COMPANY REGISTRY POLICY

Creation of international financial services capabilities

Draft for Consultation

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AUTHOR	Andrew Radley
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Contents

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1. Introduction and Executive Summary

1. Background

This policy sets out the government intentions in relation to the development of the Company Registry and administration services in St Helena.

Many jurisdictions work to provide competitive Company Registry services to attract international revenues. By offering international businesses company incorporation and administration services in and from St Helena, new taxation revenues would be available to St Helena.

St Helena Government, in developing its Company Registry, follow the principles of:

- Openness and transparency
- Sound Business Practice
- Non-discriminatory taxation
- Anti-tax avoidance

This policy has been formulated to consider how St Helena could develop its Company Registry to provide a better, more transparent and more attractive service to customers whilst ensuring that registry services are provided in accordance with international requirements and without creating harmful or abusive taxation regimes (thus preventing St Helena from becoming a 'tax haven').

Given that foreign businesses looking to use St Helena as a jurisdiction will be operating globally, they will require administration and assistance with opening of bank accounts and facilitation of payments internationally, and/or may be involved in the provision of financial services themselves to some extent. In looking at providing Company Registry and administration services to foreign businesses therefore, it is also crucial to look at the provision of these services in the context of international financial services regulation and some of the issues in connection therewith. This note sets out the headline issues that St Helena would need to consider to be able to effectively use its Company Registry for entities involved in the global financial system.

2. Issues

In the development of the policy a number of issues and problems with the current system were identified:

- **Lack of ability to tax companies on their worldwide income**

The current Income Tax Ordinance does not require companies working globally to pay tax on income derived outside of St Helena. The Ordinance states that taxable income is the total amount 'earned, accrued or derived during that tax year in or from St Helena'. However, as of 2018-2019, all of the companies, bar one, primarily operate in St Helena, and therefore the amount of revenue St Helena is currently losing from this omission may not be significant. But a change to this would be required to ensure that income earned abroad is in some way taxed and so that revenues can be raised. See below for further detail of the taxation and legislative changes that are proposed by this policy.

- **Limitation of existing Company Registry system capability**

The current Company Registry facility is basic and limited. The Company Registrar is also the judicial services assistant. As such, there is no single dedicated resource to company affairs. Companies are administered on the basis of an excel spreadsheet which has limited capability. There are also no published guidelines or standards for how the registry undertake ‘know your client’ and due diligence information on those looking to incorporate companies. This poses a risk in terms of the facilitation of money laundering.

- **Lack of direct regulation of company incorporation or administration**

While the current Companies Ordinance does set out the legal basis on which companies may be incorporated in St Helena, as noted above, other than the Money Laundering Ordinance, St Helena has not enacted any anti-money laundering handbooks or other regulations governing the operation of companies. Furthermore, there are no restrictions on the types of business that may be undertaken by St Helena companies or the ways in which they may conduct business. There is therefore a risk that St Helena companies could become engaged in practices which would be deemed illegal elsewhere or alternatively, may be used for tax aggressive purposes.

A raft of new legislation will be required in order to develop a Company Registry and financial services industry in St Helena. Further details of this are set out below.

- **Lack of ability to allow companies to be continued in St Helena**

The current Companies Ordinance does not allow companies to be ‘continued’ (i.e. migrated) to St Helena in a way that is seen in many other jurisdictions. This allow the company to be legally transferred to a new jurisdiction and for them to therefore retain their name and legal entity. An absence of this under the law in St Helena may be problematic for companies otherwise wishing to register themselves in St Helena. More information is set out below.

- **Lack of ability for certain company types to be incorporated in St Helena**

Similarly, the current Companies Ordinance restricts the types of company that may be incorporated in St Helena. Other jurisdictions allow a much broader variety of corporate structures, such as protected cell companies, hybrid companies as well as allowing well-established foreign corporate structures to be recognised in other jurisdictions (such as GmbH, Sarl etc). This policy proposed an extension to the types of corporate vehicle that may be offered under the Companies Ordinance in St Helena to as to widen the appeal of St Helena as jurisdictions in which to incorporate. More information is also found with regard to these below.

- **United Kingdom’s requirements with regards to the publication of registers of beneficial ownership**

The Foreign and Commonwealth office (the FCO) has already announced that it will require all overseas territories to publish their registers of beneficial ownership by 2023. Although under the current Companies Ordinance, the Registry is reviewable by the public in person (upon payment of a fee), a requirement will be to digitise the Company Registry so that this can be searched by the public online. The FCO has already facilitated an introduction with an organisation known as ‘Open Ownership’. Developments to the Company Registry will enable any partnership with open ownership to be easier facilitated so that the FCO requirements can be complied with, but also so that St Helena will be able to illustrate compliance with best international transparency standards (see below).

- **Revenue raising opportunities**

It is noted that the current Company Registry does not yield much in terms of revenue to SHG. In 2018-19 the Registry yielded £2,440 and in 2019-20 it yielded £3,353.

St Helena is in the unique position of being a British Overseas Territory without any existing financial services industry. This means that St Helena has the ability to develop its services in a way that will not be akin to other offshore financial services centres which have been labelled as 'tax havens'. It is submitted that St Helena's selling points for future financial services work are as follows:

1. It is a politically secure British sovereign territory with a good legal system
2. It has no negative reputation as a tax haven and does not plan to become a tax haven
3. It is within the GMT time zone, thus being attractive to businesses in a number of time zones around the world who wish to be able to liaise with their company administration and service providers

3. Rationale for intervention and creation of this policy

Given the potential for revenue raising opportunities, it is proposed that St Helena has the chance to move forward and offer company incorporation and administration services on a fully transparent basis and with developing tax laws which are not abusive in any way or typical of 'tax haven' behaviour. Comments on this follow.

Tax haven considerations

Although there is no one accepted definition of what constitutes a tax haven, the most significant issue with regard to the activities of the tax havens is that by offering zero or very low taxation for non-residents, they benefit individuals and businesses who are not resident in their territories and provide for discriminatory tax systems in order to maintain their financial services industries. St Helena is in the unique position of being able to develop an alternative source of revenue from foreign based businesses and without discriminating against St Helenians or offering a dual taxation regime.

The other aspect to tax haven activity is in terms of their inclination towards financial and banking secrecy. St Helena does not have any banking secrecy laws. Furthermore, given the FCO's requirement for all British Overseas Territories to publish details of the beneficial owners of companies (and for that matter trusts) under their administration, as well as the growing pressure on certain governments to move away from banking secrecy laws (such as those in Switzerland), this policy has therefore been developed to inform the ways in which companies registration and administration can be performed in St Helena thus diversifying the local economy and in an attempt to raise revenues for the benefit of the island while also explaining how these activities can be undertaken in a way that is transparent and in accordance with best international standards, thus avoiding the island being drawn into any criticism of tax haven behaviour and avoiding any secrecy issues.

Executive Summary of St Helena's way forward

Significant transparency and intergovernmental measures will need to be taken by St Helena if it is to operate an enhanced Company Registry system working as part of an international financial services capability and it must be admitted that there are significant steps to take with regard to liaison with the FCO and the OECD in implementing some of the international transparency standards set out in this policy document. A significant amount of legislative work will also be required. However, St Helena is very much in a position to benefit from new revenue streams as well as an ability to diversify its economy and its opportunities for St Helenians and to benefit from participation in international financial services activity in a way that will not be tax abusive or frowned on from an international or transparency perspective. The benefits can be summarised in this executive summary as follows:

- New tax rate of 20% of a St Helena company's global profits to be taxed at existing St Helena tax rate, meaning that global companies will pay an effective tax rate of 5% in St Helena.
- Minimum tax charge for medium and large companies (as defined) to be at least 1 % of global turnover (not profit) to ensure that all companies will pay tax in St Helena.
- New economic revenue stream for St Helena, provided the legislative, transparency and international requirements set out in this policy are complied with.
- New employment opportunities for St Helenians and training potential to assist international businesses with company administration, company secretarial work, preparation of accounts, assisting with bookkeeping services, client relationship skills, international finance experience etc.

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2. Overarching Policy Framework

1. Links to Strategic Objectives

The Sustainable Economic Development Plan (SEDP) as endorsed by Economic Development Committee, support growth of exports in order to attract more money to St Helena, thereby enabling St Helena to become 'Altogether Wealthier'.

