

# Bayshore Offshore Update – Q1 2008

January 2008

## Bayshore Bank & Trust (Barbados) Corporation

Bayshore Bank & Trust Corporation, through its chartered operations in Barbados, offers a variety of financial services specifically designed for high net worth individuals and corporations. It is a member of the Bayshore Group of Companies, an organization that has been serving investors for over a quarter of a century through its diversified financial operations. Bayshore uses a global network of strategic alliances including Citibank Smith Barney, CIBC, UBS and Merrill Lynch, to source “best-in-class” investment programs. Bayshore provides a true turnkey wealth management relationship from private banking facilities and investment management services, to trustee and corporate services.

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## Tax Information Exchange Agreements - A Canadian Approach

As part of the 2007 Federal Budget, Canada introduced certain international tax measures to address both international tax avoidance and international tax evasion issues. The “International Tax Fairness Initiative” included among other things an initiative to introduce a response to deal with the secrecy laws in foreign jurisdictions that facilitate tax evasion in Canada. Canada is seemingly proposing to abandon over three decades of international tax policy in favor of a “carrot and stick” approach designed to improve the exchange of information with the tax authorities in the jurisdictions where Canadian businesses are operating.

### Carrot and Stick

The “carrot” being to allow “exempt surplus” to be returned to Canada from any jurisdiction regardless of whether it had a tax treaty with Canada. All that would be required for such a jurisdiction to receive this preferential treatment for its corporate residents would be for the jurisdiction, wherein the business operated, to have executed a Tax Information Exchange Agreement (“TIEA”) with Canada. Today, there are about 32 TIEAs in the world, involving members of the Organization for Economic Cooperation and Development (“OECD”) like the United States, the United Kingdom, Canada and Netherlands, on the one hand, and tax havens like the Bahamas, the Cayman Islands and the Netherlands Antilles, on the other. Most of these agreements follow a model convention promulgated by the OECD which identifies the scope of the taxes in respect of which information is sought and lays down certain rules on how to obtain such information.

The “stick” being to eliminate the distinction between a foreign corporation’s “active” and “passive” income by requiring that any income earned by a foreign affiliate in countries which have neither signed a Tax Treaty or a Tax Information Exchange Agreement with Canada, will be taxed currently in the hands of the Canadian shareholders of those affiliates. In essence, the proposed measure would expand the scope of FAPI to include active business income earned in a non-TIEA country where that country fails to conclude a TIEA with Canada within five years of being invited to do so.

## A Change of Policy

If these changes are enacted as proposed, it appears that these initiatives would represent an about-face in Canada's tax policy on foreign affiliate taxation, a longstanding policy that Finance officials have historically defended. The implementation of such changes also sends mixed messages to the so-called tax haven countries and the companies and individuals that operate within such countries.

For many years, Canada's Department of Finance officials have defended the favorable tax status of certain countries like Barbados, Ireland, Cyprus and Malta on the basis that while they have lower tax rates on some business vehicles, their overall tax systems are roughly similar to that of Canada. Moreover, it is inappropriate for Canada to dictate to such countries how they should construct their tax incentives, on the principle that Canada has its own biases and incentives and would resent being told by other countries how best to operate its tax system.

With a new policy that grants equal Canadian tax benefits to a tax haven based corporation, provided the tax haven enters into a TIEA with Canada, as it would to a corporation in Ireland that pays 12.5% tax, Canada has completely opened the flood gates to a new era in international planning. The years of defending the favourable tax status of certain Treaty partners and the further attempts to justify the overall similar nature of such countries' tax systems in comparison to Canada's is no longer relevant. The bottom line would now seem to be that the tax systems, tax rates, etc. are immaterial as long as there is a free flow of tax information.

