EU tax haven blacklists—determining fact from fiction

The fallout from Bermuda's inclusion on the European Commission's tax blacklist has done no-one involved any favours

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In an era when the global regulatory landscape is shifting so rapidly, it is no wonder many are caught off guard by mixed messages about the state of compliance and tax transparency among international financial centres.

The European Commission's announcement last month of a new blacklist of territories deemed "unco-operative" by certain EU member states did no-one any favours. Not the EU, which had to back-track after a barrage of criticism from the Organisation for Economic Co-operation and Development (OECD) that disavowed its claims. Not EU member states, some of whose old (as opposed to up-to-date) records were used to compile the list. Not Bermuda, which saw its long-respected reputation tainted before a global audience. And certainly not the general public, who would be forgiven for scratching their heads in disbelief such misinformation, retractions and finger-pointing could be played out at top bureaucratic levels.

The problems are manifold, from the arbitrary and ill thought-out process used in the public dissemination to the blacklist's actual content. Indeed, in a response two days after the compilation was released, the OECD revealed a number of countries identified in the exercise were "either fully or largely compliant" with its own Global Forum standards on tax co-operation and information exchange. One of these is Bermuda.

The affair raises important points. First, the worldwide authority on transparency and exchange of information for tax purposes is acknowledged to be the OECD's Global Forum, not the EU. In Bermuda's case, five of the 11 member states the EU said nominated it for non-co-operation had themselves failed to complete bilateral information exchange agreements with the Island. And at least one—Poland—had already signed a 2013 bilateral Tax Information and Exchange Agreement (TIEA) and no longer tagged Bermuda with any negative rating. Poland later confirmed that affirmative status with Bermuda's government, as did Latvia—rendering Bermuda's inclusion on the blacklist entirely meaningless. The Island presently has 83 treaty partners, including 41 TIEAs and Model 2 agreements with the US and the UK under the Foreign Account Tax Compliance Act.

Second, in the interest of true transparency, it would be helpful for EU members to clarify their own country's status of compliance with Global Forum standards. Bermuda was the first offshore jurisdiction to be admitted to the OECD "whitelist" in 2009, the same rating as the UK and US. In addition, Bermuda has a head-start over some other member states in having the European Commission recognise its insurance regulation as provisionally equivalent to Solvency

II standards. It is among just six far larger nations, including Canada and the US, to have secured this status so far.

Third, for a balanced global debate on tax, transparency and compliance matters, it would be beneficial to differentiate between British Overseas Territories, for they are far from a homogenous bloc when it comes to regulation and tax co-operation. Bermuda has earned recognition for its high standards in this regard, achieved through decades of work to meet international rules on transparency and information exchange.

Failing to appropriately distinguish between overseas territories could be costly to the UK and Bermuda is a fitting case in point. The UK's own Office for National Statistics calculates Bermuda businesses and investors support 500,000 jobs worldwide, including 70,000 in the UK through trade and investment. The Island is among the UK's top three non-European trading partners in key service industries like reinsurance, finance and shipping, and the UK maintains a steady trade surplus with the territory. With eight of its largest worldwide trading partners, Bermuda transacted almost $50bn in two-way trade in 2013, benefitting globalisation generally. Law-abiding companies contribute to the generation of international jobs, household incomes and national output through their operations in Bermuda.

Indeed, Bermuda's value to global economies should not be underestimated. As one of the world's top three insurance centres, the Island covers insured losses for homeowners, businesses and governments around the world. Bermuda-based insurers and reinsurers paid 62% of insured liability claims for the UK's largest peacetime catastrophic explosion, the 2005 Buncefield oil terminal inferno, and 9% of US September 11, 2001 claims. UK consumers and businesses benefit from lower domestic insurance premiums thanks to Bermuda companies. Notably, the Island provides more than one-quarter of capacity at Lloyd's.

Bermuda will continue in its active support of the G20 in tackling corruption, tax evasion, terrorism financing and money laundering, because we fully support its goals. In turn, we expect the G20 to treat Bermuda fairly, recognising the equivalence of its OECD tax standard compliance with its own.

Most importantly, let us encourage communities engaging in the tax and transparency debate to differentiate between compliant financial centres that add value—like Bermuda—and those that do not. This is in the clear interest of the UK, Bermuda and indeed many global economies. That dialogue cannot start soon enough to deepen trust and certainty, key preconditions for legitimate business in any jurisdiction where the rule of law prevails.

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