The provision of Company Registry services to global businesses is an export business that will facilitate the raising of funds, both in terms of Company Registry fees, but more significantly in terms of revenue to St Helena Government. In order to move towards self-sustainability and to promote economic growth, the endorsement of this policy can provide significant opportunities for St Helena.

This policy also supports the following National Priority: Sustainable and ethical economic development.

2. Aims and Objectives

There are 5 overall objectives and aims of this policy. These are as follows:

- ***Key issue 1: Broadening the St Helena taxation base***

  As noted above, the current Income Tax Ordinance does not require companies operating globally to pay tax on income derived outside of St Helena. This needs to be changed as a first step to being able to realise revenues from foreign owned companies who wish to set up a company or an administration centre in St Helena.

- ***Key issue 2: Becoming a 'fair tax' jurisdiction and possible tax raising options***

  There are various options for how St Helena could raise revenues from Company Registry and administration work. This could be by deriving a % of world-wide profit as that deemed to be taxable in St Helena, or by taxing an element of turnover of a Group's company. See below for details. It will be important to determine the tax rates in a way which allows businesses an incentive to come to St Helena, but in a way that is not abusive or 'tax free' (like the 'tax havens').

- ***Key issue 3: Compliance with international standards of company administration and financial services administration , including substance and transparency initiatives***

  In offering company registration and administration services to foreign owned businesses, St Helena will effectively be embarking on engagement with international financial services businesses. It will therefore be important for St Helena to demonstrate that it is understands and complies with the best international standards in the performance of these services. It is suggested that compliance with such standards will not only be a key selling point for St Helena when marketing its services, but also will be very much expected by the UK Government and the Foreign and Commonwealth Office. In addition to the various rules and regulations of international bodies like the Financial Action Task Force ("FATF") and the Organisation of Economic Cooperation and Development ("OECD"), St Helena will also need to consider rules of economic substance. Details are set out below.

- ***Key issue 4: Effective regulation of Company Registry within St Helena***

  It will be necessary for regulation of the Company Registry to be put on a statutory footing. This policy suggests that the most appropriate way of doing this would be for the current department to formally report (on a day-to-day basis) to the SHG corporate finance team, but in terms of regulatory oversight, into the Financial Services Regulatory Authority (FSRA), who would have responsibility for all Company Registry and administration work under a revision to the Financial Services Ordinance (which would create companies incorporation and administration as a new class of regulated business). The FSRA will then need to issue Directives and anti-money laundering handbooks to effectively regulate company incorporation and administration. Further details of the legislation required are set out below.

  In terms of human resource, there will need to be recruitment for a senior financial services position to lead the department and an administrator, preferably with experience of accounts preparation or bookkeeping given the need to have 'four eyes' control over the companies' affairs and compliance with economic substance rules.

- ***Key issue 5: Enactment of legislative changes required to achieve the policy.***

  The extensive legislative steps needed to implement this policy are set out below.

3. Scope

While matters considered by this policy will only affect the operation of the Company Registry department (which it is submitted should be separated from judicial services and should report into the Financial Services Regulatory Authority), the decisions taken by St Helena Government with regard to its Company Registry policy will obviously send out a message to the wider world with regards to St Helena's appetite for financial services business. As such, the scope of this policy is island wide. There are also international aspects with regard to the way that St Helena may then position itself in the wider international services industry.

Comment re trusts

It should also be noted that internationally, the incorporation and administration of trust structures is something which operates alongside the incorporation and administration of companies. It is common for many international businesses which are not public limited companies (plcs) to be ultimately owned by Trustees of a trust, often set up for the benefit of the family members of the founder of the business.

While many of the issues raised in this policy note will also apply to the establishment and administration of trust structures, this note does not extend to trusts per se. If SHG wishes to offer trust as well as company administration services, then it will be necessary for SHG to consider a new trusts law to enable this business as there is no such law at present. To maximise revenue opportunities, however, it is highly recommended that SHG look at doing this over the next 12 months as many opportunities concerning company administration could operate in conjunction with trust administration.

3. Policy Outline

1. Changing the St Helena taxation base for companies

There are two broad systems of taxation- (i) territorial, where only local income from a source inside the country is taxed, and (ii) a residence-based system, where residents of the country are taxed on their worldwide (local and foreign) income, while non-residents are taxed only on their local income. Exceptionally, some countries (such as the US) also tax the worldwide income of their non-resident citizens. Currently, St Helena uses a territorial system of taxation.

Given that St Helena has a territorial system, therefore, taxable income under the St Helena income tax ordinance (for individuals and companies) is the total amount earned, accrued or derived during that tax year in or from St Helena. This currently therefore provides companies with the ability to establish themselves in St Helena and not pay tax on profits earned outside St Helena. This is therefore the first and most important change that would need to be made to the St Helena taxation regime if company incorporation and administration services are to be provided to international businesses in a meaningful way which would contribute revenues to St Helena's economy.

As it is important to not discriminate against locally owned companies in favour of lower taxation regimes for foreign owned companies - for danger of being caught in tax haven activity by the creation of alternative tax regimes - it is therefore proposed that this change apply to all companies - irrespective of who they are owned by.

It is understood that presently, this should not cause too much of an issue for companies incorporated in St Helena given that there may only be one St Helena company which makes profits from outside of St Helena and should this policy be taken forward, early notice of the changes and consultation with the affect company should be undertaken.

By changing the taxation of companies to include taxation on worldwide income, St Helena will effectively be changing its corporation tax regime (but not its individual tax regime) to a residency basis. To avoid residents paying tax twice on the same income, countries with a residence-based system of taxation usually allow deductions or credits for the tax that residents already pay to other countries on their foreign income. While the current St Helena income tax ordinance provides for this, an imperative will be for St Helena to enter into Double Tax Agreements (DTAs) to avoid companies paying double tax (on the basis they may be eligible for taxation in other jurisdictions in addition to St Helena). In the case of corporation tax, some countries allow an exclusion or deferment of specific items of foreign income from the base of taxation in their own country. However, given the proposals below, St Helena would be looking to a 'fair' tax percentage from companies and providing DTA's can be entered into, on the basis that the Company will be based in St Helena, it should not be paying double tax with other countries once treaties are in place; thus negating the need for a foreign tax credit based system. Further information this regard is set out below.

For the avoidance of doubt, it must be reiterated that the proposals to tax companies on worldwide income has no impact on the taxation of individual persons under the St Helena income tax ordinance. While St Helena may wish to consider the implications of moving to a residency based system of taxation for individuals in due course, this is beyond the scope of this note, which applies to corporation taxation only. It is not unusual for countries to use different systems of taxation for individuals and corporations; for example, Singapore uses this proposed system of a residence-based system for corporations but a territorial system for individuals - i.e. the same as the proposal for St Helena.

2. Becoming a fair tax jurisdiction and possible tax raising options

2.1 Corporate income taxation as a percentage of worldwide income

In order to avoid St Helena becoming classed as a 'tax haven', it will need to ensure that its taxation of companies is not zero or at a nominal rate. While this is the model for many offshore tax centres, revenue for those countries is made indirectly by the provision of jobs within a financial services industry, and therefore locally paid income tax paid by employees in that sector.

Here is a table of those countries that do not charge any corporate income tax:

Country	Region
Anguilla	North America
Bahamas	North America
Bahrain	Asia
Bermuda	North America
Cayman Islands	North America
Guernsey	Europe
Isle of Man	Europe
Jersey	Europe
Palau	Oceania
Turks and Caicos Islands	North America
Vanuatu	Oceania
Virgin Islands, British	North America

St Helena will not charge zero corporate income tax. Given the unique selling point referred to above and the opportunities that may present themselves to St Helena by being quite different from the tax havens, the proposal is to tax St Helena companies on a percentage of their worldwide profit by deeming this to have been locally derived profit, and therefore taxed at the typical St Helena income tax rate of 25%. It will be necessary for St Helena to decide on a fair tax rate, given its proposal to tax a percentage of worldwide income as local income for the purposes of assessment in St Helena.

