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## OFFSHORE FINANCE CENTRES CONTINUE TO MAKE NEWS

The changes in legislation and practice being introduced by the major Offshore Finance Centres (OFCs) continue to make news. Clients who have set up Bahamian structures with us should already have received a letter advising them about changes in Bahamas legislation which now require IBCs to have two directors and two shareholders and the details of the directors will have to appear on public file.

We now understand that Bahamas is looking again at the changes and may revert back to the old position of requiring there to be only one director and shareholder. We don't yet know how quickly that change in the changed legislation is likely to take nor indeed whether it is certain that they will make these additional changes. Obviously the picture is somewhat confusing and this makes it difficult for us to give sensible advice to our clients so bear with us while we filter through a mass of new proposals, changes upon changes and then changes back!

What is certain is that most jurisdictions will either abolish or 'immobilise' bearer shares and require much more public transparency.

*"Sovereign Asset Management has got off to a bumper start and already has over US\$150 million under management. The services of SAM are designed to suit both the larger and smaller investor".*

Most of the Caribbean jurisdictions have provisions whereby companies can redomicile in or out of a jurisdiction and these provisions are now proving particularly useful. An option for Bahamian company owners who wish to retain confidentiality about who are the directors would be to redomicile into Mauritius where details of the directors have to be reported to the Registrar but they do not appear on the file which the public can access. We are finding that a number of our clients are choosing this option. In fact, we have heard that one of the big five accountancy firms has recently

advised all its clients who own BVI companies to redomicile into Mauritius and many of them have taken this advice.

As we continue to remind our clients, it will rarely be possible to manage a low tax company from a high tax jurisdiction without making that company liable to tax in the place from which its affairs are managed and controlled. In many countries there is a duty to report liability to tax and failure to do so is a criminal offence. Offshore companies will rarely be effective in a legitimate tax planning structure unless they are actually managed and controlled from offshore. Our expertise and experience in managing companies is becoming increasingly important.

## SOVEREIGN ASSET MANAGEMENT ("SAM")

On page 7 David Gilburt has given us some views on the present investment climate and reasons for the recent decline in world markets – and the Nasdaq in particular.

**Sovereign Asset Management** has got off to a bumper start and already has over US\$150 million under management. The services of SAM are designed to suit both the larger and smaller investor. By utilizing the services of SAM, smaller investors can gain access to Swiss style private wealth management which is normally only available to those with US\$1 million and above to invest. For larger investors we are able to reduce costs normally associated with high end portfolio management as we are a volume introducer and can pass discounts negotiated with these financial institutions back to our clients.

**Anybody interested in this service should contact our Gibraltar office.**



**Howard Bilton** BA(Hons)  
Barrister-at-Law (England, Wales & Gibraltar)  
Chairman of The Sovereign Group

## AUSTRIA

Legislation to put an end to anonymous savings passbooks by requiring all new savings passbook holders, as well as any holders of existing passbooks that make a deposit to the passbook, to be identified was brought into force on 1 November 2000.

Other requirements mean that any withdrawal from a passbook where the holder has been previously identified and which has a balance of ATS200,000 or more can only be made by the identified holder, and payments over ATS200,000 into a savings deposit account require the depositor to be identified.

The Financial Action Task Force (FATF) agreed to lift the application of its Recommendation 21 which had been in place since 1999. This called on financial institutions to give special attention to transactions with bank cheques issued by Austrian banks and denominated in Austrian schillings, as these funds might be the result of the closing of anonymous 'passbook' savings accounts.

**SOVEREIGN COMMENT:** Austria still has some of the strictest bank secrecy laws in the world. The Austrian Passbook or 'Sparbok' offered the ultimate in privacy and confidentiality but was a system open to abuse and it is no surprise that Austria has been forced to cease offering this service.

## JERSEY

The Financial Services (Extension) Law to extend regulation to cover trust and company services providers was brought into force on 27 November 2000. The new law will introduce a licensing regime and impose professional standards on those who create trusts and act as trustees or who incorporate or act as administrators and directors for companies.

