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Ernst & Young
Quality In Everything We Do
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Welcome to the 2011 Edition

Welcome to the 2011 edition of Barbados International Finance & Business. Barbados has continued to evolve as an International Financial Centre (IFC), and in 2011 the Government of Barbados is expected to gazette the International Corporate and Trustee Service Providers Bill, the Financial Services Commission Act and Amendments to the Companies Act dealing with non-profit entities and other issues.

Meanwhile, the number of Double Tax Agreements (DTAs) continues to expand, with Panama, the Republic of Ghana, Luxembourg, Portugal and Spain all awaiting ratification, and more to come.

The island remains a jurisdiction of choice for companies desiring to increase their international competitiveness and also for entrepreneurs looking to establish a base here, from which to export to the world.

The island remains a jurisdiction of choice for companies desiring to increase their international competitiveness ...

We hope you enjoy reading the 2011 edition, including case studies demonstrating the type of international business which can be carried on from Barbados.

Thank you to all our sponsors and contributors - without you, we could not produce the magazine.

We invite you to send any comments and suggestions to bifb@investbarbados.org.

James Gardiner
MESSAGE FROM SENATOR THE HON. DARCY BOYCE
MINISTER IN THE PRIME MINISTER’S OFFICE

The past year has been challenging for governments and firms worldwide. Amid fears of a double dip recession, the global economy has nonetheless proven resilient.

The International Monetary Fund has projected world growth in 2011 at 4.25%. In like manner, the Organisation for Economic Cooperation and Development has also predicted expansion of approximately 3% for the G7 group of countries. The United Nations Conference on Trade and Development (UNCTAD) anticipates that Foreign Direct Investment flows will climb from US$1.2 trillion in 2010 to US$1.8 trillion by the end of 2012. The consensus, albeit still cautious, is that investment flows are set to rebound. In Barbados, our Government has been resolute in its commitment to ensuring that our domicile continues to be a centre of excellence for global business, while pursing sustainable development initiatives. There are clear signs that our efforts are paying off. Barbados recorded increased investment flows, as borne out by the UNCTAD World Investment Report 2010. In terms of competitiveness, the World Economic Forum’s Global Competitiveness Report 2010-2011 ranked Barbados 43rd worldwide and third in Latin America and the Caribbean.

Looking ahead, Barbados intends to continue to distinguish itself as a preferred domicile for international insurance, banking, trusts, wealth management, niche manufacturing and information services.

As a Government, we recognise that in today’s global context, competition, particularly for foreign direct investment flows, has reached unprecedented levels. Not surprisingly then, we have noticed the emergence of an international business community that is more discerning. We have therefore selected product offerings and regulatory systems that signal world-class standards in a dynamic, yet relevant and competitive environment. This has resulted, for example, in amendments to key pieces of domestic legislation, as well as some additions. At the top of the list is the strengthening of the Money Laundering (Prevention and Control) Act, as well as the enacting of the Registered Agents Act and the Financial Services Commission legislation – all of which will enhance our regulatory regime.

Another primary focus for Barbados has, and continues to be the maintenance and expansion of the platform from which international clients conduct business: our tax treaty network. Our network has been purposefully developed to allow access to key and emerging markets. Over the past three years, treaties have been signed with Mexico, Panama, the Republic of Ghana, Luxembourg, Portugal and Spain – the last five are awaiting ratification. Since the Barbados/Mexico Double Taxation Agreement (DTA) came into effect in January 2010, we have seen buoyant interest from that direction. We anticipate similar levels of enquiries and new business when the other DTAs take effect. Equally cognisant of the key role that diplomatic relationships can play in facilitating increased investment flows, the Government has established Embassies in China and Cuba, with whom we already share DTAs, and in Brazil. Discussions are ongoing with Brazil towards the finalisation of a DTA.

Notwithstanding this new thrust, established markets will retain their respective priority. In fact, we will continue to strengthen bonds with proven source markets like the USA, the UK and Canada, where we also have diplomatic missions and DTAs in place. Barbados continues to safeguard its enviable standing as the third highest recipient of Canadian direct investment abroad, and under CARICOM we are negotiating a Free Trade Agreement with Canada. When completed, this will create a new range of mutually beneficial trade and investment opportunities.

With the lessons of the recent recession fresh in our minds, growth across the international business and financial services sectors will be rooted, more and more, in sound investment choices buttressed by a stable, secure, enabling and competitive environment. Barbados provides that opportunity.

I trust that this publication will provide you with insight into how using Barbados can enhance your global competitive advantage – and leave you convinced that choosing to invest here is indeed in your best interests.

Senator the Hon. Darcy Boyce
Minister in the Prime Minister’s Office
At Cidel, we are leaders in executing internationally compliant structures for tax planning professionals worldwide – utilizing Barbados’ extensive tax treaty network.

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The Barbados Jurisdiction – The Way Forward

Welcome to the third edition of Barbados International Finance & Business magazine. I had hoped to be writing in this edition about Barbados as an International Financial Centre (IFC) in a world significantly recovered from financial crises and crippling economic recession, but that was not to be. Economic stimuli, rescue packages, and hasty regulatory and taxation reforms have not been enough to extricate the US and some other large economies from recession, while the knock-on effects of these ailings developed economies have wreaked havoc on smaller, more vulnerable developing open economies, and have even exacted a toll on the BRICs (Brazil, Russia, India, China) and on Canada, the least affected world economies.

As a result, Barbados has struggled to deal with reduced tourism and Foreign Direct Investment inflows, resulting in much lower economic activity and, therefore, reduced Government revenues. Government has had to prioritise its spending to protect the main economic drivers, while ensuring that the social safety net is strengthened. Once more in Barbados, through prudent governance, stability - albeit tenuous - prevails amidst crisis.

It has been this level headed conservatism that allows Barbados to place consistently high in world rankings for banking stability, transparency, human development, global competitiveness and many others – and it is this core stability that will guide us in evincing the best way forward for the jurisdiction in the world of international finance and business.

While many other IFCs have had to hastily sign Tax Information Exchange Agreements, strengthen anti-money laundering controls, reform regulatory systems, etc., Barbados has already had these jurisdictional quality measures in place. We continue to enhance them, of course, but the point is that quality, stability and reliability are the emerging tenets of the IFCs of the future, and Barbados is already ahead of the curve.

What can investors expect from the Barbados jurisdiction next? More evolution – because of the recession there have been delays in the last year, but revamped legislation and incentives for private trusts, mutual funds, hedge funds, and immigration rules are imminent. New legislation for a Financial Services Commission and for the regulation of local service providers to the International Business sector will be enacted early in the New Year, and we are monitoring the development of Solvency II, to make sure that we are ready to adopt an accredited version that makes sense to the entire range of our insurance clientele. All of these will positively impact international business and create new opportunities for international investors in 2011 and beyond.

The recession delayed progress on the international trading floor for the Barbados Stock Exchange and the International Arbitration Centre initiative, but these are both back on track for this year, and Government recently approved two significant measures to pave the way for attracting the biotechnology industry to Barbados. There are two substantial medical tourism projects in negotiation, and we have already been able to negotiate specific incentives to attract an international film project for 2011.

While bureaucracy remains a worldwide issue, Invest Barbados continues to spearhead efforts to reduce bureaucracy in Barbados, and the fast track work permit process for international business is a good example of the success of this thrust.

While I would argue that flexibility and speed are the watchwords for IFCs in these turbulent times, the way forward seems to be clearer now among economists and world finance experts – high quality (regulatory systems, local professionals, AML standards, tax efficiency), stability (banking, currency, political, social), reliability (tax treaties, transparent legislation), diversity (economic drivers, markets), safety (low crime, healthy environment, good healthcare) and lifestyle (choice, quality, pace). In other words ... the Barbados jurisdiction.

Wayne Kirton
Chief Executive Officer
Invest Barbados

I would argue that flexibility and speed are the watchwords for IFCs in these turbulent times, the way forward seems to be clearer now among economists and world finance experts.
Barbados: An IFC in a Recessionary Environment

BY DR. TREVOR A. CARMICHAEL, Q.C.

Barbara Tichman, writing about the fourteenth century, captured the non-competitive nature of the business culture in the following words: "To ensure that no one gained an advantage over anyone else, commercial law prohibited innovation in tools or techniques, underselling below a fixed price, working late by artificial light, employing extra apprentices or wife and under age children and advertising of wares or praising them to the detriment of others". In a recessionary environment, international business seeks to adopt the adverse of Tichman’s description; rather, it strives to create niches and to build on historical comparative advantage. Barbados in 2010/2011 has accordingly sought to parlay and build on its legacy as a vibrant International Financial Centre (IFC).

The focus on the current international charitable philanthropy trend has been given particular emphasis, especially in the dovetailing of new local charities legislation with the setting up by Government of the Better Barbados Foundation. The new entity is geared to attract philanthropic capital and expertise from overseas and to tap into the Barbadians who live overseas and are both capable and willing to lend a financial hand to their mother country. The initiative has been complemented by the efforts of the Barbados Foreign Mission to Canada, which has spearheaded an important publication, exposing in print biographies of the many Barbadians who have contributed to the development of Canada over the past fifty years. The non profit company, as part of a charitable cross border revenue generating exercise, has taken on a more vibrant usage as the current small and large scale transborder philanthropy movement continues, with Barbados as a beneficiary. So too, has been the more recent and increased use of the Barbados/United States of America double taxation treaty. As a result of which, the favourable provisions in Article 22 (Limitation on Benefits) allow non profit companies to qualify for treaty benefits.

