UNITED KINGDOM

UK Crown Dependencies – Edwards Review

The Channel Islands and the Isle of Man have been holding talks with the British government to examine the conclusions of the Edwards Review into financial regulation in the Crown Dependencies.

The four-part report compiled by former UK Treasury official Anthony Edwards was published last November. He found that regulation of financial institutions was generally good but needed to be deepened and include more site inspections and some increase in professional resources.

In particular the report recommended that regulatory regimes for companies be strengthened. All the islands should extend registration and regulation requirements to non-resident companies and some obligatory disclosure of financial information should be considered. It also commended proposals to license and regulate corporate service providers.

It said there was considerable scope for strengthening the legal framework for trusts to prevent potential abuses by settlors and trustees and to ensure accountability. Trustees should be licensed and regulated and be obliged to make proper disclosures to beneficiaries.

It also says that the professional regulation of lawyers and accountants in the islands should be extended to all practitioners and should cover provenance as well as handling of client accounts and requirements for indemnity insurance.

The report also identified certain priorities for change in each island:

- For Jersey to be able to co-operate fully with other countries in pursuit of financial crime and money laundering.
- For Guernsey to solve the problem of nominee directors and, as in Jersey, to complete the legislative arsenal for countering financial crime and money laundering.
- In the Isle of Man, to strengthen the regulation of companies.

The Isle of Man was the only jurisdiction to prepare a composite response to the Edwards Review. It was published in April when it also announced an immediate moratorium on the incorporation of new non-resident companies.

Guernsey is to extend the Insurance Business Law 1986 to Sark, expand existing drug trafficking legislation in line with the Vienna Convention, enact a Criminal Justice (Proceeds of Crime) Law and commence an onsite investigation programme for banking supervision and establish a systematic use of reporting accountants.

Jersey is to enact a Proceeds of Crime Law, introduce a Fiduciary & Administrative Business Law and remove the three-year time bar relating to the criminal prosecution of fraud offences.

SOVEREIGN COMMENT

The moratorium on the incorporation of new non-resident companies announced by the Isle of Man Government had immediate effect from 6 April. Existing non-resident companies can continue to enjoy this status but it is expected that further measures will be announced which will force those companies to convert to exempt or international status which in turn will necessitate appointing an Isle of Man resident board of directors.

Clients who own non-resident companies need do nothing for now. We will inform clients as soon as further measures are announced and suggest suitable alternatives.

IRISH REPUBLIC

Irish non-resident companies abolished

New controls on Irish-registered non-resident companies were brought in 25 March as part of the Irish Budget.

IRNRs will now be required to have an Irish resident director or provide a bond to the value of £20,000 as a surety against compliance and the number of directorships that any one person can hold will be limited to 25.

A promoter must demonstrate to the authorities that it proposes to carry on an activity in the Irish Republic and the tax treatment of IRNRs will be brought in line with other EU states, with the companies deemed to be resident for tax purposes in the Republic once registered.

This amendment will apply immediately to new companies and for existing companies from 1 October 1999.

SOVEREIGN COMMENT

The abolition of the IRNR came without warning. As can be seen, all non-resident companies will be treated as resident from October this year so planning must be undertaken as a matter of urgency. Options include:

- Registering the Irish company in Cyprus to create a dual resident company which is then treated as Cyprus resident due to the tiebreaker clauses included in the Irish/Cyprus tax treaty.
- Creating an offshore principal/Irish resident company fiduciary structure.
- Winding up the Irish company and re-incorporating in another jurisdiction.

Clients who hold interests in IRNR's should contact their most convenient Sovereign office as soon as possible.

ISLE OF MAN

LLC Amendment Bill

A Limited Liability Companies (Amendment) Bill to remove the 30-year limit on the duration of LLCs was approved on 25 May.

The limit was designed to ensure that an LLC would be treated as a partnership for tax purposes in the US, but new regulations brought in a simplified election system on 1 January 1997.

The amendment is intended to expand the use of LLCs for other commercial purposes, particularly corporate capital vehicles for foreign investment into the Lloyds insurance market.

A new Banking Act came into force on 31 March to implement the recommendations on cross border banking made by the Basle Committee on Banking Supervision.

