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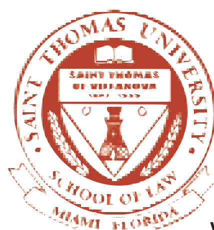

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OECD REPORT PUBLISHED

The OECD have now published the much anticipated list of tax havens – *see page 6.* Those on the black list which fail to make the necessary commitments to the OECD before July next year will go on a second list and be labelled as 'uncooperative'. Sanctions would then follow. Already six tax havens have made an advance commitment to revise their legislation and standards in line with OECD requirements. Other jurisdictions such as the BVI and the Bahamas are already preparing amendments to their legislation in preparation for making the necessary commitment to the OECD.

In particular, it seems likely that most jurisdictions will require details of directors and shareholders to be registered on public file. It does seem as though there are many persons resident in onshore high tax jurisdictions who have set up offshore companies and are acting as directors of those companies. For many years we have been pointing out the inadvisability of these arrangements as this will almost certainly make the offshore company legally tax resident in the country of residence of the director because the company is managed and controlled from that jurisdiction. Many may have been aware of this potential tax liability but have ignored it and relied upon the fact that it is difficult, if not impossible, for their home tax authority to establish their connection with the company. With the requirement to publicly file details of directors, those arrangements should rightly come to an end and onshore clients will have to employ professional third party directors who would naturally be located offshore or in a fiscally neutral jurisdiction. Responsible directors will not give control back to clients through a Power of Attorney or other methods – nor should they. Recent cases (particularly *Dimsey v Allen*) have made it clear that if directors dance to the tune of a third party then they are assisting in a tax fraud which would have serious consequences for the controlling third party and the directors themselves. We suspect that many owners of offshore companies will have to restructure and should do this quickly. As always, we advise that short cuts may prove to be a temporary saving in costs and convenience but long term may prove to be the most costly mistake ever made.

> ***"In particular, it seems likely that most jurisdictions will require details of directors and shareholders to be registered on public file."***

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Sovereign is pleased to be associated with the St Thomas University online LL.M. Masters Degrees in International and Offshore Tax Planning. **Sovereign** has been appointed as the exclusive marketing organisation for the courses outside the USA. Professor William Byrnes has been appointed as course director and the faculty includes most, if not all, respected authors and experts in offshore tax planning. We do not believe that there has ever been such a body of expertise assembled in association with an academic course.

Whilst the courses are similar to those offered by Regent University, with whom we were previously associated, the material has been updated and new modules have been added. In short, the product has been refined and improved. The academic year commences in October with a gathering of the faculty and first intake of students at the University campus in Miami. William Byrnes and myself, as professors of the university, will be travelling to Miami for this week, which will include lectures and tutorials as well as social functions. If anybody is interested in learning more about these courses, then please see our website **www.SovereignGroup.com** or contact Michael Foggo in Hong Kong, Simon Denton in London or Coleman Foster at St Thomas University.

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

GIBRALTAR SECURES EU FINANCIAL SERVICES PASSPORTING

The governments of UK and Spain signed an agreement on 19 April on the administrative status of Gibraltar which will give Gibraltar-based banks and insurance companies passporting rights into the rest of the EU. The government aims to secure passporting for investment services by the end of the year.

"Gibraltar has experienced problems in having its regulatory regime recognised by other EU members."

As a result the UK will be able to designate Gibraltar's own authorities as the competent authority in Gibraltar for the purposes of EU measures and EU-related treaties. All other member states will recognise and accept the acts and decisions of the competent authorities.

Previously Spain and other members had objected to recognising the competence of Gibraltar's constitutional authorities.

In addition to proposed legislation to provide a legal framework for electronic commerce and to liberalise telecommunications, the government is also to draft legislation to provide for protected cell companies designed to boost Gibraltar as a captive insurance centre.

SOVEREIGN COMMENT: Gibraltar is a full member of the EU having joined as a designated territory at the same time as Britain in 1977. Despite this, Gibraltar has experienced problems in having its regulatory regime recognised by other EU members partly, at least, because of political problems with Spain which refuses to recognise Gibraltar as a separate state due to its territorial claim over Gibraltar. For many years Gibraltar has had the most comprehensive regulation of its financial business and has implemented all the required EU directives and these efforts have finally been recognised.