An IFC is measured more by the use of available products than by the number and type of such products. The new double tax treaty with Mexico provides a plethora of opportunities, many of which call for integrated planning techniques. Interestingly enough, the scope for channelling some of the Mexican wealth for Barbadian development through the route of the non profit company is clearly provided for within this new treaty. It does not present a quick fix, but true maximisation of the benefits of any double tax treaty is always a long range goal, rather than a short term option.

Tax treaties, therefore, also create opportunities in areas as diverse as medical tourism and shipping - two sectors in which Barbados currently seeks to recession proof for the short term and create sustainability for the distant future. Indeed, in relation to tourism and medical tourism, the bilateral investment treaty creates the high level of comfort for large scale investors in sophisticated plant, equipment and machinery. On the other hand, the Double Tax Treaty creates discrete planning opportunities for investors who wish to minimise tax on profits, dividends and interest. In shipping, the groundwork is being laid, through legislative changes, to further use the treaty network as well as the professional and government connections.

Barbados, as an IFC in a recessionary environment, truly aims to build on its existing financial culture, profile and history. It seeks to free itself of the yolk of Tichman’s fourteenth century description of commerce and ensure that it adopts a vision as a significant IFC for, as Kotta reminds us: "Without a vision, change can dissolve into a list of confusing, incompatible, time consuming projects that either go in the wrong direction or nowhere at all".
Barbados is set to expand its tax treaty network into the Middle East, following successful bilateral discussions held in the margins of the 2010 Global Forum on Transparency and Exchange of Information for Tax Purposes. The Global Forum (the Forum) - in its modern form - is a multilateral monitoring and peer review facility designed to articulate, reinforce and measure compliance and effectiveness in terms of the practical implementation of the international standards on transparency and tax information exchange. Though hastily constituted after the G20 promulgation of its list of substantially compliant, non-compliant and near-compliant states in March 2009, the history of the global forum did not start in 2009. Indeed the original Forum as a sub-programme of the Organisation for Economic Cooperation and Development (OECD), though flawed, served at least to demonstrate the un-sustainability of unilateral action in an interconnected world.

The Forum now boasts its own Secretariat, which is staffed with nationals from the members and non-members of the OECD. Its rules require “consensus minus one” for all decisions - a far cry from the previous lack of representation of non-OECD states in the standard setting work of the OECD. That said, however, it is also true to say that the Forum, like other international bodies, does struggle with finding the right accommodation for sovereign countries with radically different financial, natural and human resources. This is rendered even more acute because of the heavy weight of compliance with the near universal standards of transparency and information exchange.

Currently, the Forum is the only means to assess countries’ commitment and practical application of the standards. The monitoring and review work, which is the mainstay of the Forum’s activities, provides important evidence about strengths and weaknesses of the legal, regulatory and administrative regimes in the countries that consent to the Forum’s methodologies. Moreover, moving beyond the ‘name and shame’ practices of the past, assessment reports generated by the Peer Review Group (a sub-group of the Forum), once adopted, will support access to technical assistance from a number of multilateral institutions such as the World Bank, the International Monetary Fund, and the African Tax Administration Forum, the European Union and the Commonwealth Secretariat, to name just a few.

Beyond the formal agenda adopted by the parties, there is an equally important informal agenda that delegates pursue at the plenary meetings of the Forum. It is in gatherings such as these that Barbados continues to find value added beyond the adoption of reports of Double Taxation Agreements (DTAs). Importantly too, the very conduct of these negotiations will serve to raise Barbados’ investment profile in a region that, although long a major player in the attraction of investment in financial services, has only recently become part of the grouping concerned with addressing transparency matters using bilateral tax agreements. When in force, these agreements will lend diversity to Barbados’ treaty network, which has so far been devoid of agreements with the Gulf region.

Mindful that its tax treaties with some members of the “Nordic Group”, which date back to Barbados’ early post independent years, do not meet the global standards, agreement was reached at the Forum to negotiate protocols to these treaties. Barbados has also agreed to conclude a protocol with its first and oldest tax treaty partner - the United Kingdom.

In 2010, Barbados signed tax treaties with Panama, Luxembourg, Portugal and Spain, and initialled tax treaties with Belgium and the Czech Republic. Treaties already concluded in 2009 with Italy and Vietnam are being advanced by the governments of these countries for signing at the earliest opportunity. Protocols to the Barbados/ Boswana DTA and Barbados/Seychelles DTA, which will reflect the revised OECD standard on tax information exchange, have been approved by Barbados and are now awaiting signature. Negotiations with Chile, though stalled as a result of the earthquake in 2010, are now back on track and will be wound up by the end of this year.

Both at the political and technical level, Barbados continues to receive positive overtures about tax treaty talks from Colombia and Australia. Discussions are in train to finalise negotiating time tables in respect of these countries. In short, Barbados will continue its policy of aggressive tax treaty network expansion, targeting countries where significant investment flows are occurring.
Barbados: Benefits of a Tax Treaty Network

BY ROLAND JONES

Barbados' long term strategy, which is to be a low tax jurisdiction with a network of Double Taxation Agreements (DTAs), has been supported by a DTA negotiation programme that has resulted in the creation of an extensive tax and bilateral investment treaty network. Barbados currently has 18 DTAs in force with 27 countries, including a multilateral DTA with 10 CARICOM countries, and bilateral investment treaties with nine countries. The establishment of this extensive network of DTAs has been made possible by the fact that Barbados has a comprehensive tax system. The tax system and treaty network have contributed significantly to Barbados' reputation as a legitimate International Financial Centre.

The following table provides a summary of the withholding tax rates that are applicable under the DTAs in force to date, and an indication as to whether international business companies and similar tax-privileged entities can qualify for the specified rates of withholding tax.

Readers should consult their advisors and the relevant DTA to clarify the appropriate rate.

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* subject to a limitations of benefits clause
CASE STUDY – LENSTEC

Leading Technology from Barbados

Barbados is traditionally known as a hub for financial services, but the business infrastructure is equally attractive to manufacturing. Lenstec is one such company and has often been called “the best kept technology secret in the Caribbean”. The company established its medical device manufacturing operation in Barbados in 1996, when its global headquarters in Florida searched the world for a domicile for its manufacturing division. Barbados was the clear choice.

“With our products having to meet global standards for medical devices, and being regulated by international health agencies such as the United States Food & Drug Administration, we needed a workforce that could compete against US, European and Asian manufacturers. Our strong growth since 1996 has proven that we can compete not only in terms of product quality, but also in speed to market. We export extensively to over 50 countries, including Western Europe, Japan, Canada and Australia and, like ‘coal to Newcastle’, we export a large quantity of our ultra-premium lenses to China.”

Excellent transport links mean that Lenstec’s global distribution network can be serviced faster than most competitors’ can, with products being delivered to all European customers within 48 hours.

Last year, Lenstec came full circle in obtaining approval to sell its products into the US market, making it only one of two non-US-based manufacturers to sell these highly specialised intraocular lenses for cataract surgery to US surgeons.

The company employs a wide range of skill and education levels in the workforce, including a team of 20 graduates from the University of the West Indies in science and engineering disciplines, demonstrating that product development, testing and regulatory work can all be done in Barbados.

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To discuss how Aon’s industry leading captive management strategies can best serve your organization, contact experts in our Barbados office and visit aon.com.

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An EU Perspective of Barbados as a Holding Jurisdiction in International Tax Planning

BY MILES DEAN & PAULINA SPENCER

Barbados is frequently overlooked as a holding company jurisdiction, yet it has a lot to offer in terms of tax structuring. It is traditionally known as the jurisdiction of choice for Canadian entities, as a result of the Double Tax Agreement (DTA) in place between the two countries. But it is also of interest to certain EU countries, particularly for investments into Latin America. The Barbadian taxation system and network of DTAs provide advantages for a variety of structures. Tax benefits aside, Barbados has a high standard of regulation, experienced service providers and is cost-competitive.

From an international tax perspective, Barbados is quite distinct from the likes of Cayman, BVI and the Bahamas. These traditional offshore financial services centres lack a suitable DTA network – a pre-requisite for most international tax structures. By contrast, Barbados has comprehensive DTAs, generally based on the OECD Model, with 17 countries, and a source based DTA with 10 CARICOM countries. Add to this a further eight DTAs that are either awaiting signature or ratification, as well as the ongoing negotiations with a further eight countries, notably including Brazil, Chile and India, and it is clear that Barbados has managed to set itself apart in the Caribbean region.

Barbados also has bilateral investment protection treaties in place with nine countries, providing an additional layer of comfort for international investors when investing into high-risk jurisdictions, e.g., Venezuela and Cuba. Other benefits include:

- political, social and economic stability;
- a strong track record as a financial centre;
- a well-regulated business environment;
- on the OECD white list;
- a qualified local workforce; and
- no thin capitalisation or controlled foreign company rules.

The use of Barbados in an international context can be illustrated by way of example, say, a Maltese company considering an investment in Venezuela. The investment could be made directly, but would suffer 34% withholding tax on any cash repatriation. By contrast, a Barbadian-resident subsidiary interposed between the Maltese and Venezuelan entities will reduce the effective tax rate on dividends to 5% and allow profits to be repatriated to the Maltese parent company free from withholding tax.

Company residence is determined on the basis of central management and control. In terms of domestic taxes, a Barbadian-resident company:

- pays corporation tax at 25%;
- is taxable on its worldwide income;
- is not subject to capital gains tax; and
- enjoys unilateral double taxation relief.

