tax Haven Abuse Act (STHA), which would dramatically change US tax rules with respect to offshore secrecy jurisdictions. As a result of the bill, US tax and securities authorities could presume that non-publicly traded offshore companies or trusts were mere nominees for those who established them and could be disregarded, unless the taxpayer could prove otherwise.

Similarly, the STHA creates a presumption concerning reportable financial accounts. Subject to rebuttal, US authorities can presume that any account with a financial institution formed, domiciled, or operating in an offshore secrecy jurisdiction contains funds in an amount, that is at least sufficient to require a report prescribed by regulations under 31 U.S.C. 5315 (part of the Bank Secrecy Act).

The bill directs Treasury to add or remove jurisdictions from the initial list. Jurisdictions can be included if they have "corporate, business, bank, or tax secrecy rules and practices which, in the judgment of the Secretary, unreasonably restrict the ability of the United States to obtain information relevant to the enforcement of this title [the Internal Revenue Code], unless the Secretary also determines that such country has effective information exchange practices."

Additional reporting requirements apply to US persons who use secrecy jurisdictions. They include the jurisdictions mentioned in S. 396, as well as Hong Kong, Singapore, and Switzerland. Alarming, a number of the listed jurisdictions have concluded Tax Information Exchange Agreements (TIEAs) or income tax treaties with the United States. For example, Switzerland and Cyprus have US tax treaties, while Barbados has both a tax treaty and a TIEA.

Treasury is authorised to apply sanctions to counter perceived threats to US tax enforcement. Treasury can apply the same sanctions currently available with respect to foreign jurisdictions, financial institutions, or transactions of "primary money laundering concern" to foreign jurisdictions, financial institutions and transactions "impeding US tax enforcement." Treasury would impose requirements and sanctions on US financial institutions which deal with a designated jurisdiction or offshore financial institution, and would also be authorised to instruct US financial institutions to block credit card transactions.

The bill gives the Internal Revenue Service (IRS) an additional three years beyond the usual three-year statute of limitations to audit or assess tax on transactions involving an offshore secrecy jurisdiction. The bill also amends US securities laws, increasing penalties for failing to disclose offshore holdings. Treasury must promulgate final regulations directing hedge funds and private equity funds to comply with various anti-money laundering requirements.

The bill changes the procedures under Code Sec. 7609 relating to third party ("John Doe") summons, authorising information gathering for unnamed taxpayers. The provisions establish an exception for summons which are limited to information regarding a US correspondent account or a US payable-through account of a financial institution in an offshore secrecy jurisdiction. In any case in which a person or class of persons subject to the summons have financial accounts in, or transactions related to, offshore secrecy jurisdictions, the bill creates a presumption that such a person or persons may have failed to comply with provisions of internal revenue law.

The bill also creates an exception to ordinary procedural requirements for John Doe summonses relating to an approved project. A project can only be approved after a court proceeding.

However, once a project is approved, the IRS may issue a summons to any member of an ascertainable group or class of persons included in the project for a period of three years. A court may further extend the time for issuing such summonses for additional three-year periods. Approved projects under these rules are subject to ongoing court oversight.

These new rules are designed to allow the IRS to present an investigative project, as a whole, to a single judge to obtain approval for issuing multiple summons related to that project. The unnamed taxpayers in each class would be presumed to be reasonably likely to have failed to comply with tax laws if the class involves financial accounts or transactions in offshore secrecy jurisdictions.

The bill makes changes to portions of The Bank Secrecy Act concerning the enforcement of foreign bank account reporting requirements and suspicious activity reports.

Analysis

Ironically, US efforts to crack down on transactions in "tax haven" and "offshore secrecy" jurisdictions may undermine the US's role as the largest market for international investors seeking secrecy and tax incentives. For example, interest earned by US bank accounts held by foreign nationals is exempt from US taxation. The US only regularly exchanges information on earnings from such accounts with Canada, and the Bush administration has not made final a proposed Clinton administration regulation to extend regular reporting of such earnings to OECD countries.

The dynamic growth of foreign investment in the US is due in part to the emergence of hedge funds. In 2005, more than 8,000 hedge funds managed an estimated USD1.1 trillion. A substantial number of these funds are based in the US. Hedge fund managers are not required to report information on foreign investors in US hedge funds to any government body, although industry sources estimate that more than 40% of these funds – worth USD400 billion – are foreign investment.

In the same vein, for over three years the US has failed to comply with the Financial Action Task Force's (FATF) 40 recommendations. In 2006, FATF gave the US a non-compliant rating because due to its lack of gatekeeper requirements. As the FATF summary report states, US "accountants, lawyers, other legal professionals, real estate agents, and trust and company service providers (other than trust companies, which are subject to the same requirements as banks) are not currently subject to AML/CFT requirements (other than the large cash transaction reporting requirements)."

Further, US accountants are not defined as "financial institutions" under the Bank Secrecy Act. Accordingly, they are not currently subject to most of the BSA's AML requirements, other than the obligation to file Form 8300s. Because accountants have access to companies' operations and financial records, Congress is considering how to incorporate AML safeguards into existing accounting standards.

The absence of corporate formation laws and lax money laundering laws, have made the US a centre for investment by Russian, Central, and Eastern European organised crime groups. In a number of cases, U.S. law enforcement authorities were not able to effectively respond to foreign requests for mutual assistance because there was no legal requirement that service providers collect the information the foreign governments were seeking.

Certain members of Congress are trying to use the US's superpower status to avoid the level playing field (LPF) requirements of the OECD's harmful tax practices initiative. LPF requirements prohibit the imposition of "greylists" or "blacklists" against targeted countries until and unless there is a level playing field, and FATF and STEP reports have shown that such an environment does not exist due to US non-compliance. The tax haven bills also contradict President Bush's statement that the US

has a competitive advantage in services and is trying to liberalise trade in services.

The growing US tax gap is the engine of the new tax legislation. US lawmakers have traditionally focused on increasing tax enforcement before confronting the reality that they need to trim spending or raise taxes. The new bills continue the US government policy of trying to persuade foreign countries to negotiate TIEAs without providing tax benefits to treaty countries and with threats of discriminatory provisions targeting countries that do not accede.

The Canadian approach is much wiser. On 19th March 2007, Canadian Finance Minister Jim Flaherty announced Canada's Budget 2007. It calls for tax benefits for jurisdictions that conclude a TIEA with Canada – benefits previously reserved for countries with which Canada has an income tax treaty.

Accordingly, Canada will not sign new or revised tax treaties that do not include comprehensive exchange of information provisions.

Budget 2007 will provide non-treaty countries with incentives to negotiate TIEAs. If a jurisdiction concludes a TIEA, business income earned in that jurisdiction by foreign affiliates of Canadian firms will be exempt from Canadian tax. Otherwise, that income will be taxable in Canada as earned.