AUSTRIA TO ABOLISH ANONYMOUS 'PASSBOOK' ACCOUNTS

The government tabled legislation in June to abolish the right to open secret 'passbook' bank accounts from November this year and phase out existing accounts by June 2002.

The measures require that after 31 October 2000 all new passbooks holders must be identified, as must any holders of existing passbooks that make a deposit. Withdrawals from accounts where the holder has been identified and which contain over ATS200,000 can only be made by the identified holder. Deposits exceeding ATS200,000, whether in one amount or several connected amounts, will require the depositor to be identified.

After 30 June 2002 any withdrawal will require the identification of the holder, and if the account contains ATS200,000 or more, must be reported to the Austrian financial intelligence unit (FIU) for investigation. The transfer or acquisition of a passbook will be prohibited and made subject to an administrative fine.

The Financial Action Task Force (FATF) which estimated that there are 27 million passbooks containing US$100bn although Austria has a population of only eight million, has agreed to lift its threat of suspension. It said the measures met its concerns and would significantly enhance Austria's anti-money laundering system.

SOVEREIGN COMMENT: The passbook or 'sparbook' provided a method whereby an Austrian bank account could be opened and operated completely anonymously. Whoever had possession of the sparbook had access to the account and the sparbook could be transferred without formality like a bearer share certificate. This system clearly facilitated money laundering and is soon to be abolished. Austrian banks remain a bastion of confidentiality but, as with all other jurisdictions, Austria will now require clear identification of the beneficial owner of the account and notification of any change in that owner.

"The sparbook could be transferred without formality like a bearer share certificate."

MONACO

A French parliamentary report on banking in Monaco accused the Principality of deliberately putting in place lax banking laws, including guarantees of anonymity, to attract wealthy depositors. It also said that monetary surveillance systems were so poor that officials were unable to co-operate with international anti-money laundering efforts.

The report found that Monaco had 340,000 bank accounts for a population of only 30,000 and that about 60% belonged to non-residents. It said that, unless changes were made, France was in danger of losing its own credibility in the fight against money laundering. It also recommended that France review its accords with Monaco.

SOVEREIGN COMMENT: Although Monaco is a separate sovereign state, France wields considerable influence over the territory and will be pressurising Monaco to clean up its act.

LIECHTENSTEIN

The Principality is to set up a financial intelligence unit dedicated to the management of reports of suspicious transactions following a major investigation into the alleged money laundering of the proceeds of organised crime. Anti-money laundering legislation is also to be amended to require financial services professionals to report all suspicious transactions.

In June police raided the offices of LGT Bank, owned by Liechtenstein's royal family, as part of an investigation into the Principality''s alleged part in money laundering schemes. Documents were seized and bank accounts of several lawyers were frozen.

CHANNEL ISLANDS

The Jersey States Assembly has passed a Financial Services (Extension) Law, to amend the Investment Business Law and extend regulation to trust companies. The Guernsey States Advisory & Finance Committee has also approved a Fiduciaries & Administration Business Law to provide for the licensing and supervision of fiduciaries within the Bailiwick of Guernsey, including Alderney and Sark. The principal element of both proposed regulatory structures is that providers of fiduciary services should be 'fit and proper' persons.

UNITED STATES OF AMERICA

The European Commission rejected proposals by the US to amend the tax regime for Foreign Sales Corporations (FSCs) which was ruled illegal by the World Trade Organisation (WTO) in February. The WTO ruled that tax breaks granted to US companies on income from exports channelled through FSCs constituted illegal export subsidies and gave the US until 1 October to brings its FSC regime 'into conformity' with international trade rules.

The proposed replacement scheme would allow US companies either exporting goods or manufacturing and selling them overseas to benefit from a tax reduction, provided they gave up their existing right to defer US income tax on overseas earnings.

