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WILL GUERNSEY CRACK THE ENIGMA CODE?

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Michael Betley, group chairman of Trust Corporation International looks at how Guernsey has coped in an increasingly transparent and regulated world and how it can adapt to further change in the future.

Is Guernsey positioned to navigate its way successfully through the maze of initiatives designed to penetrate the legal barriers to information retrieval? Assuming it can, the next question is whether Guernsey can position itself to be more attractive to the tax compliant international investor?

In a sense, this is our own version of the World War II enIGmA code. Like all IFCs, we are under attack and in need of a decoding system to help diffuse the imminent onslaught. The answer lies in knowing which battles to fight and which to influence in your favour. Guernsey has approached these initiatives head on. The States' economic strategy is based on a view that Guernsey's continuing economic success and future as an international financial centre is best served by continuing to be, and being recognised as being, a well regulated tax transparent jurisdiction. The global fight against tax evasion has created a broader movement amongst not just Western developed nations, but from emerging and embattled countries too.

Whilst the crackdown on tax evasion has been the primary motivator, the systems being developed are part of a wider international legal mutual assistance programme. The aim of this series of measures is to help governments combat anti-money laundering and terrorist finance, as well as bribery and corruption. Whilst the threads are separate, they form part of a wider information gathering network which all countries that conduct legitimate international trading are signing up to. The need to increase tax revenues and stamp out tax evasion by those US citizens living abroad resulted in the IRS developing a more powerful system than the network of bilateral Tax Information Exchange Agreements (TIEAs) it had been implementing from 2001.

The arrival of the Foreign Account Tax Compliance Act (FATCA) in March 2010 heralded the earnest beginning of the international transparency initiatives. The impact FATCA has had has, in turn, made it easier for the UK and others (such as the OECD) to develop a global standard for the automatic exchange of information. Undoubtedly, the adoption of automatic information exchange will significantly help to redress the issue of undeclared funds.

The speed with which the FATCA infrastructure has been developed is remarkable. Whilst the threat of a penal withholding of 30 percent for non-participating and reporting accounts is an incentive, it has been the greater threat of being excluded from the US dollar economy, concentrating the minds of the early dissenters.

In addition, an international call to arms to cooperate and clamp down on global tax evasion and sharp tax practices has won votes universally. The ability to make other countries participate in its FATCA regime has also won admirers. Not surprisingly, the UK followed the US and introduced its own form of FATCA mirroring the US provisions. Whilst the US reporting regime applies indiscriminately to all financial institutions, the UK was only ever likely to persuade the Crown Dependencies and Overseas Territories into agreeing to its own form of FATCA, and so it came to pass!

There was concern that other countries might follow suit and multiple FATCA regimes would thus emerge. However, the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum), as promoted by the OECD with a mandate from the G20, has created a new Common Reporting Standard (CRS). Guernsey has a long-standing commitment to being a well regulated, cooperative and transparent international finance centre.

In January 2011, the International Monetary Fund (IMF) released its report on Guernsey as part of its financial stability assessment programme. The IMF concluded that Guernsey met or exceeded the internationally accepted regulatory standards, as endorsed by the G20, and that Guernsey's level of compliance with the Financial Action Task Force (FATF) recommendations exceeded that of any other jurisdiction. Guernsey has been fully committed to the Global Forum initiatives for many years and has entered into a number of TIEAs.

In addition to TIEAs and DTAs, Guernsey has signed intergovernmental agreements with both the US and the UK

(13 December and 22 October 2013 respectively) enabling it to participate in and comply with the respective FATCA regimes. Guernsey and the other Crown Dependencies have taken the lead in implementing the FATCA system and compiling guidance through the IGA framework. The new CRS inter-governmental arrangements will be implemented through Competent Authority Agreements. Whilst based on the FATCA Model I IGA, participators will have three options thereby offering some flexibility. The options are to adopt a multilateral, bilateral or nonreciprocal approach.

The combination of FATCA and CRS will have a truly global reach and create a more even playing field for IFCs like Guernsey, which need to be seen to be setting the bar with regard to regulation and transparency to avoid criticism. However, there are significant risks still needing to be managed. Having created the reporting infrastructure it would be easy for the OECD to extend the reporting requirements and seek more detailed information; for example gathering information on the type of assets held and cross-border financial transactions.

With so much information being automatically shared it will be imperative to ensure the accuracy and quality of the data being processed, otherwise anomalies will create exception reports which could lead to unnecessary enquires and tax investigations. Guernsey's commitment to implementing transparency on global tax matters does not conflict with its desire to preserve legitimate confidentiality. Guernsey wants to fight the battle against tax evasion and terrorist finance, but is not prepared to be a hostage to the shadow initiatives such as the move for public registers of beneficial owners of companies and the registration of trusts.

The transparency debate will continue but Guernsey, like most other IFCs, regulates trust and company service providers who hold and maintain detailed beneficial ownership information, unlike their onshore counterparts. Where Guernsey now needs to concentrate its efforts, and demonstrate its leadership, is at the confluence of these initiatives so that the outcome preserves the legal rights of confidentiality whilst allowing legitimate governments to hold their taxpayers to account. Balancing these competing interests through a sophisticated and efficient platform of service providers will help position many IFCs. Guernsey is well-positioned but maintaining, let alone enhancing, its wealth management proposition will remain challenging.

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