The new Act clarifies the minimum criteria for licensing and supervising banking institutions, particularly across different jurisdictions; including powers to obtain information about other companies within a banking group which might impinge on the bank.

GIBRALTAR

Deposit Guarantee Scheme

The Gibraltar Deposit Guarantee Scheme came into operation on 5 April. It will cover banks licensed under the Banking Ordinance 1992 and incorporated in Gibraltar, including branches in the European Economic Area (EEA), branches of UK banks and certain other banks in respect of deposits taken by Gibraltar offices.

The Scheme covers 90% of a bank's total liability to a depositor in respect of qualifying deposits subject to a maximum payment to any one individual of £18,000. It only covers deposits denominated in EUROs or EEA currencies.

A bank's total liability to a depositor is the aggregate of all accounts in the name of that depositor including shares in a joint account or a client account.

UNITED KINGDOM

GAAR support withdrawn

The Tax Law Review Committee has reversed its support for a statutory General Anti-Avoidance Rule (GAAR) that would lay down a broad definition of what constituted avoidance to protect corporate tax revenues.

It believes the draft legislation put out for consultation last October is badly flawed because it would place no adequate burden on the Revenue to justify its use of the rule to levy tax and it fears that there may be insufficient resources to provide a proper ruling system.

BRITISH VIRGIN ISLANDS

1,400 funds registered

The BVI Financial Services announced that 1,400 funds had filed for registration or recognition since the Mutual Funds Act 1996 came into operation on 1 January 1998. Of these, nearly 300 were new funds established after the legislation came into force.

Comprehensive information on BVI funds is available from any Sovereign Group office.

NEVIS

New licensing requirement

The government has brought in a new licensing requirement for Nevis international business corporations and limited liability companies wishing to set up administration or management offices in Nevis.

It is designed to prevent IBCs or LLCs exploiting this provision to carry on a business from Nevis on the internet, effectively avoiding regulation in any jurisdiction.

Under the new legislation, the Minister of Finance may require any information to assist him in determining whether a licence should be granted. Existing companies with administration or management offices in Nevis were given a 30-day transition period from 1 May to submit an application.

The amending legislation specifically excludes IBCs or LLCs which are managed or administered in Nevis by licensed service providers.

Agatha Jeffers-Gooden was appointed as the first director of the Nevis Financial Services Department (FSD) which has replaced the Offshore Registry and assumed supervisory responsibilities. She was formerly assistant director general of the financial services department in St. Kitts.

ST VINCENT

New laws in St Vincent

Legislation was passed to amend the International Insurance Act 1996 and Mutual Funds Act 1997 which had been approved but not yet brought into force.

The International Insurance (Amendment & Consolidation) Act 1998 is designed to provide for the formation of captive and single-user insurance companies and permits registration in five separate classes.

The Mutual Funds (Amendment & Consolidation) Act establishes registration procedures for public funds and simple 'recognition' procedures for private and accredited funds.

UNITED KINGDOM OVERSEAS TERRITORIES

White Paper sets standards for regulation

The UK government is to require that all of its Overseas Territories (OTs) meet international standards on money laundering, transparency, co-operation with law enforcement authorities, and independent financial regulation by the end of this year.

The move was announced in a white paper published by the UK Foreign Office on 16 March which contained a non-reciprocal offer of right of abode in the UK in return for a commitment on international standards, particularly in terms of financial regulation.

The 14 Overseas Territories include Anguilla, British Virgin Islands, Cayman Islands, Montserrat, Turks & Caicos Islands, Bermuda and Gibraltar.

The report said: 'Failure to tighten regulation could affect the stability and confidence in financial markets and expose the UK to international criticism and to potential contingent liabilities.'

Legislation is to be put in place to improve regulation of company formation agents and managers and to ensure that, irrespective of secrecy laws, regulators and law enforcement authorities can co-operate fully with overseas counterparts, including on investigation and enforcement matters.

Independent regulatory authorities are to be set up and licensing and regulatory regimes introduced for all financial activity which should create conditions for fair competition between the territories

The UK is to monitor all the territories concerned and indicate what standards are expected. If territories are found to have been inactive or are lagging behind, it may act to ensure that the required standards are met.

The white paper also warns of the potential knock-on effect of EU legislation and recent initiatives taken by the OECD and G7 to combat harmful tax competition between states.

