# THE MYTH OF THE CARIBBEAN AS A TAX HAVEN

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# <u>The Myth of the Caribbean as a Tax Haven</u>

Caribbean Association of Banks- represents 52 Banks and NBFIs in the CARICOM Region ranging from Cayman/Bahamas in the north to Suriname/Guyana in the South. Its mission is to proactively influence matters of interest to financial institutions through advocacy and education.

"The Caribbean is a sunny place for shady people to put their money". This seems to have been a mantra and a justification for the prejudicial labeling of the Caribbean as a "Tax Haven". However, perception is relative and it changes based on the angle from which you view the world. So I ask: What is the reality of the Caribbean? Are we tax havens as so labeled by large economies? Or is the label a product of bias perceptions rather than the true reality?

Regulatory developments such as the formation of the Organization of Economic Co-operation and Development (OECD) Global Forum on Transparency and Exchange of Information for Tax Purposes (GF), The Multistate Tax Commission in the US, FATCA and OECD Common Reporting Standards (CRS) among others, highlight the renewed vigor with which the world's leading economies seek to eradicate tax evasion. The OECD Global Forum's 2015 report highlights that over $703 million in taxes has been recovered due to exchanges of information agreements[i].

It is said that "tax avoidance is as old as taxation itself" and it is largely agreed that "Tax Havens" seem to be the modern manifestation of this practice. In fact, The Tax Justice Network, an independent international network dedicated to the analysis of tax competition and tax evasion, estimates that as much as $21 to $32 trillion dollars of the world's private wealth is untaxed or lightly taxed, due to the liberalization of capital movements and fierce tax competition[ii]. In a list of the 40 most intensive offshore sectors in the world, six of the top 15 spots were occupied by Caribbean countries **(Cayman Islands, BVI, Bermuda, Curacao, Bahamas and Barbados)**[iii] . But what exactly is a tax haven? Ironically, there is no consensus on what the term "Tax Haven" actually means. According to the OECD there are some key identifying factors of "Tax Havens"[iv]:

1. No or nominal (not adjusted for inflation) taxation is applied on the relevant income.

2. Lack of transparency in the operation of the legislative, legal or administrative provisions of a country.
3. Strict secrecy laws which offer businesses and individuals' protection against scrutiny by tax authorities.
4. A jurisdiction with no legislative requirements to ensure that incorporated entities generate sufficient economic activity. This may suggest that this jurisdiction is attracting investment which is purely tax driven.

Given the above, do any of our Caribbean countries fit into one or more of these categories? According to the US Narcotics Report 2016, a few countries such as the **Bahamas, Cayman Islands and the British Virgin Islands**, all have zero rate corporate taxes. Some countries do not maintain public beneficial ownership registers. Some do not keep any record of beneficial ownership or company accounts[v]. This is seen as a significant lack of transparency.

The Panama Papers, released by the International Consortium of Investigative Journalists (ICIJ) which exposed over 214,000 offshore entities more than half of which were registered in the British Virgin Islands and the recent leak of offshore files on 175,000 entities registered in the Bahamas adds fuel to the perception that the region is shrouded in misconduct[vi]. More often than not, mishaps occurring in one or two countries results in the entire region being branded as "Tax Havens".

While a few countries have been targeted by the largest economies, let us examine the reality of regional compliance.

- According to the latest FATF follow up reports, most Caribbean jurisdictions are largely compliant with the FATF Key and Core recommendations. Many jurisdictions have put the necessary structures in place for FATCA reporting with nine (9/18) countries having International Governmental Agreements (IGA's) in force, four (4) have signed the IGAs but have not passed the respective legislation and five (5) agreed in substance but have not completed the other stages[vii].
- With regard to Common Reporting standards (CRS), nine (9) jurisdictions are early adopters and will begin CRS reporting in 2017 while nine (9) are preparing for reporting in 2018[viii].

