

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 1

These twelve (12) articles are intended to encourage public conversation about the appropriateness of having ad-hoc organizations, such as the FATF and the OECD/Financial Stability Board, which are controlled by G-20 member countries with competing onshore financial centres to protect, make the rules on anti-money laundering and terrorist financing and apply punitive countermeasures against competing offshore financial centres. Most of the offshore financial centres, which were black listed in 2000 by the FATF, OECD/Financial Stability Board and the United States, are once again under assault. The Bahamas' financial services sector is once again facing a clear and present danger when in April 2009 it was grey listed by the OECD/Financial Stability Board, an organization in which The Bahamas is neither a member nor has a vote. Using The Bahamas as a case study, I will examine the

response of offshore financial centres to the punitive counter-measures taken against them by of these ad-hoc organizations. I will conclude by making a number of recommendations to ensure equality of treatment between offshore financial centres and onshore financial centres and provide a more legitimate and effective global regulatory framework to fight money laundering and the financing of terrorism.

The Bahamas is a major offshore financial centre, with approximately US\$70 billion dollars under management. Most of these funds would have originated primarily in G-20 countries, including the United States. Most G-20 member countries are high tax jurisdictions and tend to view offshore jurisdictions, such as The Bahamas, as direct competitors to New York, London, Paris, Lugarno and other onshore financial centres and therefore project offshore financial centres as unfair magnates for their respective potential tax revenues.

There is no substantial evidence and data to support the claim that the existence of offshore financial centres discourages taxpayer compliance, or contribute to undermining the integrity and fairness of tax structures or increase the administrative costs to taxpayers in G-20 member countries.

The irony is that the most dramatic documented cases of money laundering, terrorist financing, drug trafficking, weapons smuggling and organized criminal schemes are organized, funded and orchestrated from and within G-20 member countries. This point is documented by the World Bank's report, published in June 2007 and entitled **Stolen Asset Recovery (STAR) Initiative: Challenges, Opportunities, and Plan of Action:**

“While the traditional focus of the international development community has been on addressing corruption and weak governance within the developing countries themselves, this approach ignores the “other side of the equation”: stolen assets are often hidden in the financial centers of developed countries; bribes to public officials from developing countries often originate from multinational corporations; and the intermediary services provided by lawyers, accountants, and company formation agents, which could be used to launder or hide the proceeds of asset theft by developing country rulers, are often located in developed country financial centers.”

Contrary to the negative perception often projected by the G-20 about offshore centres, offshore financial centres have had and do have a positive net effect on the global economy and, in particular, the economies of G-20 member countries, as documented by the **Foot Report**. In December 2008 the British Chancellor of the Exchequer commissioned Mr. Michael Foot to prepare a report on the long-term opportunities and challenges of the four (4) British Crown Dependencies and five (5) Overseas Territories with significant

offshore financial centres. In October 2009 Michael Foot submitted a report entitled “**Report of the Independent Review of British Offshore Financial Centres**” in which he stated, in part, that the British offshore financial centres positively contribute to the United Kingdom in the following ways:

“1.12 The UK has consistently been the net recipient of funds flowing through the banking system from the nine jurisdictions, with large regular inflows from the Crown Dependencies partly offset by net outflows to the Cayman Islands.

1.13 The Crown Dependencies make a significant contribution to the liquidity of the UK market. Together, they provided net financing to UK banks of \$332.5 billion in the second quarter of calendar year 2009, largely accounted for by the ‘up-streaming’ to the UK head office of deposits collected by UK banks in the Crown Dependencies.

1.14 Financial flows are also generated by insurance business and fees earned by UK based asset managers, accountants and lawyers. For example, Bermuda insurers and reinsurers reportedly wrote 30 per cent of the 2008 premium at Lloyd’s of London, a total of £5.4 billion. “

Other non-British offshore financial centres, including The Bahamas, also make a positive net financing contribution to other G-20 member countries and to the liquidity of the global financial markets. This proposition is supported by the study sponsored by the Society of Trust and Estate Practitioners (“STEP”) in 2009 entitled “**International Financial Centers and the World Economy**” by Dr. James R. Hines, Chaired Professor of Economics and Law at the University of Michigan and an Associate at the National Bureau of

Economic Research in the United States. The report, at page 2, states that:

“Offshore Financial Centers play a key role in the international financial system, improving the availability of credit and encouraging competition in domestic banking systems. The result is a boost in investment in the major economies, which ultimately supports job creation and growth. . . Furthermore, foreign investment stimulated by IFCs also appears to encourage greater domestic investment: the American evidence is that 10 percent greater foreign capital investment triggers 2.6 percent additional domestic capital investment. . .”

Therefore, the evidence is beyond dispute that offshore financial centres make a net positive contribution to the economies of G-20 member countries. Therefore, the allegation by the G-20, the FATF and the OECD/Financial Stability Board that offshore financial centres represent a threat to global financial stability is inconsistent with the empirical evidence.

The financial services sector in The Bahamas ranks among the world’s top ten Offshore Financial Centres in terms of banking assets and assets under management. The sector employs approximately 14,000 persons in some of the highest paying jobs in The Bahamas

and accounts for an estimated fifteen (15%) of the Gross Domestic Product of the Bahamian economy.

The Bahamian financial services sector comprises banks and trust companies, insurance companies, securities firms and investment funds, financial and corporate service providers, cooperatives, friendly societies, casinos, lawyers, accountants, real estate agents and trust company service providers.

Six (6) regulatory authorities, namely the Central Bank, the Securities Commission, the Registrar of Insurance, the Financial and Corporate Service Providers, the Compliance Commission, the Gaming Board and the Director of Societies, regulate the financial services sector in The Bahamas. Some of these regulators, such as the Central Bank, are well resourced, while others, such as the Registrar of Insurance, are not sufficiently resourced. For example, the failure of CLICO in 2008, wiping out the savings, pension and insurance of thousands of Bahamians, demonstrates how ineffective regulatory oversight can impact the quality of life of thousands of citizens in an offshore financial centre. Clearly, the transparency and competitiveness of an offshore financial centre is dependent upon the existence of an effective and well-resourced regulatory infrastructure.

The sufficiency of the financial regulatory infrastructure featured prominently in the punitive listings of The Bahamas by the Financial Action Task Force (“FATF”) in 2000 as a “non-cooperative jurisdiction” with respect to money laundering; the classification of The Bahamas in 2000 by the Organization of Economic Cooperation and Development (“OECD”) as an “uncooperative jurisdiction” engaged in harmful tax practices; the Advisory issued against The Bahamas in 2000 by the United States Treasury Department; and the rating by the Financial Stability Forum (now the Financial Stability Board) (“FSF”) of The Bahamas in the lowest Category of Financial Services Centres, Category 3. These listings and the punitive counter-measures taken against The Bahamas were all without justification under International Law. I submit that the response of The Bahamas should have included, amongst other measures, a formal complaint to the International Court of Justice in the Hague, challenging the legitimacy of the punitive measures taken by these limited membership organizations and certain countries against The Bahamas. This concerted attack on The Bahamas, as an expression of power politics, was also contrary to the established principles of free trade, economic competition and non-protectionism in the global

economy, as enshrined in the United Nations Charter and customary principles of international law.