

The Fate of Financial Centres: Ours, ourselves to ruin

By:

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PART I



Let's approach this in two parts. Part one goes this way: I promised not to write anything regarding the financial services in The Bahamas; since I find it is futile and whilst politicians of all stripes say they are committed to it, I have never heard anything that suggests they understand it, care about understanding, or know how to defend it.

Further reasons for my resolve are unassailable: I spent 5 years trying to defend financial centres in every corner of the globe; or very nearly. Yet, except for a handful of Swiss banks, and one very senior Swiss banker, (a man of extraordinary grace and insight), I have never met a government official, or seen a policy proposal or heard an argument from an official anywhere – except Singapore – where there was a genuine understanding of financial centres and their corollary issues; those being: The transactional nexus (clearing and custody) in the Global Financial System (GFS); tax arbitrage; convergence; comity; rules of recognition; legislative secrecy v. constitutional privacy; the avoidance/evasion distinction; the privilege problem (as it relates to information transfers); Immigration and Labour laws; the sovereignty problem and the economic profile of jurisdictions offering financial services.

Let me state unreservedly my position vis-à-vis Cross-border Tax Competition (That is to say, where I stand on “blacklisting” and tax arbitrage): It has been a tradition in our law in the West, that no nation enforces the financial laws of any other nation. The OECD and IMF recognize this – believe it or not – in their founding constitutions. Their behaviour has been in breach of that tradition. With that, my views are as follows:

- Singapore is the only designed financial centre in the world. Every other financial centre arose by accident. And most still reflect that accidental development.
- Switzerland, Bermuda, Cayman, BVI, Panama and Cyprus are centres that found their footing over time, cultivating specialty expertise in critical areas.
- The Bahamas – which should be in Singapore’s place after Switzerland – has fallen furthest amongst financial centres.
- Of the business models that I think are sustainable, Singapore is the best. Bermuda and BVI are second. Panama and Cyprus are next. Switzerland is in a class by itself (not necessarily better, just different) and The Bahamas and Cayman are the most vulnerable.
- As regards the business models of the various centres: Singapore’s and BVI’s are the most advanced. No one will interfere with Panama because of the Canal. Bermuda is advanced, but, it has failed to determine what scale is desirable, profitable or defensible. Put simply, they have not thought out how big they want to be or can be, and when and if they will begin to expand their footprint to other jurisdictions. This is a sign that they are not in complete command of the development of their financial sector. The Bahamas gave birth to everyone, but appears cobbled together and Cayman is excellent at what it does, maybe even the best, but what it does is the most despised by larger, more powerful nations.
- *Here is the critical issue for me on the financial centre side therefore:* Even though the two largest financial centres in the world are London and Manhattan, and even though, in the US, Alaska, Delaware, Colorado and Nevada are doing precisely what the OECD and now Levin-Schumer-Obama railed against, and even though financial centres had nothing to do with financing terrorism (that happened in some of the most famous banks in the G-20 nations) or the meltdown of the global financial system, I believe that in spite of all the talk of equality between nations, the *Realpolitick* is that powerful nations are powerful and will ignore the law to gain their objectives; using power to beat competition. AND I DO NOT BLAME THEM.
- I neither care for, nor regard pure tax arbitrage expertise as a strategic or sustainable business model. The world has passed it by. It was a business model amenable to the 1960s. It is not global finance. Again, part of the hypocrisy is that G-20 nations themselves are engaged in tax arbitrage. But when you are small, you must be clever, nimble, and know the distinction between right and power. We have one and not the other. Our only comparative advantage is “candle-power”, which we have traded, most often for begging and pleading. We should have been able design, advance and defend our business models, against anyone, no matter how powerful; and not by begging for mercy, but by force of an intellectual argument based on the law of competition. It is our failure and our fault – not their hypocrisy - that we are now faced with capitulation, criminalization and annihilation.

HAVING DEALT WITH FINANCIAL CENTRES, LET'S DISCUSS THEIR OPPONENTS-

- The OECD Harmful Tax Initiative was in my view a farce, hypocritical and an affront to law and comity.
- This does not mean that they did not have meaningful arguments, which may have been put to financial centres within the bounds of comity.
- The OECD nations could not, didn't and won't enforce the demands made against financial centres, against their own members.
- OECD members employed their size to force out competition from small nations.
- They have used false numbers, false authority and dubious rationale for not engaging financial centres according to law, and have debauched the international treaty system with nonsense "agreements" forced on small jurisdictions, even where it was unconstitutional in the small nation.
- This habit and attitude to law is exactly the same attitude that has led to the near collapse of the global financial system.