By way of comparison, here is a table showing the countries with the twenty lowest corporate income tax rates in the world (excluding those without any corporate income tax which are set out above):

Country	Rate	Region
Cyprus	12.5%	Europe
Ireland	12.5%	Europe
Liechtenstein	12.5%	Europe
Macao	12%	Asia
Moldova, Republic of	12%	Europe
Andorra	10%	Europe
Bosnia and Herzegovina	10%	Europe
Bulgaria	10%	Europe
Gibraltar	10%	Europe
Kyrgyzstan	10%	Asia
Macedonia, The Former Yugoslav Republic of	10%	Europe
Nauru	10%	Oceania
Paraguay	10%	South America
Qatar	10%	Asia
Timor-Leste	10%	Asia
Kosovo, Republic of	10%	Europe
Hungary	9%	Europe
Montenegro	9%	Europe
Turkmenistan	8%	Asia
Uzbekistan	7.5%	Asia

Worldwide Average	23.03%	N/A
Worldwide weighted average (by GDP)	26.47%	N/A

It must also be recognised that the basis of computation from one jurisdiction to another varies significantly, so direct comparisons are difficult. However, this may assist St Helena in deciding on an appropriate rate.

So for instance, if St Helena was to levy a tax charge of 20% of global profits as deemed local to St Helena (then chargeable at 25%), this would result in an overall tax take of 5%. This would not change the basis of income earned from or within St Helena (which would be taxed at the full 25% rate or 15% concession rate). Given the deemed basis of the charge, this is still not a zero tax rate or indeed a nominal charge.

Consultation question 1: Do you agree that 20% of global profits should be deemed local to St Helena and taxed at local rates (25%)?

If St Helena were to also introduce a minimum tax charge (either for medium or large business, or more generally (see below) then this could further enhance revenue opportunities, while still remaining competitive for businesses looking to set up administration and headquarter arrangements on the island. More importantly, introducing a minimum tax charge also reiterates the message that St Helena is not looking at becoming a tax haven.

As an example therefore, if a company declared its worldwide profits to be £1,000,000, using a rate of 20% deemed taxable in St Helena at 25%, this would result in a tax charge of £50,000 (indicating an overall tax charge of 5%). However, this would not account for any foreign account tax charges that may be available under the law as it stands, and which would need to deleted - on the basis of agreed Double Taxation Agreements being implemented. The recent changes in Mauritius should also be noted which are relevant to the availability of foreign tax credits in particular. Comparison with Mauritius's tax rates therefore follows.

The availability of foreign tax credits is also a significant factor that needs to be considered when looking at the above tables as also to be considered is the fact that some jurisdictions charge a higher level of corporation tax than those appearing in the table but then corresponding tax credits to reduce this corporate income tax obligation. Mauritius is an example of this.

Comparison with Mauritius

There have been relatively recent changes to the taxation regime in Mauritius given international criticism of its tax regimes previously. The regime in Mauritius is interesting as a comparison for St Helena's potential way forward.

As of 1 January 2019, a previously available 80% Deemed Foreign Tax Credit (DFTC) regime available to companies holding what was known as a Category 1 Global Business Licence (i.e. foreign owned companies) was abolished and the rate of tax for both domestic companies and foreign owned Global Business Companies (GBCs) was harmonised at 15%.

However, a new licence, termed a Global Business Licence (GBL), became mandatory if a foreign-controlled company wished to conduct its business principally outside Mauritius.

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In place of the Deemed Foreign Tax Credit, a new Partial Exemption Regime (PAR) was introduced based on 80% of the relevant income and applicable to Global Business Licence and domestic companies. This was effective from 1 January 2019 and applies to:

- Foreign-source dividends derived by a company;
- Interest derived from overseas by a company other than a bank;
- Profit attributable to a permanent establishment of a resident company in a foreign country;
- Foreign-source income derived by a Collective Investment Scheme (CIS), closed-end fund, CIS manager, CIS administrator, investment adviser or asset manager, licensed or approved by the Mauritius Financial Services Commission; and
- Income derived from overseas by companies engaged in ship and aircraft leasing.

So although the Deemed Foreign Tax Credit and Partial Exemption Regime rules mean that there is still an 80% credit against corporate income tax charges, the application of the Partial Exemption Regime has been more particularly defined. Where a Company has claimed the partial exemption, no credit for foreign taxes in the form of actual tax credit, underlying tax credit and tax sparing credit will be available. The definition of foreign-source income has been changed to "income which is not derived from Mauritius".

A Global Business Licence holder will be required to carry out its income generating activities in or from Mauritius though the direct and indirect employment of suitably qualified persons and should incur a minimum level of expenditure in accordance with its level of activities (this is to justify compliance with substance requirements - see below). Similarly, it is also mandatory for the holder of a Global Business Licence to be managed and controlled from Mauritius and administered by a corporate services provider which holds a licence from the local regulator.

Using the example of a company declaring £1,000,000 in profits therefore, this means that it will pay a tax charge in Mauritius of £30,000 - an overall tax charge of 3%. This compares with the proposed overall St Helena tax rate on global profits of 5%.

Overall tax charge for St Helena

St Helena should position itself at making an overall tax charge of 5% of foreign income. This means charging between 20% of global profits. While this is low, given that there is no proposal to discriminate between locals and foreign owners of companies in taxing their foreign income St Helena should be able to avoid allegations of abusive tax practices.

2.2 Minimum tax payable based on a percentage of turnover

For medium and large businesses, as part of the positioning of St Helena as a fair tax jurisdiction, it is also proposed that a tax be paid based on a percentage of turnover (as opposed to profit) to ensure that any company registered in St Helena with a turnover in excess of £25,000,000 per annum should pay tax at an amount more than or equal to 1% of turnover. This figure is based on an assessment that 20% profit is a reasonable profit margin and based on an assessment that 5% is the agreed overall tax charge. So, the calculation would be turnover x (20% profit margin x 5%) = 1% minimum tax charge.

Consultation question 2: Do you agree that for medium and large businesses, a minimum tax rate of 1% of turnover should apply to ensure that all medium and large businesses pay tax on St Helena?

A medium business could be defined as one with a turnover of between £25,000,000 and £50,000,000 per annum. A large business is one with a turnover of more than £50,000,000 per annum.

Consultation question 3: Do you agree that the definition of medium business should be defined as one with a turnover of between £25,000,000 and £50,000,000 and the definition of large business be one with a turnover of more than £50,000,000 per annum, for purposes of charging a minimum tax rate?

Other countries in the world also have minimum tax requirements. As a minimum tax based on turnover was a predecessor tax to VAT in many countries, many of the countries charging turnover based taxes are developing countries (which have not introduced VAT). Examples are as follows:

- Bangladesh - Minimum tax payable of 0.5% of turnover (0.1% our certain industrial undertakings) where turnover exceeds 5,000,000 Bangladeshi Takas (c.£47,500)
- Chad - Minimum tax of 1.5% of annual turnover
- Djibouti - Minimum tax 1% of turnover exclusive of VAT, with minimum payment of DJF 120,000 (£500)
- Equatorial Guinea - Minimum tax payment of 3% of a company's prior year turnover
- Gabon - Minimum tax charge of 1%
- Gambia - minimum tax is 1% of gross revenue for audited accounts, and 2% for unaudited accounts
- Guatemala - 25% standard corporation tax rate applies to net profits under general tax regime. However, there is an alternative, optional regime which charges either 5% or 7% of gross revenue. per annum. Remittances by branch to foreign head office are treated as dividends and subject to 5% withholding tax (see further below for potential tax charges for branches of companies located in St Helena looking to remit dividends or other profits to other countries and away from St Helena).
- Morocco - Minimum tax payable is at least 0.75%, calculated on turnover, financial and noncurrent income. Profits remitted abroad by branch in Morocco is 15% in addition to normal corporate rate.
- Panama - corporation tax assessed at greater of 25% rate on net taxable income or 1.17% on gross taxable income. Additional 10% tax imposed on after-tax branch income.
- Senegal - 15% corporation tax rate applies to free export companies. Alternative minimum tax of 0.5% of prior year turnover. Under certain circumstances, VAT at 18% may be imposed on branch remittances
- Uzbekistan - Micro firms and small enterprises pay unified tax on revenue at rate of 4%. Other rates apply to larger enterprises.

Conclusion

While direct comparisons are not straightforward, it is proposed that St Helena is not economically dissimilar to some of these developing countries, although it must be said that some of these countries do however charge a higher general rate of corporation tax (between 25%-35%). While there may be scope to lower the thresholds for when the minimum tax is to be charged, this would be a political decision. Strictly with regard to the minimum tax charges, however, a proposed charge of 1% on a company turning over £25,000,000 would result in a tax payment of £250,000 pa. As such, this is a relatively good revenue opportunity for St Helena. From the above comparisons, 1% nonetheless remains very competitive compared to other rates charged internationally (as seen from the above). Thus a combination of charging (a) a deemed percentage of global profits as chargeable in line with the existing St Helena rates and (b) also imposing a minimum tax charge based on a turnover figure (levels to be decided) would seem to be both fair and also competitive.