As a result, trust companies will need to be licensed to continue in business and Codes of Practice will reinforce existing requirements for a business to know its customers, establish the source of their wealth and report any suspicions. They must also adhere to high standards of integrity, solvency and competence. All legal provisions under the law will apply from 27 May 2001.

**SOVEREIGN COMMENT:** Jersey is probably the premier jurisdiction for trust business at least as far as UK citizens are concerned but the Edwards Review highlighted the need for Jersey to introduce proper regulation of its trustees.

## ISLE OF MAN CORPORATE SERVICE PROVIDERS ACT

The Corporate Service Providers (CSP) Act to provide a regulatory framework for those who form and administer companies in the Isle of Man was brought into force on 1 November 2000.

The law is designed to protect anyone engaging the services of a CSP by imposing standards of 'fitness and properness' and requiring them to adhere to standards of industry 'best practice'.

*"... to protect anyone engaging the services of a CSP by imposing standards of 'fitness and properness' ..."*

Regulated activities include: company formation; the sale, transfer or disposal of companies; provision of premises for registered office or accommodation address for companies; acting as or arranging for others to act as a director or shareholder/member of companies; arran-

ging for others to act as a company secretary of companies; performing any company administration functions, including keeping a company's registers, making statutory returns, preparing accounts, preparing minutes or recording resolutions of general meetings or directors' meetings.

The Financial Supervision Commission, which assumed responsibility for the Companies Registry on 1 April last year, has also launched an initiative to remove inactive companies from the register and improve compliance procedures with regard to winding up and dissolving companies.

Some 6,000 companies identified as 'abandoned' have been requested to give details of their current status. Failure to respond will result in the company being dissolved and struck off.

**SOVEREIGN COMMENT:** Sovereign Trust (Isle of Man) Limited is in the process of obtaining the required licence in the Isle of Man. No difficulties are envisaged with the application.

## UK OVERSEAS TERRITORIES RESPOND TO KPMG REVIEW

The UK Treasury published the formal responses of the Caribbean Overseas Territories (OTs) and Bermuda to the recommendations made in KPMG's review of financial regulation in February.

With regard to the three priority areas identified by the report for implementation by the end of September 2001, the Treasury concluded:

- All the OTs have now made commitments to establish independent regulatory authorities. Bermuda already has an independent regulatory authority, but this does not regulate the insurance sector and a new independent authority will be established for this purpose.
- Cayman has already introduced the necessary powers to assist overseas regulatory authorities. Montserrat and the BVI have introduced legislation in this area, although this requires further amendment. Amendments were also needed in some jurisdictions, including Cayman, to the powers available to assist overseas law enforcement authorities.

- All the OTs now have the main building blocks in place in order to tackle money laundering. All plan to introduce the further measures required in order to satisfy international standards in this area.

UK Foreign Office minister Baroness Scotland said: 'I welcome the high level commitments to address the KPMG recommendations. Financial services is a competitive sector, and the UK Government is keen that the Overseas Territories will attract quality business seeking a well-regulated environment, based on the prevailing rules, laws and good practice internationally'.

The review was jointly commissioned by the UK and the Caribbean Overseas Territories – Anguilla, British Virgin Islands, Cayman Islands, Montserrat, Turks & Caicos Islands – and Bermuda jointly commissioned in 1999 to assess progress made in meeting international standards and good practice and to make recommendations on how to deal with shortcomings.

The remainder of the recommendations are to be implemented by the end of 2001.

## BAHAMAS PUTS NEW REGULATORY REGIME INTO PLACE

A package of legislation to strengthen the Bahamas' processes with regard to international cooperation to counter money laundering, drug trafficking and related crime was brought into force on 29 December 2000.

The legislation comprises: Central Bank Act; Banks & Trust Companies Regulation Act; Financial & Corporate Service Providers Act; Financial Transactions Reporting Act; International Business Companies Act; Financial Intelligence Unit Act; Criminal Justice (Inter-

*"In the case of existing customers, financial institutions are required to verify their identities within 12 months".*

national Co-operation) Act; Proceeds of Crime Act and Dangerous Drug Act.

