

## **LATAM FOCUS ON BARBADOS**

Economic and political instabilities in certain Latin American (LATAM) countries have caused their high and ultra-high net wealth individuals to seek safer havens for protection of their assets and preservation of their wealth. Barbados is becoming a focus of their attention as a stable, safe jurisdiction.

Geographically, Barbados is strategically located in close proximity to a number of the wealthier LATAM countries with which it has international treaties – e.g., Venezuela just South of Barbados on northern shore of South America; and both Mexico and Panama West of Barbados in Central America. As well, nearby is Cuba the most populous island in the Caribbean region.

Barbados was itself once a Spanish and Portuguese territorial possession up until 1625 when it became a British colony. Today, business in Barbados is conducted primarily in English; and many service providers have multi-lingual staff to perform services, particularly in Spanish and other languages. Barbados serves as a Caribbean hub for international telephone services in the Caribbean (included in +1 North American area code) and Internet telecommunications via satellite and fiber-optic cable. Barbados has landing arrangements with commercial and charter airline services providing daily direct flights from, Canada, the United States, and the United Kingdom, as well as several regional airlines within the Caribbean, and direct flights so far on a weekly basis from Brazil.

### **Barbados Privacy and Confidentiality of Information Rules**

Privacy & confidentiality are a hallmark of the financial services sector in Barbados. Much of Barbados' legislation includes legislative provisions to preserve privacy and confidentiality of one's financial and personal information - i.e., under Barbados' the Trustees Act (1985), International Financial Services Act (2002, amended 2007), International Business Companies Act (1991, amended 2007), Societies With Restricted Liability Act (1995, amended 2007), International Trusts Act (1995, amended 2007) and Mutual Funds Act (2002), Money Laundering and Financing of Terrorism (Prevention and Control) Act (2000, amended 2010).

The Barbados Anti-Money Laundering Authority and the Central Bank of Barbados, with its *Know Your Customer Guidelines for Licensed Financial Institutions* (2001), are the primary anti-money laundering and anti-terrorism regulatory agencies in Barbados.

Most recently in 2011, Barbados has passed legislation to establish a Financial Services Commission charged with regulating and supervising operations of the non-banking financial entities (i.e., entities in the co-operatives, securities and insurance sectors). Additionally, the International Corporate and Trust Service Providers Act (2010) was recently enacted to regulate and license international corporate and trust service providers in Barbados.

For its private sectors, Barbados strives for a proper balance between confidentiality and required disclosure in limited cases. Like all jurisdictions, Barbados is moving toward more transparency regarding the exchange of tax information to prevent tax evasion. Recent amendments to the Barbados Income Tax Act provide for unilateral exchange of information within the international standards.

### **Barbados Corporate & Taxation Laws**

Barbados laws are based almost entirely on the English common law; with much of its corporate legislation modeled on Canadian legislation. Barbados is not strictly a tax haven, but offers low tax rates for offshore/international investment and business, with personal and corporate tax laws based on a hybrid system of income taxation (excluding taxation of capital gains) that combines separate offshore/international as well as domestic taxation regimes.

Under Barbados' offshore/international tax regime, preferential income tax rates are granted for entities ("tax-privileged entities") that are resident in Barbados but carry on business and investment activities outside Barbados:

- **0% corporate income tax rate and 0% withholding tax rate on dividends of a Barbados holding company** – ie.,:
  - dividend income received by a Barbados resident company from a non-resident company of which the Barbados resident company is a shareholder of at least 10 per cent of the capital of the non-resident company, and such shareholding is not held solely as a portfolio investment; and
  - dividend distributions paid to a non-resident shareholder out of foreign sources of income (ie., income earned from sources outside of Barbados);
- **0% income tax for trusts and subsidiary Barbados IBC holding companies whose funds consist solely of foreign currency or foreign securities** – ie., Barbados IBC holding companies that are wholly-owned that are managed exclusively by a Barbados licensed Offshore/International Bank and Trust Company ("Offshore/International Bank Trust") and deal exclusively in securities (no other business);
- **2.5% - 0% corporate income tax rates on international business sector income earned by designated types of international entities licensed and resident in Barbados** – ie., an International Business Company ("IBC"), International Society With Restricted Liability ("ISRL"), Exempt Insurance Company ("EIC"), licensed Offshore/international Bank and Trust Company;
- **6.25% - 1.75% net effective tax rates on net business profits** - i.e., calculated at statutory income tax rates net of a income tax credit, based on prescribed reducing percentage levels of net business profits, either earned from prescribed types of services:
  - in foreign currency (eg., earnings in any currency other than local Barbados dollars) from foreign currency earnings received from sources outside Barbados by a domestic Barbados resident company, and
  - insurance business by a Qualifying Insurance Company ("QIC")

Otherwise, under the domestic tax regime in Barbados, resident corporations are taxed at a flat statutory tax rate of 25% on corporate net income earned annually (calculated on an accrual basis), net of expenses incurred). Barbados nationals and resident individuals are taxed annually at graduated statutory rates of 20% on first BBD\$24,200 and 35% on the balance of assessable personal income received (calculated on a cash basis, less prescribed personal exemptions) and resident domestic trusts on income received (calculated on a cash basis, less trust administration costs).