The UK Foreign Office is to assess the potential economic impact of the initiatives and said that territories would be given guidance as to those aspects of their offshore financial industries which were likely to continue and those that might be subject to change.

A Council of the Territories, which will include the Chief Minister or equivalent in each territory has been established.

ANGUILLA

Commercial Online Registration Network

The Anguilla Commercial Online Registration Network (ACORN) has now come on stream to permit licensed company managers and trust companies in Anguilla to incorporate IBCs and transact all other registry activities electronically.and submit electronically all other documents which the legislation requires or allows.

Developed with assistance from the UK Companies House, the system will allow Ordinary Companies, International Business Companies, Limited Liability Companies and Limited Partnerships to be incorporated and registered in Anguilla electronically through the Internet.

Companies can be incorporated instantly 24 hours a day, 365 days a year from anywhere in the world and all other corporate registration activities, required or permitted, can be undertaken online.

The next steps in the phased implementation will be the extension of ACORN to provide eligible overseas agents with direct electronic access to the Companies Registry, the electronic incorporation of ordinary companies and all registry activities relating to the Companies Ordinance and the electronic incorporation of limited liability companies and limited partnerships and all related registry activities.

SOVEREIGN COMMENT

Sovereign Trust International in Hong Kong has been appointed by the Government of Anguilla as an overseas agent and has on-line access to the Anguilla registry allowing us to incorporate Anguilla companies for our clients instantaneously.

BELIZE

Package of offshore legislation introduced

The government of Belize has introduced a package of new legislation into the House of Representatives designed to further develop the offshore financial services industry.

The proposed legislation comprises an International Financial Services Commission Bill, an International Insurance Bill, a Mutual Funds Bill, a Protected Cell Companies Bill, a Limited Liability Partnerships Bill, an amendment to the International Business Companies Act to provide for the establishment of limited life companies, as well as a Retired Persons (Incentives) Bill.

HONG KONG

Government asks China to revise Basic Law

The government is to ask China's parliament, the National People's Congress in Beijing, to revise the territory's constitution, the Basic Law, to prevent a flood of migrants from mainland China claiming right of residence.

It follows a controversial ruling by the Court of Final Appeal in January that all children of Hong Kong residents, including illegitimate children and those born before their parents became permanent residents, are eligible to live in the territory.

The government has estimated that allowing in an additional 1.67m citizens over a period of 10 years would cost the territory £57bn. Critics have accused it of being alarmist and argue that its decision to take the issue to Beijing undermines the autonomy of the legal system.

Under the Basic Law, the Standing Committee of the National People's Congress, China's parliament, has the right to interpret the constitution. The government said that fears that it would resort to this route indiscriminately to overturn court judgments were unfounded.

It hopes that the Standing Committee will limit the right of residence to those born after their parents became permanently resident. This, it claims, would reduce the number eligible to less than 200,000.

Hong Kong's chief executive Tung Chee-hwa said: "We must not allow our achievements to be dissipated and Hong Kong to go downhill.'

SOVEREIGN COMMENT

Disagreements on constitutional matters should have no affect on the practice of commercial law in Hong Kong. An appeal to the National People's Congress is not a mechanism for overturning a commercial decision.

SINGAPORE

Five-year programme to liberalise banks

A five-year programme to liberalise foreign participation in banking and force domestic financial institutions to become more competitive was announced in May.

The main measures are to remove the 40% limit on foreign investors' total shareholdings in local banks and issue up to six new banking licences to foreign banks from 1999 to 2001.

The Singapore dollar lending limit for qualifying offshore banks is to be raised from S$300m to S$1bn and qualifying offshore banks are to be permitted to engage in Singapore dollar swaps without restriction.

The number of restricted banks is to be raised from thirteen to eighteen by 2001 but local bank share is to be maintained at a minimum of 50%.

COOK ISLANDS

International Trusts Act amended

An International Trusts Amendment Act 1999 to modify the law relating to international trusts came into force in March.

The most important changes are that when making any award to a creditor, the Cook Islands court is to disregard and exclude any award of punitive damages made to that creditor by a foreign court.

Once registered in the Cooks the establishment of the trust and any disposition or proceeding is to be subject to Cook Islands trust law as if the trust had always been governed by that law.