Interestingly, no other OECD member country has had to resort to tax incentives or the adoption of new tax policy in order to induce a tax haven counterparty to enter into a TIEA, which makes Canada's approach that much more bewildering. For example, the US was the first to secure TIEAs and it now has TIEAs with Barbados, Bermuda, Jamaica, Mexico, Trinidad and Tobago, Antigua and Barbuda, Aruba, the Bahamas, Costa Rica, Dominica, the Dominican Republic, Grenada, Guyana, Honduras, the Marshall Islands, Peru and St. Lucia. Under pressure from the European Union, the UK compelled its dependent territories and crown dependencies to sign savings income TIEAs and the Netherlands also compelled Aruba and the Netherlands Antilles to sign TIEAs. Although the OECD has yet to comment on Canada's approach to securing TIEAs, it is interesting to note that the OECD has recently announced that significant progress has been made in securing TIEAs.

It should come as no surprise to tax practitioners that corporate clients are constantly evaluating different options and strategies to minimize their global tax bill. Establishing and administering an effective international tax policy that on one hand ensures the domestic tax system is fair by requiring all tax residents to pay their fair share while on the other hand providing economic stimulus to allow global competitiveness is a fine balancing act. It is open for debate whether the mere

execution of a TIEA is a sufficient enough objective to justify Canada's proposed change in policy.

No doubt, Canada's ability to secure TIEAs without the "carrot and stick" approach will prove more difficult. That said, in today's international competitive market for attracting capital, where certain tax havens actively seek to be removed from lists of Harmful Tax Regimes (the OECD), and from lists of uncooperative regimes published by the Financial Action Task Force, and where tax havens enact their own anti-money laundering legislation, OECD countries should be finding it easier and easier to persuade tax havens to enter into TIEAs. Lastly, in our view the days of clients (corporate or individual, Canadian or otherwise) relying on "secrecy" to defer, avoid or even evade taxes are a thing of the past. In today's digital age and flattening world, nothing is secret for very long and any client that hopes to shield itself with this defence will soon falter. The changing times, have and will continue to ensure an open and instantaneous distribution of information regardless of Canada's decision to implement the proposed measures.

## Service Provider Implications

The uncertainty of the outcome of Canada's proposed approach does reinforce the importance of having a multi-jurisdictional platform for Corporate and Trust service providers such as Bayshore. In addition, it is impossible today to predict whether a tax-haven country will agree to Canada's request or see the business income in that country receive FAPI treatment. This uncertainty reinforces the stability, low tax rates and predictability of tax treaty countries such as Barbados.

## Spotlight – Corporate Services

Bayshore Bank & Trust has a dedicated team of seven staff providing industry leading corporate services to our international client base. The team, which includes two dedicated professional accountants and experienced corporate secretaries, is headed by Philip Kingston. Philip, a lawyer and seasoned corporate services practitioner, has worked in the field for 19 years including 13 years at global accounting firms before joining Bayshore in 2002. The Corporate Services Team offers a full suite of services in several Caribbean jurisdictions including incorporations, license applications, provision of director services, financial accounting and administrative services, local tax compliance services, management of corporate meetings and liaison with local auditors. The team also leverages its position within a full service bank by providing banking and cash management services. To contact the group call:

Philip Kingston at (246) 430-8650, ext 654 or email [pkingston@bayshore-international.com](mailto:pkingston@bayshore-international.com)

## Upcoming Events

Canadian Manufacturers & Exporters Conference –  
January 23-25, 2008, Hilton Hotel, Bridgetown

[www.cme-mec.ca/barbados2008](http://www.cme-mec.ca/barbados2008) or contact Gerard  
Dominic, Canadian Manufacturers & Exporters, Nfld.  
Division (709)-689-9700

Barbados Jazz Festival – January 14-20, 2008

[www.barbadosjazzfestival.com](http://www.barbadosjazzfestival.com) tickets available  
online.

Barbados General Election – January 15, 2008

## Barbados Spotlight – Bath Beach

Bath is one of the most popular beaches on the East  
Coast of the island. Just down from Bathsheba, home  
of the “soup bowl” surfing destination, Bath offers  
great swimming and a beautiful grove of trees for  
picnicking.



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