The Spirit of Palmerston

By Derek Sambrook, FIB(SA), TEP
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More than a century ago, during Great Britain's hey day, it was said that Britannia both ruled the waves and waived the rules. As the 19th century British prime minister, Lord Palmerston, stated: "we have no eternal allies and we have no perpetual enemies. Our interests are eternal and perpetual, and those interests it is our duty to follow". Lord Palmerston's dictum is itself eternal and perpetual – and has international application; only the superpowers, not those sentiments, change.

Latin America's leading banking centre, Panama, understands Lord Palmerston's view, not because it is a world power, but because, great or small, all countries (as with individuals) will usually not place others before their own interests. It is in this spirit that the Panamanian government is approaching the transparency demands of the Organisation for Economic Co-operation and Development (OECD) in relation to the thorny issue of taxation and in doing so, the government has emphasised its intention to be a responsible member of the international community; nonetheless, as Dulcidio de la Guardia, Panama's Vice-Minister of Finance has put it, the country will "always take care of its interests".

In a complete reversal of fortune since dictator Manuel Noriega's forced removal over 20 years ago, Panama's banks are today well regulated and its Financial Analysis Unit is a member of the Egmont Group (made up of a global collection of national agencies) which enjoys a good reputation. Its common goal is to facilitate information exchange, training and sharing of expertise in the battle against financial crimes. Panama's enthusiasm is best illustrated by the fact that it ranks fourth among 30 countries surveyed by the Financial Action Task Force (a body set up over 20 years ago by the Group of Seven, a collection of developed countries) because of the efforts it has made to enforce anti-money laundering measures. And unlike the Cayman Islands, which eschews imposing personal income taxes (despite its present financial problems), Panama has always taxed income earned within its borders (27% for individuals and 30% for corporations).

Panama's government does not favour the ubiquitous tax information exchange agreements of the sort that have been signed in great haste by a number of offshore financial centres; they bring no benefit whatsoever for Panama because with its territorial tax system, it has no interest in foreign income earned. Instead, the government wants to sign double taxation treaties which will not only conform with the spirit of the OECD's tax information sharing policy, but will actually attract foreign investment to Panama; presently, no tax relief can be claimed against Panamanian taxes imposed on a foreigner's local profits. This removes the one-way street benefit for foreign governments perhaps appropriate where the information requests involve jurisdictions only offering beaches and attractive legislation but this does not apply in Panama's case.

It is a common mistake to draw direct comparisons between Panama and such jurisdictions whereas the country's canal, with its vital international commercial role, is but one example of this error; geopolitics would be another but would require a separate article. Ships can always go round an island, but to profit most from international trade many ships have no choice but to pass through the canal. The canal, in fact, was the cause of a terrible blunder on the part of Ferdinand de Lesseps (the French diplomat who built the Suez Canal) who compared Egypt with Panama. Work commenced before it became clear that constructing a sea-level canal through the flat Egyptian sand (a canal, I would add, which I have passed through) was an entirely different enterprise. The French canal may not have been created but perhaps the longest palindrome phrase in the English language was: A man, a plan, a canal – Panama.

Mistakes aside, whilst much of the OECD transparency tactics can be criticised, I am readily aware that many of the critics haven't got an unbiased bone in their bodies. They are usually professionals who make their living (as your columnist does) from the steady stream of people and businesses lured by the attractions on offer in offshore financial service centres. Jason Sharman, however, does not fit this description because he is a political scientist at Griffith University in Australia.

His findings summon the spectre of hypocrisy raised in my column one year ago this month (Man, Angels & Brazil – Issue 193) only this time the culprit is the United States of America state of Nevada, not Delaware. The professor found that Nevada's corporate system offered both light reporting and disclosure requirements – not to mention a quick one-hour incorporation service. In a state with a population of less than three million, Nevada apparently forms about 80,000 new businesses a year with the total now standing at over 400,000. It is understood that when the US Internal Revenue Service undertook a study it discovered that between 50% and 90% of those registering Nevada companies were in breach of federal tax laws elsewhere. Panama, on the other hand, has just over three million citizens and registers perhaps just a little over half the number of companies each year that Nevada does and, like Panama, Nevada does not reveal the names of shareholders.

Armed with USD10,000 in funding and Google as a research partner, Jason Sharman undertook a study of international money laundering; his findings will sit uncomfortably with the OECD. What he found onshore was often a lack of concern in even knowing who the clients were: copy passports and references? Forget them. And, of course, for the people behind the structures, there is no fear of a UBS backlash – personified by the revelations of its former employee, Bradley Birkenfeld – because these middlemen, unlike Swiss bankers and other responsible offshore professionals around the world, were not concerned with knowing who was behind the companies. The professor's research led him to conclude that the US, and some other OECD members, were far more lax in their due diligence than, say, Switzerland or Liechtenstein.

45 attempts were made by Jason Sharman to create anonymous offshore companies, including bank accounts for them, around the world. These efforts were successful in 17 cases and in 13 of them the country involved was an OECD member. In the United Kingdom, after under an hour on the internet and for less than USD800 without providing identification, he formed an anonymous company and was provided with bearer shares, nominee directors and a secretary. He found, however, that service providers in centres such as Bermuda, the Bahamas, the British Virgin Islands, Liechtenstein and Panama were careful with their due diligence.

An ex-UK Foreign Office adviser (and a former colleague of mine), Rodney Gallagher, suggested in the Financial Times (18 November 2009) that at the end of the day only those offshore jurisdictions with political clout or the support of large countries (such as China) are likely to survive; he includes Hong Kong, the Gulf States, Singapore and Panama on that list.

In the case of Panama this fits in with the views expressed also last November by Susan Haird, Deputy Chief Executive of UK Trade and Investment, a government agency, when she visited the country and with whom I met as Chairman of the Panama-British Business Association. She sees Panama as a source of future business for UK companies and believes that "Panama's strategic position in the world makes it an important trading partner for the UK". She was the keynote speaker at Britannica Day, a British trade-related event, which is held in Panama every year and organised by the local British Embassy in conjunction with the PBBA.

Panama's Deputy Minister of Economy and Finance, Mr Frank De Lima, also attended Britannica Day and from discussions I had with him, it would seem that the Panamanian government understands that any tax treaties must be framed sensibly and include the necessary safeguards to deflect attempts to obtain information outside rules which call for evidence and exclude fishing expeditions. It must be why, as head of the delegation who attended tax treaty meetings with Mexico, the Deputy Minister confirmed that the negotiations came to a happy ending and that a treaty should ensue.

Britannia may no longer rule the waves, but she still has her day once a year in Panama. UK exports to the country in 2008 almost reached USD250,000 million and I predict that these are destined to grow steadily every year. After all, in President Martinelli, Panama appears to have the man and the plan.

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