But EU trade commissioner Pascal Lamy said the proposed US solution changed nothing because it still applied to to sales outside the US and therefore did not remove the obligation to export.

SOVEREIGN COMMENT: The US has been one of the prime movers in the OECD 'harmful tax' initiative. It seems somewhat hypocritical that while damning the tax regimes of other countries it is still trying to maintain the advantageous tax regime of its own.

UNITED STATES OF AMERICA

An International Counter-Money Laundering Act to curtail the use of 'international money laundering havens which are used to funnel profits of illegal or corrupt activities into the legitimate international financial system' was approved by the House Banking & Financial Services Committee.

The Act is intended to provide a national mandate for subjecting to special scrutiny those foreign jurisdictions, financial institutions operating outside the US and classes of international transactions that pose particular opportunities for money laundering.

It is also to provide the Treasury Secretary with discretionary authority to take measures tailored to the particular money laundering problems presented by specific foreign jurisdictions, financial institutions operating outside the US and classes of international transactions, and to strengthen his authority to issue and administer geographic targeting orders and to clarify that violations may result in criminal and civil penalties.

BRITISH VIRGIN ISLANDS TAKE STEPS ON TRANSPARENCY

The government is to amend the Mutual Legal Assistance Treaty with the US to include access to information relating to criminal tax investigations and eliminate the requirement for dual criminality. It is also to introduce compulsory investigative powers legislation to provide for access to information within the BVI on a regulator to regulator basis.

The IBC legislation is to be amended to require particulars of directors to be recorded at the Company Registry and restrict the mobility and anonymity of bearer shares by requiring them to be deposited with licensed financial institutions who would be made aware of beneficial ownership of such shares. It believes these measures will address OECD concerns in relation to harmful tax competition and FATF concerns in relation to money laundering.

The BVI has also incorporated the Hague Convention into law by the Registration & Records (Amendment) Act. This will remove the need for diplomatic and consular legalisation of foreign public documents in the BVI. Documents issued in a country which is a signatory to the Convention are certified by an apostille which must be affixed to the document by a competent authority and are entitled to recognition in any other signatory country without further authentication.

SOVEREIGN COMMENT: As with Mauritius, BVI is taking steps to ensure that certain additional information is now available on the public file. Additionally BVI has identified a need to reform its tax system. Residents of the BVI are subject to tax at 20% but non-residents forming an IBC in BVI are not subject to tax. The comments made earlier in relation to the Isle of Man and Gibraltar apply. It is difficult to see how the BVI could instigate a unitary tax system applicable to all. As this would necessitate removing all taxation on residents or imposing some taxation on IBC companies which would likely result in those companies immediately redomiciling to zero tax jurisdiction such as the Bahamas, Cayman or Turks and Caicos Islands. Those jurisdictions have a distinct advantage in that they have no taxation whatsoever either for residents or non-residents. We do envisage that many companies may choose to leave the BVI in the near future.

"It is difficult to see how the BVI could instigate a unitary tax system... as this would necessitate removing all taxation on residents or imposing some taxation on IBCs."

UN INVITES COMMITMENT TO MINIMUM STANDARDS

The UN Offshore Forum agreed that all international financial services centres should be invited to enter into a formal governmental commitment to its proposed minimum standards by 30 September. At a meeting in the Cayman Islands co-hosted by the UN Office for Drug Control & Crime Prevention (ODCCP) and the Cayman government and attended by 100 participants from 37 jurisdictions, delegates agreed to a series of principles which included:

- recognition of the positive action already taken or being taken by the many individual jurisdictions participating in the Forum;
- no sanctions imposed on individual jurisdictions for non-compliance with international standards in advance of a full, fair, transparent and consultative process of evaluation and unless sufficient opportunity has been provided to make good any deficiencies identified;
- no distinction should be drawn in the provision of cross-border financial services between onshore and offshore jurisdictions, but between those that are compliant and those that are non-compliant in the application of international standards.

It was also agreed that jurisdictions should seek to prevent financial services providers from promoting lower regulatory standards in any jurisdiction and that there should be no barriers to the exchange of information necessary for effective financial regulation and anti-money laundering measures.

