OIL Offshore Incorporations

opinion

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Confronting the Hypocrisies

The offshore industry is engaged in a public relations battle with opponents peddling flawed arguments. Now is the time for industry participants to join forces and address these perception issues.

Confronting the Hypocrisies

The overriding message in the latest installment of OIL Offshore 2020 report is that the industry faces a public relations problem. This does not equate to commercial difficulty.

The industry is not under pressure to prove its worth to end users, or to the professionals and intermediaries who advise them. Rather, the battle is one for wider public opinion, which in turn helps shape political and regulatory agendas. Opponents – whether they be Western government officials, politicians or lobbyists – have seized the initiative by taking pot shots at the industry based on unsubstantiated claims that have largely gone unchecked. It is up to the industry to respond, objectively and collectively.

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Over the last 12 months, the debate has been framed by unforeseen and foreseen headwinds.

First, the International Consortium of Investigative Journalists obtained a cache of 2.5 million records pertaining to offshore assets. From two service providers alone, they extracted the identities of individuals and groups, from more than 170 jurisdictions and countries, behind 100,000 companies and trusts. Though contained, the scandal has created further uncertainty within the industry.

Second, the Organisation for Economic Cooperation and Development (OECD)-led drive for greater transparency continues, supported by increased scrutiny of multinationals' offshore tax arrangements by the G20 group of nations.

There is certainly merit in efforts to clean up the system, whether that means allowing regulators to have greater visibility on the ultimate beneficiaries of structures or ensuring that companies have adequate "substance" in a jurisdiction when it is being used to derive tax benefits. However, certain elements of the debate bear little merit whatsoever.

Highlighted below are some of the hypocrisies we have witnessed:

- The OECD is the main agitator for change on tax transparency, yet all of its employees enjoy a tax free salary and actively promote this fact. Is the OECD not using this tax break to seek a competitive advantage in the international labor market?
- 60% of US Fortune 500 companies are incorporated in the state of Delaware; where no corporate income tax is paid. In 2012, close to 130,000 companies were set up in Delaware alone
- Sovereign investment vehicles operated by developed countries that claim they want to restrict the use of offshore structures actually take advantage of them. Australia's Future Fund, for example, $90 billion sovereign wealth fund, of which 20% of which is invested overseas. It uses 43 offshore entities – based in the likes of the Cayman Islands, Luxembourg, Jersey, Ireland and the British Virgin Islands – to manage these investments. This is done to avoid paying tax in other countries, the logic being that Future Fund shouldn't be taxed twice. Multinationals are criticized for doing exactly the same thing

- The so-called trillions of dollars "sitting in tax havens" does not exist; the international capital flow finds its way back onshore into government bond markets, which are being used to fund the various deficits in existence globally
- George Osborne, the UK's finance minister, claims Britain is "building the most competitive tax system in the world." Further, he praised the decision to shoot the next Star Wars movie in the UK, citing tax breaks provided by the government to attract the filmmakers. Yet the same government denounces the practice of using legal, deliberate tax strategies to attract business

Perhaps most disheartening of the various hypocrisies is the criticisms politicians make of multinational companies that have taken steps to minimize their tax exposure – working within the systems set up by these same politicians.

Double taxation treaties (DTTs) were never a bad idea and, by and large, they haven't been subverted by nefarious forces. They were created by governments to facilitate cross-border trade, ensuring companies aren't taxed on the same income in multiple locations, which could impede overseas expansion. For companies, it means efficiency and certainty over tax treatment. For governments, it means capital is flowing through official channels that require an element of disclosure as opposed to completely in the dark.

Taking a pot shot at companies legally using DTTs suggests a remarkable detachment from the realities of commerce and the striving for efficiency that makes it tick. It is akin to taking a small business owner to task for asking his accountant to identify all the deductions, rebates and incentives that might minimize his exposure on an annual tax return.

In turn, this detachment indicates a remarkably warped view of how the world works. Politicians appear to be of the view that an organization's value to society is defined by the size of its tax contribution, not the number of jobs it creates, or the wealth it creates for shareholders, or the range of products and services it offers to consumers.

The danger for the offshore industry is that these attitudes pervade the regulatory system, resulting in actions that stymie the benefits of offshore structures. Most of those who participated in the Offshore 2020 report don't believe the battle for public opinion has already been lost, but they are aware that perception issues must be addressed.

This could take the form of better public relations, concerted lobbying efforts, more transparency and education and outreach initiatives. Whatever the strategy, it would help if the industry were unified in its efforts, with a single, strong association to represent its views and dispatch unsubstantiated accusations with trusty common sense.

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