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Mr. Death

In the last issue I wrote about the Rendezvous Room at the Victoria Hotel in Bulawayo where I lived in Rhodesia (now Zimbabwe) which served superlative Suzettes of the crêpe variety. It was the 1960s and in those days the country was still steeped in its colonial history – although a resident Frenchman in 1950s Saigon would have caught the mood and sense of what was on the horizon. I started work a month after the country's Prime Minister, Ian Smith, made a unilateral declaration of independence in 1965, setting a course for the country which, in chess, is called Zugzwang: your next move, whatever it is, will likely lead to disaster. It is sad to see that today, as you read these words, and with the ghost of Cecil John Rhodes, like Hamlet's father, no longer walking the Rhodesian ramparts, that the country and its people exist in a calamitous state which I never thought possible, even at the height of the sanctions imposed against the rebellious colony by the United Kingdom.

It started slowly, but over the course of time terrorism encroached on the lives of not just the farmers in the remote areas of the country but eventually the city dwellers as well. Bombs were planted in shops and sabotage struck at important industrial installations. As you know (particularly today) death and terrorism are inextricably linked and between 1971 and 1977 (the year I left the country) my job was to liquidate deceased estates and manage trusts. Some of the people whose estates I handled for the two banks which I worked for were victims of terrorism. In many cases there was more talk about that rendezvous with death, as the poet, Alan Sager, put it, rather than pleasant dinners in the Rendezvous Room and at one stage I was preparing at least 20 wills a month for young soldiers bound for the border. This run on wills earned me the title of Mr. Death among some staff members of the banking group where I was a branch manager and I had already become accustomed to the frequent jokes associated with my job (did I enjoy a stiff drink or driving dead slow in traffic?).

But liquidating deceased estates, as a young man in my twenties (I was 29 when I left Africa for London), left me with two enduring realisations: the fickle hold we have on life and human frailty which manifests itself with the prospect of gain (especially through inheritance). Both reinforce the need for contingency planning – and clarity – when you are first establishing your offshore structure and although the degree of sophistication required will depend on circumstances, no matter how simple the structure, it is needed.

I spoke at a conference earlier this year which was labelled as an ultimate event. This prompted me to tell my audience that no event is more ultimate than death and they should get their houses in order before it occurs or risk leaving behind not only a mess to be sorted out but perhaps some very unhappy family members as well.

A Significant Puzzle

In the land of the living there has been more farce from Brussels. The European Union Commission wants its senior officials to experience what life is like working in small businesses and the EU industry commissioner, Gunter Verheugen, commented: "We don't need an ivory tower policy." He believes that with such experiences behind them, the commission's administrators will more readily understand the problems faced by small businesses and become their ambassadors.

It will be more challenging, I'm sure, than when the commission addressed the issue of taxing diapers because making a mess is something it is already expert at. Speaking of which, the EU tax savings directive has recently been in the news. It took 14 years to put the directive in place so that interest earned by EU citizens in other member (and a few non-member) states could be taxed. It came into force in July, 2005, and in the first six months Switzerland's tax collections amounted to about $125 million. Hardly encouraging when the country is the world's biggest offshore financial services centre on the basis of funds held. But as James Nason of the Swiss Bankers' Association observed: "The EU designed this directive. Switzerland implemented equivalent measures under its separate agreement with Brussels and these are the results."

In fairness, it has to be appreciated that the tax plan travelled a tortous path, requiring unanimous agreement from all EU member states along with additional bilateral agreements with non-members such as Switzerland and Liechtenstein. There were translation errors between the English and the French versions of the directive and some significant loopholes exist (such as the exemption of trusts, companies and foundations from the tax net). But any changes to the savings tax directive will mean a fresh round of negotiations with all the signatories to it and the Swiss Federal Department of Finance has already stated that it does not want to discuss the issue again until 2011 at the earliest.

The EU commission's big bureaucratic brother is the Organisation for Economic Co-operation and Development which is located not far away from Brussels in Paris. Unlike the EU aspirations, however, the OECD is hoping to create a global tax system. Its particular project is 10 years old and is in no better shape than the EU initiative. If, as some argue, Switzerland is the weak link for the EU's tax directive then the United States of America plays a similar role as far as the OECD is concerned.

In 1947 a US judge observed: "Taxes are enforced exactions, not voluntary contributions. To demand more in the name of morals is mere cant." Putting morals to one side, it is hypocrisy that has inflamed the debate. In 2004 the US Security and Exchange Commission's chief accountant said that "sunlight is said to be the best of disinfectants and the area of income tax accounting could use more sunlight." At this point let me mention Richard Hay, Co-chairman of the International Committee of the Society of Trust and Estate Practitioners. (I joined STEP in the early 1990s soon after it was formed, when its membership was still in the hundreds. Today it is a force to be reckoned with within the international trust and estate field). Mr. Hay complains – quite rightly – that the US in particular is undermining the OECD's initiative to fight tax evasion and says: "The OECD's bid to end harmful tax practices cannot just be for the little people in the global economy. If companies with secret ownership merely migrate out of small finance centres and into the US, what is the point of the OECD's project?" This criticism follows an OECD report earlier this year entitled: "Tax-cooperation: Towards a Level Playing Field" which studied how 82 countries obtained and exchanged tax information.