2.3 Branch taxes

As can be seen from the above information, several jurisdictions also levy withholding or other corporate income tax charges on branches of companies remitting profits away from the jurisdiction. This tends to be between 10% and 25% of the branch profit. It is proposed that this also be implemented in St Helena so that registered branches of foreign companies will pay 20% of their branch profits on redistribution of such profit away from St Helena.

Consultation question 4 – Do you agree that branch taxes should be implemented in St Helena to ensure that branches of companies operating in St Helena do not avoid paying tax when they remit profits away from St Helena?

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3. Compliance with international standards of company administration and financial services business administration including substance and transparency

There are a number of international requirements which St Helena will need to implement to ensure if does not fall foul of being labelled a 'tax haven' by undertaking its company registration and administration services for international businesses. It will also be likely that the Foreign and Commonwealth Office (FCO)/Her Majesty's Government (HMG) (as the entity with ultimate responsibility of the Island's governance) would require future financial services capabilities to comply with the below measures.

It should however also be noted that there are strong economic and business considerations for complying with all of these measures, both in terms of selling St Helena's financial service offering as modern, transparent and 'fair tax', but also in terms of simply facilitating potential business (for instance, the implementation of double taxation treaties is paramount). The key features that are considered are listed below.

3.1 Economic substance rules of the EU

Background

In 2016, the EU Finance Ministers instructed the EU Code of Conduct Group to undertake a screening process whereby non-EU jurisdictions (92 in total) were assessed in respect of (i) the transparency, (ii) the taxation; and (iii) compliance with anti-base erosion and profits shifting measures (see below in regard to each of these) in force in each of these jurisdictions.

St Helena is currently not in scope for the EU substance rules given that it does not provide company registration and administration or any substantive financial services to entities resident outside St Helena. If this policy is to be enacted, then this will change and these requirements will therefore become within the EU's scope.

The screening process undertaken by the EU referred to above concluded that Guernsey, Jersey, the Isle of Man, British Virgin Islands (BVI), Cayman, Bermuda and Vanuatu did not have a formal tax legal substance requirement for entities doing business in or through these jurisdictions and were accordingly put on the EU 'grey list'. As a consequence, these jurisdictions all committed to adopting 'Economic Substance Requirement' legislation by the end of 2018, in response to the threat of being blacklisted by the EU for not adhering its proposals.

The EU's proposals are aimed at addressing the EU's concern that these jurisdictions' tax systems facilitate artificial offshore structures without real economic activity. In other words, structures that attract profits which are not supported by sufficient economic activity or presence in the relevant jurisdiction.

In devising this policy for companies registration and administration in St Helena, it is therefore important that St Helena follows the core substance principles in order to avoid being grey or blacklisted. The risk in being on either of these lists is that the entities will suffer reputational damage and will wish to move a more compliant and transparent jurisdiction (and therefore resulting in a loss of business to St Helena). The effects of being on these lists has been with regard to many of the traditional offshore financial services centres, such as Jersey, Cayman and BVI, who quickly moved to introduce their own substance laws but also particularly after the publication of the 'paradise papers' which focussed on alleged abuses in the operation of the financial services industries in those jurisdictions.

What happens in practice?

Once an entity has been identified as undertaking a relevant activity, and gets any other relevant criteria such as income and tax residence, it will be required to satisfy the economic substance test. In simple terms, the test centres on the entity:

- being directed and managed in the relevant jurisdiction
- conducting its core income-generating activities in that jurisdiction; and
- having adequate people, premises and expenditure in that jurisdiction.

How to meet the substance requirements

In order to meet the substance requirements, it is suggested that an entity undertakes its principal administration activity (and therefore incur its principal administrative expenses) in St Helena. It will also be necessary for the entity to make regular (proposed annual) regulatory filings in St Helena so that all activity is monitored correctly (see below at Key issue 4 for further information). It will also be important for there to be at least two directors resident in the jurisdiction and/or present at Annual General Meetings held in St Helena. In other jurisdictions it is common for members of the senior employees of the appointed corporate service providers to be appointed as directors of the entities. In St Helena's case, this could be the two personnel appointed with general responsibility for company administration.

In other offshore jurisdictions, the substance tests are normally satisfied by the engagement of a local corporate service provider who attends to the relevant formalities. In St Helena, although the company administration will be undertaken by a government department, it will nonetheless be important for SHG to follow the same formalities - unless an application is made by an external corporate services provider to provide administration services within St Helena (see below) and FSRA approval is granted.

Entities have to report annually on their economic substance credentials and a formal hierarchy of sanctions for non-compliant entities can be enforced by the EU.

It should be noted that in practice, an entity should not be caught by more than one jurisdictions' substance requirements. But it may have to comply with corporate requirements in its jurisdiction of incorporation and substance requirements in another jurisdiction if it is tax resident there.

Guidance from other jurisdictions

There are many anomalies in the approaches taken by the different jurisdictions and the various strengths, weaknesses and opportunities from those taken by other jurisdictions is set out in the SWOT document accompanying this note. It is to be noted the although the EU has applied the substance requirements to many of the UK Crown dependencies and other Overseas Territories, it has not extended to them to financial services jurisdictions within the EU, such as Malta, Cyprus or Liechtenstein. Furthermore, there are significant differences in the ways in which the legislation has been adopted in the various jurisdictions involved, perhaps because each jurisdiction is focusing on its particular offering and/or advantages.

Implications for St Helena

It will therefore be key for St Helena to deliver its own tailored substance law. As a minimum, this should ensure that there is effective management from St Helena - either in terms of director representation on the boards, or some substantive activity taking place within St Helena. This could be director services on the board in addition to administration, book-keeping, accounts preparation or general company secretarial work. It will also be useful to ensure that at least one meeting per annum takes place within St Helena. This would most usefully be the Annual General Meeting. Any Extraordinary General Meetings should also be instigated from St Helena.

3.2 Tax Information Exchange Agreements

Background

Tax Information Exchange Agreements (TIEAs) are bilateral agreements under which territories agree to co-operate in tax matters through exchange of information.

They allow governments to enforce their domestic tax laws by exchanging information relevant to a tax matter covered by the arrangements.

They broadly follow the Organisation for Economic Cooperation and Development (the "OECD") Model Agreement on Exchange of Information on Tax Matters.

The UK has signed a number of bilateral TIEAs based on this OECD model.

The UK also exchanges information with other countries for tax purposes under the terms of:

- the joint Council of Europe and OECD Convention on Mutual Administrative Assistance in Tax Matters
- a number of EU directives and regulations with EU member states

The UK works with the OECD to improve the exchange of tax information, and makes sure all jurisdictions meet the international standards of fiscal transparency and exchange of information.

Why relevant to St Helena?

The OECD has introduced a number of financial services and transparency measures to its members (including the UK). Compliance with these is seen as very much required in the global moves towards greater global tax transparency.

Negotiation and conclusion of as many TIEAs as possible will be important for St Helena if it is to try demonstrate its commitment to global financial transparency. This will also be important from an enforcement perspective as it would enable St Helena to exchange information with other jurisdictions to ensure that the tax as disclosed in an entity's return, and as paid in other jurisdictions, is correct. The exchange procedures are normally only invoked if there is a high suspicion of illegal activity or false information being provided by an entity.

Many of the existing offshore financial services centres have been rapidly concluding TIEAs over recent years.

DR

3.3 Common Reporting Standard

Background

The Common Reporting Standard (CRS) is an information standard for the Automatic Exchange of Information (AEOI) regarding bank accounts on a global level, between tax authorities. It was developed by the OECD in 2014.

Its purpose is to combat tax evasion globally. The idea was based on the United States Foreign Account Tax Compliance Act (FATCA) (see below) and its legal basis is the OECD's 'Convention of Mutual Administrative Assistance in Tax Matters'. 109 countries have now signed an agreement to implement it, with more countries intending to sign later. First reporting under CRS commenced in 2017, with many other countries following in 2018.

Information exchanged

The information and its exchange format are governed by a detailed standard. The details are listed in the OECD CRS User Guide: http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/schema-and-user-guide/

Each participating country will annually automatically exchange with the other country the below information in the case of Jurisdiction A with respect to each Jurisdiction B reportable account, and in the car of Jurisdiction B with respect to each Jurisdiction A reportable account.