MAURITIUS SETS DATE FOR UNIFORM CORPORATE TAX RATE

Under the Finance Act 2000 all Mauritius offshore companies are to be subject to a 15% profits tax commencing 1 July 2002. Previously only companies incorporated after 1 July 1998 were subject to this tax.

Further, the unilateral foreign tax credit will be reduced from 90% to 80% from the same date so that all offshore companies will be taxed at an effective rate of 3%, doubling the tax exposure under the old regime. The changes also cover interest earned in a Mauritius bank which will no longer be tax exempt. The maximum rate of corporate tax has, however, been reduced from 35% to 25%.

"Mauritius has made an advance commitment to the OECD to 'eliminate harmful taxation'".

The legislation governing international companies has also been amended to provide more transparency. In particular bearer shares have been abolished and any company with those instruments in circulation has until December 2001 to convert them into registered shares. The details of the directors, member and officers of any International Company must now be filed with the Registrar of Offshore Companies, although the register is not open to public inspection. Offshore companies will also be subject to stricter guidelines with respect to filing audited accounts – a limit of 6 months has been imposed where previously no time frame existed.

A double tax treaty between Mauritius and Cyprus has been ratified. It entered into force in Mauritius from July 2000 and will become effective in Cyprus from 1 January 2001. There is no withholding tax on dividends, interests or royalties where the recipient is the beneficial owner of the dividends. Such income is only be taxable in the country of residence of the recipient.

SOVEREIGN COMMENT: Mauritius made an advance commitment to the OECD to 'eliminate harmful tax competition'. The requirement to register details of directors and recall bearer shares is the first step in the process designed to bring its legislation and practice into line with OECD requirements. Other jurisdictions are likely to follow this lead so confidentiality in the offshore financial centres will be eroded over the coming years.

HONG KONG TO REFORM AND MODERNISE COMPANY LAW

The government announced a four-stage plan for the reform and modernisation of the Hong Kong Companies Ordinance. It said it had identified 62 items for legislative amendments or further study following publication of the Standing Committee on Company Law Reform's (SCCLR) report in February.

"Hong Kong may become the jurisdiction of choice for tax planning."

The first phase involves urgently needed reforms which can be taken forward quickly and the second covers items in relation to corporate governance. The third and the fourth phases will embrace technical items which will involve substantial restructuring and rewriting of the existing Ordinance. These will be implemented at a later stage.

The Companies Registry will now accept documents or applications submitted electronically under certain ordinances after sections 5 to 8 of the Electronic Transactions Ordinance concerning the submission of electronic records and digital signatures were brought into effect in April.

SOVEREIGN COMMENT: It has been many years since the last major overhaul of Hong Kong companies legislation. The present legislation is still based on the 1926 UK act and has been little modified since. Hong Kong is one of the few major offshore financial centres which has not been identified as a tax haven by the OECD nor has any element of the tax regime been identified by the OECD as being harmful. Hong Kong may become the jurisdiction of choice for tax planning purposes in the near future.

SINGAPORE

Proposals to introduce new legislation for rent-a-captives and protected cell companies were announced by the Monetary Authority of Singapore (MAS) as part of a drive to position itself as a regional centre for alternative risk transfer products.

Hauw Soon Hoon, executive director of the Insurance Department of MAS, said Singapore wanted to attract activities such as captive business, financial reinsurance and was also keen to see the structuring and issuance of insurance-linked securities being carried out from Singapore.

HONG KONG

The Hong Kong Monetary Authority has issued guidelines on licensing Internet banks. They set out the principles which it will take into account in deciding whether to authorise virtual banks.

Applicants will be expected to satisfy the same criteria applying to conventional banks, including requirements to maintain a physical presence in Hong Kong, maintain an appropriate level of security and put in place appropriate policies and procedures to cover operational risks.

A consultation paper on a proposed practice note on investment advice given by solicitors and professional accountants has been issued by the Securities & Futures Commission.

