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Golden Anniversary

As I near 50 years in my chosen career some truths are abiding such that in this changing order of things in offshore financial services, there are still some constants: what was true yesterday will still be so tomorrow. To understand this I have included extracts from two earlier newsletters, March 2005 and March 2010.

Consider these comments in 2005 and their relevance today:

“Now the city is projecting a softer image with such descriptions as “Gateway of the Americas” and “Centre of the New World”. The head of the Miami-based Washington Economics Group, Tony Villamil, has said that Miami is, basically, a Latin American city that happens to be in the US.

But before you go comparing, say, Panama’s or Liechtenstein’s financial services with those offered in Miami, ask yourself why some locals and not just some foreigners have their Miami properties registered in the names of offshore companies. It is because Miami, although it could be described as a Latin American city, is, as Tony Villamil has said, still in the US where the government’s mood since 2001 has made many people uneasy and its actions to thwart terrorism have caused some to remember the words of Edmund Burke: “True danger is when liberty is nibbled away for expedience and by parts”.

I would say that Miami is not the centre of the New World, but it is certainly a gateway both to the Americas and the New World. This New World, however, bears no resemblance to the one European

seafarers discovered in centuries past. This world might, in fact, be described (with apologies to Aldous Huxley) as a Grave New World, brought on by terrorist attacks in the US which, besides many other consequences, have spawned both the Patriot Act and the Homeland Security Act. Perhaps Henry Kissinger’s words are an uncomfortable reminder: “The illegal we do immediately. The unconstitutional takes a little longer”.

Icebergs and Frozen Accounts

“International bankers with many years of experience of financial crime issues argue that a lot of the rules introduced since 2001 to prevent terrorists using the mainstream financial system will not achieve their objective. They see customers having to pay more for services due to the cost of mandatory new extensive checks. When the Federal Bureau of Investigation tried to design a profile of how a bank might be used by terrorists it only came up with one main characteristic: large deposits with withdrawals of cash in a series of small amounts. According to the head of anti-money-laundering at one large American bank, such a profile matches a quarter of the customers of most banks. No wonder some fear that while icebergs might be melting, their bank accounts run the risk of becoming frozen, if not literally.

It’s not just broadened powers, but lack of knowledge that is worrying. Back in the 1990s when I was still a gamekeeper before returning to the fraternity of poachers as a trust and estate practitioner, it always



concerned me greatly how little many onshore regulators understood the offshore element of financial business. And a decade later, my personal experience suggests that little has changed.” That goes for 2015 too.

Also in 2005 I wrote about the three main reasons for going offshore – despite today’s vehement attack from developed countries, and their respective agencies, which has seen a fiscal feeding frenzy against those who are swimming beyond the tax net.”

The one not mentioned in the extract is probate and which seems the easiest to explain. Dying with or without (worse) a will and having assets overseas forming part of your estate guarantees expense (in some jurisdictions to an alarming degree) and delay for your heirs perhaps tantamount to riding a donkey from Mexico to the tip of Chile. Under the right conditions, however, an offshore trust or foundation can provide not just privacy but efficient transmission of benefit.

Tort in School

In 2005 I wrote about American motives for coming to offshore centres such as Panama. “Like a child with a comfort blanket, many of these troubled travellers seek assurance; in their case it is that some of their assets will not remain within a domestic environment with its attendant restrictions, uncertainties and erosions of privacy, whether real or perceived. During a speech in the British House of Commons in November, 1783, William Pitt the Younger argued thus: “Necessity is the plea for every infringement of human freedom. It is the argument of tyrants; it is the creed of slaves”. Last year’s satirical film, “The Stepford Wives”, was about slavery, only in that case the manipulation and control was of wives by their husbands. Many Americans over coffee have told me that the US government is trying to do the same to those it is answerable to, attempting to create Stepford lives and spread the creed of slaves.