The "exempt surplus" rule is an important competitive advantage, permitting a Canadian company to earn business income through a foreign affiliate in any tax treaty country and bring that income to Canada with no tax. Since the only tax on such business income will be that paid to the foreign country in which it is earned, the system guarantees that Canadian firms can operate on a level playing field with their foreign competitors. Canada's new tax treaty policy comports with the recent Netherlands-Isle of Man TIEA, in which the Netherlands agreed to negotiate a tax treaty and offer other tax benefits to the Isle of Man.

As the contentious 18th April 2007 Senate Finance Committee hearing showed, the anti-tax haven bills are really an effort to reduce the tax gap. The Senate bills violate the principle in Article II of the GATS that prohibit countries from discriminating among foreign trading partners on the basis of nationality and require that rules and regulations be based on objective, non-discriminatory criteria. The bills are constructed in a clearly arbitrary and discriminatory manner because the anti-money laundering and tax/corporate transparency laws show that many of the targeted countries meet international standards, while the US do not. In this connection, in light of the US government's protracted non-compliance of the WTO ruling in the online gaming case filed by Antigua and Barbuda, the Caribbean trade delegation in the WTO Doha negotiations also shared their concerns about the enforcement of the rights of small and vulnerable economies (SVEs) in the multilateral trading system. Enactment of the anti-tax haven bills is likely to land the US in another WTO case.

The US has failed to replace the benefits of foreign sales corporations or Sec. 936 incentives, the bases of the US TIEA programme, and now proposes new measures to diminish trade and investment in services while imposing enormous new infrastructure costs on tiny island countries due to its new national security needs. The US anti-tax haven bills violate the spirit, if not the letter, of US tax agreements.



ENDNOTE

This commentary is based in part on Bruce Zagaris, New U.S. Tax Legislation Targets Offshore Jurisdictions, 23 Int'l Enforcement Law Rep. 174 (May 2007).

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II. INTERNATIONAL TAX ENFORCEMENT

A. New U.S. Tax Legislation Targets Offshore Jurisdictions

by Bruce Zagaris

Three new pieces of U.S. legislation target transactions involving “tax haven” or “offshore secrecy” jurisdictions as part of efforts to close the growing U.S. tax gap. The bills – S. 396, which has been incorporated in S. 554, the budget resolution, and S. 681, the Stop Tax Haven Abuse Act – target “offshore secrecy jurisdictions” and include lists of specifically named countries. As Congress searches for revenue to fund international and domestic projects in a pay-as-you-go budget environment, legislators are increasingly working to limit the ability of U.S. citizens and companies to obtain tax benefits from doing business abroad.

1. *Limiting Deferral*

As proposed, S. 396¹ (and incorporated as Sec. 212 in S. 554),² would deny deferral benefits to companies that locate subsidiaries in so-called tax haven jurisdictions simply for the purpose of avoiding their U.S. tax responsibilities.

Introduced Jan. 25, 2007 by Sens. Byron Dorgan (N.D.), Chairman of the Senate Budget Committee, and Sens. Carl Levin (D-Mich.) and Russ Feingold (D-Wis.), S. 396 would treat controlled foreign corporations (CFCs) established in “tax haven countries” as domestic companies for tax purposes. The bill lists 40 “tax haven countries,” including: Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain, Belize, Bermuda, Barbados, the Cayman Islands, the British Virgin Islands, the Cook Islands, Cyprus, Dominica, Gibraltar, Grenada, Guernsey, Isle of Man, Jersey, Liberia, Liechtenstein, the Maldives, Malta, Mauritius, Monaco, the Netherlands Antilles, Montserrat, Nauru, Niue, Panama, Samoa, San Marino, St. Kitts and Nevis, St. Lucia, St. Vincent, Tonga, Turks and Caicos, and Vanuatu.

The bill would exempt CFCs only if they earn “substantially all” of their income for the tax year from active trade or business activities in the jurisdictions where they were organized or created. The measure does not define what would qualify as “substantially all.” The provisions also give the treasury secretary authority to add or remove a foreign jurisdiction from the list.³

2. *The Stop Tax Haven Abuse Act*

On February 17, 2007, Senators Levin, Barrack Obama (D-Ill.), and Norm Coleman (R-Mn) introduced the Stop Tax Haven Abuse Act (STHA), which would dramatically change U.S. tax rules with respect to offshore secrecy jurisdictions.⁴

The STHA contains presumptions concerning certain offshore secrecy jurisdictions by allowing the U.S. tax and securities law enforcement authorities to presume that non-publicly traded offshore companies or trusts are mere nominees for those who establish them and can be disregarded, unless the taxpayer can prove otherwise. The three presumptions are as follows: (1) money or property transferred to an offshore account or entity represents previously unreported income of the transferor, taxable in the year of transfer; (2) transfers of money or property from the

¹ For the text of S. 396, see <http://www.opencongress.org/bill/110-s396/show>.

² For the text of S. 554, see <http://www.opencongress.org/bill/110-s554/show>.

³ For more information see *Alison Bennett, Momentum Increasing for Tax Haven Limits As Budget Writers Eye Dorgan Bill for Offset*, DAILY REP. FOR EXEC., March 23, 2007, at G-5.

⁴ For the text of S. 681, see <http://www.opencongress.org/bill/110-s681/show>.

offshore account or entity constitute income of the transferee taxable in the year of receipt; and (3) a U.S. person who formed, transferred assets to or from, or was a beneficiary of, an offshore entity is presumed to exercise control over it. (Sec. 101).

The STHA creates a presumption concerning reportable financial accounts: It applies with respect to any account with a financial institution formed, domiciled, or operating in an offshore secrecy jurisdiction. The rebuttable presumption is that any such account contains funds in an amount that is at least sufficient to require a report prescribed by regulations under 31 U.S.C. 5315 (part of the Bank Secrecy Act).

The bill directs Treasury to add or remove jurisdictions from the initial list. The criteria for inclusion are that a jurisdiction has "corporate, business, bank, or tax secrecy rules and practices which, in the judgment of the Secretary, unreasonably restrict the ability of the United States to obtain information relevant to the enforcement of this title [the Internal Revenue Code], unless the Secretary also determines that such country has effective information exchange practices." (Sec. 101).

Additional reporting requirements apply to U.S. persons who use secrecy jurisdictions. They include the jurisdictions mentioned in S. 396, as well as Hong Kong, Singapore, and Switzerland. For practitioners, it is somewhat surprising that a number of the listed jurisdictions have concluded tax information exchange agreements (TIEA) or income tax treaties with the United States. For example, Switzerland and Cyprus and U.S. tax treaties, while Barbados has both a tax treaty and a TIEA.