It proposes that a solicitor or an accountant can rely on the incidental advice exemption and will not be required to be licensed if the advice given on securities forms a normal or wholly incidental part of the overall services provided and no discrete fee is charged.

SEYCHELLES

The International Business Corporations Act has been amended to extend the period in which companies are permitted to pay fees before a 50% penalty for late payment is imposed and a company becomes liable for striking off.

Companies set up before the end of June in any year will have until the end of that year in which to make payment. A minimum of six months from the date of incorporation. Companies set up on or after 1 July will have until the end of the following year to make payment. A maximum of 18 months from the date of incorporation. This amendment will have retrospective effect as from 1 September 1999.

JERSEY: VARIATION OF TRUSTS

In *Re the Richard Colin Douglas 1990 Settlement*, an application was made under Article 43 of the Trusts (Jersey) Law 1984 to approve on behalf of unborn beneficiaries a proposed variation of a trust.

The settlor, Richard Colin Douglas, established a settlement in 1990 with Jersey-resident trustees and governed by Jersey law. The settlor, his wife and children were domiciled and ordinarily resident in England. As a result of the changes to the UK Finance Act 1998, a potential capital gains tax liability of £500,000 fell on the settlor.

It was proposed that the trustees appoint most of the assets of the 1990 settlement to a new settlement created by the settlor with UK-resident trustees and governed by UK law. The trustees would revoke the settlor's life interest in the 1990 settlement, appoint his brother in his place and exclude all persons from benefit under the 1990 settlement who were defined persons under s86 of the Taxation of Chargeable Gains Act 1992.

Allowing the application, the Royal Court held that even if the avoidance, minimisation or deferral of tax is the principal object, that is not a reason for the Court to refuse to give its consent to a variation if it is satisfied that the arrangement is for the benefit of the persons concerned.

GUERNSEY: INTERIM INJUNCTION

In *Novo Nordisk & Others v Banco Santander & Richard Adler*, an application was made to continue an interim injunction requiring the disclosure of documents by Banco Santander (Guernsey) in relation to an action commenced in the US District Court of Alabama. This was stayed by a further consent order. The defendant Adler intervened to apply for the discharge of the second order. Examination of the disclosure orders under the principle of *Norwich Pharmaceutical Co v Commissioner of Customs & Excise* and tracing orders under *Bankers Trust Co v Shapira*.

The Royal Court, dismissing the application, held that a Norwich Pharmaceutical order required a tangible link between the alleged wrongdoer and the person against whom disclosure is sought. This was not the case. The Court should not go outside the ambit of the English authorities in granting equitable remedies against third parties.

BRITISH VIRGIN ISLANDS: IMPERFECT TRANSFER OF SHARES

In *Laura Saus de Villalba v Adex International Ltd & Juris Magister (Bahamas) Ltd*, the plaintiff was the widow of Enric Villalba who died in March 1999. Adex was an IBC incorporated in the BVI whose entire issued share capital was issued in the form of 50,000 bearer shares in Certificate No 1.

Juris Magister (JM), a Bahamas company, was sole trustee of the Mercury Trust, a BVI trust. It claimed that in 1998, on oral instructions from the deceased, Adex cancelled Certificate No 1 and issued a Certificate No 2 in the name of Mercury Trust. It claimed ownership of Adex and its assets.

The plaintiff, who was in possession of Certificate No 1, sought an order that the purported issue of Certificate No 2 be declared void and that she be declared the absolute owner of the issued share capital of Adex. The defendants filed a defence and counterclaim.

The High Court of Justice British Virgin Islands, ordering the defence and counterclaim to be struck out, held that:

- the defendants could not rely solely on Article 14 to the exclusion of Article 12 and s31 of the IBC Act so that the word 'cancel' in Article 14 must involve the delivery of the bearer share certificate for cancellation.
- the deceased must do all in his power to effect the transfer to the second defendant in compliance with s31 of the IBC Act. Pleadings, which had revealed nothing beyond the alleged oral instructions, had failed to satisfy the Court.