The Financial & Corporate Service Providers Act provides for the licensing and regulation of providers of financial services other than banks and trust companies which are regulated under the Central Bank of The Bahamas Act.

The Financial Transactions Reporting Act and Financial Reporting Regulations set out conditions for the opening of accounts by a financial institution, detailing the 'know your customer' rules to be applied and establishing a requirement to report suspicious transactions to

the Financial Intelligence Unit and police.

In the case of existing customers, financial institutions are required to verify their identities within 12 months. The Minister of Finance is empowered to extend the period for a further six months. If at the end of the 18-month period the identity of an account holder has not been verified, a financial institution must transfer or assign the account to the Central Bank where it will be treated as a dormant account.

In January, the Central Bank of the Bahamas began an on-site examination programme under the provisions of the Banks & Trust Companies Act.

The new International Business Companies (IBC) Act abolishes bearer shares, removes the prohibition of IBCs from engaging in business in the Bahamas and requires IBCs operating in the Bahamas to meet all the requirements of companies licensed to do business in the Bahamas.

**SOVEREIGN COMMENT:** Sovereign has established a strong presence in the Bahamas. The Bahamas was initially heavily criticised by both the FATF and the OECD but has introduced a raft of new legislation designed to deal with those criticisms and remove the jurisdiction from the respective black-lists. The new legislation has persuaded the IRS in the United States to grant Bahamas 'qualified jurisdiction status' for trading in US securities.

## US IRS ISSUES GUIDANCE ON BANK DEPOSIT INTEREST

The outgoing Clinton administration issued a guidance on Reporting of Deposit Interest Paid to Non-resident Aliens which sets out proposals to extend information reporting requirements for bank deposit interest paid to non-resident alien individuals who are residents of all foreign countries.

At present the IRS requires the reporting of such information only for non-resident alien individuals who are resident in Canada.

The IRS said an extension was appropriate to ensure voluntary compliance by US taxpayers by minimising the possibility of avoidance of the US information reporting system and to

facilitate, wherever possible, the effective exchange of all relevant tax information with its treaty partners as a way of encouraging voluntary compliance and furthering transparency.

*"To extend information reporting requirements to non-resident alien individuals who are residents of all foreign countries".*

The proposed regulations would apply to payments made after 31 December of the year in which final regulations are issued. A public hearing has been scheduled for 31 March.

## BRITISH VIRGIN ISLANDS

The Financial Services (International Cooperation) Act, to provide assistance to foreign regulatory authorities to obtain information in respect of persons in the BVI in relation to any regulatory function, was brought into force in January.

Under the Act, the Director of Financial Services is empowered to request, of any person, the production of information or documents with respect to any matter relevant to an inquiry to which a request under the Act relates.

The Director is also empowered to apply to the court for an order of compliance against a subject person or to have that person examined under oath. To ensure confidentiality of information, the Act makes provisions for restricting the disclosure of information.

The Anti-Money Laundering Code of Practice was brought into force at the end of last year. The Code, which defines the standards required for record-keeping, client acceptance and training, represents a mandatory legislative regime with penalties for non-compliance. It also requires the appointment of compliance officers for ensuring compliance with the Code and all other related anti-money laundering laws. The Code is accompanied by Anti-Money Laundering Guidance Notes, based on the UK equivalent.

## PANAMA

Congress approved laws to bring the Panamanian money laundering regime into line with the requirements of the international community.

Law No 41 amends the Penal Code expands the definition of the crime from drug trafficking to cover the proceeds of all serious crime and increases the maximum penalty for money laundering to 12 years in prison. Tax evasion is not specifically included.

Law No 42 sets out measures for the prevention of money laundering and brings all financial institutions under the supervision of the bank superintendency.

Previously only banks were required to report suspicious transactions and those of more than US\$10,000, know their customers and adopt anti-money laundering practices. Now casinos, estate agents, insurers, the stock exchange, companies in the Colon free zone and the national lottery will have to declare transactions of more than US\$10,000.