Sec. 102 authorizes Treasury to apply sanctions to counter perceived threats to U.S. tax enforcement. Treasury can apply the same sanctions currently available with respect to foreign jurisdictions, financial institutions, or transactions of "primary money laundering concern" to foreign jurisdictions, financial institutions and transactions found to be "impeding U.S. tax enforcement." Treasury would impose requirements and sanctions on U.S. financial institutions which deal with a designated jurisdiction or offshore financial institution, and would also be authorized to instruct U.S. financial institutions to block credit card transactions.

Under Sec. 103 the IRS has an additional three years beyond the usual three-year statute of limitations to audit or assess tax on transactions involving an offshore secrecy jurisdiction. Section 201 amends the Securities Exchange Act of 1934, the Securities Act of 1933, the Investment Company Act of 1940 and the Investment Advisers Act of 1940. The penalties are increased for failure to disclose offshore holdings (not limited to offshore secrecy jurisdictions). Section 202 requires Treasury to promulgate final regulations directing hedge funds and private equity funds to comply with various anti-money laundering requirements. It imposes anti-money laundering obligations on company formation agents.

Section 204 of the bill changes the procedures under Code Sec. 7609 relating to third party ("John Doe") summons, authorizing information gathering for unnamed taxpayers. The provisions establish an exception for summons which are limited to information regarding a U.S. correspondent account or a U.S. payable-through account (both as defined in Section 5318A(E) of Title 31 [part of the Bank Secrecy Act]) of a financial institution in an offshore secrecy jurisdiction. In any case in which a person or class of persons subject to the summons have financial accounts in, or transactions related to, offshore secrecy jurisdictions, a presumption exists of a reasonable basis for believing that such person or persons may fail or may have failed to comply with provisions of internal revenue law.

The bill also creates an exception to ordinary procedural requirements for John Doe summonses relating to an approved project. A project can only be approved after a court proceeding. However, once a project is approved, the IRS may issue a summons to any member of an ascertainable group or class of persons included in the project for a period of three years. A court may further extend the time for issuing such summonses for additional three-year periods. Approved projects under these rules are subject to ongoing court oversight.

These new rules are designed to allow the IRS to present an investigative project, as a whole, to a single

judge to obtain approval for issuing multiple summons related to that project over a period of three years or more.⁵ The unnamed taxpayers in each class would be presumed to be reasonably likely to have failed to comply with tax laws if the class involves financial accounts or transactions in offshore secrecy jurisdictions.

Section 205 of the bill makes changes to portions of The Bank Secrecy Act (31 U.S.C. §. 1051 et. seq.) concerning the enforcement of foreign bank account reporting requirements and suspicious activity reports. Title III of S.681 concerns combating domestic and offshore tax shelters. Title IV concerns the requirement of economic substance for both domestic and offshore transactions.

3. Analysis

Ironically, U.S. efforts to crack down on transactions in “tax haven” and “offshore secrecy” jurisdictions ignores the U.S.’s role as the largest market for international investors seeking secrecy and tax incentives. For example, interest earned by U.S. bank accounts held by foreign nationals is exempt from U.S. taxation. The U.S. only regularly exchanges information on earnings from such accounts with Canada. The Bush administration has not made final⁶ a proposed Clinton administration regulation to extend regular reporting of such earnings to OECD countries.⁷

The dynamic growth of foreign investment in the U.S. is due in part to the international emergence of hedge funds. In 2005, more than 8,000 hedge funds managed an estimated \$1.1 trillion dollars. A substantial number of these funds are based in the U.S. Hedge fund managers are not required to report information on foreign investors in U.S. hedge funds to any government body, although industry sources estimate that more than 40% of these funds – worth \$400 billion – are foreign investment.⁸

In the same vein, for over three years the U.S. has failed to comply with the FATF Forty Recommendations. In 2006, FATF gave the U.S. a non-compliant rating because the U.S. failed to implement gatekeeper requirements. As the FATF summary report of the mutual evaluation of the U.S. states: “Accountants, lawyers, other legal professionals, real estate agents, and trust and company service providers (other than trust companies, which are subject to the same requirements as banks) are not currently subject to AML/CFT requirements (other than the large cash transaction reporting requirements).”⁹

Further, U.S. accountants are not defined as “financial institutions” under the Bank Secrecy Act (BSA). Accordingly, they are not currently subject to most of the BSA’s AML requirements, other than the obligation to file Form 8300s. Because accountants have access to companies’ operations and financial records, Congress is considering how to incorporate AML safeguards into existing accounting standards.¹⁰

The absence of corporate formation laws and lax money laundering laws have made the U.S. a center for investment by Russian, Central, and Eastern European organized crime groups. In a number of cases, U.S. law

⁵ 153 CONG. REC. S2212 (daily ed. February 17, 2007) (statement of Sen. Levin).

⁶ Daniel J. Mitchell, *How the IRS Interest-Reporting Regulation Will Undermine the Fight Against Dirty Money*, III PROSPERITAS (July 2003) <http://www.freedomandprosperity.org/Papers/irsreg-dm/irsreg-dm.shtml>

⁷ Regulation 133254-02 is a revised version of the original Clinton-cra proposal (REG - 126100-00). The only difference between the two regulations is that the revised version applies to interest paid to depositors from 15 specific nations, while the original regulation would have applied to interest paid to all nonresident aliens. The revised regulation can be reviewed at <http://www.treasury.gov/press/releases/reports/po33011.pdf>

⁸ Leonard Schncidmann, U.S. TAXATION OF FOREIGN PORTFOLIO INVESTMENTS, Ch. 4 (2006).

⁹ FATF, Summary of the Third Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism United States of America 10-11 (June 23, 2006).

¹⁰ FATF, Third Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism United States of America 10-11 Paragraph 878 on p. 201 (June 23, 2006).

enforcement authorities were not able to effectively respond to foreign requests for mutual assistance because there was no legal requirement that service providers collect the information the foreign governments were seeking.¹¹

Certain members of Congress are trying to use the U.S.'s superpower status to avoid the level playing field (LPF) requirements of the OECD's harmful tax practices initiative.¹² The LPF requirements prohibit the imposition of "greylists" or "blacklists" against targeted countries until and unless there is a level playing field, and FATF and STEP reports have shown there is not a level playing field because of U.S. non-compliance.¹³ The tax haven bills also contradict President Bush's statement that the U.S. has a competitive advantage in services and is trying to liberalize trade in services. The President's Annual Economic Report complains of regulatory barriers and investment restrictions.¹⁴

The growing U.S. tax gap is the engine of the new tax legislation. U.S. lawmakers have traditionally focused on increasing tax enforcement before finally confronting the reality that they need to trim spending or raise taxes. The new bills continue the U.S. government policy of trying to persuade foreign countries to negotiate TIEAs without providing tax benefits to treaty countries and with threats of discriminatory provisions targeting countries that do not accede. This policy is the source of some diplomatic strife, and markedly contrasts Canada's 2007 budget and recent TIEAs such as the agreement between the Netherlands and the Isle of Man.¹⁵ In a related example, the Australia-Bermuda TIEA, Australia agreed not to enact blacklists or graylists targeting Bermuda..