SOVEREIGN COMMENT: Bearer shares carry inherent problems. The issue of bearer shares are, essentially, incompatible with "know your client" principles and good due diligence. For this reason many banks and other financial institutions dislike doing business with companies which issue bearer shares. For some time we have been encouraging clients not to issue bearer shares and most offshore jurisdictions are moving towards their abolition. In this case the defendants purported to have effected a transfer without taking, and passing on, physical possession of the share certificate. This is in contravention of s31 of the BVI IBC Act which states that bearer shares are 'transferable by delivery'. This would not have been a problem if registered shares had been issued because they can be transferred, subject to the Articles of Association, by any method approved by the directors and physical possession of the share certificate does not constitute ownership of the shares. It is only evidence of the same.

ENGLAND & WALES: BREACH OF TRUST

In *Wight & Another v Olswang*, the defendant was co-trustee of a fund consisting primarily of a holding in Aegis Group plc. The settlement conferred on the trustees an absolute discretion in relation to the continued retention of the holdings. In April 1991 the trustees sold 50,000 of the shares. Most of the remainder were sold in 1992 and 1993.

> ***"The law requires of a trustee no higher degree of diligence... than a man of ordinary prudence... "***

The claimants submitted that the trustees lost, by reason of alleged breaches of duty, opportunities to sell the remaining shares at higher prices in May and September 1991.

The defendant argued that the claim could only succeed if the decision not to sell the shares failed to satisfy the test in *Lenroyd v Whitely* that 'the law required of a trustee no higher degree of diligence in the execution of his office than a man of ordinary prudence would exercise in the management of his own private affairs'.

The High Court held that, irrespective of breaches of trust during the decision-making process, beneficiaries of a trust did not have a claim against a trustee who made an investment decision unless they could establish that the decision was one that no reasonable trustee could have made.

SOVEREIGN COMMENT: This case confirms the principle that trustees will only be liable for losses resulting from investment decisions if it can be shown that those decisions could, and would, not have been made by a reasonable man. Trustees are not expected to be expert investment advisers but they may be expected to hire same.

OECD IDENTIFIES 35 JURISDICTIONS ON 'TAX HAVEN' LIST

The OECD Forum on Harmful Tax Practices published a list of 35 jurisdictions which meet its criteria for tax havens based on its report on Progress in Identifying and Eliminating Harmful Tax Practices. Listed jurisdictions have been given one year to agree to eliminate harmful features by the end of 2005 or they will be included on an OECD list of Unco-operative Tax Havens (UTHs), to be completed by 31 July 2001, against which economic sanctions may be imposed.

The Forum reviewed 47 jurisdictions which it initially identified as potential tax havens on the grounds of: no or only nominal taxes; tax breaks for non-residents; lack of effective exchange of information; lack of transparency; and attracting business with no substantial activities.

"Most of the jurisdictions ... will be keen ... to secure exclusion from the list of unco-operative havens."

Six of the jurisdictions under review – Bermuda, Cayman Islands, Cyprus, Malta, Mauritius and San Marino – were found not to be in compliance but were not listed after making 'advance' commitments to adopt international standards on exchange of information on tax matters, transparency and fair tax competition.

The jurisdictions found by the OECD to meet its tax haven criteria and which did not make a commitment were: Andorra; Anguilla; Antigua & Barbuda; Aruba; Bahamas; Bahrain; Barbados; Belize; British Virgin Islands; Cook Islands; Dominica; Gibraltar; Grenada; Guernsey/Sark/Alderney; Isle of Man; Jersey; Liberia; Liechtenstein; Maldives; Marshall Islands; Monaco; Montserrat; Nauru; Netherlands Antilles; Niue; Panama; Samoa; Seychelles; St Lucia; St Kitts & Nevis; St Vincent & the Grenadines; Tonga; Turks & Caicos; US Virgin Islands; and Vanuatu.

The OECD Forum also reviewed harmful tax practices in its own member countries. It identified 47 tax practices in countries, including Switzerland and Luxembourg which abstained from the 1998 Report, as 'potentially harmful'

SOVEREIGN COMMENT: For the moment holding company regimes such as the Dutch participation exemption, UK International headquarters companies and the new Danish regime have not been identified as harmful tax regimes by the OECD but they have indicated that they will be examining these in the near future. Most of the jurisdictions which have been identified as tax havens will be keen to ensure that they make the necessary commitments and changes in legislation to secure exclusion from the list of unco-operative havens which the OECD will publish next year.