The confidentiality provisions have also been amended to permit disclosure of certain information in relation to a trust in the ordinary course of its business, to facilitate the management and administration of the trust. This is to permit the trustee greater freedom to carry out its duties and functions.

The Cook Islands' government brought the Offshore Financial Services Act into force in December to supervise the licensing of trust companies, offshore banks and offshore insurance companies.

Brian Mason, a barrister and solicitor from New Zealand, has been appointed as the first permanent Commissioner of Offshore Financial Services to take over responsibility for licensing matters from the Cook Islands Monetary Board.

He will also be responsible for supervising compliance by licensees and recommending policies to improve the provision of offshore financial services and the delivery of government services.

Mason was formerly a senior executive officer to the prime minister and more recently has been legal counsel to the Cook Islands Government Property Investment Corporation, which oversees all government assets.

UNITED ARAB EMIRATES

Abu Dhabi free trade zone

The Abu Dhabi Free Zone Authority issued new banking regulations in April governing the free trade zone on Saadiyat Island which it hopes to establish as an offshore financial centre with a stock exchange and futures exchange and commodities exchange.

The the UAE government has granted the authority sole regulatory responsibility over the financial centre and is in the process of recruiting financial supervisors.

The banking regulations are modelled on UK and US banking rules and seek to comply with the core principles of the Basle Committee of banking supervisors. Banks will be able to secure long term leases on properties in Saadiyat and local employment restrictions will not be applied. they will also be able to take wholesale deposits from UAE nationals and make local corporate loans.

It is the first time since 1982 that banking licences have been made available to international banks in the UAE. Only 10 banks from OECD countries are currently represented in the UAE.

SEYCHELLES

Mutual Funds Act in force

The Mutual Fund Act 1997 was brought into effect with the publication in November of the Mutual Fund (Structure & Operations) Regulations for the control of mutual funds and fund administrators.

The regulations set out the rules governing the structure and operation of mutual funds and mutual fund administrators.

A licensed mutual fund must have its registered office or principal place in Seychelles, and, if it is a unit trust, there must be a Seychelles resident trustee, which is a financial institution or corporate body, registered under the Companies Act.

The Central Bank is named as the Authority under the Act. Before issuing a licence, the Authority must satisfy itself that the promoter of the fund and all other parties connected with it are of sound reputation and that the business of the fund will be carried out in a proper manner.

A licensed mutual fund may be a private or public mutual fund. Mutual fund administrators must also be licenced and prior written approval of the Authority is required before a licenced mutual fund administrator can issue shares, appoint a director, general manager or other senior officer, change the address of its registered office or change any person acting as its agent in Seychelles.

HONG KONG

Anti-Avoidance Rule

In *Commissioner of Inland Revenue vs. Yick Fung Estates Ltd*, the High Court ruled that a single-step, unilateral act could constitute a transaction under the general anti-avoidance rule in the Income Tax Ordinance and that a taxpayer is required to provide a non-tax justification to displace the implication that his sole or dominant purpose was to obtain a tax benefit.

BAHAMAS

Free-standing Mareva

The Court of Appeal set aside a Supreme Court order granting a free-standing Mareva injunction in support of foreign proceedings – the Grupo Torras case in London – against six locally-incorporated trust companies.

In *Meespierson (Bahamas) Ltd & Others vs. Grupo Torras SA & Another*, the respondents had brought proceedings in England against Sheikh Khaled and others alleging fraudulent conspiracy and in 1995 a world wide Mareva injunction and disclosure order was secured against him.

At the hearing in the Bahamas in 1998, the Supreme Court ruled that it had territorial jurisdiction over the defendants and it was 'arguable that it also has the power to grant a Mareva injunction in support of foreign proceedings even where, as here, there is no cause of action.' The defendants appealed.

In granting the appeal and dismissing the injunction, the Court of Appeal stressed the importance of the requirement of substantive domestic proceedings on a justifiable cause of action as the basis for Mareva relief and that to hold that Mareva relief could attach to the defendants who are trusts would be for the courts to over-reach and assume powers which are properly within the province of the legislature.

AUSTRALIA

Court of Appeal meaning

In *Commissioner of Taxation vs. David Coombes (No. 2)*, the Federal Court of Australia held that the disclosure by a lawyer of the names and addresses of clients to the revenue authorities might disclose a confidential communication between the client and the respondant lawyer which was covered by the privilege. Disclosure would amount to disclosing whether the client had discussed with the lawyer entering into an employee share arrangement, and that would be privileged.