With that, let's turn to the substance of this discussion: The several aspects of the preceding curricula that constitutes the basis of a financial centre, maybe recognizable to some, yet, you will not study this in any university anywhere. Because this is an industry that grew up as a substrate to global banking, in fact preceding it in many ways; as financial services was global before banking.

Even if one understands the foregoing curricula, still, there are the geostrategic issues, counter-balancing issues, demographic and social safety-net impacts on economic policies in G-20 nations that can erode the competitiveness and even viability of financial centres. But make no mistake, anyone who has a clear idea of what creates and sustains the opportunity for financial centres, also has a keen understanding of the economic and demographic issues of every country in the G-20.

From this curricula and the historical background of knowledge drawn from it, there is also the aspects of cross-border regulatory imperatives, negotiation and diplomacy. Altogether, these are the basis of understanding financial centres, their origins, design, function and evolution. Unless – dear reader - there is evidence somewhere that this knowledge is available and active in your context, no matter how it seems otherwise, you do not live or work in a financial centre likely to survive.

PART II-

I think I met Mr. Elcott Coleby of The Bahamas once before. At the time I think he was speaking in that impressively courageous manner, which, if I remember correctly, is both his style and substance. Mr. Coleby has written, courageously again, to www.bahamasuncensored.com praising some suggestions of my good friend, The Honourable Alfred Sears MP, the Attorney General of The Bahamas, erstwhile.

Mr. Sears unveiled a series of proscriptions for The Bahamas, with no distinction between what was necessary for the country as a financial centre, as distinct from financial services; such as a package of financial services products from The Bahamas.

As said, Mr. Sears is my friend; himself possessing a mind of luxuriant fecundity, it is no small thing when such a man puts forward, not merely ideas but a plan for the salvation, though not the maintenance of an industry that generates 20% of the nation's *Gross Domestic Product* (GDP).

I must argue these points with my friend, publically, because even the limits of what he proposes, he could have done in government as the Attorney General – unless I misestimate his authority-, and he and his party, as parties and governments before and since, have done nothing – mind you, I said and mean absolutely n-o-t-h-i-n-g to advance the Bahamas as a financial centre.

We must be, never, in the habit of confusing activity for action. For the most furious activity, if wrong-headed, or worse, bone-headed, is more deleterious than inaction. To add to these philosophic points against which we are in the habit of raising excuses (well, we understand now or at least we are trying, as if the world waits around for laggards), let me say: there is a season for everything. And in the midst of a crisis, there are opportunities laid open, which do not open by design, but are opened by force of so complex a set of circumstances, which couldn't be arranged or negotiated deliberately. Woe to the man who does not seize the opportunity in its season, then dares to congratulate himself for a late start to a near impossible mission.

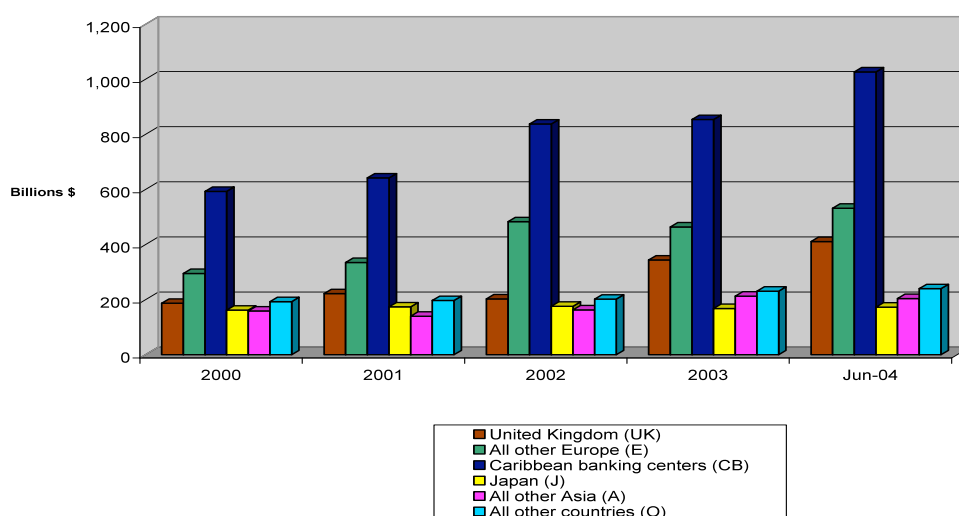
It is impossible in this space to deal with all of the steps taken wrongly or things said – in excuse – that are mistaken for policy or to discuss the variety of initiatives that emerged out of the various institutions in the G-20 or whether those initiatives are feasible, and if so, fair; and if so, even legal.

