LATAM blossoming in Barbados

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If the recession has taught us anything, it is that, societies adapt in spite of their global position. Man changes his financial behaviours and the fittest survive. This tiny flicker or interruption in behavioural pattern, this mutation, could well have a ripple cosmic effect and alter the course of those persons who are prepared to create *generational wealth*. In this sense, wealth need not be gargantuan in order to foster intelligent financial planning. Persons over a wide range of affluence in emerging countries can now attain the goal of comfortably supporting multiple generations. This is true for individuals and companies alike.

The Latin American financial consumer has risen to become a natural focal point for experienced financial centres that are equipped to provide the *vehicles* required to create, manage and preserve wealth. The recession has revealed that the average Latin American has more disposable income than their rivals. We have seen an increase in the number of affluent Latin Americans travelling to the Caribbean and in particular, Barbados. Naturally, Barbados is poised to explore and bolster this untapped market.

In a world where flexibility and innovation are key to economic survival and success, Barbados continues to seek to advance its position as a leading international financial centre, through the exercise of modern legislative prowess. Barbados has revisited its international business approach, and has entered into a number of anti-double taxation treaties with countries such as Panama, Mexico, Venezuela and Cuba. Barbados is currently negotiating double taxation treaties with Colombia, Chile and Brazil. Barbados also has an extensive network of anti-double taxation treaties with various countries, such as Canada, the United States of America, China, Caricom countries, and various European and African countries, which can facilitate Latin American clients trying to access global markets. Similarly, Latin America is very attractive to foreign investors, and we have seen that a number of companies established in Barbados are also contemplating branch offices in Latin American countries.

When affluent Latin Americans ponder on their estate planning needs; asset management and protection; the preservation of wealth; tax planning and business continuity and all other such ideas entertained by the financially advantageous, the usual structure recommended by wealth management professionals is the *Trust*. A Trust is administered by a trustee who has title to all of the assets and usually owns the shares of a privately held underlying company. The company can own a variety of assets ranging from bank accounts to real property to chattels, or may have the right to receive income from a third party. The Barbados trust structure allows for flexibility and security.

In order to broaden its offerings and forging new relationships, Barbados has bolstered its laws to encourage the development of alternative trust structures, as a means of increasing its ability to attract a multiplicity of new wealth management based businesses. Barbados is in the process of enacting legislation which will allow for the formation of *Private Trust Companies* (PTCs) and *Foundations.* The *Trustee Act Cap. 250 of the Laws of Barbados* is also being amended to provide for certain reserved powers to settlors of *Trusts*. These changes are exceptionally attractive to Latin American planners.

PTC's were borne out of the necessity for greater control by families over their trust assets and has become a very attractive option for the sophisticated clients. The settlor and family can legally exercise greater control over the administration of the assets of the trust. Such flexibility is favored over the traditional trust structures, where the trustee is the legal owner and custodian of assets, and the beneficiaries are subject to the total and complete discretion of the trustee. PTCs offer managerial powers, as it relates to the transfer of the trust to other family members. The *modus operandi* of the PTC will allow the client to make administrative changes as needed, without actually affecting the role of the trustee.

A *Foundation* can best be described as a fund which has been endowed by its founder (known as the settlor in the *Trust* scenario) to be utilised for persons or purposes, as detailed in its charter. Unlike a traditional *Trust*, a *Foundation* is a legal entity that has no owners, but instead, is a legal person that can bring and defend legal action and has unlimited capacity to contract on its own behalf. Assets placed or transferred to a *Foundation* become the property of the *Foundation* and therefore are independent of the settlor. The *Foundation* can exist in perpetuity or have a life-span as defined in its statutes. As with a *Trust*, the *Foundation* cannot engage in commercial trading, but the *Foundation's* ability to own a trading company is ideal when holding interests in a private company is contemplated by the founder. The settlors of a *Trust* and the founders of a *Foundation*, have in common the ability to direct the investment activities of the trusts, as well as, the ability to veto management decisions.

A brief exploration of some of the tax treaties that Barbados has with Latin American countries serves to reveal the mirage of benefits which Latin Americans and Barbadians alike stand to gain through proper structuring *vehicles* as noted above.