Barbados operates a worldwide tax system, however dividends received by a Barbadian-resident company in respect of a shareholding of at least 10% in a foreign company, which does not constitute a portfolio investment, are exempt from Barbadian tax. Furthermore, dividends paid to non-residents out of foreign income are exempt from Barbadian withholding tax. Withholding tax exemption also applies to interest and royalties paid to non-residents by International Societies with Restricted Liability (ISRLs) and International Business Companies (IBCs).

Barbados also allows ISRLs and IBs to benefit from, inter alia, credit for tax paid outside Barbados, tax on income on a sliding scale ranging from 1% to 2.5%, and exemptions from exchange controls.

Trusts are also recognised in Barbados – a fact that will provide comfort to investors from common law jurisdictions.

Barbados is an attractive alternative to other Caribbean jurisdictions and, with the right tax structure, can provide significant tax savings for international investment.
Quality Manufacturing for a World Market

TT Electronics Ltd., based on Newton Industrial Estate, is a manufacturer of electronic components, and although originally set up in 1980, the company here has been owned by UK-based international group, TT Electronics plc, since 1991. Its longevity as a viable international company operating in Barbados can be attributed to the support of its dedicated, quality workforce, and to the infrastructural framework that facilitates the needs of a large, international company.

TT Electronics plc employs over 5,000 people world wide, with the Barbados operation employing 140. The company here has the full range of skills associated with volume component manufacture and sources its raw materials from all over the world. A combination of flow and single operation processes enables the production of electrical wire-wound resistors, controlled by its well established, ISO approved quality systems. This, coupled with a philosophy of continuous improvement, enables it to compete and rise to the challenges of an increasingly demanding market place.

TT Electronics is a customer-driven organisation, enabling it to support demand from global industrial, medical, automotive and telecoms markets, mainly in the USA, Europe and the Far East. Its ongoing success is based around providing those customers with a quality product, delivered to them with a very efficient on-time delivery performance.
Trust Update - Canadian Cases

BY MICHAEL COLBORNE

In the fall of 2010, the Canadian Federal Court of Appeal heard two significant appeals involving Barbados trusts. In Garron Family Trust (Trustee of) et al. v. The Queen (2009 TCC 450), two trusts (the Trusts) were settled in 1998 with shares of a Canadian resident holding company (disclosure: Thorsteinssons LLP acted for the appellant in this case). The Trusts had Canadian-resident beneficiaries, and the sole trustee of both Trusts was a Barbados-resident corporation. On the sale of these shares the Trusts realised substantial capital gains, which the Trusts claimed were exempt by reason of the Canada-Barbados Tax Treaty (the Treaty) because the Trusts were resident in Barbados. The Minister disagreed for several different reasons, and the Trusts appealed the decision to Tax Court.

The Treaty would exempt the gains realised by the Trusts from Canadian tax if the Trusts were resident in Barbados and not Canada. Because Canadian tax law does not have a statutory definition for residence of a trust, the Trusts asserted that they were resident in Barbados by reason of the 1978 Thibodeau Family Trust decision of the Federal Court – Trial Division (78 DTC 6376). Many, if not most practitioners, view this case as standing for the proposition that residence of a trust should be determined based on the residence of the trustees which, in this case, was Barbados. Moreover, the appellant’s position was that this proposition is consistent with the historical development of the statutory rules dealing with the nature of trusts in the Income Tax Act (Canada).

The Tax Court rejected the appellant’s submissions for a variety of reasons, and found that the correct test for residence of a trust should be the same “central management and control” (CMC) test usually applied to corporations “with such modifications as are appropriate”. The Court also noted that using the same test for both trusts and corporations would promote “consistency, predictability and fairness” in the application of tax law.

In applying the CMC test to the facts of the case, the Court found that the role of the Barbados-based trustee was limited to purely “administrative services” that did not involve any actual decision making, despite noting that there was “no explicit evidence that establishes the limited nature of [the trustee’s] role”. As such, the Court concluded that the CMC of the Trusts rested in Canada and that the Trusts were therefore resident in Canada. On appeal, the Federal Court of Appeal agreed with the Tax Court judge that the CMC test was the correct test to apply in the circumstances and also agreed that the application of this test resulted in a determination that the Trusts were resident in Canada. Leave is being sought to appeal this decision to the Supreme Court of Canada.

In Anite et al. v. The Queen (2009 TCC 465), the Tax Court once again decided against the taxpayer in a trust case. In Anite, the taxpayer transferred a property with an accumulated capital gain to a spousal trust (with a Barbados-based trustee - the Trust). The Trust sold the property to the taxpayer’s spouse, the spouse then sold the property to a third party and used the proceeds of disposition to repay the Trust, and finally the Trust distributed the funds to the spouse and was wound up. The effect of the transactions was to place the proceeds of disposition in the spouse’s hands without the payment of Canadian capital gains tax. The Minister reassessed on the basis that the capital gain was subject to tax in Canada, and the taxpayers appealed to the Tax Court.

Unlike its decision in Garron, the Court in Anite found it unnecessary to determine the residence of the Trust in order to dispose of this matter, instead finding that the transactions did not accomplish their stated goal because the Trust itself was not validly constituted. In analysing the sequence of events, the Court found that the Trust deed had not actually been signed by the taxpayer until after the other documents effecting transactions were signed. Consequently, the Court found that the taxpayer could not have had the requisite intention to settle a trust because he never had the intention to lose control of the shares or the money resulting from the sale. The Court also found that the shares themselves were not validly transferred to the trustee, meaning that they could not have been validly sold by the trustee to the taxpayer’s wife.

The taxpayer’s appeal in Anite was dismissed by the Federal Court of Appeal in mid-October 2010.
Barbados: A Compelling Location for Business and Investment

For decades, Barbados has been heralded as an idyllic holiday destination, alluring to even the most seasoned international traveler, but it has been little appreciated as an extraordinary place in which to reside and from which to do business in local and global markets. This article highlights some of the more compelling reasons why Barbados stands out as extraordinary.

Transparency
Barbados’ strategy has always been to attract quality, substantive business and to subscribe to the highest standards of transparency and exchange of information. Barbados’ credibility in this regard was powerfully demonstrated on April 2, 2009 when the publication of the OECD’s revised list of substantially tax compliant jurisdictions, Barbados emerged as the only independent Caribbean country to be included on this “white list”.

Legislative and Regulatory Environment
Barbados’ legislative and regulatory environment is pragmatic and supportive to commerce. The government is committed to enhancements such as the anticipated Financial Services Commission Act, which is expected to streamline and bolster the existing regulatory regime. The companies legislation is modern and flexible. Of particular relevance to anyone considering moving their business interests to Barbados, are provisions for ready corporate mobility into the jurisdiction and for the easy registration of local branches.

Barbados’ international business laws provide for a range of corporate vehicles (IBVs) which enjoy low corporation tax rates and exemption from exchange control restrictions, property transfer tax, ad valorum stamp duty (except in respect of local real estate), import duties and taxes relating to equipment to be used by the IBV, and withholding tax on dividends, interest, royalties and fees paid to non residents.

Tax
IBVs benefit from tax rates ranging from 2.5% to 1%, depending on income levels. For domestic entities, the corporation tax rate is 25%, although certain types of companies, notably manufacturing companies, enjoy a 15% rate. These rates can be mitigated using incentives to promote foreign investment. For example, in cases where the foreign currency earnings credit is applicable, the effective corporation tax rate is reduced on a sliding scale, ranging from 16.25% to 1.75%, depending on the level of profits derived from foreign currency earnings as a percentage of total profits.

Individuals are taxed at 20% on the first BDS $24,200 of taxable income, and thereafter at 35%. Specially qualified international business sector personnel may utilise exemptions.

Withholding taxes on certain payments to non residents (such as dividends, interest and royalties) range between 15% and 25%, unless reduced by a double taxation treaty. Dividends paid by one Barbadian resident company to another such company are exempt from tax. However, similar dividend payments to resident individuals are subject to a 12.5% withholding tax, which is a final tax. No capital gains or inheritance tax is levied in Barbados.

With respect to relief for double taxation, unilateral relief is allowed by way of a credit for foreign taxes paid on foreign earnings against the Barbados tax payable on such earnings. In addition, Barbados has concluded 18 double tax treaties with 27 countries, including Canada, China, Mexico, United Kingdom, United States of America, Venezuela and each of the CARICOM nations. These treaties allow for significant mitigation of withholding tax.

Infrastructure
Barbados benefits from a cadre of highly qualified and experienced local professionals, many of whom are members of firms with regional or global reach. The island’s business infrastructure features modern telecommunications and IT, with related disaster contingency capability, reliable local utilities, and an international airport with daily flights to and from London, New York, Toronto, Miami and several Caribbean islands. In addition, the banking system is sound and the economy is stable, with the Barbados dollar having been fixed to the US dollar at 2.1 for over four decades.

Though still better known in some quarters for its exquisite natural beauty, near-perfect climate and excellent quality of life, Barbados has developed a progressive, well regulated environment supported by modern legislation and grounded in a long tradition of transparency. Add to all this, a tax regime which promotes foreign investment and private enterprise, and the result is a desirable jurisdiction in which to structure international transactions or establish global headquarters.
Opportunities for Using the Barbados-Mexico Double Taxation Treaty

BY MARIA ROBINSON & KOEN VAN ’T HEK

The Double Taxation Agreement between Barbados and Mexico (the Treaty), in force since January 2010, is expected to usher in a new era of foreign investment. This article will outline the attributes of the Treaty and how it may be used.