In Mr. Coleby's preliminary remarks referred to earlier, is one of the themes that Financial Centre governments should have counteracted as a matter of law. Twice Mr. Coleby uses the term "avoidance"; in one case he uses "inappropriate avoidance". Except the law knows no such concept. It is not Mr. Coleby's fault. That is the term the OECD, FATF and governments in the G-20 have begun using even though tax avoidance is not illegal. It is the failure of financial centre governments and their Attorney Generals – in particular that avoidance which is legal, is now nearly criminalized, even though, again, there is no law against it.

The second point Mr. Coleby raised is that of the \$100 billion figure that has got bandied about as the loss to the US Treasury. Again, it is not Coleby's fault. That is the number flung out by those who oppose financial centres, even whilst their own governments allowed the destruction of \$3-trillion dollars of global wealth through criminal activity.

The fact is no one knows the amount of "loss" to the US Treasury. The figure kept rising as each amount failed to create the sensation those using the figure expected. But take this to heart: let us always argue the numbers, for therein lies our salvation, in this case, undeservedly. However, according to the US Treasury, and confirming *The Landfall Centre's* research 4 years before: International Financial Centres IFCs are responsible for moving nearly USD Equivalent \$23 Trillion dollars around the global financial system. (For instance, The Bahamas moves nearly USD\$207 Billion in private banking structures; USD\$350 Billion in Funds and another USD\$300 Billion in Trust structures and Companies, largely into US Securities for a total of nearly USD\$1 Trillion dollars directed toward the US. Cayman moves 2 times as much and Switzerland 7 times as much). Here is the coup d' grace: even if you accept the bogus \$100 million dollar figure, Financial Centres invest trillions of dollars into the US capitol markets, funding therefore US deficits, national and household debt.

Chart CM-A --U.S. Liabilities to Foreigners Reported by U.S. Banks, Brokers and Dealers with Respect to Selected Countries



(In millions of dollars: Source: Treasury International Reporting System)

Country	2000	2001	2002	2003	Jun-04
United Kingdom	187,145	222,032	203,237	344,189	411,033
All other Europe	294,716	334,586	483,421	463,853	531,634
Caribbean banking ctr\1 \2	593,499	641,952	837,771	853,896	1,027,255
Japan	162,449	173,640	176,331	168,469	173,037
All other Asia	158,524	140,329	162,938	212,870	203,718
Subtotal	1,396,333	1,512,539	1,863,698	2,043,277	2,346,677
All other countries	192,856	197,241	202,433	231,205	239,710
Grand Total	1,589,189	1,709,780	2,066,131	2,274,482	2,586,387

The tallest blue bars in the chart represent not only the liabilities of US banks to Foreigners, but more importantly, where those liabilities are structured; almost twice as often through the Caribbean. And these are only bank liabilities to foreigners who lend the US their money through financial centres and do not include US securities; which is to say Stocks and Bonds, or Capital Stock such as buildings, technology and equipment.