1. Name and address, Taypayer Identification Number (TIN) and date and place of birth of each Reportable Person
2. Account Number
3. Name and identifying number of the reporting financial institution
4. Account balance or value as of the end of the relevant calendar year (or other appropriate reporting period) or at is closure, if the account was closed.
5. Capital gains, depending on the type of the account (dividends, interest, gross proceeds, redemptions, other)

Reportable accounts

OECD allow the participating country to determine what accounts are deemed to be 'reportable'. The formal definition of 'reportable account' means a [Jurisdiction A] reportable account or a [Jurisdiction B] reportable account, depending on the context, provided it has been identified as such pursuant to due diligence procedures, consisted with the Annex (detailed in the Standard and the OECD user guide), in place of [Jurisdiction A] or [Jurisdiction B].

Although this seems complex, what it means is that a jurisdiction can negotiate and determine its own reportable accounts in its agreement. For example, the United States, with its citizenship-based taxation, has established in its FATCA Intergovernmental Agreements that, accounts held by US citizens and US Persons for Tax, purposes in the other country's jurisdiction need to be reported by FATCA.

St Helena could determine its own reportable account as any individual or company with a liability to tax in St Helena.

Considerations and recommendations for St Helena

CRS, as an automatic exchange of information is essentially a more robust and automated version of receiving tax information that can otherwise be provided under a Tax Information Exchange Agreement.

Although CRS appears at first sight to only apply to reportable accounts held by individuals and not companies, the information to be reported under CRS also applies to corporate entities where a beneficial owner of the entity is ultimately resident in a participating jurisdiction, if that participating jurisdiction has deemed the account in St Helena (or for that matter, potentially - in Gibraltar) to be a 'reportable account'.

The decision whether or not St Helena will sign up to CRS will be made depending on the nature and type of clients and companies wishing to incorporate in St Helena and have their administration activities undertaken in the island. Although the automatic exchange of information is of course reciprocal, it is likely that St Helena will not benefit from much information exchange in the early days given the infancy of its financial services industry.

As at 2019, there were 59 countries which had not signed up to the CRS standards. It is fair to say that they are mostly African and developing companies. This is probably due to the difficult and costly nature of collecting the information. It should also be noted that some of the 'tax havens' have elected to supply the information under CRS but not receive any information in return. This in effect ensures that they 'comply', but clearly doesn't provide them with visibility on whether or not a company is indeed paying the correct amount of tax in the jurisdiction involved. Although for most tax havens that will be zero in any event, in St Helena's case; should it wish to be a fair tax jurisdiction, then adoption of CRS might be apt.

A list of the CRS participating countries can be found at: http://www.oecd.org/ctp/exchange-of-tax-information/MCAA-Signatories.pdf.

Although the setup of CRS will require time resource (along with many of the other initiatives identified in this policy), it is seen as the global transparency standard with regard to AOI. It may be difficult for St Helena to demonstrate its commitment to its 'fair tax' credentials and transparent financial services industry in the absence of CRS participation.

Any corporate services partner appointed by SHG may also be able to assist with the collation of data. For further thoughts in this regard, please see below under Key Issue 4 - effective regulation of the Companies Registry.

Consultation question 5- Do you believe that St Helena should participate in the Common Reporting Standard (CRS), an information standard for the Automatic Exchange of Information (AEOI) regarding bank accounts on a global level, between tax authorities?

3.4 US Foreign Account Tax Compliance Act (FATCA)

Background

The Foreign Account Tax Compliance Act (FATCA) is a piece of legislation enacted by the US in 2010. It was designed to help counter tax evasion in the US and requires global financial institutions to report on its US customers. Importantly, it is a piece of extra-territorial law, which means that it applies anywhere in the world. In its aim to encourage tax compliance by preventing US persons from using banks and other financial organisations to avoid US tax on their income and assets, it requires a financial institution to apply a 30% withholding tax on certain types of US income paid to non-FATCA compliant customers. It is this application of such a high withholding rate that effectively enforces compliance with FACTA.

A significant number of countries and territories worldwide have signed inter-governmental agreements (IGAs) relating to FATCA compliance with the US government. These IGAs resulted in the FATCA legislation becoming part of their local laws. The effect of the IGA is that the financial institutions within the participating country do not have to report on US accountholders directly to the US authorities - they report the information to the local tax authority, who in turn, then sends the information to the US authorities, thus alleviating the need for each financial institution to open its direct account with the US. The UK's IGA came into force in Jan 2014. It does not apply to the Overseas Territories or British Overseas Territories.

In the absence of an IGA, any financial institutions has to open an account with, and report to the US authorities, on an annual basis, with regard to its US Persons.

The term 'US Person' is very wide-ranging, and includes (but is not limited to):

- a citizen of the US, including an individual born in the US but resident in another country or territory (who has not given up their US citizenship)
- a person residing in the US, including US green card holders
- certain persons who spend a significant number of days in the US each year
- US corporations, US partnerships, US estates and US trusts.

Although a UK version of FATCA was subsequently implemented, ("UK FATCA") requiring the Crown Dependencies and the British Overseas Territories to report similar information on UK taxpayers to HMRC, this has now been replaced by the CRS (see above). It should be noted that the Overseas Territories who were required to implement UK FATCA were Anguilla, Bermuda, British Virgin Islands, Cayman, Gibraltar, Montserrat and Turks & Caicos. St Helena was not included, presumably as it does not (currently) offer any international financial services.

Implications for St Helena

Currently St Helena and BOSH do not have any FATCA compliance issues. Accordingly, St Helena has not negotiated an IGA nor has it currently considered FATCA in any degree.

If St Helena wishes to expand its Company Registry services and offer incorporation and administration services to non-residents, compliance with both CRS and FATCA will be necessary in order to comply with the international requirements on accounts held ultimately for individuals resident within the CRS countries or (with regard to FATCA) in the US. This can be done either within St Helena or by an appointed representative. For information on how an appointed service provider could assist St Helena with some of these issues, please see below under Key issue 4 - effective regulation of the Companies Registry.

Essentially, St Helena will need to decide whether it wishes to comply with FATCA, either by enactment of its local law to allow US reporting or (most appropriately) by entry into an IGA with the US. There are 2 models of IGA.

Whereas, under Model 1, the "FATCA Partner" government is tasked with collecting information from resident Foreign Financial Institutions ("FFIs") and reporting this to the IRS, Model 2 instead requires that FFIs register with the IRS directly and comply with the requirements of an FFI Agreement with the US.

FFIs resident in, or organized under the laws of, Model 2 jurisdictions (in St Helena's case, (a) the Bank of St Helena - providing accounts to non-resident businesses; and (b) - potentially - financial services entities incorporated in St Helena under the new regime) will be required to request consent from account holders (where this is required under local law) to report information regarding US accounts and accounts or obligations of non-participating FFIs. Where such consent is granted, FFIs will then report directly to the Inland Revenue Service (IRS) customer-specific information as required under the FFI Agreement and US Treasury Regulations.

Where consent is not granted, FFIs will be required to report aggregate information regarding these non-consenting account holders and obligations to the IRS, which may then seek to obtain additional information by making group requests to the FATCA Partner government based on the aggregate information reported.

The Model 2 FATCA Partner government will then have six months to respond to this information request by the IRS by providing the requested information regarding these accounts and obligations as if it had been reported directly to the IRS by the FFI (i.e., the same information and format as would have been required to be reported by the FFI under the FFI Agreement and the Regulations, had the laws of the local jurisdiction not prevented the FFI from delivering this information directly to the IRS).

Recommendation for SHG

If St Helena wished to join FATCA, then negotiation of a Model 2 IGA might be more appropriate, as the burden for compliance with FATCA then falls to the FFI, rather than to St Helena Government. It is also possible that, once the Model 2 IGA has been negotiated and signed, that a corporate services partner or appointed administrator may be able to capture the reportable information on behalf of St Helena's FFIs (see below).

Consultation question 6- Do you believe that St Helena should participate in the US Foreign Account Tax Compliance Act (FATCA), an information standard for the Automatic Exchange of Information (AEOI) regarding bank accounts to the US tax authorities?

3.5 Double Taxation Agreements ("DTAs")

Background

Double taxation is the levying of tax by two or more jurisdictions on the same income (in the case of income taxes), asset (in the case of capital taxes), or financial transactions (in the case of sales taxes). Understandably, businesses will be reluctant to incorporate entities in St Helena if they will end up being taxed on the same liabilities twice.

