

Bermuda's international relations¹

Bermuda's geographical location, population and political system

Bermuda is an isolated archipelago in the North West Atlantic, some 800 miles east of the Carolinas in the United States. It is approximately 1000 miles north of the nearest Caribbean islands. Bermuda's population is around 65,000. English is the official language and Portuguese is also spoken. There is a two-party political system, with the legislature comprising a Senate and a House of Assembly.

Bermuda's legal status

Bermuda is a self-governing overseas territory (OT) of the United Kingdom (UK). Formally, under the UK constitution and public international law, the UK is responsible for Bermuda's defence and international relations. In practice, Bermuda is entrusted² by the UK for the conduct of its own external relations in economic policy areas such as tax and financial services.

Bermuda's relations with the EU

Bermuda is covered by Part Four of the Treaty on the Functioning of the European Union (TFEU) on the association of overseas countries and territories (OCTs). The Council's Overseas Association Decision (OAD) has applied to Bermuda since 1/1/14. However, given its level of GDP, Bermuda does not receive development aid from the EU. In addition, in the absence of significant manufacturing and agriculture, Bermuda does not benefit in practice from preferential trade arrangements with the EU under the OAD.

Bermuda is however an important partner of the EU and many of its Member States through the reinsurance provided to most large EU insurance companies.³ The fact that insurance is the strongest "pillar" in its relationship with the EU is demonstrated today by the EU's selection of Bermuda as one of three partners eligible for an "equivalence" decision under the Solvency II regime.

¹ This paper has been prepared in anticipation of the Bermuda Finance Minister's meetings in June 2015 between the OECD Secretary General and the Tax Committee of the European Parliament. The focus of the paper is therefore Bermuda's relations with the OECD and the EU.

² Through "letters of entrustment" issued by the Secretary of State for Foreign Affairs

³ Bermuda's evolving relations with the EU in insurance are described in more detail below.

Bermuda's economy

The mainstays of Bermuda's economy are financial services (notably insurance and especially re-insurance for which Bermuda is a world-leader), tourism and the registration and management of aircraft and shipping registers. Bermuda receives no external financial assistance, either from the UK, the EU or from international institutions.

Out of a total population of 65,000, some 7,000 people are employed directly in the international business (including insurance and re-insurance sector), with many more employed in related sectors, such as law, accounting, housing, education, hotels and restaurants, housing etc. In this respect therefore the Bermuda economy is characterized by genuine and substantial economic activity, generating value not only for the Bermuda economy but also for "partner" economies such as the EU, United States and other jurisdictions where insurers benefit from the reinsurance services of Bermuda.

Bermuda's system of taxation

Bermuda's public expenditure (on hospitals, schools and infrastructure) is financed through a consumption-based tax regime.⁴ For historical reasons (notably in the absence of a manufacturing sector), Bermuda has never instituted an income tax system, either for individuals or companies.

In the context of the present paper, it is important to underline that, under public international law, States and other fiscally-independent jurisdictions are free (in the absence of treaty obligations to the contrary) to determine their own tax structures and rates. There is currently no rule of international law which requires a State (or autonomous fiscal jurisdiction) to tax the income and profits of companies or individuals. Bermuda imposes taxes to finance its public expenditure and not artificially to attract economic operators to Bermuda which do not contribute to the Bermuda economy. In the absence of an income tax system, Bermuda does not have double-taxation agreements (DTAs) with other jurisdictions.

Bermuda's international cooperation on tax matters

Bermuda is a party to the OECD Multilateral Convention on Mutual Assistance on Tax Matters (providing for the exchange of information on request) and has concluded more than 40 bilateral Tax Information Exchange

⁴ For the 2015/2016 fiscal year, Bermuda's current account revenue generated by the consumption tax is estimated at \$ 931,298,000, funding a government budget of \$ 1,082,613.

Agreements (TIEAs), including with most EU Member States. Having been briefly “blacklisted” by France between August and December 2013⁵, Bermuda is now recognized by the French tax authorities as one of the most efficient partners in the provision of information on request. Bermuda is rated Largely Compliant on transparency and the exchange of information for tax purposes by the Global Forum, the same rating as the United States, the UK and other G7 countries.

Bermuda is also an “early adopter” of the OECD Convention on the Automatic Exchange of Information and signed the Multilateral Competent Authority Agreement in October 2014 at the Berlin meeting of the OECD Global Forum.

Bermuda is a member of the Global Forum’s Peer Review Group and participates in the review and assessment of other jurisdictions. In May 2015, Bermuda was elected as one of three Vice Chairs of the Coordinating Body of the Multilateral Convention on Mutual Assistance, the first small jurisdiction to serve in this capacity.

Bermuda’s international cooperation on insurance

Bermuda is one of three jurisdictions⁶ selected by the EU in a “first wave” of third countries to be considered for “equivalence” decisions under the Solvency II directive. A first positive equivalence decision was published by the Commission in May 2015. The Commission’s decisions on equivalence are based on an assessment by EIOPA that Bermuda’s regulation and supervision in the insurance and re-insurance sectors are broadly in line with EU law and practice under the Solvency II regime. Although work is still in progress to take into account the most recent EIOPA observations on Bermuda’s insurance and reinsurance regime, Bermuda expects that a positive equivalence decision will be taken by the Commission within the next few months.

At the multilateral level, Bermuda is a leading participant in the International Association of Insurance Supervisors (IAIS).