Dividends, interest, royalties and branch profits
Mexico does not levy a withholding tax on dividends under domestic law. The withholding tax rate for interest or royalties can be up to 40% if the recipient qualifies as a Preferred Tax Regime (PTR). However, the Treaty provides for reduced withholding tax rates of 10% for interest and royalties and 5% for branch profits. For dividends, the rate is 15% where the shareholder owns less than 10% of the capital of the investee, and 5% otherwise.

Capital Gains
Gains derived by a Barbados resident from the sale of shares of a company resident in Mexico, in which it owns at least 25% during the last 12 months preceding such sale, may be taxed in Mexico. Mexico imposes income tax on such capital gains at a rate of 25% of the consideration (40% if the PTR rules apply), or at 30% on the net gain if certain requirements are met.

Limitation on benefits (LOB) article
To qualify for treaty benefits, taxpayers must meet the criteria in the LOB article. If a Barbados entity is subject to a special tax regime, e.g. the International Business Companies (IBCs) Act, which provides for a tax rate that is lower than those applicable to Regular Barbados Companies (RBCs), then the Barbados entity is ineligible for the benefits relating to international transport, dividends, interest, royalties, capital gains and independent personal services. Moreover, a contracting state can apply its domestic rules regarding thin capitalisation, controlled foreign corporations and preferential tax regimes.

Mexico’s anti-deferral rules
In 1997, Mexico adopted a “black list” regime to prevent the deferral of taxable income by Mexican tax residents.

Barbados is technically still on the blacklist, but in acknowledgement of the entry into force of the treaty, the Mexican tax authorities made certain amendments to the Mexican tax rules in early 2010, which effectively negate the effects of Barbados being on the blacklist.
Where a Mexican resident earns Barbados source income which is subject to an effective tax rate that is below 75% of the effective Mexican tax rate (e.g. in an IBC), then the income would be taxed in Mexico on a current basis.

A RBC that earns active business income and pays tax in Barbados at the regular rate of 25% would be excluded from the PTR. IBCs and other low-tax entities are carved out of the Treaty and so the PTR rules, including higher withholding tax rates, apply.

Insurance activities are unaffected by the PTR. Income of a captive insurance company will be taxed in Mexico on an accrued basis only if:

- The Mexican shareholder exercises effective control; and
- The tax rate of the captive is below 22.5%.

If the above criteria are not met, the income of the captive will only be taxed in Mexico when distributed. However, the profits of a captive may be taxed only on receipt in Mexico where it earns less than 20% of its income as passive income. This provides opportunities for tax planning.

**Outbound investment from Mexico**

A Mexican company can establish an exempt insurance company (EIC) in Barbados for reinsurance activities. The Mexican company insures its risk with a Mexican insurer, which in turn reinsures such risks with the EIC. The premiums paid to the Mexican insurer are tax deductible in Mexico. The reinsurance premiums received by the EIC are taxed at 0%. Dividends can be paid by the EIC to its Mexican shareholder free of Barbados withholding tax. Such dividends will only be taxed on receipt in Mexico. (The Mexican insurer must withhold tax when paying premiums to the EIC at a rate of 2% under Mexican regulations, as this is not explicitly covered by the Treaty.)

**Inbound investment into Mexico**

The Mexican PTR rules permit Mexican taxpayers to exclude (passive) income generated by a foreign finance company (FinCo) in a PTR if:

- FinCo has authorisation from the local authorities to act as a finance company;
- the income earned by FinCo is not tax deductible in Mexico;
- FinCo is engaged in financing transactions with third parties; and
- a ruling is obtained from the Mexican tax authorities.

Where these conditions are met, groups may shift their financing to Barbados. The Treaty also provides other interesting opportunities for financing and licensing intangibles into Mexico, taking benefit of the reduced withholding tax rates.

In summary, there are several benefits arising from Barbados’ tax treaty with Mexico, and investors should investigate and take advantage of the tax planning opportunities offered by the Treaty.
Strategies for Global Expansion

BY DAMIAN MCKINNEY

Having lived in Barbados before, it was always in the back of my mind to do so again. A discussion with my children provided the extra impetus and, although I had no idea how, I was determined to make it happen. Looking back, having lived in Barbados for three years, here are my top tips for success.

When you establish your company, ensure that you set the Vision and Values. Have a clear vision of where you want your global company to be in five years time and then stick to it, but be prepared to adapt the plan when necessary along the way. Leaders in any organisation must display the right values and ensure that their leadership team shares these values. Select your leaders carefully, make sure they fit your DNA and then communicate your plan to ensure they clearly understand their part in it – this alignment then needs to be cascaded throughout your business.

Few business leaders spend enough time examining their position in the marketplace. To be a global player, you need to act and think globally all the time. Even more important than understanding your market is to understand your competition. Always look at yourselves from the competitors’ perspective - try to get them to react to you, so choose your battles carefully. When you are on an island, this can be a difficult mindset to adopt.

To build any business, but especially a global one, you need a great brand and brilliant people.

So much for the planning - writing strategy is relatively easy, but making it happen is the difficult part. Keep your plans as simple and clear as possible. In a global business with multiple languages, ensuring clarity of message is challenging. Focus on executing your plans, innovate where necessary and always seize opportunities, but don’t be distracted - focus on the outcome.

To build any business, but especially a global one, you need a great brand and brilliant people. As you build your operation around the world, be clear about what your brand is and ensure it has global reach and relevance. Think globally and act locally, be sensitive to cultural differences - by using locals you will achieve this. Understand the DNA of your organisation - ensure you get the right people in your business. You need to be able to trust people working in different time zones – look for attitude and capability rather than the right experience.
Still the Domicile of Choice for Canadian Business  

BY DAWN WILLIAMS

Exchange of information between the tax authorities of states can be done bilaterally or multilaterally. When done bilaterally, two main types of agreements are utilised - Double Taxation Agreements (DTAs) and Tax Information Exchange Agreements (TIEAs). TIEAs have come to the fore recently due to OECD-led pressure for the exchange of tax information commitment.

DTAs are comprehensive agreements between two states to prevent income or profits from international economic activity from being taxed twice. One of the main reasons countries enter these agreements is to foster foreign investment.

TIEAs are intended for use with countries for which a DTA is not considered appropriate: for example, where a country levies no taxation. While TIEAs are much narrower in scope than DTAs, they are more detailed than DTAs on the subject of information exchange. This is but one of the differences between DTAs and TIEAs. One obvious, very important and distinctive feature is that DTAs allow residents of the treaty countries to avoid double taxation - something the TIEA does not cover. TIEAs, typically, specify the rules and procedures for how the tax information exchange is to occur.

Canada has sought to incentivise countries with which it does not have a DTA, by entering into TIEAs with such countries and extending exempt surplus treatment to active business earnings of foreign affiliates derived in such countries. At first, it appeared that this change in Canadian policy was likely to place Exempt Insurance Companies (EICs) in Barbados at a disadvantage in relation to captive insurance companies located in countries that enter into TIEAs with Canada.

At the time of going to press, none of the TIEAs signed with Canada in 2009/10 had yet been ratified, and so were not yet in force. However, the Canada Revenue Agency (CRA), in a recent Technical Interpretation of the Canada/Barbados Treaty, has clarified the position with regard to the characterisation of the active business earnings of EICs under the exempt surplus rules. In its Interpretation, the CRA has stated that where a Barbados-incorporated EIC is resident in Barbados under the management and control test:

- it will be "liable to tax" within the meaning of Article 4 of the Canada-Barbados Tax Treaty, notwithstanding its time-limited exemption (30 year guarantee) from actual taxation;
- it will be deemed eligible for "exempt surplus" treatment under Part 59 of the Canada Income Tax Regulations, provided it fulfills all of the necessary conditions;
- it will not be eligible for benefits under the Canada-Barbados Tax Treaty, as the CRA viewed the EIC legislation as similar to Barbados International Business Companies legislation.

Under the Canadian Income Tax Act, dividends derived from the active business income of a foreign affiliate may, generally, be received by a Canadian corporate shareholder free of Canadian tax. In this new Interpretation, the CRA has stated that a Barbados EIC must meet two tests in order for its active business income to qualify as exempt earnings. The tests are:

- The EIC must be resident in Barbados, under Canadian tax principles based on the common law test of residence; and
- It must not be deemed to be non-resident in Barbados under Regulation 5907 (11.2) of the Canadian Income Tax Act.

Now that the CRA accepts that active business income earned by a Barbados resident EIC generates exempt surplus, relief can be sought for dividends paid out of such income by an EIC before February 27, 2007 to a Canadian corporate shareholder of which it is a foreign affiliate. For dividends paid to such a shareholder on or after February 27, 2007 amended returns will be allowed, provided the request is made within the prescribed time limits for an assessment or reassessment.

With this clarification from the CRA, the perceived benefits of the TIEA diminish when seen in the light of Barbados’ extensive and ever-expanding double taxation treaty network, and its irreproachable position of being the only independent Caribbean country on the first OECD White list, where it has remained.
Corporate Social Responsibility

by David Thomas

Businesses that operate in international settings such as Barbados are often attracted by the quality of the workforce, infrastructure and low tax rates. But equally important is the intangible "quality of life", the intrinsic benefit of operating in a safe and cohesive social environment, an advantage that Barbados has long cherished.

A company’s attitudes to its social responsibility are fundamental to its identity and corporate principles.

