

OECD targets tax avoidance

STEWART MILLER
NG Business Reporter
stewart@nasguard.com

Another storm cloud is emerging on the horizon for The Bahamas' offshore financial services sector. The Organization for Economic Cooperation and Development (OECD) is asserting that it has the power to regulate and restrain tax avoidance.

It is a move described as 'remarkable' and 'startling' by the Center for Freedom and Prosperity Foundation (CF&P) in a June 2nd statement, following an amended Multilateral Convention on Mutual Administrative Assistance in Tax Matters that came into force the day before. That convention is the OECD's 'preferred vehicle for thwarting tax competition' according to the CF&P, and ill-boding for jurisdictions like The Bahamas.

"This is very, very bad for The Bahamas, Switzerland, Panama – any low-tax jurisdiction is in a much more dangerous position now," Dan Mitchell, senior fellow at the Cato Institute told Guardian Business yesterday. He was in Bermuda as a CF&P delegate to the Global Tax Forum on May 31 – June 1, when the news of the broadened scope of the convention was announced.

"Perhaps the most worrisome development is the fact that the OECD has in effect set itself up as the judge, jury and executioner for interpreting the document, and so there's little doubt especially now with this new - I don't want to say mandate because there is no mandate, they just assert that they have this power - that they also now get to go after tax avoidance and tax planning."

For many in the financial services industry it means that the 'goal posts' are being moved back – again. While much of the world's financial centers strive to participate in global efforts to combat tax evasion, tax planning and tax avoidance have been accepted as good business in jurisdictions large and small, heavily and lightly taxed.

Prominent local attorney and financial services expert Heather Thompson told this newspaper that the move fits the OECD's reasoning, though she questioned the application of the new provisions.

"I don't find it surprising. It seems to be in line with OECD thinking, and given the recession worldwide and new developments with Greece, Spain, etcetera, I think it's a very predictable reaction," Thompson said.

"At the same time, I don't know how this will work in practice."

Countries like the United States, Canada and the United Kingdom for example, are fairly active in providing tax planning and avoidance options. The Bahamas is in line with English jurisprudence, which acknowledges that tax avoidance is acceptable, Thompson said. She cited a landmark 1996 decision by Justice K. Neville Adderley in a Central Bank of Ecuador and others vs. Ansbacher (Bahamas) Limited and others case. In that ruling Justice Adderley asserted that it is a long standing tradition of English and international law that individuals should be free to use offshore jurisdictions to lessen their tax burdens, so long as they are not trying to evade taxation.

In the United States, tax avoidance is not a crime either – individuals may arrange their affairs to minimize their tax burdens. By OECD definitions the US is a tax haven in many ways, Mitchell said, referencing its treatment of bank deposits, capital gains and Delaware companies.

"We don't even have to get into the tax planning part of it, it's just that there are pure tax haven policies in the US and of course to some extent in the UK. And Luxembourg of course is nothing but an EU tax haven," Mitchell said.

But those facts may prove no deterrence to the OECD from taking on low-tax jurisdictions. Mitchell said there may be a simple solution available to the OECD in its efforts to take on such jurisdictions – discrimination.

“I think there is no doubt that there’ll be a little bit of discrimination in terms of how this thing is applied and enforced,” Mitchell said.

“As with the WTO and other bodies, the bigger and more powerful a country, well, the rules are a little different for you.”

As a small country in turbulent economic seas, this coming storm may have to be rode out like those before, according to Thompson.

“These are challenging times and the economic situation does not make things any easier,” Thompson said. “As a small nation, you just have to contend with matters as they arise.”

“To me, there’s no point in burying your head in the sand and becoming upset about it. This is the trend and it will certainly continue until there’s a swing away from this.

“Given the way the world moves, it’s likely to swing again at some point.”