

## **Are we falling short on true advocacy for the Cayman Islands financial services industry?**

Left wing, high tax, commentators, notably, The Guardian, Tax Justice Network, Oxfam, Christian Aid and, altogether more frequently than it ought for a publication that represents itself as knowledgeable about financial matters, The Financial Times, routinely levy accusations that the Cayman Islands fosters financial opacity, tax avoidance, tax evasion and even money laundering. This too convenient a trope persists and surprisingly so in the face of the well documented adherence of its financial services industry to world leading standards of transparency, which exceed the standards set by the OECD and the FATF. But why does it persist when as against this ill-founded narrative the government and occasionally, through its public relations arm, Cayman Finance, portrays itself as a tireless advocate for the Island's financial services industry?

Very probably because the representation to date is misaligned with and fails to establish the true fundamentals of the financial services structuring undertaken in the Islands. It also understates its legitimacy with the result that the tax haven stereotype suggested by onshore commentators has

become more firmly and not less well entrenched. The press reports of the most recent visit to the United Kingdom by the Cayman Islands Premier in November 2024 serve as an example that underscores the broader issue. Repeated acquiescence by the Cayman Government and the Cayman Islands Regulatory Authorities to the extension of layer upon layer of additional anti money laundering and other regulation emanating from the EU and the UK without, in any such discussion, securing any acceptance of the legitimacy of Cayman Islands financial structuring has had the unintended effect of reinforcing the erroneous perception that there existed a Cayman Islands problem to solve. It should not be necessary, here, to restate the mechanisms which give effect to the essential foundations of the Territories transparent structuring. They are publicly available. Robust and highly effective frameworks have been implemented under the Foreign Account Tax Compliance Act (“FATCA”) and the Common Reporting Standard (“CRS”) to ensure that the tax authorities in the jurisdictions of tax residence of all investors in Cayman Islands structures (overwhelmingly funds) are notified of the investors interest and gains. This is reinforced by onshore controlled foreign corporation legislation. Most crucially, tax is paid by Cayman Islands entities in accordance with the laws of the jurisdiction where investments are made, which is the essence of the tax neutral

structuring for which the Cayman Islands is renown. Further the Cayman Islands has verified and documented beneficial ownership information available to law enforcement and tax authorities. The correct and unassailable policy position for government ought to have been to rest on having established the global standard on transparency required by the OECD and the FATF rather than abandoning that moral and legal high ground in favour of the swamp of constant UK and EU appeasement based as it is on a false narrative which reinforces the negative stereotype

And now out of this persistent false narrative comes the suggestion that the documented and verified Cayman Islands Beneficial Ownership Register should be extended from companies to include limited partnerships and funds and should be made available to the public to meet, we are told by the UK Government, the “global standard”. But a moments analysis reveals that there is no such “global standard” and certainly not in the United States where the Corporate Transparency Act does not extend access to public access<sup>1</sup>. Nor is public access an FATF standard and nor in the EU, notwithstanding EU Commission’s hasty introduction of the new Sixth Anti-

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<sup>1</sup> At the time of writing, a Texas Federal Court has prohibited any application of the Corporate Transparency Act nationwide across the USA, see Texas Top Cop Shop, Inc. et al. v. Garland et al.

Money Laundering Directive. This Directive notably does not take effect on a national basis and where further analysis reveals that most EU countries have no such available register. Nor does the Sixth Directive resolve the dispute within the EU, between the quite contrary views as to public access of private data expressed by the EU Data Protection Commissioner as supported by the European Court of Justice in the Sovim judgment<sup>2</sup>.

No coherent argument has yet been made by the UK government (or any other government) and certainly not by Dame Margaret Hodge or Andrew Mitchell MP for the need to extend access to the Beneficial Ownership Registry to journalists, howsoever they are supposed to be defined<sup>3</sup>. Nor has comment been made to the UK Government about how effective the Cayman Islands Beneficial Ownership Registry is in practice compared to its hopeless counterpart introduced in the United Kingdom given that there is no UK requirement for verified and certified documentation on every defined beneficial owner of each of the UK's four million plus companies.

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<sup>2</sup> For a detailed analysis of the position, see the article "Beneficial Ownership Register - An Outbreak of Common Sense, IFC Review 1<sup>st</sup> December 2022 - <https://www.ifcreview.com/articles/2022/december/beneficial-ownership-registers-an-outbreak-of-common-sense/>

<sup>3</sup> See also "A Reply to Dame Margaret Hodge", IFC Review 30<sup>th</sup> August 2019 - <https://www.traversthorpalberga.com/wp-content/uploads/2019/08/IFCcaribbeanReview.pdf>

It is widely understood that in the United Kingdom (and other onshore jurisdictions) significant commercial and retail real estate now represents the proceeds of money laundering<sup>4</sup>. If so, the complete solution for dealing with the problem already exists given the UK requirement now to disclose ultimate beneficial ownership of the real estate in question without creating the suggestion that the problem is a Cayman Islands issue. And then why then, if the problem is thereby solved in the UK, risk a Constitutional law challenge in the Cayman Islands based on a contravention of the Right to Privacy contained in the Cayman Islands Bill of Rights?<sup>5</sup>

### **A question of advocacy: Compliance or unwarranted concession?**

In fairness, the Cayman Islands government would say that in response to constant but unwarranted threats of black or grey listing from the European Union and the FATF over the past two decades, it had little option but to extend unnecessary and counterproductive regulation including the registration of private equity funds and the particularly useless (in a

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<sup>4</sup> Not only in London but now too, Wokingham – Daily Telegraph, 5<sup>th</sup> December 2024

<sup>5</sup> It appears from a recent press release that Sir Keir Starmer has now recognized the constitutional impossibility of extending such legislation to the Cayman Islands by Order in Council. The Bancoult cases refer.