Let's consider the Panama-Barbados Anti-Double Taxation Treaty, for example, with its main features being as follows:

- Dividends: withholding tax on dividends cannot exceed five per cent of the gross amount of the dividends if the beneficial owner is a company that directly holds at least 25 per cent of the capital of the company paying the dividends, or 75 per cent of the statutory nominal rate applicable at the time of the dividend distribution in all other cases.
- Interest: withholding tax on interest cannot exceed five per cent of the gross amount of the interest if the beneficial owner is a bank that is a resident of the other contracting state, and 7.5 per cent of the gross amount of the interest in any other case.
- Royalties: where the beneficial owner of royalties is a resident of the other contracting state, the tax on those royalties cannot exceed 7.5 per cent of the gross amount of the royalties.

The treaty establishes methods for the elimination of double taxation as follows:
In Panama:

- If a resident of Panama derives income that can be taxed in Barbados, Panama must exempt that income from taxes;

- If income derived by a resident of Panama is exempt from tax in Barbados, Panama may still, in calculating the amount of tax on the remaining income or capital of that resident, take into account the exempted income;
- To the extent that a resident of Panama may be subject to income tax in Panama on income generated in Barbados, Panama must exempt that portion of the income if it arises from companies covered under the following Barbadian laws; the fiscal incentives legislation; shipping (incentives) legislation; tourism development legislation; and duties, taxes and other payments.

Barbados avoids double tax by allowing a credit for the following:

- Tax payable under the laws of Panama on profits or income from sources within Panama (excluding dividend tax payable on the profits out of which the dividends is paid);
- Dividends paid by a Panamanian resident company which is a resident of Barbados and which directly holds at least ten per cent of the capital of the Panamanian company, for the profits out of which the dividend is paid can be credited against taxes be paid in Barbados. The credit must in no case exceed that part of the tax, as computed before the credit, which applies to the income that can be taxed in Panama.

Additionally, to the extent that a resident of Barbados may credit taxes paid in Panama, Barbados must include in the amount being credited any tax that is normally payable in Panama but that has been reduced or waived by Panama under tax incentive provisions (for example, for trade zones and economics areas) and any other subsequent provisions granting an exemption that is accepted by the competent authorities of Panama and Barbados as being of a substantially similar character.

In the case of Mexico-Barbados Anti-Double Taxation Treaty the main features are:

- Dividends: withholding tax charged shall not exceed five per cent if the beneficial owner is a company which owns at least ten per cent of the capital of the company paying the dividends. In all other cases, the maximum withholding tax is ten per cent.
- Interests: withholding tax charged shall not exceed ten per cent.
- Royalties: withholding tax charged shall not exceed ten per cent.

The treaty establishes methods for the elimination of double taxation as follows:

In Mexico:

- The tax payable in Barbados on income arising in Barbados shall be allowed as a credit against the Mexican tax payable.
- In the case of a dividend paid by a Barbados company to a company that is a resident of Mexico and which owns at least ten per cent of the capital of the company paying the dividend, the credit shall take into account the Barbadian tax payable by the distributing company in respect of the profits out of which such dividend is paid.

In Barbados:

- Tax payable in Mexico on profits or income from sources within Mexico (excluding, in the case of a dividend tax payable in respect of the profits out of which the dividend is paid), shall be allowed as a credit against any Barbados tax computed by reference to the same profits or income.
- In the case of a dividend paid by a company that is a resident of Mexico to a company that is a resident of Barbados and which owns at least ten per cent of the capital of the company paying the dividend, the credit shall take into account the Mexican tax payable in respect of the profits out of which such dividend is paid.

In addition to the benefits and products that Barbados has to offer, its other advantages lie in the political stability of the Island, it's educated, multicultural and increasingly bilingual workforce, its geographical proximity to Latin America and the good corporate governance practices which are the focus of Barbadian practitioners involved in the area of financial services provision and wealth management. Furthermore, the Barbadian regulatory environment, whilst meeting international standards, also recognises the need for legitimate business facilitation and improvements are constantly being made to guarantee this result.

Essentially therefore, it comes down to the realisation and exploration of the benefits of utilising the various *vehicles* which Barbados has to offer, which an increasing number of Latin Americans seem to understand. The modern Latin American planners are recognising that Barbados has much more to offer than its traditional vehicles such as Insurance Companies, International Business Companies and International Banks. Latin American countries are poised to harbour additional wealth and require such a conduit as has been created in Barbados.

If you can see prosperity in recession, you can create generational wealth.
