

Offshore centres high and dry? What offshore financial centres still have to offer and whether criticism of them is fair and accurate.

My name is Stephen Platt, I am the Group Chairman of the law firm BakerPlatt and a member of chambers at 7 Bedford Row in London. I am also the principal author of the International Compliance Diploma and the International Diploma in Money Laundering Prevention awarded by the University of Manchester. I specialise in financial crime and regulatory matters and international co-operation. My expertise enables me to see first hand the legal and regulatory regimes of financial centres globally and the extent to which they co-operate with international investigations.

The genesis of the latest round of scrutiny of offshore centres is the global financial crisis. It is now widely accepted other than by a few that the cause of the crisis was the lack of oversight by regulatory authorities in the UK and the US that were self evidently not fit for purpose.

Gordon Brown has called for action against tax havens “which have escaped the regulatory attention they need”. How much attention do they require? The consensus view of technically informed observers, such as the IMF is that the best of such centres are already better regulated than their big country counterparts. Utilising Jersey as an example, it has undergone countless evaluations by international standard setting bodies over the past 10 years and on each occasion it has passed muster to the extent now that it positively welcomes each new opportunity to be scrutinised. Most recently it was assessed by the IMF as being in the top drawer including those of G20 and EU. It was assessed as having achieved

a “high level of compliance” with almost all aspects of the Financial Action Task Force’s 40+9 Recommendations.

It is difficult to reconcile the charge that centres such as Jersey have facilitated systemic instability with for example the Financial Stability Forum's assessment of Jersey as a Gp 1 jurisdiction.

Similarly, how can we square the allegation that Jersey poorly regulates its finance industry with the 2007 House of Commons Public Accounts Committee report which said "In most of the territories the standards of regulation across areas such as banking, money laundering, insurance and securities are not as good as those in the Crown Dependencies" or indeed the comments of Jeffrey Owens the Director of the OECD's Centre for Tax Policy who singled out both Jersey and Guernsey as examples of jurisdictions that have implemented high standards of transparency when he testified before the Senate?

Finally, how do we make sense of the charge that Jersey does not adequately tackle money laundering when in 2008 it was deemed to be equivalent to the third EU money laundering directive - a feat that 17 of the EU member states have still to achieve.

There are of course on and offshore tax havens that don't pass muster and which continue to serve as the worlds toxic dumps. They must be put under pressure to reform, or be closed not because they were a causal factor in the financial crisis but because the business they transact is inherently suspect.

They are to use a footballing analogy, in the 'Vauxhall conference' division of finance centres. There are, however offshore centres that play in the premier league. The fear is that the clear distinctions between good and bad quality finance centres are being ignored. At the expense of mixing metaphors there is a very real danger that the indiscriminate policy towards all offshore centres will result in the baby being thrown out with the bathwater.

That is in nobody's interests, least of all the City of London - The reputation of the UK's offshore centres for probity, professional skills and financial sophistication enables them to attract capital from around the World. Such capital is then substantially directed into the UK, European and US capital, banking and securities markets. Capital goes where it is welcome. We are currently doing an excellent job of chasing it to Asia where the Chinese in particular recognise the conduit value of both Singapore and Hong Kong which are growing rapidly as offshore centres at the expense of the UK Crown Dependencies.

Assuming there is an appetite for substance over rhetoric, which I sometimes doubt the first stage in addressing the problems posed by the offshore world is to establish criteria by which we can stratify all finance centres. What criteria could be used to distinguish the diamonds from the dirt?

From my experience there are five obvious criteria:

1. Does the jurisdiction have statutory bank secrecy in place? By that I mean does the law of the jurisdiction criminalise the disclosure of customer information?
2. Has the jurisdiction enacted money laundering legislation that criminalises the laundering of the proceeds of foreign tax evasion, or is foreign tax evasion excluded? And, critically does it use it.
3. Does the jurisdiction regulate the provision of trust and corporate services by which I mean is the activity licensed and supervised for all conduct of business purposes?
4. Does the law of the jurisdiction require the disclosure of the identity of the beneficial owners of companies?
5. Has the jurisdiction enacted laws that enable it to co-operate with foreign investigating authorities in criminal matters and does it use them?

In my experience 2, 3 and 4 are the most critical. Let me expand on them briefly:

If you enact a money laundering law that excludes from its ambit of predicate conduct, foreign tax evasion you stand to be accused of attracting tax evaders. The UK Crown Dependencies enacted 'all crimes' money laundering laws in 1999. Many, including several on mainland and Europe have yet to do so.

The regulation of trust and corporate service providers is crucial. Many of the cases I have been involved in have featured the abuse of trusts and companies for the purpose of disguising the connection between criminals and their assets. These vehicles, particularly trusts which get an unfairly bad rap are not inherently flawed.

The vast majority are used for legitimate purposes not just offshore but across the common law world. The trust industry itself is represented by the Security of Trust and Estate Practitioners (STEP) a highly credible body that actively promotes rigorous anti money laundering standards throughout its global membership. The UK Crown Dependencies began to regulate their trust and corporate service providers in 2001. The UK and the US have yet to do so. The Swiss trust industry is now lobbying for regulation and they must be given credit for that.

Insisting that the identity of the ultimate beneficial owners of companies incorporated in your jurisdiction is disclosed to the authorities is a major disincentive for criminals including tax evaders. Jersey has required disclosure for 35 years. Neither the UK or the US have yet introduced this requirement.

If we apply these criteria transparently then the good quality offshore centres can compete on a level playing field and be judged not only against the poor quality centres but also, critically against those onshore centres that through lax regulation continue to attract tax evaders and others, with impunity.

My fear is that there is not in fact an appetite for the distinctions between the regulatory regimes of different jurisdictions. Ostensibly, of course the debate is about regulation but the real agenda is in fact tax competition. Quality offshore centres have large pools of development capital that the governments of busted onshore governments need now to exercise control over. Globalisation is regarded with suspicion as it introduces competition including on taxes. Yet tax competition is as old as taxation itself. In ancient Greece traders used the Greek Islands to store

goods to avoid paying the 2% tax levied by Athens. Anybody in the UK who uses their ISA allowance or trades shares within their capital gains allowance is avoiding tax. Are they wrong to do so? Where is it written that we are all obliged to pay the maximum possible amount of tax and not take advantage of legitimate tax planning measures?

Tax competition has always been and will forever remain a fundamental cornerstone of the global free market economy. We forget at our peril that the alternative is a 3 year wait for a Trabant.

The worlds small finance centres have been singled out indiscriminately for special attention. Offshore centres including those that meet the criteria I have set out, are not generally represented in the supranational clubs forging the new architecture. It is generally easier and certainly more polite to blame the absent.

The danger is that attacking the good quality centres not only disincentives those centres, it undermines the international standards on compliance and regulation themselves, thereby removing what should be a means for legitimate clients to distinguish between good and bad jurisdictions. If the real argument is about unwelcome competition in difficult times then not only is it an unattractive one, it is intellectually dishonest to pretend that it is about poor regulation or money laundering, particularly in view of the available evidence.

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