UNITED KINGDOM

Courts will not enforce foreign revenue laws

The Court of Appeal held that the rule that English courts would not directly or indirectly enforce the revenue laws of another country was not overridden by either the Brussels Convention on Jurisdiction & the Enforcement of Judgments in Civil & Commercial Matters or European law.

In *QRS 1 Aps & Others vs. Frandsen*, the plaintiffs were Danish companies in compulsory liquidation and the defendant, the former owner of the companies, was now resident in England. The companies had no assets.

The sole creditor was the Danish tax authority which was owed £4m. It had appointed the liquidator and was funding the action for restitution or damages for negligence based upon the defendant's alleged involvement in asset stripping.

The companies had issued a writ in the High Court for sums allegedly owed to the companies. An action had also been commenced in Denmark.

The plaintiffs issued a summons seeking to stay the proceedings pending determination of the issue whether the Danish court would assume jurisdiction.

The defendants issued a summons seeking to strike out the English writ as an attempt indirectly to enforce a foreign tax debt.

Striking out the action, the High Court held that the proceedings in England were certain to fail and would therefore be struck out. It further held that the proceedings were a 'revenue matter' and not within the scope of the Convention. The plaintiffs appealed.

Dismissing the appeal, the Court of Appeal held that the action was a 'revenue matter' within the second sentence of Art 1 of the Convention and so fell outside the Convention. it also held that the rule of non-enforcement was justifiable and was not, therefore, contrary to the principles of EU law.

ITALY

Italian court rules on Pavarotti residence

A tax court in Italy found in April that the tenor Luciano Pavarotti was not resident for tax purposes in Monaco and dismissed his appeal against a ruling of the tax inspectors that he owes 4.6bn lire (£1.6m) in taxes and fines.

The judges upheld the decision of the tax commissioners and rejected claims by the tenor that he was exempt for the years 1989-91.

They ruled that he had pretended to be living abroad to avoid tax because his two-bedroom apartment in Monaco could not be viewed as his main residence. He had maintained his social and economic interests in Modena where he had built an entire village of 15 buildings.

The judges also noted that Pavarotti was a board member of 11 Italian companies, and had accounts in six banks, whose balances stood at £20 million in 1995.

They also ruled that he had failed to provide proof that he had paid taxes in any other country.

Believed to earn £14 million a year, and to have reached a settlement in excess of £70m with his wife, Adua, whom he left last year, Pavarotti is the most prominent victim of a campaign by Italy's authorities to uncover and tax the undeclared foreign earnings of prominent personalities resident abroad.

BERMUDA

Court dismisses Thyssen privilege claim

The Court of Appeal has dismissed an appeal against a Supreme Court decision which held that a party who puts a privileged relationship in issue is taken to have waived any privilege.

In *Hans Heinrich Thyssen-Bornemisza vs. Georg Heinrich Thyssen-Bornemisza & Others*, the Baron sought to have the Thyssen-Bornemisza Continuity Trust, created in 1983, set aside on grounds of a presumption of undue influence.

The Baron is seeking to regain control of the family businesses from his eldest son Georg Heinrich on grounds that the creation of the trust was manifestly disadvantageous.

The respondents sought discovery of documents in respect of legal advice received by the Baron to show that he had fully understood the nature and consequences of his actions. The Baron agreed to give partial discovery but claimed privilege in respect to a core.

The respondants contended that there was an implied general waiver of privilege in legal advice when the person entitled to the benefit of privilege had put the relationship between himself and his lawyer in issue in an action which he commenced.

The Supreme Court held that the waiver arose from the invitation to the court to adjudicate upon the matter to which the privilege related. The Court of Appeal agreed.

DENMARK

New Danish holding company regime

The Danish Parliament approved Bill L53 to ease the participation exemption for Danish companies and establish a new holding companies regime for international groups, effective from 1 January 1999.

Danish holding companies repatriating profits will therefore be able to receive dividends from foreign subsidiaries, even if based in low tax jurisdictions, tax free provided they are not 'financial companies'.