jurisdiction without double tax treaties) economic substance provisions. Critics however argue that the government's acquiescence, admittedly encouraged by the Cayman Islands accounting profession (which unsurprisingly turns out, by way of the requirement for local audit sign off, to be the primary beneficiary of these extra-territorial legislative initiatives), is an abdication of responsibility that paints the Cayman Islands as a guilty subservient, and particularly, since the contrary arguments as to legitimacy of financial structuring and transparency have not been effectively made. This simply entrenches the negative narrative as the regulatory overreach carries the implication that it is justifiable and designed to solve a problem. A problem which no one has yet established. In acquiescing in the adoption of these measures in the name of combating illicit financial activities, no one appears to have made the blindingly obvious point that in relation to US\$8 trillion of capital flows in and through Cayman Islands structures with full transparency afforded to law enforcement and tax authorities, there has been no statistically relevant illicit financial activity to complain of. Tweedledee and Tweedledum appear to have a grasp of the right approach when dealing with the UK and the EU's suggestions,

"If it was so it might be: and if it were so, it would be; but as it isn't so it aint. That's logic.

## **Scapegoating a transparent jurisdiction**

Accordingly, and uncomfortably, as a result, the Cayman Islands financial services industry continues to operate under the constant threat of shifting regulatory goalposts set by external actors. These onshore authorities and for their supporting NGO's are either deliberately malicious as to their intentions, or, at best, simply have no idea as to the fundamentals of tax neutral structuring and continue to use the negative narrative of the Territories as justification which is leveraged into hyperregulation with no demonstrable benefit save to reinforce the toxic agenda and flawed understanding of left wing high tax campaigners. And this agenda plays well in the UK and the EU where deficit spending governments find the zero-tax base of the Cayman Islands , its fiscal stability and near zero debt to be an embarrassment.

So, the Cayman Islands continues to be vulnerable to this tortured and manufactured logic. The absence of any evidence of any sort of meaningful wrongdoing, let alone, tax evasion or tax avoidance apparently justifies the

UK and EU freely and patronizingly to insist , in the finest tradition of Colonial rule , on yet further transparency initiatives and now to allow journalists and ultimately the public at large have access to the confidential ownership information of all Cayman company and partnership structures. This without a thought of the normal rules of confidentiality to which all commercial enterprise wheresoever undertaken is entitled or to the legitimate right to privacy in personal affairs both of which are in the Cayman Islands Constitutionally legally protected.

If that argument were in any way good, it would also lead to the surprising admission that HMRC, the IRS and Scotland Yard are incapable, and that their respective jobs of legal tax and regulatory enforcement are better entrusted to the public at large. But this mischaracterization of the Cayman Islands harms its financial services industry. It has created an uneven playing field. Companies and funds domiciled in the Territory are often unfairly stigmatized and still face unwarranted scrutiny despite operating exclusively within a framework that is both transparent and compliant. Rather than firmly challenging these misconceptions, the constant reference by the UK Government to adherence to fictitious “global standards” in introducing yet



more regulation and the Cayman government policy of appeasement has resulted in perpetuation of the scapegoat narrative.

The Cayman government represents its regulatory framework as evidence of world leading good governance, but that framework is arguably now counter productive. Cayman has now embraced hyperregulation with no evidential basis. However, these measures come now with significant cost. The burden of compliance is substantial making it harder to compete with an increasing number of jurisdictions which are able to adopt, shall we say, a more pragmatic and less focused and document heavy approach<sup>6</sup>. These would also be the jurisdictions which are now routinely involved in convictions for money laundering. Whilst the financial services industry has proved itself highly resilient it would be an unpardonable and damaging error to take this resilience and client acceptance for granted.

Moreover, the overemphasis on compliance, without any evidence of a problem to solve, leaves less room for creative structuring to leverage the

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<sup>6</sup> For an analysis of the flawed logic of the suggestions that the Cayman Islands are involved in tax avoidance, see “Hopeless, Clueless, and Almost Disingenuous: The EU Tax Observatory Global Tax Evasion Report 2024”, IFC Review, 15<sup>th</sup> December 2023 - <https://www.ifcreview.com/articles/2023/december/hopeless-clueless-and-almost-disingenuous-the-eu-tax-observatory-global-tax-evasion-report-2024/>

Territory's tax neutral status without constant interference or suspicion. A more assertive government stance should reinforce the Territory's image as a legitimate transparent financial center founded on the actual not a fevered version of the international standards, rather than adopting the posture of an acquiescent enforcer of external and ever-increasing layers of rules which serve no purpose. We should replace Stockholm Syndrome with a more robust and self-confident George Town Syndrome<sup>7</sup>.

## **Conclusion – A call for proactive self-assured representation**

The Cayman Islands already have the legislative framework, professional expertise and infrastructure to be recognized as a world leading offshore financial center which demonstrates as a matter of routine first class transparency and regulatory compliance that far exceeds the standards applied in the major onshore financial centers. In the absence of any statistically relevant evidence of tax evasion or money laundering, it is time for a more assertive approach that challenges the outdated stereotype and

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<sup>7</sup> For an excellent and robust defence of the Cayman Islands position, however, see the speech of the Hon McKeeva Bush, JP, MP in the Cayman House on 23<sup>rd</sup> November 2023 - <https://parliament.ky/wp-content/uploads/2024/12/OHR-23-11-2023-Second-Special-Meeting-of-the-2023-2024-Session.pdf>

describes the Cayman Islands as a transparent compliant jurisdiction unfairly scapegoated by international critics with their own agendas. Perhaps then the Cayman Islands may be allowed realize its potential as a global hub of independent, innovative and legitimate business.