EUROPEAN UNION TO PURSUE EXCHANGE OF INFORMATION

The EU ended the three-year deadlock on the proposed taxation of non-resident savings after Austria and Luxembourg dropped objections to information exchange at the EU summit in Portugal. EU states have agreed to draw up a directive by the end of this year. Under the deal, five countries – Luxembourg, Austria, Belgium, Greece and Portugal – are to be allowed to operate a withholding tax system but would be required to shift to information exchange after a seven-year transition period. This would require those countries with bank secrecy rules to repeal them.

Implementation is contingent on third countries, primarily the US and Switzerland, agreeing to impose a similar system. EU ministers set a target of 31 December 2002 to persuade third countries to adopt similar measures.

SOVEREIGN COMMENT: The requirement for exchange of information is to apply to EU members and territories under their control so, in particular, these requirements are likely to apply to the British offshore financial centres such as Bermuda, BVI, Cayman etc. The EU has made it clear that they do not wish to see a flight of capital to offshore centres but this is the likely result of this legislation as people do have a legitimate desire for privacy. The likely outcome is a flight of capital to independent territories such as Bahamas, Hong Kong and Mauritius.

ISLE OF MAN

The government announced a radical restructuring of its tax system to meet new international standards promoted by the G7 and OECD countries and to attract entrepreneurs and internet companies.

The tax proposals are based on a reduction in the corporate tax rate from 20% to 10% for trading companies over a three to five-year period, with a deadline of 2005, and removal of the ring-fence regime around exempt insurance companies and ship management companies which will be brought within the domestic tax system, but at a zero rate.

Personal allowances will be available for non-residents as for residents and a new tax credit system for distributions will ensure that tax neutrality is preserved for the investor, whether resident or non-resident.

An important element of the proposed tax system will be an updated double tax treaty with the UK which can be applied equally to any other jurisdiction wishing to enter into a treaty. Talks with the UK Inland Revenue are ongoing.

SOVEREIGN COMMENT: The OECD regards one of the criteria which identifies a tax haven to be a dual system of taxation. In the Isle of Man local residents pay tax at 20% but non-residents are not subject to tax. The new measures are designed to implement one system of taxation which will apply to both residents and non-residents. In effect the Isle of Man will become a low tax jurisdiction rather than a no tax jurisdiction. Other jurisdictions with similar tax systems such as Gibraltar are also likely to introduce a unitary system. In the case of Gibraltar they are examining switching to a source-based system of taxation similar to Hong Kong.

UNITED KINGDOM

The Treasury has agreed to defer implementation of Budget measures to tighten tax rules for multinational companies by preventing the use of mixer companies, or overseas subsidiaries through which profits are repatriated to the UK as dividends, from 1 July this year to 31 March 2001, although the proposals remained in the Finance Bill.

The new rules will cap the rate of underlying tax attributable to a dividend paid from one company to another at the UK corporation tax rate and end a company's ability to specify out of which profits a dividend is paid.

THE FINANCIAL ACTION TASK FORCE REVIEW TO INDENTIFY NON-COOPERATIVE COUNTRIES OR TERRITORIES

In June, the Financial Action Task Force (FATF) issued a list of 15 'non-cooperative' financial centres,which it said, must step up efforts to combat money laundering or face the threat of unspecified international counter-measures. The 15 countries in which the FATF identified 'serious systemic problems' are: Bahamas, Cayman Islands, Cook Islands, Dominica, Israel, Lebanon, Liechtenstein, Marshall Islands, Nauru, Niue, Panama, Philippines, Russia, St Kitts & Nevis and St Vincent & the Grenadines.

