

Tax

Increased scrutiny threatens British Virgin Islands and wealthy clients

Growing international pressure on tax havens and local corruption probe put the territory's business model at risk

Michael Stott in Road Town 4 HOURS AGO

The British Virgin Islands have weathered some devastating storms. When [Hurricane Irma](#) lashed the territory with 220mph winds in 2017, five people were killed and more than 80 per cent of the buildings damaged.

But now the idyllic eastern Caribbean archipelago faces turbulence of a different kind with unpredictable consequences for its role in global finance. The most immediate challenge is a British government inquiry into allegations of corruption and collusion between leading politicians on the island and organised crime, which is due to report by mid-April.

Also looming over the islands is the [economic crime bill](#) being rushed through Parliament because of the Ukraine war. It will oblige offshore companies holding UK property to disclose their beneficial owners.

And next year brings a deadline from London for the BVI to launch a publicly accessible register showing the ultimate owners of the hundreds of thousands of international companies registered locally, which one expert sees as nothing less than “a stake through the heart” of the business model” of offshore finance.

These threats to the BVI and the global offshore industry come amid a hardening of attitudes globally towards offshore finance following a spate of highly publicised leaks of confidential files.

The documents showed how some of the world's politicians and wealthy business people used the secrecy offered by offshore jurisdictions such as the BVI to hide ill-gotten gains or dodge taxes.

Islanders are confident they will weather the latest storms but international experts are less certain — some question whether the offshore finance industry is sustainable in its current form.

Tax haven critics would not be sorry to see it shrink or disappear. Many see the BVI and other offshore centres, such as the Channel Islands and the Cayman Islands, as a web designed to conceal wrongdoing, especially tax evasion. But the tax havens themselves and their clients insist that it is perfectly legitimate to minimise tax by legal means, to protect assets from political turbulence in unstable countries and seek anonymity to protect privacy reducing the risk of unwanted attention, whether from terrorists, kidnappers or stalkers.

The tax advantages have diminished in the last two decades, but the appeal of concealing ownership has only increased for many rich families in the internet age.

So what questions do the latest threats to the BVI and tax havens generally pose for wealthy UK-based investors, both for those who are domiciled for tax purposes and those who are non-domiciled, usually because they are foreign citizens or have other strong links with other countries?

‘Confidentiality is very important’

The casual visitor to the British Virgin Islands might be forgiven for missing the giant offshore finance industry altogether. From the air, the most striking features of the islands are the steep verdant hills falling away to white sandy beaches lapped by turquoise seas. Entering the tiny capital Road Town, the yachting marina and the cruise ship terminal loom large. Offices are housed in modest low-rises, many hosting shops at street level.

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The clients and their lawyers agree. Simon Goldring, an international tax expert at law firm McDermott Will and Emery, says that holding UK property via BVI structures no longer offers tax advantages, even for non-domiciled individuals, following government moves over the past decade to bring offshore-owned property into the capital gains and inheritance tax nets. “The main benefit now is anonymity,” he says. “Wealthy clients own UK property through offshore companies mainly for anonymity as they are high-profile.”

That anonymity is likely to be threatened by the economic crime bill, once it completes its passage through the House of Lords. The Commons has approved the measure.

Also, owning UK assets via BVI companies will not help Russian oligarchs dodge sanctions over the Ukraine war; the islands have pledged to help the UK government enforce any punitive measures.

Goldring says BVI companies remain a popular choice for wealthy individuals to hold non-property assets such as trading companies, shares or bonds. A common structure might involve an investment portfolio owned by a BVI company, which is in turn owned by an offshore trust located either in the BVI or another jurisdiction such as the Channel Islands.

Under such an arrangement, UK inheritance tax and capital gains tax can be mitigated for non-domiciled individuals in the UK — even after 15 years when they become “deemed domiciled” in the UK, meaning that they are regarded in law as domiciled.

Moreover, as tax havens have come under greater international scrutiny following the leaks of confidential papers, lawyers have noted that hubs with better legal reputations have become more popular at the expense of others — a shift that has benefited the BVI, along with the Cayman Islands and the Channel Islands.

“Following the [Panama Papers](#) and the [Paradise Papers](#) there has definitely been a flight to quality,” says Laura Perkins, an offshore lawyer at Jersey-based Collas Crill. “High net worth individuals are really concerned about reputational risk, and the reputational risk associated with certain jurisdictions is higher than others.”