The Barbados taxation base, of corporations as well as individuals and trusts, are either:

- **all worldwide/extra-territorial sources of income** wherever earned or received by Barbados residents – ie., for domestic corporations and trusts as well as nationals or citizens and permanent resident individuals domiciled in Barbados; including foreign corporations, trusts immigrant individuals re-domiciled into Barbados; or
- **only domestic in-country/territorial sources of income earned or received by/remitted to non-domiciled residents and non-residents in Barbados** - i.e., branches of foreign corporations and foreign trusts or individuals not domiciled in Barbados.

## **Barbados' Network of Double Income Taxation Treaties (DTAs)**

The Government of Barbados is committed to expanding its extensive network of international double taxation treaties (DTAs), including 6 treaties so far with LATAM countries, as evidenced by the following (at the April 2011 time of this writing):

- **19 DTAs in force** – i.e., including 4 treaties in force with the LATAM countries of Cuba, Mexico, Venezuela and Panama and with CARICOM (i.e., 11 other Caribbean jurisdictions within the Caribbean Community; namely, Antigua & Barbuda, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts & Nevis, Saint Lucia, St. Vincent & Grenadines, Trinidad & Tobago); as well as with Austria, Botswana, Canada, China, Finland, Malta, Mauritius, Netherlands, Norway, Seychelles, Sweden, Switzerland, United Kingdom, United States of America
- **4 DTAs signed, and awaiting mutual ratification** – with Ghana, Luxembourg, Portugal, Spain
- **4 DTAs initialed** – with Belgium, Czech Republic, Italy, Vietnam
- **11 DTAs under negotiation/discussion with other countries** – i.e., including treaties to be negotiated with the 2 LATAM countries of Brazil and Chile (in progress); as well as with Australia, Iceland (in progress), India (in progress), Columbia, Indonesia, Ireland, Japan, Malaysia, South Africa

Barbados' tax treaties are primarily modeled on the OECD model treaty which reserve taxation of income to the signatory country in which a recipient is resident; except for the CARICOM tax treaty which is modeled on the United Nations model treaty that reserves taxation of income to the signatory of source. The CARICOM tax treaty includes permanent establishment and other specific rules that exempt or minimize taxation of residents of a signatory country on business and services income derived from sources in the other signatory country. Also, the CARICOM treaty eliminates withholding tax rate on dividends and reduces withholding tax rates on other passive investment income (e.g., , interest, royalties, rents) and management or administrative fees paid from one signatory country to residents of the other signatory country.

## **Barbados' Bilateral Investment Treaties (BITs)**

Barbados has signed 11 bilateral investment tax treaties (BITs) – i.e., including BITs with the 2 LATAM countries of Venezuela and Cuba; as well as with Belgium-Luxembourg Economic Union (awaiting ratification), Canada, China, Germany, Ghana (awaiting ratification), Italy, Mauritius, Switzerland, and United Kingdom.

These BITs complement Barbados' DTAs, covering the promotion and protection of investments from and into a signatory country, including through Barbados' offshore/international sector. Generally, BITs protect intellectual property and other investments owned by nationals and corporations of each signatory country from discrimination (e.g., confiscation or appropriation) in the other signatory country, with recourse to international arbitration to settle disputes with the host country.

Generally, BITs grant national and most-favored-nation treatment and non-discrimination benefits to nationals and corporations of the signatory countries. They also provide for a range of non-tax benefits. For example, a national company from one treaty country may, subject to the terms of a particular treaty, allow persons from that signatory country to work in the other signatory country.

## **Venezuelan - Barbados Business & Investment Structures**

The Venezuelan – Barbados DTA was signed in November 1998 and ratified in 2001. Since then various tax-efficient Venezuelan inbound structures have been developed to acquire or move ownership of Venezuelan business and investments under Barbados entities, particularly to gain protection under the long-standing BIT in place between the countries since September 1994.

Most of these Barbados-Venezuelan structures being developed are based on using a Barbados IBC as the primary vehicle for holding ownership of Venezuelan assets. Under the Venezuelan - Barbados DTA

A Barbados IBC is eligible for treaty benefits, unlike most DTAs that carve out such IBCs and other special tax-privileged Barbados entities. Also, privately-owned Offshore/International Bank and Trust Companies licensed in Barbados and related Offshore/International Bank Trusts formed in Barbados may be used to benefit from treaty-reduced withholding tax on interest available under the treaty.