## HONG KONG

The Companies Registry has announced a strategic change plan to completely restructure its operations to facilitate electronic filing, electronic processing and electronic searching of company data.

The first phase of the Integrated Companies Registry Information System (ICRIS), to include the replacement of existing computer systems, infrastructure enhancement, data conversion, document imaging, business process automation and electronic searching, will be implemented in July 2003. The second phase, to include the implementation of electronic registration and incorporation processing, will be implemented in August 2004.

## SEYCHELLES

The Seychelles has given a commitment to the OECD to eliminate harmful tax practices by 31 December 2005. It was among 35 jurisdictions identified by the OECD in June 2000 as meeting the technical criteria for being classified as a tax haven.

The commitment, based on the OECD's Memorandum of Understanding issued last November, includes undertakings in favour of transparency, non-discrimination and effective exchange of information.

In making its commitment, the Seychelles ensures that it will not feature in a list of 'un-cooperative tax havens' to be issued at the end of July 2001. Bermuda, the Cayman Islands, Cyprus, the Isle of Man, Malta, Mauritius, the Netherlands Antilles and San Marino have already made similar commitments.

## LABUAN

Islamic bankers announced plans to launch the world's first Islamic money market, to be centred on Labuan and Bahrain, by the end of this year.

The launch of the Islamic money market would be co-ordinated by the Jeddah-based Islamic Development Bank. Bankers said the money market could mobilise more than US\$150bn in funds and would be backed by continuous liquidity and market management centres.

They also agreed to create an Islamic ratings agency, to be based in Bahrain, to give ratings to Islamic paper in addition to those from conventional agencies.

## HONG KONG REVENUE AMENDMENT BILL ATTACKED

The Inland Revenue (Amendment) Bill 2000, which seeks to amend provisions relating to profits tax on royalty income and tighten anti-avoidance provisions on interest payment deductions, has been attacked by the Taxation Institute of Hong Kong for violating the territorial-based taxation principle of Hong Kong. The Bill was tabled in the Legislative Council last October.

*"The Bill has been attacked by the Taxation Institute of Hong Kong for violating the territorial-based taxation principle of Hong Kong".*

With respect to the use of a trademark in Hong Kong, a non-resident recipient of royalty income is now subject to withholding tax only where the Hong Kong business entity paying the royalty is allowed a deduction for the royalty paid as an expense incurred in deriving assessable profits in Hong Kong.

The need for this amendment has arisen from a decision of the Court of Final Appeal which held that only that part of royalty income relating to goods manufactured in Hong Kong should be chargeable to profits tax, while royalties paid in respect of goods manufactured outside Hong Kong were not chargeable.

## PACIFIC ISLAND FORUM IN TAX TALKS WITH OECD

Ministers and senior policy makers from the Pacific Island Forum and OECD countries met in Tokyo in February for a workshop on tax issues hosted by the Japanese government and the OECD.

The Forum told the meeting that if the OECD's deadline of 31 July 2001 for imposing sanctions against jurisdictions which have failed to make a commitment to eliminate 'harmful' tax practices could not be withdrawn, it should at least be postponed as a sign of good faith.

Forum members include the Cook Islands, Nauru, Niue, Marshall Islands, Samoa, Tonga and Vanuatu which were all among the thirty-five jurisdictions identified by the OECD last June as meeting its criteria for tax havens.

The IRD considered this deviated from 'current practice' where royalty income was charged to profits tax as long as the trademark was used by a Hong Kong business entity in producing assessable profits, irrespective of where the goods concerned were manufactured or sold.

New specific anti-avoidance provisions to restrict the deduction of interest payments have also been proposed to combat the increasing incidence of aggressive tax avoidance schemes which cannot readily be caught by the IRD's current general provisions. They seek to ensure that a deduction is only allowed for payments that are genuine interest expenses which have been made to non-associated parties.