Perkins says the BVI is appealing for wealthy clients because they could get “respectable law firms, easy access to good quality advice . . . a highly respected court system with an ultimate right of appeal to the Privy Council . . . and it’s politically very stable”.

Corruption inquiry rocks the boat

One of the last remnants of the British empire, the BVI is governed under a quirky arrangement with power shared between a governor sent by the Foreign Office and a locally-elected premier.

Despite the territory’s name, evidence of British rule is scant. The architecture of Road Town and the main island Tortola is more American than anything else, like the burgers on the menus and the clothing in the shops. The currency is the US dollar and symbols of British power are conspicuous by their absence.

So governor Augustus Jaspert's decision last year, just before leaving the role, to exercise colonial-era powers to appoint a commission of inquiry from London to investigate allegations of high-level corruption tore through this delicate constitutional tissue with hurricane force.

Fahie had no advance warning and remains indignant. "It is regrettable that the former governor has made some very unsubstantiated allegations towards the territory which have the potential to be damaging to our reputation," he told the FT. "And thus far the inquiry has found those allegations to be unfounded. We do call on the former governor to apologise."



'Very unsubstantiated allegations': BVI premier Andrew Fahie © Ricki Richardson

While some islanders welcomed the scrutiny offered by the inquiry as long overdue, others mentioned resentment caused by mainly white lawyers from London cross-examining black elected politicians in public hearings and, by Whitehall standards, a small Caribbean civil service which has battled two recent hurricanes and the pandemic.

Sir Gary Hickinbottom, the retired appeal court judge leading the inquiry, held 55 days of public hearings last year. Evidence emerged suggesting some malpractice: one example was the rebuilding of a school wall, divided into 70 work orders for multiple firms and a total bill of more than \$1.1mn.

With cases such as these, the BVI is braced for bad headlines. But officials in Road Town insist that no evidence has been put before the inquiry to substantiate the dramatic allegations Jaspert made of government links to drug traffickers.

“We will wait for the outcome of the inquiry,” Fahie said. “But one thing I do know is that we will do our best to guard the reputation of the Virgin Islands. Because if I paraphrase the Bible and Shakespeare, a man’s reputation is all that he has.”

Jaspert referred questions about his time as governor to the Foreign Office. In his inquiry evidence he did not go into detail on his claims, but denied that the probe was motivated by a breakdown in his relationship with Fahie.

Whitehall officials declined to speak ahead of the report’s publication, saying they would not “prejudge the outcome” of an “independent” inquiry.

Confident in its probity, Fahie’s government is using the time until the commission’s report is published to mount a robust defence. Sir Geoffrey Cox, a Conservative MP and former attorney-general, represented the BVI government at the inquiry. Eyebrows were raised after reports that he had charged hundreds of thousands of pounds in fees and spent several weeks last year at a villa in the BVI.

Sir Geoffrey declined to comment but has said in a statement that his BVI work has been mischaracterised. “This is not to ‘defend’ a tax haven or, as has been inaccurately reported, to defend any wrongdoing but to assist the public inquiry in getting to the truth,” he said. “No evidence of tax evasion or personal corruption has been adduced before the Inquiry.”

The Panama Papers changed attitudes

Lacking the fertile soil and flat ground of other Caribbean nations, agriculture was never an option for the BVI. The runway of the main airport is too short for most jets, ruling out mass tourism. Instead, the BVI pursued a mix of financial services and luxury travel as the “yachting capital of the world”.

Given the competition among Caribbean islands for the lucrative offshore finance industry, the BVI needed to specialise. A small group of expats and locals eventually came up with a successful idea: easy-to-create offshore companies, exempt from all BVI taxes, with a low registration fee, a minimum of paperwork and a guarantee of complete confidentiality (the industry prefers to call it privacy).

The new companies offered a flexibility in their structures which was revolutionary in corporate law at the time, giving ample scope for mergers, acquisitions and quick changes to operations.

The BVI International Business Company was born in 1984 and took off fast, particularly after the 1990 US invasion of its main offshore rival Panama. At its peak, the BVI had more than 700,000 companies incorporated and was especially popular in the Hong Kong market, where all offshore companies were known as “BVIs”. The registration fees provided fast-growing revenues for the government and the industry sucked in wealthy expatriate lawyers, advisers and accountants.