Far from being accidental, quality of life is the result of investment, cooperation and a great deal of reinforcement of core social values. Corporations now recognise that they play an expanding role in this process and that, as prime beneficiaries of a healthy society, they can make significant contributions to sustain it.

Today, corporations recognise that generosity, charity and social investment are not just for PR or brand building; a company’s attitudes to its social responsibility are fundamental to its identity and corporate principles. The benefits to a company in “walking the talk” are greater than just the extrinsic benefits of a healthy society. Supporting employee community involvement and boosting pride in one’s employer have their own distinct benefits inside the company as well. There are several avenues available for corporations to facilitate social investment:

- Support of local charities with cash donations
- Adopting a specific charity
- Donation of resources or materials, often the company’s own products
- Donation matching with employees
- Time off, financial support or other means of supporting employee charitable activities.

International business will continue to grow its contributions as corporations embrace their opportunity to participate in social investment. The methods may vary but the outcome will be the same: something better for all.●
CASE STUDY – TRICOR CARIBBEAN

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The Captive Life Cycle: Maximising the Benefits of your Captive Insurance Company

BY MICHAEL BYNOE & RONAELE DATHORNE-BAYRD

The use of a Captive insurer is a well-accepted and useful risk transfer mechanism. In a climate of rising rates and restricted coverage, Captives have frequently delivered cost savings. To maximise the benefits of a Captive, the fundamental elements of the life cycle must be clearly understood. This cycle includes the following four steps:

1. Planning & Implementation
2. Benefits & Enhancement
3. Ongoing Maintenance
4. Closure

Planning and Implementation
Successful Captive operations need to be researched and properly planned. Some of the key matters that need to be addressed at the planning stage are:

- The types of coverage that will be ceded to the Captive;
- The level of initial capital;
- The need for fronting arrangements and/or reinsurance;
- The Captive’s domicile.

Barbados is a well-established domicile that offers two different regulatory regimes for Captives. A Barbados Captive can be licensed as an Exempt Insurance Company (EIC) under the Exempt Insurance Act, Cap. 308A, or it can be registered under the Insurance Act, Cap. 310 that governs local insurance companies. International companies that choose to register under the Insurance Act are known as Qualifying Insurance Companies (QICs). An EIC is tax exempt, while a QIC incurs tax at reduced rates based on the level of premiums originating outside of CARICOM (tax may be reduced to 1.75% of taxable income on general insurance business and to 0.35% of gross investment income for life business).

Ongoing Maintenance
In Barbados, a Captive must satisfy the following statutory requirements:

- Unless it is self-managed, a Captive insurance company must appoint a licensed management company to manage its day-to-day operations. A Captive must have at least one director;
- Directors may conduct their business by unanimous written resolution, or meet by telephone. An annual meeting of shareholders is required;
- Adequate accounting books and records must be maintained in Barbados and a qualified local auditor must be appointed. Audited financial statements must be filed with the Supervisor of Insurance within six months of year-end;
- QICs must file tax returns.

Solvency requirements for both EICs and QICs are the same. For general insurance business, the value of assets must exceed liabilities by US$125,000 during the first year, and also in subsequent years if annual premium income does not exceed US$750,000.

Otherwise, after the first year, the solvency margin is 20% of annual premium income on the first US$5 million, and 10% thereafter. All calculations are based on the net earned premium income of the preceding financial year. For long-term insurance business, the value of assets must exceed liabilities.

Benefits and Enhancement
There is a wide range of ongoing benefits that may be derived from a Captive, including:

- Insurance costs can be reduced by retaining the premium for the expected losses and by avoiding the premium loading for a commercial insurer’s overheads and profits;
- Cash flow can be protected by reinvesting reserves for unpaid claims and unearned premium, which would otherwise have been kept by a commercial insurer;
- Insurance cover can be provided that is either not available in the commercial market or not available at a reasonable price.

A Captive can also expand over time by assuming new lines of business and/or higher exposures, and it is common to see Captives retain greater risk by gradually reducing reinsurance coverage. The pace of expansion often depends on how quickly a Captive can grow its capital base by reinvesting profits. In Barbados, EICs can reinvest their profits tax-free, while QICs bear a very low tax rate in doing the same.

Captive Closure
Periodically, companies may find that there is no longer a need for their Captives. For example, as insurance markets soften it may become cheaper to purchase commercial insurance on the open market. In other cases the business rationale for the Captive may change. It is easy to wind up a Captive insurance company in Barbados, subject to the approval of the Supervisor of Insurance, and the procedures to be followed are set out in the Barbados Companies Act Cap. 308.
Developing a Risk Management Strategy using a Barbados Captive  

By Nicholas C. Crichlow

Today’s increased focus on corporate governance and risk management has also led to an increased focus on the importance of appropriate risk financing strategies. As a result, organisations are becoming far more sophisticated in their approach to insurance purchasing, are taking a more long-term approach to risk financing and are looking to become less dependent on the ever volatile insurance market.

As part of this long-term view, many organisations now put more emphasis on the cost of risk as opposed to purely considering insurance premium spend. Understanding the cost of risk enables organisations to determine their optimum risk financing programme, and make decisions about how much risk to retain and how much to transfer.

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Our philosophy is that wealth preserved is wealth deserved. We think the ancient Greeks would agree.
When risk management improvements are successfully implemented, it should follow that the frequency of losses will decline. However, insurers generally do not give immediate premium credit for organisations undertaking simply risk management initiatives, and tend only to respond a number of years later when improvements in the claims history are apparent. If this improved risk is retained within a Captive, then the organisation should experience immediate benefits, as it will result in a reduction in claims payments, ultimately improving the Captive’s profitability.

In Barbados, to be licensed, a Captive must first obtain approval from the Office of the Supervisor of Insurance and Pensions. That process involves the completion of an application, which includes a business plan and pro forma financial statements. In addition, the company’s incorporating documents, including its articles of incorporation and its by-laws, must be submitted with the application in draft form. Usually, the management company and the appointed lawyer would coordinate the completion and submission of these documents.

After obtaining approval to incorporate the Captive, the lawyer would file the incorporating documents with the Corporate Affairs and Intellectual Property Office and the company would come into existence.

The management company would then prepare the opening balance sheet, evidencing the receipt of the initial capital, and this balance sheet would be audited by the Captive’s auditors. The audited opening balance sheet would then be submitted with the final application to the Supervisor’s office and the Captive license would be issued.

Barbados is a mature Captive domicile, having enacted the Exempt Insurance Act in 1983. In keeping with its stature as a mature domicile, Barbados has a well established financial services infrastructure, including major audit firms and experienced and knowledgeable attorneys. In addition, several of the major management companies also have offices on the island.

The educational system in Barbados has encouraged the pursuit of university degrees and other professional qualifications by its citizens and, as a consequence, a significant number of the employees in the financial services sector are Barbados nationals. This generally results in lower staff turnover and an overall reduction in costs, as the additional expense incurred by having to recruit non-nationals at all levels is avoided.

Barbados’ development as a domicile for international business has been built primarily on its network of tax treaties. As a result, owners are able to benefit from the convenience of having their IBCs and Captive insurance companies domiciled in one location.

Barbados also has the physical infrastructure to make the business traveller’s visit to the island pleasant and convenient. Considering its daily international flight connections, wide range of quality hotels, restaurants and reliable telecommunications, Barbados truly has all the attributes to make it the domicile of choice for Captive insurance owners.
The Role of the Captive Manager – Delivering Clients’ Expectations  BY CHRIS EVANS

In the evolution of a Captive, the client will engage a consultant to prepare a feasibility study. When a favourable recommendation to establish a Captive insurance company is delivered, the client then has to choose a Captive Jurisdiction. Barbados is frequently the jurisdiction of choice but the decision is influenced by many factors – tax, and whether the client is already represented in the jurisdiction, are two such factors. Often the Captive is to be licensed and operated in a jurisdiction with relevant legislation and regulation where the client has no presence. In any event, the client isn’t (usually) familiar with the operational and regulatory environment of a Captive, and instead of hiring staff, leasing space, etc., the decision is often made to outsource the Captive’s operations to a management company (Manager), while simultaneously wondering “Who are these people and what do they do?”

The specifics of the Manager’s function will vary considerably depending on the nature of the Captive’s insurance or reinsurance programme, the structure of that programme, investments, mind and management considerations and the corporate culture of the Captive’s shareholder(s). Nevertheless, at the end of the day the Captive is owned by its shareholder and the Manager is expected to service its Captive client in the same manner as if the Captive employed the staff itself. Reporting content requirements and deadlines have to be met, Board and Committee meetings prepared for and attended, etc.

Added to the list of functions are insurance specific matters, such as processing of premiums and claims, investment activity, actuarial input, the annual audit and liaising with the persons and entities involved with same. It isn’t usual for the Manager to have expertise in many of these fields but it is useful, in some cases critical, to be able to provide access or recommendations to the client and, of course, to be able to effectively liaise with all.

These various activities are eventually collated into financial statements, which is why most Managers’ professional staff have strong accounting backgrounds. The development of reporting content by the Manager is usually of value to the Captive’s parent, which often has no knowledge of insurance accounting. The maintenance of accurate accounting records also helps to ensure that the Manager is well positioned for managing the Captive’s regulatory responsibility, which is addressed below.