Unintended consequences have produced a few red faces and if sunlight is indeed good for income tax accounting, then more of it is needed in some of the OECD countries, with the US being at the top of the list. The OECD report was made at the behest of small finance centres who argued that the standards expected from them did not correspond with the ones in some OECD countries. It is possible, for example, to incorporate anonymously-owned US companies for foreigners which flaunt the lack of transparency complaints made against other countries. STEP says that US states such as Delaware, Nevada and Wyoming are classic examples. An April, 2006, report by the US Senate's General Accounting Office was very clear: "Most states do not require ownership information at the time a company is formed and while most states require corporations and limited liability companies to file annual or biennial reports, few states require ownership information on these reports."

And compliance costs for small finance centres responding to the OECD's complaints have become a problem. The report of the Commonwealth Finance Ministers meeting in

Colombo, Sri Lanka, in September concerning co-operation with tax transparency and related initiatives observed: "The costs involved in meeting the new standards have exceeded the identifiable short to medium term benefits that have resulted for both the public and private sectors. The leading benefit of compliance with the multilateral regulatory initiatives was said to be enhancing the jurisdiction's reputation. However, the lack of any observable benefits from the positive reputational consequences of introducing new, more demanding regulations poses a significant puzzle." Indeed. It is not surprising then that Panama, along with other countries with financial services centres, has little enthusiasm for moving the OECD's agenda along when many of the missing pieces to the puzzle can be found in the US.

Exploding Frogs & Other Issues

As we know, death and taxes are life's two certainties and the need for planning can become even more vital if you are going to have any of your business affairs conducted offshore. I cannot begin to guess, however, the number of times I have counselled caution before taking the offshore plunge. But you can only take it so far, as the exploding frog featured in a variation of one of Aesop's Fables found out. A frog is sharing a field with a huge ox. The frog attempts to get the ox's attention by puffing himself up, but to no avail. In the end the frustrated frog puffs himself up so much that he explodes. And still the ox doesn't notice him.

Oxen aside, having exercised caution and done your research, the next thing is choosing an offshore jurisdiction. That will always depend on your objectives and it's quite possible that some of the advantages hoped for will not be possible if you are to achieve the main objective. Increasingly, a slice of the cake has to be sacrificed. What you don't need to do, however, is sacrifice the standard of service you expect – unless frugal foolishness gets in the way. Quality does cost and as Jonathan Swift said, you can't make a silk purse out of a sow's ear. On cost I think that John Ruskin, the great Victorian art critic, expressed it as well as I have read anywhere: "It's unwise to pay too much, but it's unwise to pay too little. When you pay too much, you lose a little money – that's all. When you pay too little, you sometimes lose everything, because the thing you bought is incapable of doing the thing you bought it to do." And he added: "There is hardly anything in the world which someone can't make a little worse and sell a little cheaper – and people who consider price alone are this man's lawful prey."

And just as you should be careful with your choice of professional, they should be equally cautious in accepting you as a client if they are worth their salt. With an increasing number of wealthy people becoming aware of the array of offshore opportunities available, the number of enquiries is growing – and so is the risk that some of the enquirers are less than honest. Searching questions directed at you should not cause offence: it tells you what calibre of client you will find your own file next to. Shakespeare wrote in Othello: "Reputation, reputation, reputation! O, I have lost my reputation! I have lost the immortal part of myself, and what remains is bestial." The wise professional understands that it is the immortal part of business as well.

Leave it to Beaver

There is some cause for celebration in the Republic of Panama this Christmas season. In January the country will replace Argentina on the United Nations Security Council and last month Panama celebrated its 103rd anniversary. The month before that its citizens approved a plan to enable its world-famous canal to service ships twice the size of those presently able to traverse the isthmus. Panama's commercial ambitions extend beyond shipping, however, and, during the decade that I have lived here, it has been gradually improving its banking and other financial services. Its foundation law, in particular, has prompted other offshore centres to strive to replicate its success. Panama's foundation was modelled on the Liechtenstein variety but many believe that Panama has built a better mouse trap. It reminds me of the rabbit and the beaver by the Hoover dam: "Did you build that?" asked the rabbit. "No, but it was based on an idea of mine," answered the beaver. Panama already has the fundamentals for any offshore centre: sovereignty; political and economic stability; a strong infrastructure and excellent communications (in technology and travel).

Besides its attractive offshore business laws and respect for privacy, which it shares with Switzerland, it has adopted a prudent fiscal policy. There has been a restructuring of the country's sovereign debt profile and most shorter-dated debt has been replaced by longer-term bonds; all remaining Brady bonds have been swapped for conventional debt and a major fiscal reform package will raise revenues from new business taxes, reducing the country's level of debt.

The ratings agency, Standard & Poor's, announced that it has revised its outlook on Panama's long-term sovereign credit rating to "stable" from "negative", whilst also affirming its "BB" long-term sovereign credit rating and commenting that the government has "demonstrated a firm commitment to reduce fiscal imbalances by advancing a politically aggressive tax reform to reduce loopholes in Panama's tax regime, while at the same time reducing government expenditure over the next few years." The ratings agency expects that Panama's fiscal reforms will reduce the general government deficit to 2% of gross domestic product by year-end, down from almost 5.5% in 2004.

So the country has steered a course which has taken it away from shallow waters. It is progressing nicely and the arrival on its doorstep of the OECD global tax plan is most unwelcome. Egyptians smash an ulla (a cheap clay jug) on the threshold of their house when an unwanted guest leaves to be certain that they never come back. But by the looks of things, it will be other jurisdictions, rather than jugs, that will be Panama's best defence against the OECD.

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