The islands prospered but international regulators started to worry. Tax authorities were alarmed about the loss of revenue from wealth hidden in offshore entities and started to toughen compliance rules. The BVI was forced to change its tax rules and to update company legislation.

The publication of the Panama Papers in 2016 marked a turning point in public attitudes. Millions of leaked files from the [Mossack Fonseca](#) law firm revealed information on 214,000 offshore entities, more than half of which were located in the BVI.

The following year, the BVI introduced BOSS, a computer system for searching company records for details of beneficial owners. Foreign law enforcement organisations and courts can access the system, something the BVI holds up as an example.

“UK law enforcement has lauded us for what we have done with the BOSS system,” Fahie said. “That tells of their confidence in our system to be fully accountable.”

International experts recognise advances. “The BVI could do better, should do better but frankly speaking they’ve made significant progress,” says Pascal Saint-Amans, director of the OECD’s Centre for Tax Policy and Administration.

“They started from nothing, nothing was available. Nothing was accessible. And now you have something like a register of companies, you have some beneficial owner information, you have access to the automatic exchange of information. So it’s true that they’ve done a lot. Is it enough to be fully compliant? No.”

Today, a host of websites tout BVI company incorporation services, promoting the low cost, convenience and confidentiality. For [as little as \\$1,000](#), corporate service providers will set up a BVI entity within two working days and provide articles of association and a certificate of incorporation. Paperwork is minimal.

Demand comes from all over the world. According to the 2017 report by Capital Economics, 42 per cent of the beneficial owners of BVI companies were from Asia, 18 per cent Latin America, 10 per cent the UK, 8 per cent the EU and 7 per cent US and Canada. Russians made up 3 per cent.

BVI authorities say that company agents carry out “know your customer” checks on the names of company directors and shareholders and enhanced due diligence on politically connected individuals.

They point out that this is stricter than the UK, where individuals can register a company online without checks. “We have always prided ourselves on making sure we are a very co-operative jurisdiction,” says Elise Donovan, chief executive of BVI Finance, a trade body. “When you look at our compliance rating, it’s on a par with and in some instances actually surpasses those of the United Kingdom or the United States.”

She adds: “We want quality businesses establishing in the jurisdiction. We don’t provide a haven for anyone involved in nefarious activities.”

An offshore future?

The hardening of international attitudes to tax avoidance and financial secrecy poses the biggest challenge yet to the territory’s business model.

Alex Cobham, head of Tax Justice Network, describes the UK’s requirement for all the overseas territories to bring in a public register of beneficial ownership of companies by end-2023 as a “stake through the heart” of a big part of the business model of the BVI, though exactly how the BVI will implement it is still under negotiation.

When this is combined with last year’s OECD agreement to bring in a global 15 per cent minimum corporate tax rate, “what’s the model?” he asks. “If there’s no secrecy and no corporate profit-shifting, then what do you have?”

The BVI has signed up to the OECD tax initiative but the 15 per cent minimum tax rate only applies to companies with an annual turnover of more than €750mn and the BVI has very few of these. Many BVI companies do not trade; they simply hold assets.

Robert Barrington, professor of anti-corruption practice at the University of Sussex, says there probably still is a role for offshore finance centres “but we don’t need all of them — Jersey, Guernsey, BVI, the Cayman Islands and so on — and we don’t need a manufacturer of shell companies”.

Islanders insist their resilience will ensure the British Virgin Islands continue to thrive.

“BVI is, I always say, the little engine that could,” Donovan of BVI Finance says, referring to the US folk tale. “We’re always a jurisdiction that’s going to do what it takes to make sure that we continue to thrive and to be sustainable and to be a part of the global economy.”

International lawyers take a more nuanced view, emphasising the global squeeze on havens. Collas Crill’s Perkins says the UK government’s proposals to force public disclosure of beneficial owners would be “a challenge for all the offshore jurisdictions”.

But she thinks even if the international environment is getting tougher the recent flight to quality would still benefit the BVI. She says: “We would hope that the quality of legal, trustee and corporate services that are provided in the BVI would be enough to continue to make it an attractive jurisdiction.”

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