Apart from insurance, Bermuda does not allow the establishment of private banks. There are currently only four banks operating in Bermuda, only one of which – HSBC – is international. Similarly, although Bermuda is seeking to

⁵ The reason given by the French authorities for this was the delay in providing requested tax information resulting from judicial review procedures in Bermuda. Bermuda has taken action (resulting in its de-listing by France after 4 months) to reduce delays caused by judicial review procedures, without prejudice to the principle of due process.

⁶ The other jurisdictions are Switzerland and Japan.

diversify its activities in financial services other than insurance, asset management remains small in Bermuda compared with other jurisdictions.

Nonetheless, apart from the priority case of insurance, Bermuda is also seeking positive equivalence decisions from the EU in the audit and asset management sectors.

Bermuda’s “partnership” with the EU in the field of insurance and re-insurance

One of the reasons why the European insurance industry itself has pressed the EU to place Bermuda (with Switzerland and Japan) in the “first wave” of third countries eligible for equivalence decisions, is because European insurers greatly benefit from the reinsurance services provided by Bermudian reinsurers. In this very practical sense therefore Bermuda is (and for many years has been) an indispensable business partner for the EU, adding value to the European economy.

In 2009, Bermuda was the largest single contributor to cover losses in France and Spain as a result of Windstorm Klaus. A similar contribution has been made by Bermuda reinsurers in catastrophes such as Windstorm Xynthia, the UK Buncefield fire and explosion (the largest in peacetime) at an oil storage terminal near London, the Air France crash in 2009, the loss of the Costa Concordia in Italy, the European floods and German hailstorm of 2013 and the European windstorm in 2014.

Bermuda’s international cooperation in the fight against economic crime, including money laundering

Bermuda supports the work of the Financial Action Task Force and has implemented all but one of the 40 Recommendations for fighting money laundering and terrorist financing.⁷ As far as transparency is concerned, Bermuda legislation has for more than 70 years - provided for a register of companies which requires the identification of shareholders, including the ultimate beneficial ownership of companies. This information is available to law-enforcement agencies as well as competent authorities in tax matters. In this respect, Bermuda is fully in line with the relevant provisions of the recently-adopted EU 4th anti-money-laundering directive.

⁷ Assessment in May 2014 by the Caribbean Financial Action Task Force

In contrast to certain other jurisdictions, Bermuda does not encourage the establishment of “shell-companies”. Today there are some 17,000 companies and partnerships registered in Bermuda⁸. The register of companies is managed by the Registrar of Companies, in cooperation with the Bermuda Monetary Authority.

The “tax haven” issue and the risk to Bermuda’s reputation

Given Bermuda’s leading role in the field of re-insurance (in which cooperation with international partners is crucial), Bermuda’s reputation as a well-regulated, transparent and cooperative jurisdiction is fundamental. The economic prosperity of Bermuda (and the welfare of its 65,000 inhabitants) depends on this reputation.

The increasing focus on tax (especially tax evasion and avoidance, “aggressive” tax planning by multinational companies, “tax havens”, “harmful” tax practices, international economic crime including money laundering, non-cooperative jurisdictions, “blacklists” etc.) as a result of the current unprecedented economic and financial crisis, has tended to concentrate attention on small (and sometimes non-sovereign) jurisdictions such as Bermuda.

In this difficult environment, there has been a tendency to refer generically to “off-shore” or international finance centres and to refer to them as “tax havens”⁹ which – almost by definition - cause harm to the international economy.

In this context, the publication (without any prior consultation) by the Commission on 17 June 2015 of a compilation of EU Member State “blacklists” which includes Bermuda is wholly incompatible with Bermuda’s internationally-recognised status as a well-regulated, cooperative and transparent jurisdiction.¹⁰ The Commission’s action in this field is also in conflict with its recognition of Bermuda as a “first wave” partner of the EU in the field of insurance under Solvency II.

As the present paper demonstrates, Bermuda:

⁸ In certain other jurisdictions, the number runs to hundreds of thousands.

⁹ It is important to note that there is no binding definition of the concept of “tax haven” in international (or EU) law. Indicative criteria were established in 1998 in the OECD Report on Harmful Business Taxation and in the EU Code of Conduct on Harmful Taxation.

¹⁰ Many of the Member States which continue to “blacklist” Bermuda have failed to take into account either the existence of TIEAs with Bermuda or Bermuda’s Early Adopter status in the OECD’s Convention on the Automatic Exchange of Information. The list published by the Commission is therefore inaccurate and out-of-date.

- a) Exercises its fiscal sovereignty in full conformity with international law, in providing a non-discriminatory tax structure (and tax rates) which generate the revenue necessary to provide the finance for essential public services;
- b) Seeks to develop its role - explicitly recognized by the EU in the current “equivalence” process under Solvency II – as the world’s leading centre for reinsurance;
- c) Specifically rejects the establishment of “shell-companies” without significant economic activity and maintains, by law, a register of companies which is fully transparent in terms of ownership;
- d) Is fully committed to international cooperation in taxation, financial services and the fight against economic crime, as reflected not only by formal adherence to bilateral and multilateral agreements, but also by active participation in related international organisations and the enforcement of these legal instruments in everyday practice.

The Bermuda Government seeks to enhance international recognition of Bermuda and its special (if not unique) contribution to the international economy, notably in the field of insurance, reinsurance and other service sectors. The meetings to be held next week by the Finance Minister with the Secretary General of the OECD and the European Parliament are a further step in this continuing process.

Alastair Sutton, Brussels, June 2015.