

Cayman Islands company register--promoting transparency or an unnecessary burden?

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Private Client analysis: The UK Overseas Territories Minister, Grant Shapps, recently indicated that the UK will not pursue the idea of a publicly available company register for the Cayman Islands. David Cooney, partner at Ogier in the Cayman Islands, along with managing associate Madeleine Welham, take a closer look at the broader legal issues surrounding this development.

Original news

Government slows Cayman Islands company register efforts, LNB News 04/09/2015 46

City AM, 4 September 2015: The government is to relax its efforts to get the Cayman Islands to create a company register.

What is the significance of this apparent relaxation around the treatment of the Cayman Islands?

In August 2015, the UK Foreign Office indicated that a publicly accessible list of beneficial owners of Cayman companies and other legal arrangements may not be the only acceptable course for the Cayman Islands with regard to ensuring an acceptable level of transparency with regard to beneficial owners of Cayman companies and other legal arrangements. The recent comments, made by Grant Shapps, the UK Overseas Territories Minister, while visiting the Cayman Islands, acknowledge that the transparency objective may be achieved by using the robust systems already in place in the Cayman Islands without the need for a publicly available register. However, officially, nothing has changed and the issue is set to be discussed further at the Joint Ministerial

Council meeting in London in November 2015.

The Cayman Islands Government and industry organisations in the Cayman Islands have opposed a public registry of beneficial owners since the inception of the idea on the grounds that it would be impractical and prohibitively expensive to implement, virtually impossible to maintain on a real time basis and, given the imminent implementation of the common reporting standards (CRS) for the automatic exchange of information for tax purposes, duplicative and unnecessary. The Cayman Islands has also opposed a 'centralized' registry, as opposed to 'public', on the same grounds but also with the particular concern that, even with the best security measures in place, it would be an obvious target for cyber criminals.

The views expressed by Mr Shapps appear to be an acknowledgment of the effectiveness of the measures that are already in place in the Cayman Islands and the potential that they have, with some improved efficiencies, to deliver the requisite level of transparency being sought by the British government. If this is indeed the case, it would be a significant victory for the Cayman Islands, a jurisdiction that has been adhering to global anti-money laundering and anti-terrorism standards for more than a decade and that already has in place a regime that requires information on beneficial ownership to be collected, verified and maintained by licensed and regulated service providers and to be provided to law enforcement, tax and regulatory authorities upon request.

What issues are jurisdictions facing in meeting the tax transparency targets and expectations of the British government?

The Cayman Islands is already fully compliant with anti-money laundering standards set by the OECD and Financial Action Task Force (FATF). Notably, the Cayman Islands is one of only a few jurisdictions that has undergone a full due diligence remediation exercise to ensure that all 'know your customer' files across the financial services industry dating back to 2003 are compliant with current standards. The Cayman Islands regulations require due diligence on all beneficial owners holding an interest of 10% or more in a Cayman company or legal arrangement, which means that data available in the Cayman Islands is already more extensive than in the UK, where the threshold is 25% beneficial ownership.

The Cayman Islands has already implemented the legislation and mechanisms required for the automatic exchange of tax information with HMRC in line with the intergovernmental agreement between the two jurisdictions (the UK/Cayman IGA). The first automatic exchange of tax information between the Cayman Islands Tax Information Authority (TIA) and HMRC will take place no later than 30 September 2016. The Cayman Islands has also signed up as an early adopter of the CRS and expects to introduce legislation to implement the requirements of the CRS in October 2015.

Would different treatment for the Cayman Islands affect tax planning and the approach of other jurisdictions?

Most structures used in global finance and capital markets transactions involve multiple entities in a number of different jurisdictions. Structures are typically designed to minimise tax leakage, but that is rarely the main purpose of a structure. Organisations or individuals using Cayman companies or legal arrangements within their corporate structures do so with the knowledge that the details of each ultimate beneficial owner holding a 10% or greater interest in a Cayman company or legal arrangement must, as a matter of Cayman Islands law, be disclosed to the licensed and regulated service provider assisting with the formation of that company or legal arrangement. The success of the Cayman Islands as a tax neutral financial centre is indicative of the fact that organisations and individuals are comfortable disclosing the details of the beneficial owners of their structures in this way.

A move to a publicly available register of beneficial owners raises a number of issues and concerns, particularly for high-net worth individuals who, for security or other reasons, prefer that details of their personal financing affairs remain outside of the public domain. The imposition of an obligation on the Cayman Islands to make beneficial owners' details available to the public without the same obligation being imposed on all tax neutral jurisdictions would certainly disadvantage the Cayman Islands and lead to a significant disruption to the financial services industry. If well-regulated places like the Cayman Islands are required to adopt public registers of beneficial ownership without that being the global standard, the result may be a flight from Cayman to less well-regulated jurisdictions and the flow of information to international law-enforcement agencies and regulators would be impaired. The imposition of a universal obligation on all jurisdictions to maintain registers of beneficial owners, with the ability to synchronise and deliver accurate information on a real time basis seems implausible. However, without that, there seems little to be gained, and much to be lost, by imposing a publicly available register of beneficial owners on the Cayman Islands.

What is the current position in the Cayman Islands around the disclosure of beneficial interests?

The current information exchange regime in effect in the Cayman Islands is fully compliant with international standards, as prescribed by the OECD and FATF. A Cayman Islands company or legal arrangement cannot be formed without the services of one or more corporate service providers or trust companies in the Cayman Islands, all of whom are licensed and regulated by the Cayman Islands Monetary Authority (CIMA). In accordance with the Cayman Islands Money Laundering Regulations (2015 Revision) (issued pursuant to the Proceeds of Crime Law (2014 Revision)) and the related guidance notes, all CIMA licensed and regulated entities are required to obtain, verify and retain prescribed information on all persons with a controlling interest, which includes shareholders with an interest of 10% or more. This verification by a third party service provider is in stark contrast to the UK and other jurisdictions that rely on self-reporting systems.

In the Cayman Islands, corporate service providers and trust companies are required to keep information on beneficial owners confidential unless required to release such information pursuant

to a request from CIMA. An overseas regulatory authority seeking to obtain information on the beneficial owners of a Cayman company or legal arrangement is required to make an application to CIMA for disclosure of the information. Currently CIMA is required to respond within 72 hours. No application to the Cayman Islands court is required and one application may be made in respect of multiple entities. The Cayman Islands Government has committed to speed up the information exchange process by aiming to enact legislation that will require corporate service providers or trust companies to produce beneficial ownership information to tax, regulatory and law enforcement authorities within a target turnaround time of 24 hours.

Specifically vis-à-vis the UK, the Cayman Islands has fully implemented the requirements of the UK/Cayman IGA and, from next year, information on all 'Specified UK Persons' with interests in Cayman Islands financial institutions is required to be reported to the TIA and will be automatically exchanged with HMRC.

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