Those concerns, of course, are in addition to the worries over civil lawsuits that can annihilate wealth and are reason enough to place assets beyond the reach of avaricious plaintiffs. A 2003 report from the US Congressional Budget Office on the tort system revealed that only 46 cents of every tort lawsuit dollar was going to the victims with the remainder consumed by legal fees and other costs. If further proof was

needed of the current craziness, consider a case near San Francisco where the Rubin family filed a \$1.5 million dollar suit for damages against the New Haven Unified School District because their son was thrown off the high school varsity basketball team. The coach was blamed for ruining the son’s chances of winning a university basketball scholarship and thus the possibility of a professional career with the National Basketball Association. It has been said that civil suits have become a sport, but this is ridiculous. In 1999, incidentally, a survey found that one in four US public school principals had been involved in a lawsuit. Ten years earlier the figure was one in ten.”

Cowboys and Indians

In 2010 it had already become clear (if that’s the right word) that governments were going to employ words as a weapon in the tax war. Nothing since then has dented my belief; in fact, it has only been reinforced: “Remember Humpty Dumpty? He featured in this newsletter last June (Who is to be Master? Volume 12, Number 2) when I wrote about the Organisation for Economic Co-operation and Development’s Model Tax Convention. If beauty is in the eye of the beholder, is a spoken word’s meaning equally subjective, being in the ear of the listener? In Humpty Dumpty’s world, as Alice in Wonderland was told, a word means what he chooses it to mean, and in the absence of an office of Grand Interpreter of Tax Co-operation, as I wrote before, who will decide when a tax information request from a foreign country falls within the spirit of the rules that are to be applied?

What would the jovial egg, sitting on his wall, make of that part of the MTC which requires information about an individual’s tax affairs to be released when it is “foreseeably relevant” (sic) ? to quote the defining words in Article 26 of the Convention. Humpty’s opinion would depend on which side of the wall his legs were, I suppose: in other words, where his interests lay. The late American actor, John Wayne, is said to have reasoned thus: “I don’t feel we did wrong in taking this great country away from them [Indians]. There were great numbers of people who needed new land and the Indians were selfishly trying to keep it for themselves”. Most certainly this logic would turn the



abbreviation, US, used to identify the superpower, into a pronoun, being the objective case of “we”.

One thing’s for sure: the US is looking for scalps, like the Indians did, and vague, if grammatically incorrect, terms such as “forseeably relevant” are its tomahawk in the present campaign against Switzerland over hidden tax income. Remember, the US has charged UBS AG of Switzerland with aiding and abetting US taxpayers not to pay their share at a time when public finances dictate a need to recover every possible cent of taxes due. In this the US is simply echoing the words of the 19th-century British prime minister, Lord Palmerston, who believed that his government had “no eternal allies and we have no perpetual enemies. Our interests are eternal and perpetual, and those interests it is our duty to follow”. There’s that “we” again.”

Breakfast in Delaware

Sometimes, confusingly, onshore, not offshore, corporations are your best bet if privacy is important. Here’s how I put it in 2010:

“As I finish writing, Panama has just held its 100th annual Carnival and it is surprising to reflect that a year has past since my 2009 February column in Offshore Investment.com (Latin Letter) when I wrote about the situation in Delaware in the context of the transparency standards demanded by the US of all international offshore finance centres (“Man, Angels and Brazil”). One year on, that state continues to allow the identities of owners of companies to remain anonymous; nothing has changed except the carnival floats in this year’s parade along Panama’s Via España in the city. Those who read the Letter from Panama in January or Latin Letter (“The Spirit of Palmerston”) last month will know, however, that Delaware is not the only US state with opaque practices which have been otherwise condemned by the US government; Nevada, for example, is no better.

If the US was not in the vanguard of the OECD’s collective outcry against jurisdictions whose laws keep shareholders’ names secret, hobbling tax collectors pursuing them, this application of double standards – whilst distasteful – would not be so astounding. Jeffrey Owens, head of the OECD’s tax division, acknowledges the difficulty with Delaware and has said “there is a discussion going on within the US” and that “There are

a number of bills that have been put forward to address this issue, so I am sure it is an issue that will eventually be addressed”. Why the delay? Tax Justice Network, a non-profit organisation, has said that despite the US commitment to strict tax transparency, Delaware is the world’s most secretive jurisdiction... ..It would seem that anything is possible, although Alice in Wonderland struggled with this contention. If Humpty Dumpty confused her, then the Queen most certainly did.