The Manager’s relationship with the Office of the Supervisor of Insurance and Pensions (the Regulator) and knowledge of the legislation and regulatory policy are of major importance. The annual filing of financial and other statements creates a need for the

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Manager to liaise with the Regulator at least once a year. However, the world of Captive insurance is so diverse that the Manager has to approach the Regulator whenever a matter arises, for which there is no template. In Barbados, the Regulator’s consistent willingness to be a facilitator, as long as there is no conflict with their primary and overriding regulatory responsibility, is an advantage. By law, the Manager must report any breaches of the solvency requirements and non-compliance with legislation on a timely basis, with significant financial and other consequences to the Manager in the event of non-compliance.

Captive Managers in Barbados, as in other jurisdictions, have to undertake all of the above in a transparent manner, while respecting the Regulator’s and the client’s interests. Trust, integrity and competency, as well as the strength of the Manager’s regulatory and other relationships, are paramount.

CASE STUDY – MARSH MANAGEMENT

Barbados - An Important Management Services Base

Marsh Management Services commenced operations in 1986 with two employees, and over the years the company has grown to employ a staff of 10 persons.

A licensed management company under the Exempt Insurance Act, Marsh provides management services to the insurance subsidiaries of several major US and Canadian companies, representing all major industrial sectors. Over the years, the company has made donations to a number of charitable organisations across the island.

Barbados has been an important domicile for Marsh. In 1986, when Marsh was established, US companies were allowed an FET exemption and this proved very useful for several of Marsh’s clients. Subsequent to that, the benefits under the Canada-Barbados treaty resulted in many of Marsh’s Canadian clients making Barbados the domicile of choice for their captives. With its competitive cost structure and well educated labour force, Barbados continues to be an important domicile for Marsh.

Marsh, an active member of the Barbados International Business Association, celebrates 25 years of operation in Barbados, attributing its success to the productivity and loyalty of its local employees.

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Solvency II: Background and Implications for Barbados Captives  

BY VIN HAMPDEN

While Solvency II is a European regulatory initiative, it is clear that it will have an impact on some non-European captive domiciles. For example, where a European insurer restructures European risks into markets outside of the Solvency II and Solvency II equivalent network, there will likely be some significant costs for both the reinsurer and the reinsured.

Bermuda has sought to minimise the impact of the above on its reinsurers that write European business, by adopting a framework which can be considered as equivalent by the EU, referred to as "Solvency II equivalency". By taking this action, Bermuda is attempting to minimise the likelihood of its large reinsurers seeking to relocate to a European jurisdiction.

The questions remain: will Bermuda pay a price with their captives who are not writing European business? Will the Solvency II equivalency framework increase the costs of business excessively for those not writing European business?

The jury is still out, as Solvency II does not come into effect until November 2012, but there is some concern among captive owners and onshore gatekeepers. Those owners and gatekeepers, however, will gain some comfort from the fact that Barbados is not rushing to adopt the Solvency II framework.

CASE STUDY – TOWNER MANAGEMENT GROUP

Gateway to the Captive Insurance World

The Towner Management Group (TMG), headquartered in Holetown, Barbados, was founded in 1991 by Christopher J.N. Towner. In the intervening years, the fledgling business has grown to become one of the leading independent Captive Managers, with offices in Barbados, Anguilla, New York and Vermont. This natural progression was due to global business forces and TMG’s ability to offer solutions to meet their clients’ needs. Operating from Barbados, with its fair but firm regulations and experienced service infrastructure, has positioned TMG to transfer its business model to other domiciles.

A natural progression

Barbados has long been recognised in Canada as an International Business Company (IBC) and captive insurance domicile, so it was only natural that the island’s stellar reputation – and by extension, TMG’s – would propel the company’s expansion into the USA and beyond. So, in April 2008, when former Willis captive insurance veteran Gary Leggat and former Vermont Captive Regulator Ken Crouse had retired from their respective roles, these well respected risk management veterans joined forces as Principals of TMG operations in the USA, to establish TMG’s North American presence. Thomas P. Stokes, another long-time respected name in captive industry, joined not long afterwards as Head of Risk Consulting based in New York. These three professionals provide TMG with expertise and knowledge globally, not just in the USA.

Other well known veterans of the industry soon joined so that today TMG:

- represents companies with net written premium from USA captive insurance operations of approximately $500 million and approximately $1 billion worldwide.

While the USA operations grew, TMG Barbados continued to strengthen its favoured status among Canadian-based captive owners and became licensed in Anguilla. TMG also services multi-national clients in Brazil, Venezuela and Colombia and is working to establish business contacts in Mexico.

The Barbados connection

What does all of this expansion mean? For TMG, it means that its client base has grown some 33% in the past two years, while remaining an independent manager and provider of expertise and experience. For Barbados, it means that this island country, once again, has proven it is the little island that not only can, but will, when it comes to participating in, and even leading internationally as a respected business environment, provide transparency and a mature financial infrastructure.

While other jurisdictions might have to fight the impression that they serve as tax havens, Barbados has long established a reputation as a jurisdiction that offers fair and equitable legislation and taxation, while maintaining the tax advantages, through treaty networks, of the best domiciles.

We, at TMG, are proud of our history and our ability to provide customised solutions wherever our clients need them. Together with our sister organisation The St. James Group (SJG), started in 2000, we have achieved much with Barbados as our partner. TMG and SJG are growing international forces, but we also are proudly Barbadian headquartered.

As we look ahead, we anticipate leveraging our best-in-class Barbadian relationship to build on our reputation as a truly global player in the services arena.
The Role of a Portfolio Manager

BY ALLEN RANSOME

You meet someone at a party who introduces himself as a “Portfolio Manager”. What does that mean? In many ways, Portfolio Manager is a job title similar to that of a doctor or lawyer - they are specialists. Generally, the term Portfolio Manager describes a person who is licensed as a Portfolio Manager with a recognised government securities commission, and is subject to some form of a self regulatory organisation of the securities industry. The specific duties of a Portfolio Manager can vary from one manager to another.

In a large investment firm there is a separation of responsibilities among specialised Portfolio Managers. The result of such a separation is that a client has a team of specialists working for him/her, with each one representing a piece of the portfolio management puzzle.

Among the portfolio management services provided, specific areas of expertise include:

- Asset allocation
- Client management
- Product development
- Product selection
- Investment research
- Performance appraisal.

Portfolio management is broadly defined as the process for investment in financial and real assets to meet financial objectives. It takes the concept of investment management, which focuses on individual asset selection, and expands it to recognise the merits of diversification and the interrelationship between assets within a portfolio. Portfolio management is a continuous and dynamic process that requires constant monitoring and adjustment. It is an ongoing process that includes:

- Identifying the client’s objectives and constraints;
- Developing appropriate investment policies and strategies, which take into consideration market and economic conditions;
- Implementing policies and strategies – security research, selection and portfolio construction;
- Performance measurement and evaluation;
- Re-balancing or readjusting the portfolio to reflect changes to some or all of the inputs upon which the original plan was based.

There are essentially two types of Portfolio Manager: the Relationship Manager, who deals directly with the client; and the Fund Manager, who is responsible for asset selection and portfolio construction.

Relationship Managers advise clients directly and implement portfolio strategy plans for clients. They do not perform security analysis, nor do they buy or sell the securities within the portfolio. This type of manager is focused on allocating assets based on the client’s ultimate objectives for the assets, subject to any client specific constraints. He or she will choose, on behalf of the client, portfolio management is broadly defined as the process for investment in financial and real assets to meet financial objectives from among professionally managed products and will constantly monitor the performance of the funds. The manager also analyses economic and market conditions, as well as any changes to the client’s situation that would dictate a rebalancing of the portfolio.

Fund Managers typically do not deal directly with retail or institutional clients. They manage a fund on the basis of a specific mandate or with certain constraints. This type of manager will typically manage a pooled pension or mutual fund.

Portfolio Managers should do both of the above and work with the client to develop, implement and monitor an agreed investment plan. The plan may include trading at least a portion of the client’s portfolio, as well as buying and selling individual securities to create a segregated portfolio specifically tailored to the client’s situation. Portfolio Managers should provide guidance that will support tactical asset allocation, which is the deliberate and temporary departure from a strategic asset allocation for the purpose of profiting from market opportunities, gaining protection from specific risks and enhancing diversification, based on expectations about future correlations between asset classes.
The Investment Manager’s Role through the Captive’s Life Cycle

A Captive insurance company is a corporate entity designed to improve the risk management structure of the business, while deriving financial benefits through the most optimal financial and operational structure. Captive insurance companies are typically domiciled in jurisdictions that are well regulated and have the infrastructure to provide them with high quality banking and investment services to make their business successful. Over the last 30 years, Barbados has provided the infrastructure needed to attract several Captive insurance companies with significant cash flows, resulting in the growth of the international business sector.

Branches and subsidiaries of most of the large Canadian banks are located in Barbados. These entities provide banking and investment products and services to companies across a range of industries. The Investment Manager and Banker are usually inextricably linked at these major banks, providing a single point of service. This provides added value in relationship management and service delivery.

Banking services usually sought by Captive Insurance Managers include accounts in major currencies, global cash management, fully automated wire transmission services, extensive correspondent banking access, internet banking, international money orders and drafts, cross border setup, treasury products and services, foreign exchange transactions, standby letters of credit (NAIC & OSFI approved), documentary credits and bank guarantees. A standby letter of credit is usually an important element of the reinsurance programmes within the Captive insurance structure, and all of the

THE MAJOR INTERNATIONAL BANKS PROVIDE A ONE STOP SHOP TO SERVICE THE DAY-TO-DAY BANKING AND INVESTMENT NEEDS OF THE CAPTIVE THROUGHOUT ITS DEVELOPMENT.

