



RESPONDING TO INTERNATIONAL INITIATIVES ON TAX TRANSPARENCY AND CORPORATE GOVERNANCE

[Bruce Zagaris](#)

The international initiatives on tax transparency and corporate governance are in enormous flux. The financial crisis, the revelations from the data dumps of the International Consortium of Investigative Journalists, the implementation of the Foreign Account Tax Compliance Act (FATCA), the extension by the European Union of the savings tax directive and good governance in tax matters, and the new signatories and ratifications to the Council of Europe/OECD Convention on Administrative Assistance in Tax Matters show how quickly international standards are moving. Increasingly, governments and international organizations are conditioning trade, tax, and aid deals on requirements that governments meet new international standards.

Small international financial service jurisdictions (SIFSJ) will need to be nimble in anticipating and meeting the new standards or they will lose access to major markets due to the countermeasures that developed countries are imposing. SIFSJs may find it useful to conclude a tax information exchange agreement (TIEA) as a means to build confidence with a country, in hopes that it will lead to more substantial commercial relations and to avoid losing access by being subject to a blacklist of such country. A disadvantage of SIFSJs is that they often do not have a seat at the table of the OECD, FATF, the Financial Stability Forum, the G8, and the G20, where many of the decisions are made. They can participate actively in some of the subgroups, such as the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes and the regional bodies (e.g., Caribbean FATF). SIFSJs can also participate indirectly through groups, such as the Society of Trust and Estate Practitioners (STEP) and the International Bar Association.

SIFSJs can correct inaccuracies about their own laws and regimes of some of the statements that come from some of the groups or leaders of such groups. They may also want to resort to bringing actions in the World Trade Organization when countries improperly discriminate against them through countermeasures. For instance, on December 19, 2012, Panama brought an action in the WTO against Argentina for illegal discriminatory countermeasures. SIFSJs may want to consider supporting such actions and also cooperating in responding to some of the proposed standards and ensuring that there is an actual level playing field.

SIFSJs will need to cooperate in providing regional training to upgrade their financial regulatory and transparency standards. Some of the same institutions that can provide regional training can also serve as a mechanism to explore new financial products.



The Government Office complex in Warrens, St. Michael.

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THE OUTSIDE IN

[Dr. Trevor A. Carmichael, Q.C.](#)

Barbadors as an international business and finance centre must always be mindful of developments within the wider global business environment, irrespective of how subtle may be the developments or changes. With a reinsurance industry which has emerged out of the post- 1983 local exempt insurance developments, it is critical to constantly review global reinsurance trends. With Canada as one of the key partners, notice should therefore be taken of the current scrutiny in that jurisdiction of reinsurance transactions.

It is the settled law that intra-group reinsurance transactions (both reinsurance premiums and remuneration paid by the reinsurer to the insurer to cover costs which may be incurred between related parties located in two different jurisdictions) are subject to transfer pricing rules and are capable of review by the Canada Revenue Agency (CRA) as part of a tax audit. The CRA is however increasingly auditing primary insurers, reinsurers, captives and brokers on the transfer pricing of their reinsurance premiums.

Auditors will often retrospectively evaluate whether premiums are at arm's-length. Premiums, however, are priced based on the information available at the time of entering into a reinsurance transaction; therefore assumptions are made on elements such as mortality and interest rates. Increasingly, there is an emerging view that it is not appropriate for auditors to use hindsight to adjust the price of a premium based solely on factors evident at the time of an audit. For it is recognized that the pricing of reinsurance premiums is fundamentally based on the probability of the customers defaulting on their payments to the company.

The indirect taxation of reinsurance transactions remains a contentious issue in Canada since new legislation was passed in 2010. Hence, Canadian reinsurers are viewed as qualified taxpayers and reinsurance premiums paid to a related party are subject to self-assessed tax.

The onshore movement by new captives is attributed to a number of factors including travel cost savings, changing insurance regulations, insurability of certain covers, new onshore jurisdictions and potential premium tax savings. The report was based on the activities of 886 captive insurance companies. It found that financial institutions remain the largest users of captives, representing 19% of those benchmarked, followed by healthcare organizations, which represent 17% of all captives.

Companies conducting reinsurance transactions are required to be audit ready by preparing contemporaneous documentation. However, as reinsurance is not a functionally intensive business, an auditor may sometimes conclude that there is a lack of substance in an offshore reinsurer.