Double liability may be mitigated in a number of ways, for example, a jurisdiction may:

- exempt foreign-source income from tax,
- exempt foreign-source income from tax if tax had been paid on it in another jurisdiction, or above some benchmark to exclude tax haven jurisdictions, or
- fully tax the foreign-source income but give a credit for taxes paid on the income in the foreign jurisdiction.

Clearly, in this proposal to tax St Helena companies on a proportion of their worldwide income it is not going to be possible to follow the first option and completely exempt a company from its foreign-source income.

However, it is possible for St Helena to negotiate tax treaties with other countries, which set out rules to avoid double taxation and to allow a company relief against any taxation levied in another jurisdiction. These provisions are of course reciprocal but it is nonetheless not unusual for a business or individual who is resident in one country to make a taxable gain (earnings, profits) in another country. So although DTAs present great assistance to businesses involved in international trade, it could happen that an entity will need to pay tax on that income locally and also in the country in which it was made.

It is proposed that DTAs could replace the foreign tax credit process currently set out in the St Helena income tax ordinance. These treaties also often include arrangements for exchange of information to prevent tax evasion - such as when a person claims tax exemption in one country on the basis of non-residency in that country, but then does not declare it as foreign income in the other country; or who claims local tax relief on a foreign tax deduction at source that had not actually happened.

The stated goals for entering into a treaty often include reduction of double taxation, eliminating tax evasion, and encouraging cross-border trade efficiency. It is generally accepted that tax treaties improve certainty for taxpayers and tax authorities in their international dealings.

A DTA may require tax to be levied by the country of residence, and be exempt in the country in which it arises. In other cases, the resident may pay a withholding tax to the country where the income arose, and the taxpayer receives a compensating foreign tax credit in the country of residence to reflect the fact that tax has already been paid. In the former case, the taxpayer would declare himself (in the foreign country) a non-resident. In either case, the DTA may provide that the two taxation authorities exchange information about such declarations. Because of this communication between the countries, they also have a better view on individuals and companies who are trying to avoid or evade tax.

Considerations for St Helena

Although individuals ("natural persons") are normally only resident for tax purposes in one country at a time, corporate persons, owning foreign subsidiaries, can be based in one country and simultaneously based in another country: a subsidiary may make substantial income in one country but remit that income (as license fees, for example) to a holding company in another country that has a lower rate of corporation tax. Because of this, the control of unreasonable tax avoidance of corporations becomes more difficult and it requires more investigation when goods, rights and services are transferred. This is why it will be important for St Helena to (a) develop DTAs with as many partner countries as possible and (b) to consider its own anti-avoidance laws, or other regulations/codes of practice in order to prevent both the evasive distribution of profits from one jurisdiction to another and to ensure that fair tax remains 'fair'. Further information in this regard is set out below at Key Issue 4 - effective regulation of the Company Registry and at Key Issue 5 - legislative requirements in order to enact this policy.

From a commercial perspective, it will also be important to conclude DTAs so that companies know that there will be no issue with regards double taxation. An absence of DTAs may in fact deter companies from doing business in or from St Helena.

See also the OECD Base Erosion and Profit Shifting initiatives referred to below.

Consultation question 7- In your opinion, which countries would it be most important for St Helena to set up double taxation agreements with?

DR

3.6 Base Erosion and Profit Shifting

Background

Base erosion and profit shifting (BEPS) refers to corporate tax planning strategies used by multinationals to "shift" profits from higher-tax jurisdictions to lower-tax jurisdictions, thus "eroding" the tax-base of the higher-tax jurisdictions. These strategies "exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations" (the OECD's BEPS definition) where there is little or no economic activity or to erode tax bases through deductible payments such as interest or royalties.

The OECD has tried repeatedly to regulate its members against using BEPS schemes. However, it should be noted that academics have proved that the tax havens facilitating most BEPS schemes (such as Ireland, the Caribbean, Luxembourg, the Netherlands, Singapore, Switzerland, and Hong Kong), use OECD–whitelisted tax structures and OECD–compliant BEPS tools.

So while most of these plot shifting schemes used are therefore legal, in the view of the OECD this nonetheless undermines the fairness and integrity of tax systems because businesses that operate across borders can use BEPS to gain a competitive advantage over enterprises that operate at a domestic level.

BEPS is of particular significance for developing countries due to their heavy reliance on corporate income tax, particularly from multinational enterprises.

Relevance to St Helena

In order to demonstrate St Helena's commitment to transparency and international standards, it will be necessary for St Helena to consider a BEPS approach, particularly given that much economic activity of the entities to be incorporated or administered in St Helena will not of course be generated in St Helena - at least initially.

The OECD, as part of its G20 BEPS Project, developed 15 actions which equip governments with domestic and international rules and instruments to address tax avoidance. The 15 actions are set out at: https://www.oecd.org/tax/beps/beps-actions/

Of these 15 actions, four are deemed to be 'minimum standards' with the remaining eleven action points depending on the activities carried out in the jurisdiction. St Helena shall implement the four minimum standards which.

The four minimum standards are as follows:

1. Formal abolition of harmful tax practices (BEPS Project Action Point 5)

Put simply, this would require:

- an undertaking from St Helena not to engage in any preferential taxation regimes which could facilitate base erosion and profit shifting, and therefore have the potential to unfairly impact the tax base of other jurisdictions.
- Secondly, an assessment of appropriate transparency frameworks such as automatic information exchange through which an assessment of any BEPS concerns can be made; and
- Thirdly, compliance with 'substantial activities requirements' (which the OECD require in 'no or nominal tax' jurisdictions).

In terms of St Helena's ability to comply with this standard, it should be noted with regard to these points that:

1. The proposals set out at Key Issue 1 to amend the St Helena income tax ordinance would not create any preferential taxation regimes as only one taxation regime will apply to all St Helena companies (whether owned locally or not). This aspect should therefore be satisfied.
2. If progress is made with TIEAs and AOI one behalf of St Helena, then it is likely that this requirement will be satisfied.
3. If the economic substance tests are satisfied (see above), then it will be possible for St Helena to comply with this requirement.

2. Prevention of tax treaty abuse (BEPS Project Action Point 6)

Over the last few decades, double taxation agreements (see above) have served to prevent harmful double taxation and remove obstacles to cross-border trade in goods and services, and movements of capital, technology and persons. As stated above, this is why negotiation and conclusion of DTAs is crucial for the commercial success of St Helena's future Company Registry capability. This extensive network of tax agreements has, however, also given rise to treaty abuse and so-called "treaty-shopping" arrangements.

Treaty shopping typically involves the attempt by a person to indirectly access the benefits of a tax agreement between two jurisdictions without being a resident of one of those jurisdictions. There are a wide number of arrangements through which a person who is not a resident of a jurisdiction that is a party to a tax agreement may attempt to obtain benefits that a tax agreement grants to a resident of that jurisdiction.

Taxpayers engaged in treaty shopping and other treaty abuse strategies undermine tax sovereignty by claiming treaty benefits in situations where these benefits were not intended to be granted, thereby depriving jurisdictions of tax revenues.

In the OECD's view, this treaty abuse is one of the most important sources of BEPS concerns and is undesirable for several reasons, including:

- Treaty benefits negotiated between the parties to an agreement are economically extended to residents of a third jurisdiction in a way the parties did not intend. The principle of reciprocity is therefore breached and the balance of concessions that the parties make is altered;
- Income may escape taxation altogether or be subject to inadequate taxation in a way the parties did not intend; and
- The jurisdiction of residence of the ultimate income beneficiary has less incentive to enter into a tax agreement with the jurisdiction of source, because residents of the jurisdiction of residence can indirectly receive treaty benefits from the jurisdiction of source without the need for the jurisdiction of residence to provide reciprocal benefits.

With regard to St Helena's ability to comply with this standard, in negotiating DTAs with as many partner countries as possible, St Helena should include in its DTAs a commitment dealing with treaty shopping to ensure a minimum level of protection against treaty abuse. It is also noted that further development on this action point is expected from the OECD during the course of 2020.

This should therefore be an achievable standard for St Helena.

3. Implementation of Country-by-Country Reporting (BEPS Project Action Point 13)

Under BEPS Action 13, all large multinational enterprises (MNEs) are required to prepare a country-by-country (CbC) report with aggregate data on the global allocation of income, profit, taxes paid and economic activity among tax jurisdictions in which it operates. This CbC report is shared with tax administrations in these jurisdictions, for use in high level transfer pricing and BEPS risk assessments.