- The latest OECD GF on Tax Transparency Review report indicates that most Caribbean countries have completed Phase 1 and are undergoing Phase 2 reviews[ix].
- It is noteworthy that with the exception of the Cayman Islands there is no Caribbean country listed in the top twenty of the Tax Justice Network's financial secrecy index ranking list. However, the top twenty positions comprise seven (7) OECD countries, among which is the USA.

These facts clearly show that the majority of our countries are compliant and have taken the necessary steps for tax transparency requirements.

Despite this, there has been multiple instances of "blacklisting" Caribbean countries as "Tax Havens". For example, on 17th June 2015 the EU blacklisted 15 Caribbean countries in their "**Action Plan for Fair and Efficient Corporate Taxation in the EU"**. The methodology used to make that determination was regarded as grossly flawed as it relied on the assessments of some countries which had no relations or dealings with some of the countries "blacklisted". Additionally, the blacklisting by the EU was contrary to the assessment of the OECD which stated that a number of the countries listed on the "Blacklist" were fully or largely compliant and were committed to the Automatic Exchange of Information (AOEI)[x]. The OECD's Secretary General, Angel Gurria also stated that there was nothing more that the countries could do in order to be considered cooperative[xi]. In 2015 the District of Columbia listed 15 Caribbean countries as "tax havens" in their DC 2015 Budget Support Act. Fortunately due to the strong stance taken by Caribbean countries as well as the CAB and other stakeholders the listing was removed.

More recently, in relation to the Common Reporting Standards (CRS), a recent article by The Economist on September 10th, 2016 garnered significant attention by stating that the Bahamas was deliberately opting for a "go-slow" approach on tax transparency by pursuing bilateral agreements on automatic information exchanges (AOEI) as opposed to multilateral arrangements[xii]. Bahamas, however refuted this position claiming the article to be untrue and merely an attempt to paint the Bahamas in an unfair light. According to the Minister of Financial Services, the OECD provided the Bahamas with a choice of either a multilateral agreement or a bilateral approach. The Bahamas went bilateral because it better suited their tax regime. They reiterated that they have committed to CRS, even as early adopters[xiii].

Given the foregoing scenarios, one can deduce that there is a measure of bias in the perception of the Caribbean as a Tax Haven.

Moreover, this prejudicial labelling positions the region as being 'high risk' and can have serious impact on trade and cross border capital flows coupled with untold reputational damage. For example, the region has been facing de-risking of the financial services sector and this perception of the Caribbean as a tax haven has caused correspondent banks to ascribe a high risk rating on regional banks. The loss of correspondent banking relationships in turn has had ripple effects on the transmission of remittances and transfer of funds necessary for other economic activities.

While there are individual countries which are working on specific areas regarding AML/CTF and tax transparency the majority of countries are highly compliant. To reverse this perception I wish to propose the following:

1. We need to establish a mechanism for monitoring and enforcement of the relevant laws.
2. We need to publish the results of our National Risk Assessments in key international media such as Bloomberg, Wall street Journal, and Global Radar and wherever gaps are identified, we need to provide public progress reports on what we have done to close these gaps.
3. The Region needs to undertake a targeted and focused rebranding marketing campaign to change this tax haven perception.
4. Regional governments need to act together to ensure that the Region is represented in key decision-making fora which can impact the growth and development of our economies.
5. Caribbean Governments need to address issues affecting our Region in a unified manner and not adopt an individualistic approach; thus strengthening the voice of the Region.
6. To ensure efficient and effective compliance, CARICOM governments need to work towards the harmonization of key legislation and regulation.

The Region has expended significant resources (financial and otherwise) at country and industry level to comply with international standards on tax transparency and it can therefore be considered unfair to label the Caribbean as a tax haven. Notwithstanding, there are some areas which need attention. Correspondent banking issues, rising compliance costs, low growth and the reputational damage caused by unfairly branding Caribbean countries as "Tax Havens" are proving to be a significant challenge. It is very apparent that we cannot face this individually. We must collaborate and cooperate to implement the necessary changes to protect our reputation.

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