The Danish company must own at least 25% of the foreign company and the foreign company must be active. There will also be no withholding taxes on overseas dividends to foreign parent companies even if located in a low tax jurisdiction.

Denmark does not levy capital gains tax on the sale of shares in overseas subsidiaries provided they have been held for more than three years and provided the foreign company is not a 'financial company'.

SOVEREIGN COMMENT

The abolition of withholding taxes on overseas dividends will make Denmark the most direct route for cross-border investments. Existing European low-tax holding company regimes in Austria, Belgium, Luxembourg, Spain and Switzerland – with the exception of the Netherlands – require that the foreign company pays tax in the other jurisdiction comparable to their own domestic corporate tax rate.

MALTA

Malta effects tax treaty with Denmark

A tax treaty between Malta and Denmark came into force last December.

Withholding rates under the treaty are 5% on dividends flowing from Denmark to Malta where the Maltese company holds more than 25% of the capital of the Danish company and 15% in other cases. From Malta to Denmark, the only tax paid by the company is on the profits being distributed.

For interest and royalties the withholding rates are 10% and imposed only in the country of residence of the person receiving them.

Malta also signed treaties with Egypt and the Lebanon in February. Under the treaty with Egypt, the maximum rates of withholding tax paid to residents in Malta are 10% for dividends and interest, and 12% for royalties.

Under the treaty with Lebanon, maximum rates of withholding tax paid to residents in Malta are 5% for dividends, zero for interest and 5% for royalties.

SOVEREIGN COMMENT

Malta's new regime has generated much interest and attracted some high quality business.

International Trading Companies and International Holding Companies pay 35% tax on profits but a rather complicated system of credits and refunds offered to the company and its shareholders mean that the effective rate of tax ranges between 0% and 6%.

Malta has a good range of attractive tax treaties and these, coupled with the high headline rate of tax, allow Malta companies to be used to great effect in international tax planning structures. Sovereign are well advanced with plans to open an office in Malta which we hope will be fully operational in September

CYPRUS

Cyprus treaty with South Africa in force

A tax treaty between Cyprus and South Africa came into force on 1 January 1999. Withholding tax rates on dividends, royalties and interest will be zero and the treaty applies to local as well as international business companies in Cyprus, .

Income and capital gains from immovable property may be taxed in the country where the property is situated while gains from the sale of any property (other than immovable property) are taxable only in the country where the seller is a resident.

Director's fees and similar payments derived by a resident of one state from a company which is resident of the other state may be taxed in the other state. In Cyprus, a credit is allowed for any tax paid (directly or by deduction) in South Africa in accordance with the tax treaty. For dividend income the tax credit will include the tax payable by the South African paying company on the profits. In South Africa, taxes deducted in accordance with the tax treaty are allowable as tax credit.

Irrespective of any of the requirements of any of its tax treaties, Cyprus international business companies are not required to deduct any withholding tax on interest, dividends or royalties paid anywhere in the world.

CYPRUS

New Cyprus-Russia treaty

A new tax treaty with Russia will replace the existing 1982 treaty from 1 January 2000 and will be valid for five years. Renegotiated last year at Russia's request, it brings the treaty into line with other tax treaties signed by Russia since 1992 with EU countries and the US.

The only significant difference is the request for some withholding tax on dividend payments – previously no withholding tax was imposed. But any withholding tax deducted is provided as a credit in the other country so that in the case of a Cyprus international business company (IBC) the 5% withholding tax on dividends paid in Russia will be enough to cover the tax liability in Cyprus (4.25% of the net profit) such that no further tax on dividends will be payable in Cyprus.

The withholding tax rate for dividends is 5% if the recipient invested more than US$100,000 in the share capital of the paying company, otherwise it is 10%. The rate on royalties and interest paid from one country to the other is zero. Irrespective of treaty requirements the Cyprus IBC is not required to deduct any withholding tax on interest, dividends or royalties paid anywhere in the world.

The treaty provides that each country shall allow a credit for any tax paid in the other country. For dividends the credit must include the withholding tax and the company tax paid by the company that makes the dividend distribution. The treaty applies to local companies as well as IBCs.

IRISH REPUBLIC

New Irish withholding tax

A 24% dividend withholding tax was introduced on 6 April 1999, designed to reduce tax evasion on dividends paid to Irish residents and certain non-residents .