The lack of quality data on corporation taxation has been a major limitation to measuring the fiscal and economic effects of tax avoidance, making it difficult for authorities to carry out transfer pricing assessments on transactions between linked companies and even more difficult to carry out audits.

This Action report provides a template report for authorities to complete on an annual basis the income, profit and taxes paid by multi-national enterprises in their respective jurisdictions.

It should be noted that MNEs are defined as those with a consolidated group revenue in excess of EUR 750,000,000. It is therefore unlikely that St Helena will (at least initially) be incorporating or administering companies which are MNEs. So while St Helena may commit to signing up to CbC reporting, the reality is that it may be unlikely that the requirements will be triggered.

4. Mutual Agreement Procedures (BEPS Project Action Point 14)

The BEPS Action 14 Minimum Standard seeks to improve the resolution of tax-related disputes between jurisdictions. Jurisdictions signing up to the usual agreement procedures commit to having their compliance with the minimum standards reviewed and monitored by peers through a robust peer review process that seeks to increase efficiencies and improve the timeliness of the resolution of double taxation disputes.

Given that St Helena does not currently have any DTAs in place, a mutual agreement procedure can be set out in a DTA or by virtue of enactment of OECD frameworks. As such, this minimum standard should be achievable.

BEPS Conclusion for St Helena

Although none of the above points are difficult to achieve, it is suggested that if St Helena intends to adopt the minimum standards, then it should explicitly engage with the OECD from the outset (possibly through the Foreign and Commonwealth Office) to ensure that a realistic and achievable framework to achieve agreed compliance.

Consultation question 8- Do you agree that St Helena should sign up to the Base Erosion and Profit Shifting Minimum Standards?

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4. Effective regulation of the Companies Registry in St Helena

There are several steps which SHG will need to take to ensure effective regulation of the Companies Registry.

4.1 Personnel

As stated at the beginning of this Policy, in order to develop the St Helena Company Registry, a new post should be implemented which is responsible for Companies Registry and International Finance. This person should have extensive company secretarial and registry experience as well as good legal and regulatory understanding of financial services in another jurisdiction. Business development experience will also be key to this position.

It is proposed that the FSRA, under amendment to the Financial Services Ordinance to include company incorporation and administration as a regulated activity (see below), should confirm they have no objection to the appointment of this person in accordance with section 14 of the FS Ordinance.

While it will be ultimately necessary for the Company Registry team to consist of two persons (to assist with good governance and a 'four eyes' principle), the immediate focus should be on recruiting for this senior position.

4.2 Effective Reporting of the Companies Registry

It is suggested that the post responsible for Companies Registry and International Finance should report into Corporate Finance/the Financial Secretary, to whom this person will be accountable in terms of progress with development of the project. However, the Company Registry will also be required to report to the Financial Services Regulatory Authority under a new regulatory regime to be adopted. This will be important to demonstrate effective and independent regulatory supervision. Some details follow.

4.3 Consideration of FSRA's regulatory remit

Under proposed amendments to the Financial Services Ordinance (the "FS Ordinance"), incorporation and administration of St Helena companies for and on behalf of non St Helenians will become a new class of regulated financial services business under the FS Ordinance. This is necessary as compliance with the international standards on combatting financial crime and anti-money laundering prevention and prevention of terrorism (see details below in Key issue 5) will need to be evidenced. By ensuring that incorporation of companies for non-St Helenians requires FSRA permission, St Helena can ensure that only the Companies Registry will be able to facilitate this and that there is an adequate regulatory system in place to prevent entities being incorporated without recourse to the legal requirements and standards - thus protecting St Helena and its international reputation.

The FS Ordinance provides for ongoing monitoring, reporting and supervision of regulated entities. It is proposed that these provisions will apply equally to the St Helena Companies Registry as it would to any other regulated entity in St Helena.

It should be added that this requirement will not apply for companies that local St Helenians (or anyone with immigration permission in St Helena) wish to incorporate - this should continue in the same way as presently (albeit with the same level of 'know your client' requirements to be provided to the Registrar. Locally owned companies will also be subject to the same anti-money laundering regime (including the SAR process)).

4.4 Consideration of Money Laundering Reporting Authority (MLRA) remit

It is also proposed that the MLRA's role be enhanced to include an explicit responsibility for receiving periodic reports and confirmations from the Companies Registry as well as details of any issues with suspicion of money laundering being undertaken by the entities administered by the Companies Registry. These reports are commonly known as Suspicious Activity Reports (SARs). Details of a new SAR regime will need to be established, and it is suggested that this be done either by a Directive issued by the FSRA, or as an explicit set of new anti-money laundering regulations issued under the St Helena Money Laundering Ordinance. Guidance on the submission of SARs can also be included in a new anti-money laundering handbook (see below).

Under the existing Money Laundering Ordinance, the MLRA has a remit for investigating any suspicion of money laundering where a 'relevant activity' takes place. Helpfully, this already includes:

"*the provision by way of business of services in relation to the formation, operation or management of a company or a trust*".

This gives the MLRA existing general powers, but a comparison of other AML laws around the world shows that St Helena should enact an updated Money Laundering ordinance to give more fulsome regulatory powers to the MLRA in cases of financial services business which may soon be facilitated (see below at Key Issue 5 - legislative changes necessary). Further detail and the practical implementation of these anti money laundering measures will also be set out in a new Anti-Money Laundering handbook.

4.5 Implementation of a St Helena Anti-money laundering Handbook (the "Handbook") in accordance with the Financial Action Task Force (FATF) recommendations

In order to set out the essential regulatory, compliance and anti-money laundering provisions that St Helena will need to demonstrate its commitment to effective regulation of the Companies Registry, it will be necessary for the FSRA - as the entity with overall responsibility for the regulation of incorporation and administration of companies for non-St Helenians - to issue a Handbook.

It should be noted that the requirements of the Handbook will apply only if the St Helena incorporated entity is undertaking financial services business (as defined in the Financial Services ordinance).

While it is suggested that the Handbook will not have direct legal effect, a failure to comply with the terms of the Handbook can lead to an FSRA investigation into issues/and or public censure or findings against the Companies Registry. Alternatively, it is submitted that the FSRA powers may be enhanced to direct that transactions be frozen, declared void or dealt with in conjunction with the MLRA and/or police powers.

All of the other offshore financial services centres have issued a Handbook. It will important for St Helena to adopt similar measures. Most offshore financial centres base their handbooks on the Financial Action Task Force (FATF) recommendations. FATF is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financial of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering and counter-terrorist financing standard.

The FATF Recommendations can be found at: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf

A useful resource here is the Mauritius AML Handbook. Mauritius's Handbook is based on the FATF Recommendations. This can be found at: https://www.fscmauritius.org/media/82226/fsc-aml-cft-handbook-27012020-to-website.pdf.

The principal areas that the Handbook will deal with are set out at Annex C. Although this seems quite detailed, this document is important as it will be the principal tool that the Companies Registry should use in administering entities in a compliant way and which minimises the risks of their facilitation of money laundering or countering the financing of terrorism.

The contents of the Handbook also facilitate a description of some of the salient issues for consideration.

Consultation question 9 – Do you agree that St Helena should utilise a St Helena Anti-money laundering Handbook (the "Handbook") in accordance with the Financial Action Task Force (FATF) recommendations?

4.6 Examples of 'Sound Business Practice 'regulations

Several jurisdictions have published guidance on company activities that will not be allowed without mitigation or explanation in their jurisdiction. In some cases there is a complete prohibition on companies undertaking specific activities.

Jersey for example, has a sensitive activity list which requires close cooperation with the Jersey Financial Services Commission before any company can be incorporated in or administered from the jurisdiction if the entry involved is engaged in the provision of specific services. This is incorporated into their 'Sound Business policy' (revised November 2019): https://www.jerseyfsc.org/media/3403/pol-sound-business-practice-policy.pdf.

This policy sets out activities which, as a matter of policy, the Jersey regulator has determined potentially poses reputational risks to Jersey. These areas include:

- Trading activities which include the provision of goods or services that require payment in advance, where such goods or services are not subject to consumer protection or pose a risk of fraud. Examples include, but are not limited to:
  - (a) travel agents which are not 'bonded'
  - (b) container leasing
  - (c) sale or leasing of overseas property development
  - (d) time share activities
- In respect of arms, weapons, ammunitions, countermeasures or other military or defence equipment, goods, technology, and personnel (as applicable) involvement, directly or indirectly, in one of more of the following:
  - (a) manufacture
  - (b) maintenance
  - (c) sale
  - (d) supply
  - (e) delivery
  - (f) transfer
  - (g) purchase
  - (h) importation

(i) exportation
(j) transportation
(k) financing or financial assistance
(l) use of
(m) provision of brokering services
(n) training or technical assistance.