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¹¹ Bruce Zagaris, *GAO Report on Company Formations Focuses on U.S. Shell Companies, Evidence Gathering Problems*, 22 INT'L ENFORCEMENT L. REP. 258 (July 2006); Bruce Zagaris, *GAO Report on Russian-U.S. Money Laundering Fuels Calls for Strengthening U.S. Anti-Money Laundering Laws*, 17 INT'L ENFORCEMENT L. REP. 42 (Feb. 2001).

¹² See, e.g., OECD, *OECD's Project on Harmful Tax Practices: the 2004 Progress Report* (<http://www.oecd.org/dataoecd/60/33/30901115.pdf>).

¹³ Jason Sharmon and Gregory Rawlings, *Deconstructing National Tax Blacklists: Removing Obstacles to Cross-Border Trade in Financial Services* (Set. 19, 2005).

¹⁴ White House, *ECONOMIC REPORT OF THE PRESIDENT*, 171 http://www.whitehouse.gov/cea/2007_erp.pdf

¹⁵ See Bruce Zagaris, *Canadian Budget Provides Tax Benefits for TIEAs*, 23 INT'L ENFORCEMENT L. REP. 180 (May 2007).

3/14/07
Celia R. Clark, Esq.

Outline of S. 681, for Consideration by Members of Committee on Civil and Criminal Penalties

S. 681 was introduced to the Senate by Senators Carl Levin, Barack Obama, and Norm Coleman on February 17, 2007. It has been referred to the senate Finance Committee.

S. 681 lists 34 “offshore secrecy jurisdictions,” 15 of which are in the Caribbean, transactions on the part of U.S. persons trigger several rebuttable evidentiary presumptions and other consequences. The last two titles of the bill relate to both domestic and offshore tax shelter activities, including expanded rules governing aiding and abetting and tax opinions, and the codification of economic substance. The various provisions of the bill are outlined below.

Title I: Sections 101-106

Section 101: Transfers To and From Offshore Secrecy Jurisdictions

The triggers for the evidentiary presumptions are extremely broad: Direct or indirect transfers between a United States person and an account or entity in an offshore secrecy jurisdiction.

The three presumptions are as follows: (1) Money or property transferred to the offshore account or entity represents previously unreported income of the transferor, taxable in the year of transfer; (2) Transfers of money or property from the offshore account or entity constitutes income of the transferee taxable in the year of receipt; and (3) A U.S. person

who formed, or transferred assets to or from, or was a beneficiary of, an offshore entity is presumed to exercise control over such entity.

Exception for publicly traded entities: If the U.S. person is an entity with shares regularly traded on an established securities market, the presumptions do not apply. In addition, the presumption of control does not apply with respect to an offshore entity which is itself publicly traded.

Limitation of application of presumptions: The presumptions apply for the purposes of any United States civil judicial or administrative proceeding to determine or collect tax.

Rebutting the presumptions: The standard of rebuttal is “clear and convincing evidence, including detailed documentary, testimonial and transactional evidence.” In addition, the court shall “prohibit the introduction by the taxpayer of any foreign-based document that is not authenticated in open court... or any other evidence supplied by a person outside the jurisdiction of a United States court....”

Presumption regarding reportable financial accounts: A separate presumption applies with respect to any account with a financial institution formed, domiciled, or operating in an offshore secrecy jurisdiction. The rebuttable presumption is that any such account contains funds in an amount that is at least sufficient to require a report prescribed by regulations under 31 U.S.C. 5315 (part of the Bank Secrecy Act).

The bill also includes two evidentiary presumptions applicable to civil proceedings to enforce U.S. securities laws.

The bill authorizes Treasury (and the Securities and Exchange Commission) to issue regulations identifying classes of offshore transactions, such as corporate reorganizations, that may not present a potential for abuse.

List of jurisdictions: The bill includes an initial list of 34 offshore secrecy jurisdictions. The bill's sponsors state that the list is taken from "actual IRS court filings in numerous, recent court proceedings in which the IRS sought permission to obtain information about U.S. taxpayers in the named jurisdictions." 153 CONG. REC. S2204 (daily ed. Feb. 17, 2007) (statement of Sen. Levin). The bill provides Treasury with the authority to add or remove jurisdictions from the initial list. The criteria for inclusion are that a jurisdiction has "corporate, business, bank, or tax secrecy rules and practices which, in the judgment of the Secretary, unreasonably restrict the ability of the United States to obtain information relevant to the enforcement of this title [the Internal Revenue Code], unless the Secretary also determines that such country has effective information exchange practices."

Section 102: Special Measures Authorized Against Foreign Jurisdictions, Etc.

This section of the bill authorizes Treasury to apply certain sanctions to counter various perceived threats to U.S. tax enforcement. The same sanctions currently available to

Treasury with respect to foreign jurisdictions, financial institutions, or transactions found to be of “primary money laundering concern” are extended to foreign jurisdictions, financial institutions and transactions found to be “impeding U.S. tax enforcement.” Requirements and sanctions would be imposed on U.S. financial institutions which deal with a designated jurisdiction or offshore financial institution. Treasury would also be authorized to instruct U.S. financial institutions not to authorize or accept credit card transactions.

Section 103: Extension of Statute of Limitations

The IRS is given an additional three years (beyond the usual three-year statute of limitations) to complete an audit or assess tax on transactions involving an offshore secrecy jurisdiction.

Section 104: Reporting Beneficial Owners of Foreign Accounts

A bank that has knowledge that a U.S. person is a beneficial owner of a foreign entity that opened an account, or of the account itself, is required to file a Form 1099 reporting account income to such beneficial owner. This provision is not limited to offshore secrecy jurisdictions. In addition, a U.S. financial institution that directly or indirectly opens a foreign bank account, or establishes a foreign entity for a U.S. customer, in an offshore secrecy jurisdiction, must report the action to the IRS.

Section 105: Grantor Trusts

For purposes of the grantor trust rules (I.R.C. Secs. 671-679), “a grantor shall be treated as holding any power or interest held by any trust protector or trust enforcer or similar person appointed to advise, influence, oversee, or veto the actions of the trustee.” This new provision applies to any grantor trust, not only to foreign trusts.

A second new provision under this section applies to foreign trusts only. This provision broadens the definition of beneficiaries, and treats as a trust distribution any loan of foreign trust assets such as real estate, jewelry and artwork (in addition to loans of cash or securities already covered by current law).