Now in conclusion, we turn to the substance of The Hon. Mr. Sear's proposals. I shall go to the problems directly and swiftly. But let me preface myself: First I do not believe in tax arbitrage as a business. This has nothing to do with the US or the OECD. I simply find it inelegant and our attention span is far too short to defend it meaningfully. Second, as a business model, it is stuck in the 1960s and the model implies that there is nothing of value in the place where it is practiced. Third, as a model, tax arbitrage

allows the bank owners to send unknowledgeable “professionals” to ‘man’ their institutions, creating a hard ceiling against advancement for locals. Fourth, tax arbitrage puts a jurisdiction in direct opposition to large nations whom they do not have resources to challenge. It means a small corner of your financial services industry has the power to alter the relationship between the entire country and its larger neighbours. With that, on to Sears’ proposals, which either requires us to beg for help or asks us to undertake measures demanded by others, whilst requiring nor demanding anything for the benefits of Bahamians in this sector:

- a. Mr. Sears’ proposals mention ridding the Bahamas of “Secrecy”. In The Bahamas, uniquely, there is no “offshore secrecy”. Article 23(2), 2 outlines “constitutional privacy” as a Supreme Court obligation that cannot be delegated. Secrecy is arbitrary. Constitutional confidentiality goes to the heart of sovereignty.
- b. Sears’ next six proposals have already been forced on us largely; with governments of every stripe in The Bahamas accepting that force uncritically, and even claiming – without care for constitutional obligations – the “we went further than was required”. No nation intending to be taken seriously would say that. Small nations can accept the reality of the power of larger nations, whilst gaining respect for standing firm on constitutional grounds.
- c. On the lobby front, I cannot say how many times I recommended this across the Caribbean. However, we seem to think Americans make better lobbyists than our own professionals. I have had National Leaders say, “Oh, I know Charlie Rangel. We have got our situation sown up”. In Washington DC itself, this is seen as total ignorance. An American can only go so far opposing his own government for another. Second, they will never understand the deeper historical or cultural aspects of our financial centre; particularly since our own politicians on both sides lack that understanding themselves. Should Americans be part of the team? Yes. But we must defend ourselves, *ourselves*. And in that case, the most important city, and state is not Washington DC, but Miami/Fort Lauderdale, Florida. And the most important name is Meeks, not Rangel.
- d. Two of the remaining proposals are protest. We have no credibility to protest anything. And to have to protest means you have no credibility. I know what Sears means, (lodging a formal complaint), but again, when you have intellectual power over a subject, you do not protest, you negotiate.
- e. One of the final remaining proposals calls for a Research Centre. Again, why not when in power? Why after 50 years of financial services, just now? Moreover what is needed now is to determine what sort of financial centre The Bahamas will be. Are we a Private Banking Centre? No one seems to know. We have a hodge-podge of rules, with frequent nonsensical inconsistent amendments (usually at the behest of some foreign entity, in breach of Article 48 (1) b of the Constitution).
- f. The suggestion of a global conference is again a good one, the best one made. However, again, nothing in the conference proposal, as in any of the other proposals, aims at bringing revenues to The Bahamas government or advancing opportunities for Bahamians. When 5 years ago Maurice O. Ginton and Leandra Esfakis took the step of defending Legal and Professional Privilege – developing a series of brilliant arguments confirmed

by courts all over the world, (including the House of Lords) most lawyers were indifferent. Moreover, the AG then (Sears), appealed the decision. The lawyers, clients and judges around the world connected with this issue, should form the basis of the attendees at such a conference. But, I put it to you in want of basic clarity, how can one now convene that conference in a country that rejected their collective wisdom?

I close with this, our negligence toward our financial centres – across the Caribbean – reflects a clear misunderstanding of how they are constituted, their meaning and role in the global financial system. We have an industry that is larger, and more significant than our capacity to understand it.

Nowhere is that more visible than in personnel. In the case of the Bahamas, the expatriate personnel can be seen as two types: the first is professional (like Christian Coquoz, Yves Lourdin or Alison Yule) and then the playboy types who sit at the head of a bank, but spends 90% of his time scuba diving. This has led to tensions, which cannot be resolved because there are no growth prospects for the industry, because – in turn – we do not know what we are, how we came about and what our role is in the global financial system.

Here is how the tensions function: The expats say clients are comfortable with people who speak their language and are from their culture. Fair enough. Bahamians say, we have degrees and qualifications and cannot get the top jobs. Also fair.

I will say this to end: in this argument between Bahamian professionals and the expats', whether the latter are qualified or not, both of them are wrong. Both of them (one group defending a position that cannot last, the other hoping for a position – defined by someone else - that time has passed by), are outside the cutting edge fighting over that which they did not create, do not understand and cannot defend.

There is a better way, a more meaningful approach, in which everyone can get what he or she wants. But that cannot be advanced in this forum.