The Captive Manager is focused on maximising return on surplus funds, while also protecting the company’s capital base. The selection of the Investment Manager is therefore a key decision for the Manager. Investment and Asset Management services are available for those Managers assessing the following:

- Money Market
- Fixed Income and Equity
- Structured Products
- Asset Management Services
- Securities Trading
- Custodial services.

Investment management involves the professional management of investment products from various asset classes according to predetermined guidelines that maximise the return on those assets. An Investment Policy Statement (IPS) is a critical element, and many Captives are affiliates of listed companies which have well developed investment policies – so the parent’s IPS can be used as a basis for the Captive’s IPS, along with specific guidance from the Captive’s board.

Given the conservative investment outlook of most new Captives, the IPS could reflect an asset allocation of 90% fixed income and 10% cash, with ranges to reflect the flexibility provided to the Investment Manager, but this can change as the Captive matures to a more balanced portfolio. In addition to the asset allocation, the IPS addresses the Captive’s appetite for exposure to issuers, industries→

major international banks in Barbados are able to provide this through their respective global trade finance service units.
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and geographical location, currency exposures, credit quality, the time frame within which the Manager should return the portfolio to its strategic allocation, ethical considerations and any other issue that is considered important to the company.

The interaction between the Investment Manager, the bank and the Captive Manager is a dynamic one that involves the issuance of monthly statements that provide updates on the economic situation, current valuations and returns for the month and year-to-date. Regular communication takes place between the parties as needed. While all Captives hold an annual meeting, some schedule quarterly meetings, at which the board of directors considers the Investment Manager’s report and takes the opportunity to review the investment strategy, given the economic conditions that exist at the time.

Several Captives in Barbados have benefited from the professional management of the island’s Investment Managers, flourishing from infancy to adulthood and developing strong roots.

CASE STUDY –
J&T BANK AND TRUST

Sophisticated Private Banking in Barbados

J&T Bank and Trust has been in Barbados for 14 years and is owned by the fast growing, central European based J&T Finance Group, which has assets in excess of US $6 billion and capital approaching US $1 billion.

In Barbados, we have 32 staff dedicated to providing the best of private banking services for our wealthy individual and corporate clients, through our dedicated team of trust, corporate, investment and back office professionals.

J&T Finance Group was attracted to Barbados as the jurisdiction of choice in which to create a base for growth into the Americas, Barbados’ treaty network, strong reputation, deep pool of human resources and quality infrastructure, made it a natural location from which to grow.

We plan to have offices open in Canada and Mexico by the beginning of 2011, and have affiliated banks in Zurich, Prague, Bratislava and Moscow. We are proud to be playing a part in developing the Barbados International Financial Services sector.
Investment Management …
Discretionary vs. Advisory

When investors are considering their various options, there is one very important decision they will need to make - whether to select a "discretionary" investment relationship or an "advisory" investment relationship. These two options vary considerably, so investors should make sure that they understand each one clearly before determining the most appropriate solution to meet their needs.

Discretionary investment accounts are for investors who don't have the time or expertise to be actively involved in managing their assets. As a result, they delegate the "day to day" investment decision-making process to the Discretionary Investment Manager. Institutional clients, such as captive insurance companies, often favour discretionary investment management as the client (the Captive Manager) does not typically want to be involved in the "day to day" process.

If a discretionary investment solution is selected as the preferred choice, a client will first establish their overall investment objectives with the Investment Manager or Relationship Manager. This can be done in the form of detailed discussion or through established risk-return questionnaires. The investment objectives are then documented into an "Investment Policy Statement" (IPS) which is the guideline that the Investment Manager is bound by and follows when managing the client's investments. At no point will the Discretionary Manager deviate from the IPS or take investment instructions from a client.

With an advisory investment account, clients are actively involved in the "day to day" management of the investment portfolio with their Investment Advisor. Selecting an Investment Advisor based on their academic achievements, experience and years in the business is important when dealing with advisory relationships. Clients leverage their Investment Advisor's expertise on everything from markets, currencies and commodities, to individual investment questions. In addition to academic achievements and past experience, working with larger brokerage houses can also add significant value to the advisory relationship, by providing broader and more in-depth research for their clients.

Advisory accounts allow clients to make investments in a wider selection of securities, whereas with discretionary relationships, the Discretionary Manager normally specialises in the more common asset classes such as fixed income and equities. Should the client want to invest in a security or asset class that the Discretionary Manager does not offer, an advisory account would be able to facilitate this need. Thus, making tactical moves between asset classes is possibly easier with advisory accounts.

Advisory accounts can also have an overall asset allocation defined in advance, similar to a discretionary account. This formal definition should be reviewed regularly with the client, as it provides a clear structure for account management. A managed product solution allows some (or all) the assets being invested to be allocated to Discretionary Managers. Thus, a client can have the best of both worlds when working with an advisor and have peace of mind that they can make investment changes at their direction.

With the recent financial crisis and the consequent losses that many investors experienced, there seems to be a growing trend in client preference towards advisory type investment accounts. Clients want to be able to talk with their advisors and gain feedback on markets and securities, and this is not necessarily available from Discretionary Managers on a regular basis. Further, with advisory accounts, clients can tactically tailor their investments more as they move through the various stages of their life cycle, facilitating compensatory shifts in asset classes.

Understanding the differences between a discretionary investment account and an advisory investment account is therefore very important when deciding the structure of a portfolio. This is the case for investors both within and outside Barbados. Understanding the differences will help investors choose the appropriate approach for their circumstances.

Understanding the differences will help investors choose the appropriate approach for their circumstances.
The Appeal of Barbados – A Trust Perspective

BY LYNN A. GARNER

How Trusts Work
A trust is a legal relationship that is created when a person or corporation (settlor) transfers ownership of assets to another person or company who the settlor appoints as trustee. The trustee holds, manages and distributes these assets to designated beneficiaries, adhering to a standard of care in the exercise of these duties imposed by law. In Barbados, we establish many trusts, known as “inter-vivos trusts” (trusts established during the lifetime of the settlor). The assets which can be contributed to a trust may include traded securities, private or operating company shares, life insurance policies, captive insurance companies, aircraft, yachts, collections, real estate, cash etc. A trust can be revocable or irrevocable and can be established for a specific purpose or for the benefit of a class of beneficiaries.

Benefits of Using Trusts
Trusts are often utilised by wealthy families and corporations for the following purposes:
- Possible deferral and/or reduction of personal income taxes, capital gains tax and wealth, inheritance and/or death duties for the settlor or beneficiaries;
- Asset and creditor protection;
- Business succession;
- Probate avoidance;
- Avoidance of forced heirship requirements;
- Protection against foreign exchange controls or public sequestration;
- Corporate Governance;
- Flexibility in dealing with assets or beneficiaries in multiple jurisdictions; and
- Privacy.

Some of the most attractive aspects of the ITA are the provisions related to asset protection

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**Why Use Barbados?**

The following are some reasons why many families and corporations choose Barbados as their trust jurisdiction:

- Strong banking and Anti-Money Laundering legislation;
- Considered a “clean jurisdiction” for transparent planning (not on the blacklist of the OECD, FATF and the IMF);
- Expanding Treaty network (Double Taxation Agreements and Bilateral Investment Treaties);
- Strong Government support for the financial services industry, with excellent and modern trust legislation;
- Well educated and experienced professionals employed in the financial services industry;
- Income tax which applies to individuals, corporations and some trusts. There is no capital gains tax;
- Easily accessible from most major cities, including Miami, New York, Toronto and London.

The laws relating to Trusts in Barbados have their foundation in British common law and rules of equity. Inter-vivos Trusts are governed by two pieces of legislation in Barbados - the Trustee Act Cap 250, 1985, and The International Trust Act Cap 245, 1995 (ITA).

Some of the most attractive aspects of the ITA are the provisions related to asset protection, as well as the strengthened protection against forced heirship provisions. Barbados included the non-recognition of foreign judgments and protection against creditors within the Act. Generally, creditors have three years in which to set aside the terms of a trust, but can only do so if they can establish the intent to defraud. There are three types of trusts in Barbados and below we have included some of their benefits:

1. **Barbados Domestic Trusts** - as the trust is taxable in Barbados on undistributed worldwide income, domestic trusts are often entitled to treaty benefits under Barbados' many Double Taxation Agreements. Use of the treaties may reduce, or even eliminate, tax in the other treaty jurisdictions.

2. **Barbados International Trusts** - the settlor and beneficiaries must be a foreign person or entities. The rule against perpetuities does not apply and foreign source income is not subject to tax in Barbados, unless remitted to Barbados. The legislation governing international trusts also provides for the establishment of purpose trusts. Such trusts do not require specific beneficiaries to be named, but instead can provide for an attainable charitable purpose and are often used for business purposes.

3. **Barbados Offshore Trusts** - are created when the Trustee is licensed under the International Financial Services Act and where the settlor, beneficiaries and assets are foreign. Offshore Trusts are exempt from Barbados tax.
A Global Perspective on Asset Allocation Strategy  BY JOHN PAUL JONES

The discipline of asset diversification, which is often referred to as the main strategy to reduce risk in investment portfolios, is available to investors in Barbados. Given brutal declines across almost all asset classes in 2008 and into 2009, some of the benefits of diversification were clearly undermined. Instead of enjoying the benefits of diversification, many investors were left feeling frustrated and questioning their involvement in the equities market entirely.