## **Mexican – Barbados Business & Investment Structures**

The Mexico - Barbados DTA was signed in April 2008 and finally ratified in April 2010. Concurrently, with Barbados was removed from Mexico's blacklist of countries that denies residents of Mexico tax-deferrals on passive investments held through entities in a blacklisted country, and requires them to file annual information returns reporting their investments held in and through such entities. These recent events have given rise to Mexican outbound and inbound structures for business and investment purposes.

Outbound investments by Mexicans may be made directly into the Barbados tourism sector, where an income tax holiday and import duties exemptions may be granted for the construction and operation of a hotel in Barbados. Also, Mexican outbound investment via a Barbados holding company may be made to access tax treaty benefits under other Barbados DTA treaty partners with which Mexico itself does not have a tax treaty.

Various inbound investments may be structured for Mexicans to maintain security, confidentiality and tax efficiency by holding assets through certain Barbados entities. One inbound structure allows Mexicans to hold a wide variety of assets, such as foreign bank accounts, foreign immovable property (e.g., located in Mexico) and shares (e.g., issued by Mexican entities). Another inbound structure allows multiple Mexican taxpayers to invest through a single-managed Barbados legal entity, yet still have their own investments remain legally and economically segregated from each other's equity in the entity. Also, there has been restructuring of reinsurance for Mexican insurance companies utilizing Barbados captive insurance companies.

Such Mexican outbound and inbound structures, however, need to be carefully designed to overcome or avoid a number of hurdles under both Mexican law and the Mexico-Barbados DTA. Tax efficient Mexico-Barbados structures have and continue to be developed to overcome these hurdles.

Under Mexican domestic tax law, the main hurdle is Mexico's "Preferred Tax Regime" (e.g., referred to internationally as Controlled Foreign Corporation, or so-called "CFC", rules). In general terms, this Mexican anti-tax deferral regime applies where revenues derived via a Mexican-owned entity that is resident in a foreign jurisdiction where it is subject to income tax paid at an effective income tax rate that is less than 75% of the applicable income tax rate in Mexico (in practice this means a foreign income tax rate of less than 21%). This regime applies also when the investment is made through a fiscally transparent entity or vehicle in a foreign jurisdiction and subjects a Mexican resident taxpayer to income tax on the passive revenues generated by the foreign entity (i.e., the income is taxed even if the foreign resident entity does not distribute the income to the taxpayer). For this purpose, passive revenues include not only revenues (e.g., dividends, interests, rents, etc.) from passive investments, but also capital gains on assets not physically existing in the foreign entity's jurisdiction of residence or location, and revenues from services rendered by the foreign entity outside its foreign jurisdiction.

An important exception to the Preferred Tax Regime rule effectively exempts a Mexican taxpayer who, as the beneficial owner/investor in a foreign resident entity, by himself or together with related persons, does not control nor have any administrative influence over income, profits or dividend distributions of the foreign entity. Given the absence of such effective control, the Mexican taxpayer can defer the income recognition until the profits of the foreign resident entity are actually distributed (only then being included as taxable income for Mexican tax purposes).

Also, revenues generated through Mexican-owned foreign resident entities engaging in active business activities are exempt from Mexico's Preferred Tax Regime, as long as their passive revenues do not

represent more than 20% of the aggregate thereof. For this purpose, revenues derived from the business of insuring risks are considered to be from active business activities.

Under the Mexico-Barbados DTA there are several hurdles as well. These include the limitation on benefits provisions that restrict the DTA benefits otherwise available to residents of either signatory country. Also, there are so-called “carve out” provisions that exclude tax-privileged Barbados entities from DTA benefits – i.e., specifically entities formed under Barbados’ International Business Companies Act, International Financial Services Act, Society With Restricted Liability Act, Exempt Insurance Act.

### **Panama – Barbados Business & Investment Structures**

Most recently, the Panama – Barbados DTA was signed in June 2010 and ratified February 8, 2011 (to be effective January 1, 2012). The Panama – Barbados DTA, like the Venezuelan – Barbados DTA, doesn’t contain any carve out exclusions from treaty benefits for Barbados IBCs and other tax-privileged entities, unlike the Mexico – Barbados DTA discussed above. In light of these new developments, new Panama – Barbados structures are being planned.

In conclusion, LATAM high and ultra-high net worth individuals can through proper family planning achieve asset protection, maintain confidentiality and privacy, and at the same time be legally compliant via a Barbados structure.