Section 106: Limitation on Legal Opinion Protection From Penalties

The bill provides that an opinion of a tax advisor may not be relied upon to establish that there was reasonable cause for any portion of an underpayment, or that the taxpayer acted in good faith, if the underpayment is attributable to a transaction which in any part involves an entity or financial account in an offshore secrecy jurisdiction. Treasury may issue regulations exempting from the provision legal opinions expressing a confidence level that substantially exceeds the “more likely than not” confidence level, or certain classes of transactions, such as corporate reorganizations.

Title II : Sections 202-205

Section 201: Amendment to Securities Laws

This part of the bill includes amendments to the Securities Exchange Act of 1934, the Securities Act of 1933, the Investment Company Act of 1940 and the Investment Advisers Act of 1940. The penalties are increased for failure to disclose offshore holdings (not limited to offshore secrecy jurisdictions).

Section 202 will require Treasury to issue final regulations directing hedge funds and private equity funds to comply with various anti-money laundering requirements. Company formation agents would also be subject to anti-money laundering obligations, under *Section 203*.

Section 204 of the bill changes the procedures under Code Sec. 7609 relating to third party (“John Doe”) summons, in which the person whose liability is at stake is not named. The bill changes the procedural requirements for these summons in several ways. An exception is created for summons which are limited to information regarding a U.S. correspondent account or a U.S. payable-through account (both as defined in Section 5318A(E) of title 31 [part of the Bank Secrecy Act] of a financial institution in an offshore secrecy jurisdiction.

One change is that, in any case in which a person or class of persons subject to the summons have financial accounts in, or transactions related to, offshore secrecy

jurisdictions, there is a presumption of a reasonable basis for believing that such person or persons may fail or may have failed to comply with provisions of internal revenue law. Another change is that an exception to the ordinary procedural requirements is made for John Doe summons relating to an approved project. A project can only be approved after a court proceeding. Once a project is approved, a summons may issue to any member of an ascertainable group or class of persons included in the project for a period of three years. A court may further extend the time for issuing such summonses for additional three-year periods. Approved projects under these rules are subject to ongoing court oversight.

The intention of these new rules is to permit the IRS to present an investigative project, as a whole, to a single judge to obtain approval for issuing multiple summons related to that project over a period of three years or more. 153 CONG. REC. S2212 (daily ed. February 17, 2007) (statement of Sen. Levin). The unnamed taxpayers in each class would be presumed to be reasonably likely to have failed to comply with tax laws if the class involves financial accounts or transactions in offshore secrecy jurisdictions.

Section 205 of the bill makes changes to portions of Title 31 of the U.S.C. Secs. 1051 et. seq. [The Bank Secrecy Act] relating to enforcement of foreign bank account reporting requirements and suspicious activity reports.

Title III: “Combating Tax Shelter Promoters”

This title and the following title of the bill relate to both domestic and offshore tax-shelter activities.

Sections 301 and 302 of the bill increase penalties for promoting the use of tax shelters and aiding and abetting an understatement of tax liability. **Section 301** increases the maximum penalty on tax shelter promoters under Code Section 6700 to an amount equal to 150% of the promoter’s income from the activity. **Section 302** increases the penalty under Section 6701 of the Code, subjecting aiders and abettors to a maximum fine of 150% of the income from the prohibited activity. The penalty applies not just to return preparers, but to accounting firms, law firms, banks and others who offer “aid, assistance, procurement or advice.”

Section 303 of the bill prohibits the patenting of any “invention designed to minimize, avoid, defer, or otherwise affect the liability for federal, state, local or foreign tax.”

Section 304 amends Section 6701 of the Code to prohibit tax practitioners from charging fees which are calculated with reference to a projected or actual amount of tax savings or losses.

Section 305 of the bill requires federal bank regulators and the SEC to develop examination techniques, in consultation with the IRS, to detect potential tax shelters and products or services that aid or abet tax evasion.

Section 306 authorizes the Treasury Secretary to disclose to the SEC, federal banking agencies and the Public Company Accounting Oversight Board, upon request, tax return information related to tax shelters, tax evasion, or “activities related to promoting or facilitating inappropriate tax avoidance.”

Section 307 will permit increased disclosure of tax shelter information to Congress. Tax return preparers (and others providing services in connection with the preparation of returns) will not be permitted to rely on Code Sec. 7216, which prohibits the disclosure of taxpayer information to third parties, in refusing to comply with a Congressional subpoena. In addition, upon receipt of a request from a Congressional committee or sub-committee, the IRS must disclose documents, other than a tax return, relating to the IRS’s determination to grant, deny, revoke, or restore an organization’s exemption from taxation.

Section 308 of the bill provides statutory authority for the Treasury to develop standards for tax practitioners issuing opinion letters. The section requires the Secretary of the Treasury to impose standards applicable to the rendering of written advice with respect to any listed transactions or “any entity, plan, arrangement, or other transaction

which has a potential for tax avoidance or evasion.” The standards must address, at a minimum, the following issues:

- (1) Independence of the practitioner;
- (2) Collaboration among practitioners or other parties which could result in the parties having a joint financial interest in the subject of the advice;
- (3) Avoidance of conflict of interest;
- (4) If the advice is issued by a firm, standards for reviewing the advice and insuring the consensus support of the firm;
- (5) Reliance on reasonable factual representations;
- (6) Appropriateness of fees charged;
- (7) Preventing aiding or abetting of the understatement of tax liability;
- (8) Banning the promotion of potentially abusive tax shelters.

In the words of Carl Levin, the intention of this provision is to develop a “beefed-up Circular 230” in order to reduce ongoing abusive practices related to tax shelter opinion letters. 153 CONG. REC. S2216 (daily ed. February 17, 2007) (statement of Sen. Levin).

Section 309 expands the category of penalty-related payments for which deductions are denied under Code Sec. 162(f). That section is now limited to “a fine or similar penalty paid to a government.” It would be expanded to apply to payments to any person relating to the violation of any law, or the investigation or inquiry into the potential violation of any law.

Title IV: “Requiring Economic Substance”

This title codifies the economic substance doctrine. The provisions of this title, like those of title III, are not limited to offshore transactions or entities.

Section 401 defines a transaction with economic substance as a transaction (1) which “changes in a meaningful way,” aside from Federal tax effects, the taxpayer’s economic position, and (2) for which the taxpayer has a substantial non-tax purpose, if the transaction is a reasonable means of accomplishing such purpose. Where a taxpayer relies on the profit potential of a transaction to establish economic substance, the present value of the reasonably expected pre-tax profit must be substantial in relation to the present value of the expected net tax benefit that would result, and the reasonably expected pre-tax profit must exceed a risk-free rate of return.

In determining whether a transaction has profit potential, the expected tax benefits with respect to leased tangible property shall not include the benefits of depreciation, tax credits, or other deductions determined by the Secretary, and the rule requiring a pre-tax profit exceeding a risk free rate of return shall be disregarded.