Many offshore reinsurers are economical in their number of employees and will rely on third-party services companies for many of the reinsurance back office related functions. Such reinsurers must have more than administrative activities so that profits in excess of compensation for administrative functions may be attributed. Indeed, the reinsurer should be responsible for making risk assumption decisions based on relevant information.

With these recurring issues, it is not surprising that many new captive owners are choosing onshore domiciles in the United States and the European Union. According to a recent report, 55% of companies had onshore captives, as opposed to 45% domiciled in offshore locations by the end of last year. The report, "[Discovering Opportunity in the Shifting Captive Landscape](#)", was released at the 2013 Annual RIMS Conference. It indicated that although new captive formations are gravitating towards onshore domiciles, the market is not seeing a large number of existing offshore captives re-domesticating to onshore jurisdictions.

INLAND REVENUE DEPARTMENT'S TECHNICAL UNIT FACILITATES THE INTERNATIONAL BUSINESS SECTOR

The Inland Revenue Department (IRD) of Barbados continues to provide infrastructure and systems that efficiently address matters concerning corporate and other taxpayers, including the members of the country's international business sector. The IBFS newsletter spoke recently with Ricardo Mapp, Assistant Commissioner of the Revenue Department to learn more about the Department's [Technical Division](#), a special unit which makes every effort to respond in a timely manner to the concerns of these taxpayers.

Mapp acknowledges that the number of requests for assistance or information from international business companies does increase significantly at the time for the filing of corporate returns, but is quick to point out that the Technical Division is kept busy year round responding to technical matters that are endemic to the nature of these businesses. The Division was established with responsibility inter alia, to facilitate compliance with the Barbados Tax Laws, so it works generally to ensure that its customers recognize and honour all of their tax obligations as opposed to just focusing on matters related to the filing of forms. It can be reached at (246) 430-3113.

In an effort to promote information sharing, minimize bureaucracy and avoid duplication of the provision of documentation, the Inland Revenue Tax Administration System incorporates information supplied to other key agencies. As an example, a corporate taxpayer's registration number is the same across the databases of the Corporate Affairs and Intellectual Property Office (CAIPO), the Ministry of International Business and International Transport and the Tax Department, which enables each institution to amend data and update records without the company repeatedly having to supply information already known to any one of the other agencies.

"E-Tax", the online Tax Administration System, is also continually improving, further enhancing the quality of the Department's services to both corporate and individual taxpayers. Its web-based applications enable the electronic filing of returns as well as the direct deposit of refunds. Established in 2008, it features a communications area which provides answers to FAQ's as well as other useful information relevant to all categories of businesses operating in Barbados.

In keeping with its Mission Statement, the Tax Department strives to conclude matters in a timely manner for all its customers, including members of the international business community.



Looking towards Bridgetown from the Cave Hill area, the Central Bank can be seen in the far distance.

Editor's Note



[Laurie Blackman](#)

This quarterly newsletter has routinely featured articles from a cadre of professionals who are experienced and knowledgeable about the dynamics of the Barbados international business sector. We are also open to relevant submissions from new contributors and representatives of stakeholder agencies. Please direct submissions, comments and other feedback to:

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JPWG TACKLING BUSINESS FACILITATION ISSUES

Business facilitation issues in Barbados are being tackled with a fresh, multi-pronged approach through initiatives in the Ministry of Industry, International Business, Commerce and Small Business Development.

One such move has given the Joint Policy Working Group (JPWG) a shot in the arm through the establishment of its own secretariat within the Ministry's International Business Unit. It will be headed by Mr. Robert Folkes, currently the Deputy Director of the International Business Unit, and is expected to facilitate the flow of information into and out of the JPWG, especially to steer the Group's advisories through the required channels to advance new policies, new practices, or legislation. The Secretariat is expected to bring momentum resolving issues that cut across Ministries and Government Departments, and also accelerate the preparation of Cabinet papers.

The JPWG was established as an advisory committee to the Ministry in 2008. Chaired by Ricardo Knight of JLT Towner Insurance Management (Barbados) Ltd., the 11-member committee meets monthly, collaborating to develop advisories to Government – what adjustments are needed to ensure that the international business sector to function as smoothly as possible. It has already made several recommendations which will boost the island's image where business facilitation services are concerned.



[Ricardo Knight](#)

Other JPWG focal points have included the development of draft private trust and foundations legislation, as well as the pursuit of new products and markets. Its guiding mission is to put on the front burner those issues and regulations which could serve to weaken the profile of Barbados as an attractive location for international business activity, which includes the use of regular business companies (RBCs).

