

G-2-0 AND OFFSHORE FINANCIAL CENTRES: FREE TRADE OR PROTECTIONIST ATTACK BY G-20 MEMBER ON-SHORE FINANCIAL CENTRES? – A CALL FOR REFORM OF GLOBAL REGULATION OF ANTI-MONEY LAUNDERING AND TERRORIST FINANCING”

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PART 4

UNITED STATES TREASURY ADVISORY AGAINST THE BAHAMAS

In Part 4 of this 12 part series, I examine the role of the United States in the protectionist campaign against the Bahamian offshore financial centre.

The United States Department of the Treasury, Financial Crimes Enforcement Network, issued Advisory #13 in July 2000 against The Bahamas, in concert with the FATF, the OECD and the Financial Stability Forum, alleging, in almost identical terms to those of the FATF, the Financial Stability Forum and the OECD, alleging that the Bahamian legal, supervisory and regulatory systems relating to counter-money laundering, suffered from “**serious systemic**

problems". Specifically, the Advisory claimed, amongst other things, that The Bahamas' supervisory system did not include rules for the reporting of suspicious transactions by financial institutions; that banks registered in The Bahamas were not required to verify the identity of bank customers for whom Bahamian lawyers or certain other intermediaries opened accounts; that access to customers' bank accounts could can only have been obtained by Order of the Supreme Court, collectively defined as "deficiencies in the counter-money laundering controls".

Further the United States Treasury Advisory complained that The Bahamas remained committed to bank secrecy, that regulatory procedures for identification of customers and account opening procedures were limited and that Bahamian International Business Companies ("**IBCs**") could have issued bearer shares. The Advisory required banks and other financial institutions operating in the United States to exercise "**enhanced scrutiny**", when dealing with transactions originating in or routed to or through The Bahamas, or involving entities organised or domiciled or persons maintaining accounts, in The Bahamas, to determine how the aforesaid

deficiencies in the counter-money laundering controls affect the possibility that those transactions are being used for illegal purpose.

As a punitive measure, the said Advisory required the U.S. banks and financial institutions to apply United States law and federal financial institution supervisory guidelines to transactions originating from or routed through The Bahamas to determine whether any transaction over \$5,000.00 required reporting under the U.S. rule.

To avoid these negative consequences, The Bahamas undertook a major legislative and administrative overhaul of its regulatory infrastructure of the financial services sector in 2000. Consequently, in January 2001 the United States granted The Bahamas provisional Qualified Intermediary Status, subject to The Bahamas signing a Tax Information Exchange Agreement with the United States of America before July 2002.

STOP TAX HAVEN ABUSE ACT

In February 2007, The Bahamas was once again the target of a protectionist measures from the United States of America, when the Bill, **“Stop Tax Haven Abuse Act”** was proposed by United States Senators Levin, Coleman and Obama (as he then was) in the 110 Congress, 1st Session, which was twice read and referred to

Committee. The objective of the Bill is **“to restrict the use of offshore tax havens and abusive tax shelter to inappropriately avoid Federal Taxation, and for other purposes.”** This Bill proposes the Black Listing of The Bahamas as an “offshore secrecy jurisdictions” which should be **deemed** listed by the Secretary of the Treasury and subject to penal sanctions. An offshore secrecy jurisdiction will be subject to a **rebuttable presumption** that a U.S. person exercised control over an entity **“where she/she directly or indirectly formed or transferred assets to was a beneficiary of, or received money or property, or the use thereof from a trust, formed, domiciled or operating in an offshore secrecy jurisdiction.”**

The Bill also authorizes the Secretary of the Treasury, in consultation with the Secretary of State, the U.S. Attorney General and the Chairman of the Federal Reserve, to take punitive measures against such jurisdictions, including prohibiting any corresponding accounts or payable-through accounts by U.S. financial institutions or the use of a credit, debit or charge card in the United States.

The Government has been silent about this Bill which pending in the United States Senate. The Bahamas can well learn from the

strategy of the Cayman Islands when it undertook a vigorous lobby in Washington in response to President Obama's and the OECD/Financial Stability Board's characterization of that jurisdiction as being engaged in harmful tax practices. Similarly, The Bahamas should undertake a vigorous lobby to have its name removed from this Bill and against the passage of the **Stop Tax Haven Abuse Bill** by the United States Senate and House of Representatives. The Bahamas should take all reasonable measures to blunt the growing protectionist tendencies in the United States and other OECD member countries by a campaign to educate policy makers and legislators in OECD member countries and the international media of full contribution offshore financial centres, such as The Bahamas, make to international finance and economic development in the global economy, including members countries of the OECD.

It is ironic that the United States would have taken such hostile measures against The Bahamas. In the context of power politics, the maxim that for countries "there are no permanent friends, only permanent interests" should teach The Bahamas that it needs to develop more sophistication in managing the complex bilateral relationship with the United States: of close proximity, joint geo-

strategic interests of family bonds, security cooperation, economic and trade dependence and cultural linkages on the one hand, and robust competition in tourism and financial services, on the other.

Therefore, the management of the bilateral relationship between The Bahamas and the United States requires a bipartisan consensus between the Government and the Official Opposition, with a sustained public/private partnership. This process will require tremendous skill, sophistication and shrewdness by The Bahamas in the management of this dialectical relationship of friendship and competition in the context of unequal power relationship. Clearly, the best talent and collective wisdom of the entire Bahamas, including citizens, long-term residents and friends of The Bahamas should be deployed in protecting and advancing the Bahamian national interest during this period of shifting global power relationships.