Special rules apply to transactions with a “tax-indifferent party,” defined as “any person or entity not subject to tax imposed by subtitle A.” The form of two different types of transactions involving a tax-indifferent party will not be respected. The first of these transactions is a financing transaction, or a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-indifferent party, if the present value of the deductions to be claimed is substantially in excess of the present value of the anticipated economic returns of the person lending the money for providing the capital. (A special rule applies to public offerings.) The second type of transaction which will not be respected as to form is one involving income-shifting and basis adjustments, if it results in an allocation of income or gain to a tax-indifferent party in excess of that party’s economic income or gain, or it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-indifferent party.

Section 402 of the bill imposes a penalty equal to 40% of the amount of any understatement attributable to a non-economic substance transaction. A 20% penalty will apply if the transaction is fully disclosed on the tax return or attached statement. Only the Commissioner of Internal Revenue can compromise any portion of such penalty.

Section 403 denies a deduction for interest on underpayments attributable to non-economic substance transactions.

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Aide Mémoire

BARBADOS' POSITION IN

RESPONSE TO UNITED STATES TAX HAVEN BILLS

Embassy of Barbados

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Aide Mémoire: Barbados' Position in Response to U.S. Anti-Tax Haven Bills

Introduction

Barbados continues to be the victim of negative publicity as a result of the “tax haven” label that is easily affixed to small low-tax jurisdictions. In the context of the consideration of anti-tax haven initiatives designed to “curb offshore tax haven abuses” in the U.S. Congress, the following Aide Mémoire serves the sole purpose of discussing and highlighting those points which could form the basis of a preliminary invalidation of the erroneous classification of Barbados as a tax haven, which has the potential to seriously undermine or result in the override of the Barbados/U.S. Double Taxation Agreement.

PART 1: POINTS FOR CONSIDERATION

1. Barbados: A Reputable International Business and Financial Services Centre

The Government of Barbados remains committed to expanding its tax treaty network as a central pillar of its continued development into a mature, world-class and well-regulated international business and financial services centre. The international business and financial services sector has steadily grown throughout the years buttressed by Barbados' expanding network of double taxation and bilateral investment treaties. It is this network, which not only gives Barbados credence as a competitive, offshore jurisdiction but also reinforces the country's seriousness as an actor in the foreign investment market.

Barbados currently has 14 DTAs (including several with OECD Members) and has recently signed DTAs with the Republic of Austria and the Kingdom of the

Netherlands and initialed a DTA with the United Mexican States. These countries do not negotiate tax treaties with tax havens or secrecy jurisdictions. When Norway, Sweden and Finland concluded DTAs with Barbados, they trumpeted the exchange of information provisions contained in the Barbados Model DTA that would help to reduce tax evasion. Barbados has secured negotiating commitments with the Seychelles Republic and Luxembourg and is also interested in pursuing DTA/BIT discussions with Ghana, Belgium, India, Dubai, Chile, Panama, Malaysia, France, the Netherlands Antilles and Nigeria.

In order to promote and protect investment, Barbados has also signed Bilateral Investment Treaties (BITs) with Cuba, Venezuela, China, Canada, Germany, Switzerland, the United Kingdom and Mauritius.

Barbados' investment framework, services offer, and sound regulatory financial policies, make it a first-class international business and financial services jurisdiction in the Caribbean. Barbados is also a leader in the region and as such plays a pivotal role in regional affairs.

2. The OECD Initiative on Harmful Tax Competition

In 1998 the OECD put forward an initiative on harmful tax competition which set out criteria for the identification of tax havens and preferential regimes. A jurisdiction said to promote harmful tax competition was described as one in which there was a **lack of information exchange, a lack of transparency**, where business was attracted with no domestic activity i.e a regime "ring-fenced" from the domestic economy, coupled with low tax or no tax policies. During the period July 1998 to June 2000, the OECD

Secretariat sought to coerce targeted jurisdictions (Barbados was one of 35 jurisdictions listed) into signing a letter of commitment to eliminate harmful tax competition. Barbados refused however to sign the letter of commitment. It is important to note that although the list of jurisdictions put forward by the OECD was initially a list of international financial centres to be examined and then potentially blacklisted if they did not comply with transparency and information exchange demands, this list by its exclusionary and arbitrary approach and its conditional nature was construed to be in itself a blacklist.

On November 14, 2001, the OECD issued its Progress Report with the initiative now re-titled “Harmful Tax Practices”. The report eliminated “ring fencing”. On January 30, 2002, a joint statement was issued to the effect that Barbados would not appear on the list of un-cooperative tax havens. The OECD confirmed that there was no cause against Barbados with respect to harmful tax practices and that Barbados had met the transparency and exchange of information requirements. It is important to note that no change in Barbados’ legislation had been necessary for Barbados to be reclassified by the OECD.

In the Joint Barbados/OECD Statement of March 2002, the OECD publicly conceded that Barbados had no case to answer based on several aspects of its tax and regulatory framework outlined as follows:

- There are no laws or practices in Barbados (such as bank secrecy provisions) which prevent the effective exchange of information;

- Barbados does not have any “dual criminality” provisions in its domestic law or in the tax information provisions of its treaties or Tax Information Exchange Agreement (TIEA);
- Barbados does not have any “domestic tax interest” provisions in its domestic law or in the tax information provisions of its treaties;
- The Barbados Government has access to bank information for purposes of exchange of information that is foreseeably relevant to civil and criminal tax matters;
- Barbados has provisions requiring the maintenance of accounts and the auditing or filing of such accounts;
- Bearer shares are not permitted in Barbados;
- Nominee shareholders and nominee directors are not allowed in Barbados;
- The Barbados regulatory or tax authorities have full access to information on beneficial owners of all business enterprises, partnerships, and those setting up and benefiting from trusts;
- Barbados has transparent tax and regulatory systems and has in place a mechanism that enables it to engage in effective exchange of information;
- Barbados has long-standing information exchange arrangements with other countries, which are found by its treaty partners to operate in an effective manner; and

- Barbados maintains a basic rate of corporate taxation of 25 percent. This rate was reduced over a 5-year period from 37.5 percent to 25 percent. In a special incentive regime, certain companies are taxed at a maximum of 2.5 percent. These companies are however still subject to the strictures of Barbados' tax information and reporting requirements and must comply with the application of domestic rules and regulations.

The above account provides an example not only of Barbados' firm stance in the face of challenges to its core economic rights, it is also an indication of the propriety of Barbados' tax and regulatory framework, particularly as it relates to transparency and effective information exchange.