“There’s no use trying,” she said, “one can’t believe impossible things.”

“I daresay you haven’t had much practice,” said the Queen. “When I was your age, I always did it for half-an-hour a day. Why sometimes I believed as many as six impossible things before breakfast!”

In the meantime, is it possible that the US president will bring pressure to bear on Nevada and other non-transparent states? The OECD’s Global Forum should certainly raise the matter when it meets in Singapore in October, unless, of course, there are changes before then.” There weren’t any then and in 2015 there are still none.

The Naked Truth

How about the US dollar? It’s one of the reasons investors go to foreign jurisdictions to find entrée to expertise in foreign currencies. In 2005 I reflected on this: “A lot of people uncertain about the fate of the US dollar are opening accounts in foreign currencies via offshore financial services centres. They are following Otto von Bismarck’s advice and want to have two irons in the fire. Once they do this, of course, they are then exposed to other offshore opportunities as well.

Much of late has been written about the US dollar. John Kenneth Galbraith said that “if the history of commercial banking belongs to the Italians and of central banking to the British, that of paper money issued by a government belongs indubitably to the Americans”. Paper money, in fact, has its roots in China where the earliest banknotes were printed over 1,000 years ago. (It was Croesus, king of Lydia, who invented coinage.) Europeans had to wait until 1661 for paper money to be introduced when Stockholm Banco in Sweden issued banknotes. It is the Bank of



England, however, established in 1694, that is now the longest continuous issuer of banknotes in the world. Americans have worried about the value of their paper money before now. In order to finance the 1776 war of independence the colonies issued a considerable amount of paper money which very quickly became devalued. The deep mistrust of paper money was such that the 1789 US constitution banned the issue of paper money by any state; in the 1830's, Andrew Jackson would not allow the establishment of a central bank and it was not until 1913 that the US had one. Paper money is fine, however, when you follow the simple 1817 dictum of David Ricardo ("Principles of Political Economy and Taxation"): "It is not necessary that paper should be payable in specie to secure its value, it is only necessary that its quantity should be regulated". Besides any other concerns, we are asked to believe in the credibility of something with no inherent value. Here there is a clear parallel with diamonds that are perceived to be precious mainly due to the South African company, De Beers, best described as lord of the (diamond) rings. To quote Nicky Oppenheimer, Executive Chairman of De Beers: "We're selling something which has immense value to the person who buys, but which has no real value". De Beers has a controlling interest in the rough diamond market through its Central Selling Organisation in London. It can, therefore, heed Ricardo's words by regulating supply and then, with the help of masterful marketing, distort the value.

Next month will be the 200th anniversary of the birth of Hans Christian Andersen, author of "The Emperor's New Clothes". In the tale, no one wished to state the obvious to the king for selfish motives except a child with a frankness born of innocence. But the king refused to admit that he had been duped and that the clothes he was wearing were illusory. Naked, he continued to ride in the procession in his carriage with a page holding a mantle that wasn't there. Common folk and not just kings can be taken for a ride sometimes." Do you really feel safer with the US dollar in March 2015?

A Final Word

Naked or not, we are all on a bike ride. The front wheel is the present and the one behind is the past, both moving forward together, whether the road is level, descending or ascending, with fallible man controlling the brakes. Twice in the previous century he has fallen off it. Let's hope that in this century we don't go beyond a wobble.

I promised last month to try and not dampen your spirits in this month's Offshore Pilot Quarterly. Perhaps the political scientist, Sebastian de Grazia had it right: "Lean back under a tree, put your arms behind your head, wonder at the pass we've come to, smile and remember that the beginnings and ends of man's every great enterprise are untidy."

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Engaging an offshore representative is an important decision and we advise all persons to seek appropriate legal and tax advice from professionals licensed to render such advice in the appropriate jurisdiction before making offshore commitments.

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