It will apply to all distributions made by an Irish resident company except where the beneficial recipient is a non-corporate person resident in the EU or a tax treaty country, an Irish resident company, a corporation ultimately controlled from the EU or a tax treaty country, an Irish charity or an Irish pension fund.

There are detailed compliance procedures in relation to these exemptions. Transitional provisions will also operate for the first year.

As a separate measure, Revenue powers have also been enhanced. The Act broadens the power of Revenue officials to access bank accounts of named individuals where there is reason to believe that a financial institution possesses information relevant in calculating the individual's tax liability.

A Letter from Gibraltar

Gibraltar has withstood many attacks in its long history. **JOHN L. HODGSON**, Sovereign Group legal adviser, looks at how Gibraltar is standing up to the current political and fiscal bombardments from Spain and the OECD respectively.

GIBRALTAR'S SOVEREIGNTY

The casual observer may sometimes wonder at the passion generated by a territory measuring barely three square miles, but Spain's continuing claim to sovereignty over The Rock has recently been accompanied by misinformation and misleading propaganda. A few facts should serve to put the record straight.

Under the 1969 Gibraltar Constitution Order, the UK government has responsibility for Gibraltar's defence, security and external affairs whilst the Gibraltar Government has, both by definition and convention, responsibility for all domestic matters., including fiscal.

"The high standard of financial regulation in the jurisdiction. . . has received considerable praise and is the best guarantee for financial success and the biggest draw to investors."

Gibraltar is the only UK overseas territory that is part of the EU under the Treaty of Rome. A change in Gibraltar's terms of membership would require an amendment to the Treaty of Accession of the UK. This would need the agreement of all other member states, an extremely remote possibility.

EU directives are implemented in Gibraltar by Gibraltar's legislature, the House of Assembly. This enables the Gibraltar government to comply with the guidelines or requirements laid down by EU directives within a framework that can be adopted to promote or enhance Gibraltar's competitiveness. Gibraltar has implemented, or is in the process of implementing all the required EU directives.

FINANCIAL REGULATION

The Gibraltar Government is conscious of the need to protect and preserve its financial services industry. It has one of the strictest regimes for financial regulation in Europe and has introduced legislation that enables it to respond to the changes in demand in a highly competitive market.

Tax legislation, for example, has been amended to provide for qualifying companies engaged in international business to pay tax ranging from a minimum of 2% to a maximum rate of 35%.

The high standard of financial regulation in the jurisdiction, including co-operation with other financial authorities and adoption of anti-money laundering legislation, has received considerable praise and is the best guarantee for financial success and the biggest draw to investors.

The British Foreign Secretary, Robin Cook lauded Gibraltar as setting the standard for regulation to which other jurisdictions should aspire. This, said Cook, has transformed Gibraltar's international reputation. Gibraltar was excluded from the review of the financial services industry in the Channel Island and the Isle of Man commissioned last year by the UK government; although the Edwards report ultimately concluded that regulation in those Island's was also 'extremely good'.

Politically motivated attacks have been discredited and rejected by the British Foreign Secretary, the European Commission and the US government as being irresponsible. No evidence has been seen of any mass exodus of investors to more remote jurisdictions and the consensus appears to be that the future of financial services in the British dependent offshore jurisdictions may be regarded as secure.

GIBRALTAR AND THE OECD

In April of last year the Organisation for Economic Co-Operation and Development (OECD) issued a report entitled 'Harmful Tax Competition: an emerging global issue' in which it attacked 'tax competition in the form of harmful tax practices' claiming that such practices could distort trade and investment patterns, erode national tax bases and undermine the fairness of tax structures.

"Politically motivated attacks have been discredited and rejected by the British Foreign Secretary, the European Commission and the US government."

The OECD report was followed by a conference in Brussels on the subject of 'harmonisation of taxes in the European Union'. This created some concern that jurisdictions under British dependency were in danger of having their systems of taxation scrutinised and attacked. However, these fears appear to have been largely unfounded.

The OECD report was not entirely negative, conceding that tax competition was beneficial in stimulating the simplification of tax systems and reduction of tax rates. The main objection was to what was termed 'harmful' tax competition but one of the weaknesses of the report was that it failed to clarify when tax competition ceases to be beneficial and starts to become harmful.