3. Barbados/U.S. DTA

The Barbados/U.S. DTA was concluded in 1984 and has worked well since its inception to facilitate legitimate business activity and to increase competitiveness in both Barbados and the U.S. This 23-year-old tax treaty is testimony to the mutually beneficial cooperation enjoyed by the Contracting parties. The relationship between the two countries with regards to taxation matters has been constructive and cooperative and Barbados has adhered to the provisions of the treaty in good faith, constantly demonstrating a willingness to make adjustments, when necessary in the interest of enhancing the effectiveness of the treaty for mutual benefit.

The Barbados/U.S. DTA is not only one of the oldest treaties in Barbados' network; it is also one of the more important agreements. Barbados has attached great importance to this DTA and has always been guided by the highest principles in developing business under the terms of the DTA.

This most recent challenge to the operation of the Barbados/U.S. DTA is not only unjustified and discouraging but is above all incompatible with U.S. tax treaty policy which has always adopted a somewhat selective approach of not concluding tax treaties with jurisdictions it views as tax havens. Barbados is neither an offshore secrecy jurisdiction nor a tax haven.

a. Second Protocol to Barbados/U.S. DTA

One of the catalysts for re-engaging the U.S. on DTA talks in October 2003 was the IRS note of July 17, 2003 which specifically mentioned the Barbados/U.S. DTA as unsatisfactory and thereby denied treaty benefits via the reduced U.S. withholding taxes on interest, royalties and dividends. The concern was that the treaty might operate to provide benefits which were not intended to mitigate or eliminate double taxation in cases where there was no risk of double taxation. More specifically, reference was being made to the issue of corporate inversions and the perceived abuse of the DTA to facilitate such.

As soon as the Barbados Government became aware of the problems being experienced with respect to corporate inversions through the use of the provisions of the Barbados/U.S. DTA in a manner that had not been anticipated at the time of its negotiation, Barbados took the initiative to meet with the Department of the Treasury to

convey its willingness to work with the U.S. to find a mutually satisfactory solution to the problem.

The revision of the Barbados rating, according to the IRS note was stated to be contingent on the successful renegotiation of a Protocol to the Barbados/U.S. DTA.

i. Provisions of the Second Protocol

Under the LOB Article of the Second Protocol to the Barbados/U.S. DTA, a number of anti-treaty shopping provisions were crafted that would in effect put an end to the perceived abuse of the treaty by persons not entitled to treaty benefits. As a consequence, benefits would only be accorded to residents of the U.S. or Barbados that satisfy a number of stringent tests, (i.e publicly traded test, ownership test, base erosion test).

Article 22(1)(c)(i) of the new Protocol which outlines the publicly traded test, is designed to ensure that the Article operates effectively to limit treaty benefits to bona fide residents. It puts an end to the use of the treaty in inversion transactions unless the inverted company is primarily traded on the Barbados Stock Exchange, (or on one of the sister exchanges in Trinidad or Jamaica.)

Article 22(1)(c)(ii) of the new Protocol outlines the ownership test which stipulates that more than 50% of the shares of the Barbadian resident company must be owned by residents of Barbados in order to qualify for treaty benefits. Companies must in addition meet the base erosion test under Article 22(1)(d)(ii) to qualify for benefits under the treaty. This test requires that less than 50% of the company's gross income be used directly or indirectly to make tax deductible

payments to persons that are not qualified residents of the country in which the company is resident. This provision limits the ability of an inverted company to qualify for the benefits of the treaty unless Barbadian residents own the majority of the company's shares.

Article 22(2) puts forward the active trade and business test which was amended to include a number of provisions to determine the relative substantiality of the activities carried on in one State versus the other. The new definitions provide for greater clarity and reciprocity in determining what constitutes an active trade or business.

Paragraph 6 of this Article is a carve out which is reciprocal in nature excluding special incentive entities from benefiting from the dividends, interests, and royalties articles. These entities can however still benefit from the other provisions of the Agreement.

The Government of Barbados considers the conclusion of the Second Protocol a refinement of the 23-year tax treaty relationship and testimony to an extraordinary spirit of cooperation and goodwill between the two countries. The Protocol has led to a reduction of international financial services business in Barbados but provides clearer and more effective rules for the qualification for treaty benefits. As a direct result of the successful conclusion of the Second Protocol, on October 30, 2006, the U.S Internal Revenue Service (IRS) issued IRS Notice 2006-101 adding Barbados to the list of countries eligible for reduced tax rates on dividends paid by foreign corporations under the 2003 Jobs and Growth Tax Relief Reconciliation Act (Pub. L. No. 108-27).

4. Barbados and Tax Information Exchange

Barbados is the first Caribbean country to have concluded a Tax Information Exchange Agreement (TIEA) with the U.S., having signed one since 1984. U.S. policy has in recent times placed even more emphasis on the negotiation of TIEAs rather than DTAs to assist in the fight against tax evasion. The U.S. will not conclude a treaty with a country whose rules operate to prevent or seriously inhibit the appropriate exchange of information under a tax treaty. The advantages afforded to Barbados under the TIEA are now practically non-existent in light of the WTO Ruling on Foreign Sales Corporations (FSCs). Barbados however still respects its obligations under the TIEA and provides information where necessary to U.S. authorities. It should be noted that this is the only TIEA ever concluded by Barbados and that Barbados' policy as it relates to tax information exchange generally takes the form of a DTA with a wide exchange of information exchange provision. In fact pursuant to Article 27 in the Barbados Model, every jurisdiction that concludes a DTA with Barbados concludes, de facto, a built-in exchange of information agreement.

The Barbados/U.S. DTA is further complemented by Article 26 of the Barbados/U.S. DTA on Exchange of Information. This Article was also amended during the negotiation of the Second Protocol resulting in a wider and clearer exchange of information provision. This amendment is also largely consistent with the Barbados/U.S. TIEA.

The "Tax Co-operation: Towards a Level Playing Field – 2006 Assessment by the Global Forum on Taxation" is a survey of 82 OECD and non-OECD countries (including Barbados) which shows that countries continue to improve their international cooperation

to combat tax abuse by putting in place mechanisms which enhance transparency and exchange of information for tax purposes. Some of the mechanisms used to measure progress in these areas were the introduction of rules on customer due diligence, information gathering powers, the immobilization of bearer shares, the negotiation of DTAs and /or tax information exchange agreements, and international cooperation to counter criminal tax matters. Barbados does not fall short in any of these areas and has been deemed fully compliant with transparency and exchange of information requirements.

Barbados has demonstrated time and time again that it is able to fulfill these obligations not only under the Barbados/U.S. TIEA and under Article 26 of the Barbados/U.S. DTA, but it has also been deemed compliant by international groups like the OECD through its Global Forum.

PART 2: IMF AND CFATF REVIEWS ON BARBADOS' FINANCIAL SYSTEM

The 2003 IMF Financial System Stability Assessment and the 2003 CFATF Mutual Evaluation Report present a review of Barbados' financial regulatory and legislative framework in 2003. Subsequent IMF Executive Board Article IV Consultations with Barbados give an indication of the progression of the recommended changes to be made as well as other supervisory and regulatory adjustments.