In addition to JLT Towner, the working group includes representatives from key stakeholder agencies (Barbados International Business Association, Barbados Stock Exchange, Central Bank of Barbados, Financial Services Commission, Invest Barbados, Ministry of Finance and Economic Affairs, Ministry of International Business, Commerce and Small Business), as well as private sector professionals with legal, tax, and captive insurance expertise.

ABOUT the IBFS Newsletter.....

A quarterly electronic publication, released exclusively on the Central Bank of Barbados' website, www.centralbank.org.bb.

There is no subscription fee involved in accessing the publication. The primary target audience includes professionals who are experienced and knowledgeable about the dynamics of the Barbados international business sector, and are keen on monitoring the global issues which may impact it.

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COMPLIANCE: THE ROAD TO GOOD GOVERNANCE

[Kirk Taitt](#)

When we think about compliance, the idea of adherence to some benchmark in the form of a law, rule or standard, immediately comes to mind. And this is true to a large degree. Indeed, anything which has to do with maintaining order whether it is giving deference to traffic signals, respecting codes of conduct in sporting activities, or even the standards implemented by parents or guardians, are all modes of compliance. These elements, in their various ways are aimed at shaping appropriate behaviours, which in turn, support and promote good governance of the smallest groups to, ultimately, the broader society.

On occasion though, there may be no specific law or rule that informs a particular course of action and yet to undertake that action, could adversely affect an entity's reputation in the community in which it operates. It is within these 'shades of grey' that compliance takes on an ethical form and can bring real value to the organization.

An ethical stance is best exercised from the highest level of an entity. A Board of Directors for example, by virtue of its own behaviour and attitude, can set the appropriate tenor, which naturally, stimulates and inspires corresponding behavior right down the line. In addition to an ethical stance, organizational order is also influenced by the quality of internal controls - that system of checks and balances which promote accountability and which, through feedback mechanisms, bring operational gaps to the attention of top management.

Inevitably, the risk management dynamic needs to be brought on board if organizational order (compliance) is to be truly achieved. For a financial institution, resulting risk events may include legal sanctions, material financial loss, licence suspension, or the tarnishing of the institution's reputation. Thus, techniques that are aimed at mitigating such risk events should be artfully woven into an organization's corporate reality as they aptly support the broader compliance mandate. It will also reflect the depths to which a company is truly governed by its Board and senior executives.

Whereas risk management is not necessarily mandatory (it is in fact best practice), compliance **is**. A company's respect for laws and regulations, its ethical stance and quality of internal controls are primary indicators of good governance. It is what serious investors look for when considering where to place their hard earned funds.



**BARBADOS —
Town & Country:**

Left — a view of the Treasury Building in Bridgetown;

Right — the picturesque hills of St. Andrew.

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WEEKES SHARES VISION FOR BIBA

Barbadian Ryle Weekes is the new President of the Barbados International Business Association (BIBA), having been elected at the Association’s June 25 annual general meeting. During the coming year, Weekes aims to heighten the value-added for BIBA Members, as well as further sensitise Barbadians to the value of the international business sector and its significant contribution to international reserves, government revenues, and their overall quality of life. In addition, he feels that the intellectual capital, experience and passion of all of the sector’s stakeholders must be leveraged urgently to take action and elevate the country’s legal and regulatory infrastructure, range of products, and quality of service to a level that firmly establishes it as the jurisdiction of choice among professionals and potential investors.



Ryle Weekes

Weekes has been with Cidel Bank and Trust Inc since February 2000, rising through the ranks to become President in December, 2012. He gained international experience working with TD Global Finance in Dublin, Ireland, and has also been an assistant consultant with KPMG Barbados. He holds the BSc (Honours) in Economics and Accounting from the University of the West Indies, and is a member of the CFA Institute and the Barbados CFA Society. A CFA charterholder, he previously held BIBA Executive Committee posts of Treasurer and First Vice President.

2013 INTERNATIONAL BUSINESS WEEK

“International Business Barbados....Embrace the Opportunities”



Sunday Morning	20-Oct 2013	Church Service
Sunday Afternoon	20-Oct 2013	Fun Walk
Monday Evening	21-Oct 2013	Opening Reception
Tuesday Morning	22-Oct 2013	Schools Symposium
Tuesday Evening	22-Oct 2013	Discussion Forum
Wednesday	23-Oct 2013	Career Showcase
Thursday	24-Oct 2013	Conference
Friday	25-Oct 2013	Conference
Saturday	26-Oct 2013	Charity Event

For further details, contact the BIBA Secretariat at biba@biba.bb