So, what went wrong? Theoretically, if diversified investments with suitably low correlations are used to construct a portfolio, poor performance of one investment can be ameliorated by other investments in the portfolio that perform better. It’s an elegant concept ... but, as is often the case with theory it does not always function as it should in the real world. As such, a more sophisticated approach to analysing the mix is needed.

If diversification breaks down when it counts most, what strategies should be employed to limit the potential for investment losses? Static asset allocation is simply not a prudent investment strategy. Rather, actively shifting the asset mix is a crucial component that can limit downside risk by shifting away from overvalued assets toward those that present better value. This may mean re-deploying capital to investment classes that have exhibited defensive qualities when probabilities of heightened market volatility are high. Critically, dynamic asset allocation focuses less on short-term events and more on intrinsic values and risk measures.

Investors should recognize that short-term price swings are the norm with risky assets, even in balanced portfolios. Effectively, investors are purchasing varying levels of risk when constructing diversified portfolios, so that means investors should be able to tolerate short-term volatility - and ignore much of the market noise. A view to longer term returns figures is critical. International investment opportunities and other special situations will always present themselves (emerging markets, inflation-linked bonds, precious metals, and so forth). Confining exposures to purely domestic investments is a sure way to increase volatility and lower returns.

Limiting risk measures to a strictly quantitative science is perilous. Risk is more than just volatility, as history has repeatedly shown. Structural factors and irrational human expectations also determine risk, but a wider analysis of risk is necessary when constructing diversified portfolios. Fundamental risks are perhaps the most common missing element of the typical risk analysis approach.

Looking at today’s investment climate - where to next, and can we expect certain virtues of portfolio diversification to return? It is instructive to reflect on the situation in which financial markets found themselves in 2007. Almost all asset classes were in definitive bubble territory, and risk premiums, across the board, were hitting historic lows. In that environment, diversification was of little value in limiting losses. Rather, that was a time to reduce overall portfolio risk. Today, we have a very different situation. The global economic news continues to be bleak, but that is already discounted in many asset prices. In fact, some risks are now being well-compensated and longer-term expected returns should be ratcheted higher. Indeed, the full benefits of diversification are likely to shine again and the easiest and most transparent method of establishing the requisite diversity is through actively managed ETF portfolio selection.

Exchange-traded funds – What are they?
Exchange-traded funds (ETFs) are baskets of stocks and bonds that trade on exchanges. They are a new way of investing in stocks, bonds and other types of investable assets. With ultra-low fees, tax efficiency and intra-day pricing, “listed portfolios” are leading the way in cost-effective investing. Using ETFs, portfolios can have diversified exposure to many countries and industry sectors and thousands of companies, tracking equity indices on a country, regional, sector and style basis. Fixed-income indices are also available that track both domestic and international government and corporate bond indices and different interest rate spectrums. These “listed portfolios” are selected to actively manage client investment mandates. As such, an active asset mix is achieved with widely-diversified investments that have no specific equity or corporate fixed-income risk. Actively managed ETF portfolios can be used by investors and investment managers based in Barbados and, when used effectively, can deliver superior returns.
Private Trust Companies

BY LIZA HARRIDYAL-SODHA

In its latest effort to attract diverse and long term investments, Barbados is poised to enact legislation which will bring into effect the establishment of Private Trust Companies (PTCs). This unique type of trust company will complement an already expansive financial services landscape and will provide asset management services within an existing international business framework.

After incorporation of the PTC under the Companies Act, Cap.308 of the Laws of Barbados and obtaining the relevant license, PTCs will stand in a unique tax and domicile position and will be able to offer the structuring of inheritance planning to high net worth individuals and their families.

The main attraction of PTCs is that the settlor and his or her family are in greater control over the administration and assets of the trust. This provides flexibility and creates the desired buffer of confidentiality, while protecting the validity of the underlying trust. This flexibility is restricted when professional trustees are utilised. A professional trust company will often not be in a position to offer the settlor the degree of flexibility and the speed of response he/she is looking for, and its employees cannot be expected to be familiar with the business of companies owned by the trust as well as the family members.

The proposed legislation will also allow the PTCs to possess managerial powers, as it relates to the transfer of the trust to other family members, through the use of Board Committees. The “modus operandi” of the PTC will allow the client to make administrative changes as necessary, without actually affecting the trustee position, allow family members to customise the trustee service to meet their evolving needs, as well as allow them to be actively involved in key investment strategies and decisions. The company itself will generally be administered by a fiduciary in the chosen offshore location and will be represented on the Board. Such intimate involvement does not exist with professional trustee services, and in fact if a change of trustee is required, it is usually a lengthy and expensive process.

Good governance practices will be key to the proper administration of PTCs, as there are key risks that have to be mitigated or removed outright. These range from the concentration of power in the chairperson of the Board, to more practical considerations, such as income tax issues and generational representation that may arise if a trust is contested. Additionally, the directors will have to be prudent in their decision making to ensure that the beneficiaries’ interests are served as a whole and not in part. It is likely that PTCs will have to apply for a license, as is the norm in other major international financial services jurisdictions, which means that both owners and directors will have to be approved and that any proposed changes will also have to be approved in advance. This also creates the need for compliance formalities on an ongoing basis.

While initial start up costs for PTCs will include the usual practitioner fees and general administrative costs, the client of PTCs will enjoy the flexibility and advantages of personal control. In addition, the client receives peace of mind that they are actively involved in the management of family assets, which can include succession planning, the ability to give greater assurances of consensus after death of the settlor and the tailoring of investment policies to meet family needs.

Trust management has been a considerable activity in Barbados for 30 years or more. Initially the trust was used primarily by wealthy individuals from the major common law countries, but it is now accepted as a major vehicle for asset protection in all parts of the world. The International Trusts Act Cap.245 of the Laws of Barbados gave Barbados a modern, comprehensive, business-oriented trust regime which has proven attractive, particularly to corporate users. This new, wider market-place for trusts is not only interested in effective tax planning, but also in the efficient management of wealth in a more general sense. As such, Barbados remains committed to being a reputable, innovative and world class jurisdiction that will facilitate new and emerging products through progressive legislation.
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10. Fantastic eateries
11. Trendy cafés and coffee shops
12. Thriving business environment
13. Social outings
14. Swimming with turtles
15. Inspired charity events
16. International schools
17. Daily international flights
18. Touring downtown
Wealth Preservation: Using Barbados as your International Financial Centre  

BY E. ADRIAN MEYER

One cannot write about wealth preservation without looking at the components of wealth in its simplest form - assets and liabilities. Wealth preservation, therefore, is all about maximising assets and minimising liabilities.

**Assets**

When considering the asset side of the equation, there is only one advantage to be derived from holding assets in an International Financial Centre (IFC) - access to a wider variety of investment opportunities.

In most developed markets, there are various restrictions on the types of investment assets that residents can access, largely because of investment protection legislation. For the sophisticated investor who holds his assets through an IFC, this lack of restriction is a major benefit. Having access to a wider variety of investment options results in greater diversification and lower risk. The best example of this is the hedge fund industry, where most hedge funds can only be accessed by private clients through an IFC.

**Liabilities**

It’s on the liability management side that some of the significant advantages of holding assets through an IFC occur.

Sophisticated, compliant tax planning can effectively reduce the tax rate on investment returns substantially, particularly in relation to capital gains taxes. Most countries levy withholding taxes on dividends and some on interest, which means that those investing through IFC’s do incur a withholding tax liability on some income, but this is generally less than what they would pay in their home markets. Most of those investment destinations do not have withholding taxes on capital gains. Other planning can minimise liabilities from creditors, ex spouses and spendthrift children.

Tax treaties generally provide for lower withholding taxes on income and zero tax on capital gains, thus lowering the effective overall tax rates for clients.

**Why Barbados?**

On the assets side, Barbados’ strategy of a low tax, treaty based jurisdiction has ensured that it is white-listed by the OECD. This has real advantages for clients because it allows unimpeded access to the developed world’s investment markets.

Barbados is a common law jurisdiction, which means that the common law jurisprudence relating to trust law, developed over many years, is fully recognised here. The result is a very useful planning jurisdiction for those clients whose wealth preservation requirements include the use of Trusts.

Barbados has particular flexibility with respect to Trusts and there are three types of Trusts that can be set up in the jurisdiction. The choice of Trusts will be dependent on whether or not a client needs to access a tax treaty between Barbados and the country in which the investment is located. Tax treaties generally provide for lower withholding taxes on income and zero tax on capital gains, thus lowering the effective overall tax rates for clients.

In addition, Barbados has effective company legislation modelled on Canadian legislation, which aids the wealth planning process. When it comes to multinational corporate planning, Barbados is an ideal place to hold treasury wealth assets for Canadian corporations. Recent changes in the taxation of holding companies have also made Barbados a very attractive holding company jurisdiction.

In some cases the most effective tax planning can only be achieved by becoming resident in a low tax country. Barbados has an internationally recognised, high quality lifestyle and, as such, is seen as a desirable place to live. Proposed changes in the immigration laws will simplify the process for becoming resident here, and for UK citizens who wish to become domiciled in Barbados, tax law changes that will reduce tax on worldwide income to a low single digit effective rate are imminent.

In conclusion, Barbados brings significant benefits to both asset and liability planning for private clients and corporations. In the current era of low interest rates and low investment returns, using Barbados makes the task of preserving wealth much more achievable.
PwC will assemble the right team around you to help navigate the complex issues that come with global management. Let us help you create value for your business.

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