Both 2003 Reports gave Barbados an overall nod of approval for the work done in creating the legal, financial and law enforcement frameworks on which Barbados' reputation as a reputable, first-class international business and financial services centre stands. Barbados was said to have observed a high level of transparency in Monetary and

Financial Policies and the authorities were commended for having worked hard to develop an effective framework for anti-money laundering and to combat the financing of terrorism. The report also issued recommendations concerning areas in which improvements could be made.

In the IMF 2004 Article IV Consultation with Barbados, the actions taken by Barbados to implement most of the 2002 Financial Sector Assessment Program recommendations, including improvement in the supervisory and regulatory frameworks for the banking and insurance sectors were welcomed. The IMF encouraged rapid implementation of the remaining recommendations, including increasing the independence of the Central Bank of Barbados (CBB), and the strengthening of efforts with regard to Anti-Money Laundering/Combating the Financing of Terrorism issues.

The IMF 2005 Article IV Consultation encouraged Barbados' authorities to make greater use of indirect monetary policy instruments and enhance competition in the banking system. It was noted that this would facilitate the gradual phasing out of the minimum deposit rate and improve the efficiency of financial intermediation. It was noted that while the banking sector appeared well poised to absorb shocks, risks related to the large share of public debt held by domestic financial institutions would need to be monitored carefully. The IMF was encouraged by the progress made in addressing the outstanding issues from the Financial Sector Assessment Program report of 2002, and called for strengthened efforts to curb money laundering and the financing of terrorism.

The 2006 Consultation received positive reviews. The IMF was encouraged by sound banking indicators and upgraded financial sector regulations, and emphasized the importance of monitoring potential risks associated with large capital inflows and rapid

credit growth. The authorities were commended for the introduction of measures to strengthen the financial sector regulatory framework and to develop the financial market infrastructure.

Since the IMF and CFATF Reports were issued in 2003, much work has been done to further strengthen the regulatory and supervisory arms in the international business and financial services sectors.

More specifically as it relates to the domestic and international banking sectors, various guidelines have been issued by the CBB to the industry. Some of these include AML/CFT Guidelines, Corporate Governance Guidelines, Electronic Banking Guidelines and Guidelines on the Administration of Abandoned Property for Institutions licensed under the Financial Institutions Act (FIA) 1996-16. These guidelines provide general best practices and the minimum policies and procedures that each licensee should have in place. Additional guidelines to deal with various risks within the industry are also in train.

Supervision and Regulation in the international business sector has taken the form of different legislative amendments. These are Amendments to the IBC, SRL and International Trust Acts made in 2005. Legislation is also pending for the Registration of Service providers.

The Prime Minister in his 2007 Economic and Financial Policies proposed the establishment of the Financial Services Authority to regulate the non-banking sector. This would allow for a more streamlined approach in the supervision and regulation of entities. He also proposed the creation of an International Institute of Securities and Financial Regulation. Not only will this Institute provide training and re-training of

professionals in the financial services sector, it will also ensure that professionals are aware of and adhere to international best practices in the exercise of their professions.

PART 3: MISCHARACTERISATION OF BARBADOS BY U.S. ANTI-TAX

HAVEN BILLS

The measures in the three (3) bills (S.681, S.554 and S.396) are proposed to guard the U.S national tax revenue by limiting or barring transactions carried out by their citizens or corporations with certain specified foreign jurisdictions. These bills however contain provisions which state that those jurisdictions which meet none of the requirements of the same, may be removed from the list.

1. Mischaracterization of Barbados by Tax Bills S.554 and S.396

Both U.S. anti-tax haven bills expressly characterize Barbados as an “offshore secrecy” jurisdiction. This characterization of Barbados as such is however misguided. Barbados’ practices in the following areas have not fallen short of international standards as set by the OECD or the FATF:

(i) Regulation of Service Providers

The OECD includes the regulation of service providers as one of the hallmarks of transparency of corporate vehicles and a key measure of determining whether a jurisdiction is a secrecy jurisdiction. Barbados has drawn up legislation to regulate service providers and is in the process of establishing a Financial Services Commission that will ensure that all persons are deemed as fit and proper before they form corporate entities.

(ii) Transparency of Corporate vehicles

Financial service providers are required to conduct Know Your Customer (KYC) Procedures in order to apply for licenses. The Supervision and Regulation Department of the Ministry of Economic Affairs and Development will then verify whether the application for license meets KYC requirements.

(iii) Annual Reporting Requirements

The OECD corporate transparency standards also include the requirement to file annual reports. Barbados legislation requires that all entities benefiting from international financial services legislation file annual reports.

(iv) Requirement of Registered Office in the Jurisdiction

One of the elements in the OECD's standards for corporate transparency is having an office in the jurisdiction. When an entity has its office in the jurisdiction, the regulator can more easily obtain books and records, ascertain answers to questions, if necessary through compulsory order, and otherwise hold the entity accountable. Barbados requires its entities benefiting from international financial services legislation to have a registered office in Barbados.

2. The Stop Haven Act Improperly Characterises Barbados as a Tax Haven (S.681)

The statement of Carl Levin on S. 671, The Stop Tax Haven Act, explains the definition of a tax haven which the bill targets:

A tax haven is a foreign jurisdiction that maintains corporate, bank, and tax secrecy laws and industry practices that make it very difficult for other countries to find out whether their citizens are using the tax haven to cheat on their taxes. In effect, tax havens sell secrecy to attract clients to their shores. They peddle secrecy the way other countries advertise high quality services. That secrecy is used to cloak tax evasion and other misconduct, and it is that offshore secrecy that is targeted in our bill.

In the Joint Barbados/ OECD Statement, the OECD confirmed that Barbados was not a tax haven. It does not attract international financial services on the basis of secrecy.

Instead, as supported by the IMF and CFATF Reports, Barbados has a robust anti-money laundering and transparency of corporate vehicles regime. These reports on Barbados' corporate, bank, and tax transparency (or secrecy) laws and industry practices show that Barbados meets the standards for international anti-money laundering and transparency of corporate vehicles.

As a result, to the extent the bill is directed at the abuse by U.S. taxpayers of tax havens, the bill improperly targets Barbados. Indeed, neither the bill, the statement in support of the bill, nor the hearings conducted by the Permanent Investigative Subcommittee show that Barbados is a tax haven. The listing of Barbados in the S.871 undermines the purpose of the bill since it shows clearly that it is based on inaccurate premises.

It is important that this matter be addressed with the urgency and efficiency required. It is crucial that any uncertainty around the future of the DTA be removed in an effort to support Barbados' negotiating agenda with other treaty partners.

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