- Manufacture, marketing or sale of pharmaceutical goods or devices which are not licensed or have not received marketing authorisation in the jurisdiction where they are manufactured, marketed, sold or supplied.
- Conduct of scientific research
- Investment in or purchase of debt of developing countries
- Involvement in mining, drilling or quarrying for natural resources
- Involvement in initial coin offerings or crypto exchanges or providing other services relating to cryptocurrencies
- Sale of or facilitation of sale of citizenship/citizenship by investment
- A company to be incorporated or registered in (our case St Helena) but which has operations in a country which St Helena has deemed to be of high risk (perhaps by reference to that country's transparency index scores or other internationally published indicia. See, for example the FATF countries which have been 'called to action' (Iran and North Korea) and those which are identified has having 'strategic deficiencies' (Albania, The Bahamas, Barbados, Botswana, Cambodia, Ghana, Iceland, Jamaica, Mauritius, Mongolia, Myanmar, Nicaragua, Pakistan, Panama, Syria, Uganda, Yemen and Zimbabwe). See http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-february-2020.html for more detail.
- The cultivation, production of supply of cannabis.

These sound business policy requirements or restrictions on sensitive industries could be issued by the FSRA under the existing Financial Services Regulations 2017 and then also published by the Companies Registry as a gazette notice together with publication of the revised fees for company incorporation and administration costs (in the case of foreign owned companies).It should be noted that these are only examples of what other jurisdictions have deemed to be sensitive industries which may affect their international reputation.

Other examples in addition to the above Jersey examples where corporate activity is restricted by other jurisdictions includes activity involving:

- Pornography, adult content material
- Dating agencies, contact websites
- Gaming, gambling (although several jurisdictions have actively marketed themselves and passed legislation to position themselves as forefront gambling and gaming economies)
- Parallel trading
- Tobacco, wines and spirits
- Mercenary or contract soldiering
- Security and riot control equipment, or any device that could lead to the abuse of human rights or be utilised for torture
- Technical surveillance or bugging equipment
- Industrial espionage
- Dangerous or hazardous biological, chemical or nuclear materials
- Trading in human or animal organs
- Adoption agencies

• Pyramid selling schemes
• Religious cults or their charities
• Clubs, Associations, Federations, NGOs etc.
• Private educational establishments, eg. Academies or Universities
• Generic web-hosting services for multiple undefined activities.
• Call-centre marketing services for undefined products or services, or “boiler-room” enterprises.

4.7 St Helena regulation of corporate activity: Overall Companies Registry ‘Sound Business Practice ’ regulations to be issued by the FSRA under the Financial Services Regulations 2017

It is suggested that on launch of the new Companies Registry, the FSRA (having been given a mandate from Government) also issue Regulations under the FS Ordinance regarding aspects of company activity that will be allowed in St Helena and/or activities to be undertaken by companies that will not be allowed.

It is proposed that St Helena explicitly restricts corporate activity involving:

• Pornography, adult content material
• Mercenary or contract soldiering
• Security and riot control equipment, or any device that could lead to the abuse of human rights or be utilised for torture
• Technical surveillance or bugging equipment
• Industrial espionage
• Dangerous or hazardous biological, chemical or nuclear materials
• Trading in human or animal organs
• Pyramid selling schemes
• Religious cults or their charities

4.8 Other general company activity restrictions
FSRA should deliver the following prohibitions by either publication of a Directive, or by the publication of Regulations under the FS Ordinance:

1. Prohibition on use of bearer shares
Bearer shares are equity securities wholly owned by whomever holds the physical share certificate - thus the name ‘bearer’ share. The issuing company neither registers the owner of the share nor tracks the transfer of ownership; the company simply disperses dividends to bearer share holders when a physical coupon is presented to the firm. Because the share is not registered with any authority or even with the company, transferring the ownership of the share involves only delivering the physical document.

Bearer shares were historically commonplace in secrecy jurisdictions as they allow the shareholders’ investment to remain private and out of any public attention. Clearly that means however they lack regulation and control of ownership is impossible as ownership is never recorded. They have thereof been convenient instruments to secure funding for terrorism and other money laundering and criminal activity. This is why internationally use of bearer shares has now dwindled in light of government restrictions on anonymity-related activity. While some jurisdictions, such as Panama, allow the use of bearer shares, they impose punitive tax withholdings on dividends issued to owners to discourage their use. Interestingly, Marshall Islands is the only country in the world where the shares can be used without problems or extra costs.

In St Helena bearer shares are not conducive to the Policy's objectives and therefore it is proposed therefore that an explicit ban on the use of bearer shares be introduced into the FS Ordinance Regulations.

Consultation question 10 – Do you agree that there should be a ban on the use of bearer shares, because these allow beneficiaries a level of secrecy?

2. Restriction on transfer of shares in St Helena companies over certain thresholds and only with consent of the Companies Registry

It is proposed that the 'know your client' and Customer Due Diligence requirements which will be set out in the Anti-money laundering handbook will require full Customer Due Diligence to be obtained by the Companies Registry on anyone acquiring more than 25% of the issued share capital in an administered entity. This is common to AML Handbooks seen in other jurisdictions. This means that the Companies Registry understands at all times for whose benefit structures are being administered and that there is no sanctioned person or involvement in the facilitation of money laundering from St Helena. For more detail, please see above description on the contents of the Handbook.

3. Prohibition on provision of registered office only services

Given the substance requirements and the need for effective control over an entity's affairs due to the risk of money laundering, entities will not be allowed to simply incorporate in St Helena with no effective administration or substance services (some offshore jurisdictions have traditionally allowed this depending on receipt of information flows and data and reporting; however in practice this is difficult to obtain). This is a service which is advisable to avoid given the inherent risks.

4. Requirement for company records to be kept at an address within St Helena

There is an existing requirement for all companies to have a registered office within St Helena. In order to facilitate the take on of international business, SHG should consider offering global businesses an address for such businesses to use. It should also be made a requirement that all company records must be physically available for inspection from the registered office address in St Helena.

5. Regulation of lending rates

There shall be an interest rate ceiling for St Helena entities which will be introduced by regulations- i.e. they should not be permitted to lend to internal group entities at a rate of more than 10% per annum. This is to avoid transfer pricing and aggressive intra-group tax avoidance issues.

6. Debt/equity ratios

There shall be further regulations stipulating that debt lending may not be more than 10% of the equity capital of a borrower without consent of the FSRA. Again, this would be to ensure against artificial arrangements intended to deprive St Helena of taxation.

4.9 Delegation of certain services to a corporate service provider in another jurisdiction or approval of an overseas entity to provide regulated incorporation and administration services in St Helena

It is to be recognised that delivery of some of the requirements of this policy will require expertise and investment that St Helena may not initially be capable of. It is therefore submitted that anti-money laundering and compliance requirements as well as certain ancillary 'nursery' assistance may be contracted for with an established corporate services provider in another jurisdiction, for an on behalf of the St Helena Companies Registry.

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It must be noted that while St Helena must nonetheless adopt its policy and approach at a governmental level, and while legislative protections required by this policy will nonetheless still need to be enacted, St Helena may of course benefit from the assistance of a well-recognised and professional team in another jurisdiction who could be paid to offer compliance and reporting services to St Helena entities, and while under the supervision of the St Helena Company Registrar. These services could inside CRS and FATCA reporting and anti-money laundering and compliance screening services for and on behalf of St Helena clients. It is also proposed that any partner could refer business opportunities to St Helena on a split of revenues realised by St Helena, either by sharing company administration charges, or a (small) percentage of the tax revenue taken by referral of such clients.

If such a partnership is to be adopted, then St Helena will need to ensure that the partner is as compliant as possible with best practice in its home jurisdiction. This will include a fulsome due diligence review, including review of accounts, governance, business practices as well as meeting in person with the appointed representatives and directors of the corporate service provider as, essentially, St Helena will be putting full reliance on the service provider for important aspects of its own company administration capability.

Consultation question 11 – Do you have any other comments on the Draft Policy and its annexes?

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Annex A - Legislative changes required

Annex B – Business Case

Annex C Contents of new Anti-Money Laundering Handbook

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