One of the OECD's stated aims was to encourage a transition to a free market with a uniform tax system throughout the world. This appeared to be consistent with the EU's own ideas for Europe. However, subsequent criticism of the OECD and dissension amongst EU member states, in particular the UK's widely reported objections to any form of tax harmonisation, has made it highly unlikely that this aim will ever be achieved and self-governing jurisdictions such as Gibraltar do not appear to be under any particular or immediate threat.

"Any form of tax harmonisation or imposition of international standards must presently be regarded as some considerable way off."

TAX SOVEREIGNTY

Historically, countries that tax its citizens on a world-wide basis have always found it difficult to enforce payment overseas. Generally, tax judgments obtained in one jurisdiction have not been enforceable in another. This is because a state's authority to tax is recognised as territorial in scope and in practice most countries have resisted the efforts of others to levy taxes within their territory. So-called tax havens have seldom attempted to tax income or assets outside their territory and have had no natural incentive to co-operate with countries that try to tax on an extra-territorial basis. The OECD may be seeking co-operation on such matters but it is likely to encounter considerable natural resistance.

The OECD report anticipated such difficulties and recognised that there were no particular reasons why any two countries should have the same level and structure of taxation. The report stated that 'although differences in tax levels and structures may have implications for other countries, these are essentially political decisions for national governments. Depending on the decisions taken levels of tax may be high or low relative to other states and the composition of the tax burden may vary.'

The report therefore conceded that a jurisdiction should be free to devise its own tax system as it saw fit, as an essential matter of sovereignty.

The report did state that countries should remain free to design their own tax systems as long as they abided by 'internationally accepted standards' in so doing. Perhaps the intention was that the OECD would determine what was meant by 'internationally accepted standards' with a view to imposing such standards internationally on other jurisdictions. However, the OECD's aims involve major ideological hurdles and any form of tax harmonisation or imposition of international standards must presently be regarded as some considerable way off.

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SOVEREIGN

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SOVEREIGN REPORT

THE SOVEREIGN GROUP REPORT : ISSUE 1 JULY – SEPTEMBER 1999

A Note from the Chairman of The Sovereign Group: Howard Bilton

Welcome to The Sovereign Group Report

Welcome to the first edition of the Sovereign Report.

Since our demerger in October last year the Group has gone from strength to strength with new offices now open in the Turks & Caicos Islands, the Netherlands and London. We are currently in the process of opening further offices in Malta and the Bahamas. More news on these developments will appear in the next edition of the Sovereign Report.

The Sovereign Report will be offered free of charge to our clients but if you are interested in receiving future editions (we plan quarterly editions) then please confirm your interest by returning the coupon which appears on the back of the magazine to us. If we don't hear from you then we will presume that you have no interest in receiving future editions and will take you off our mailing list.

All the talk in the offshore world at the moment is about the OECD Report, the Edwards Report and the EU proposals for tax harmonisation. All these measures aim to bring greater regulation to the offshore centres and prevent the offshore centres from being used to facilitate crime and tax evasion. Whilst we have some concerns about some proposals we generally welcome the reports as we believe that they will lead to better service, remove rogue operators and allow the quality service provider to flourish. What is sure is that the industry is gradually moving in the direction proposed by these reports and the tide is unstoppable. Greater sophistication is going to be required in offshore planning and newer and less well regulated offshore jurisdictions are going to find it very tough to stay in business.

We believe that The Sovereign Group is ideally placed in this new world. Gibraltar has been held up as the benchmark in regulation to which all other offshore jurisdictions should aspire. Hong Kong is a sophisticated international financial centre which has the advantage of British law but Chinese rule which should ensure that it is relatively immune from interference from outside forces. The Bahamas are already one of the world's great banking centres and their independence should give them a greater control over their own affairs. The Turks & Caicos Islands are directly controlled from the UK and therefore have regulation which has been specifically approved by the UK Government.

In the following pages appears information on a wide range of offshore topics. Further information can be found on our website (www.sovereigngroup.com) and our consultants will be pleased to discuss these issues with anyone who cares to ring the appropriate office.

We shall look forward to hearing from you.

Howard Bilton BA(Hons)
Barrister-at-Law (England, Wales & Gibraltar)
Chairman of The Sovereign Group

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