The report calls on FATF members to request their financial institutions to give special attention to businesses and transactions with persons, including companies and financial institutions, in countries or territories identified as being non-cooperative. The FATF examined 29 countries and territories. Below we set out extracts of the FATF findings in relation to those jurisdictions reviewed in which **The Sovereign Group** has offices:

BAHAMAS: Although the Bahamas has comprehensive anti-money laundering legislation, there are serious deficiencies in its system. In particular, there is a lack of information about beneficial ownership as to trusts and international business companies, which are allowed to issue bearer shares. There is also a serious breach in identification rules since certain intermediaries can invoke their professional code of conduct to avoid revealing the identity of their clients. International co-operation has been marked by long delays and restricted responses to requests for assistance and there is no room to co-operate outside of judicial channels.

This jurisdiction is a member of the Caribbean Financial Action Task Force (CFATF), and has indicated, during the process of this review, its commitment to follow the recommendations contained in the CFATF mutual evaluation of 1997. At present there are several Bills pending in the legislative process that would address the weak points identified.

BRITISH VIRGIN ISLANDS: The British Virgin Islands (BVI) is committed to implementing solid legislation and regulatory measures against money laundering. The BVI allows certain intermediaries, and individuals, which are subject to the same anti-money laundering standards and supervision as financial institutions, to introduce business to banks and financial institutions on the basis that the introducers themselves verify the identify of the customer. BVI also allows certain institutions based in certain overseas countries, subject to equivalent standards, to introduce business, without separately verifying the identity of the client. The banks and financial institutions are only required to know the name of the client but not to verify the identity separately. There is concern as to whether such a system provides sufficiently rigorous checks on the identity of clients of banks and financial institutions, especially in cases where the introducer is not a financial institution.

"International co-operation has been marked by long delays and restricted responses to requests for assistance."

The BVI also has a large number of International Business Companies (IBCs), the formation of which by intermediaries is subject to fewer identification requirements than applied to the company sector as a whole. The FATF has decided to consider both issues.

CYPRUS: Cyprus has a comprehensive anti-money laundering system. The review did, however, raise a specific issue of concern on customer identification in respect of trusts. The FATF welcomes Cyprus' intention to supervise lawyers and accountants when engaged in financial activities.

"The lack of a stringent scheme to apply new rules of customer identification to pre-existing accounts is also a source of concern."

GIBRALTAR, GUERNSEY, THE ISLE OF MAN & JERSEY: These jurisdictions have comprehensive anti-money laundering systems. All have in place a system for reporting suspicious transactions. Where the underlying criminal conduct is drug trafficking or terrorism, the obligation to report is a direct one. Where the underlying criminal conduct is another predicate offence, the reporting is an "indirect obligation": failure to make a report potentially leaves one open to a charge of money laundering; making a report is a defence against such a charge. FATF will need to discuss further the adequacy of the suspicious transaction reporting system in the jurisdictions with the authorities.

All allow certain intermediaries, and individuals, which are subject to the same anti-money laundering standards and supervision as financial institutions, to introduce business to banks and financial institutions on the basis that the introducers themselves verify the identify of the customer. They also allow certain institutions based in certain overseas countries, subject to equivalent standards, to introduce business, without separately verifying the identity of the client. The banks and the financial institutions in Guernsey, Isle of Man and Jersey are only required to know the name of the client but not to verify the identity separately. Guernsey, Gibraltar, and Jersey have decided to restrict to those meeting FATF standards, the list of countries permitted to introduce business to banks without them having to verify separately the client's identity. The FATF has decided to consider the adequacy of introducer systems in the jurisdictions.

The lack of a stringent scheme to apply new rules of customer identification for pre-existing accounts is also a source of concern. The new rules for customer identification verification were introduced in Gibraltar in 1995, Guernsey in 1999, Isle of Man in 1998 and Jersey in 1999.

MALTA: In an otherwise comprehensive anti-money laundering system, the review raised only one major source of concern. This relates to the Maltese system of nominee companies which is an obstacle for the identification of the beneficial owners in offshore and onshore companies although the nominee companies are licensed and regulated by the Malta Financial Services Centre. The FATF urges Malta to accelerate the phasing-out of the nominee company system.