**SOVEREIGN COMMENT:** We agree with the Taxation Institute. These new provisions do appear to be trying to bring a charge to Hong Kong profits tax income which would normally be considered as not arising in Hong Kong. We do not believe that this is the start of a general change in the way that profits are taxed in Hong Kong but rather is a specific provision which would not be extended to other areas. It may be that the concerns expressed within the industry lead to changes in the draft legislation. We will advise of any progress in future editions of the Sovereign Report.

The secretariat argued for the development of a truly global international tax forum where even the smallest nations could be heard. This, it said, would allow standards to be developed in consultation with affected parties and so have the full support of the international community.

**SOVEREIGN COMMENT:** Geoffrey Owens of the OECD recently spoke at a conference in Mumbai (formerly Bombay, India) and stated that he thought that all offshore jurisdictions would shortly be making the advance commitments necessary to keep them off the black-list which will be published in the summer except for Niue and Vanuatu. For the moment we would advise clients against using these two jurisdictions until their position has been clarified.

## US COURT RULING ON “OFFSHORE” CREDIT CARDS

A US district judge in Miami authorised the IRS to issue ‘John Doe summonses’ on American Express and MasterCard in order ‘to determine the correct federal income tax liabilities (for 1998 and 1999) of US taxpayers who have signatory authority over credit, charge or debit cards issued by or through financial institutions in Antigua, the Bahamas and the Cayman Islands’.

*“ ... if used to withdraw income then that income must be declared by the recipient”.*

The court found that the government had established that:

- The summonses ‘relate to the investigation of an ascertainable group or class of persons, i.e., American Express and MasterCard signatories whose charge, debit or credit cards were issued by or through, or paid for from funds drawn on, banks during 1998 and 1999’.
- ‘A reasonable basis exists for believing that

such individuals may fail or may have failed to comply with the Internal Revenue laws’.

- ‘The information to be obtained from the testimony and examination of the records (and the identities of the persons with respect to whose liabilities the summonses are issued) is not readily available from other sources’.

After the court ruling, the IRS said: ‘It is not illegal to have an offshore credit card. However, there is reasonable basis for believing that some people are using cards to evade paying US taxes. Credit cards provide easy access to offshore funds and accounts in tax haven countries that allow income to be hidden’.

**SOVEREIGN COMMENT:** Sovereign offers clients its own Mastercard – The Sovereign Mastercard – which can be a useful way of accessing offshore funds. The offshore cards are particularly useful for paying legitimate business expenses but if used to withdraw income then that income must be declared by the recipient. Sovereign can not condone any failure to make the correct reporting in the country of the cardholder.

## PAVAROTTI FACES TAX EVASION CHARGES IN ITALY

A judge in Modena has ordered opera singer Luciano Pavarotti to stand trial on 2 May for tax evasion. Pavarotti is accused of avoiding £13m tax between 1989 and 1995, and faces a possible sentence of up to three years.

The singer, whose annual income is estimated at £35m, claims to pay his taxes

*“The fact that a person is resident in one country does not prevent them from being tax resident in another”.*

as a genuine resident of Monte Carlo. But at a preliminary hearing last week, the public prosecutor claimed the centre of Pavarotti’s interests are in Modena, where he owns three houses, maintains six bank accounts and controls eleven companies.

In June last year Pavarotti reached an agreement with the Italian Treasury to pay

£8.3m. The decision to prosecute is seen as part of an international crackdown on artists, sports stars and businessmen who claim residence in the tax haven of Monaco.

**SOVEREIGN COMMENT:** The fact that a person is resident in one country does not prevent them from being tax resident in another. In fact, it is perfectly possible to be tax resident in a number of different jurisdictions at the same time and to be liable for tax on the same income in several jurisdictions at the same time. Frequently tax treaties remove the liability to be taxed on the same income twice and most tax authorities will allow a credit for tax paid in one jurisdiction against tax due in another even if there is no statutory right to such a credit by virtue of a tax treaty. In this instance Pavarotti was claiming to be resident in Monaco but rarely visited the principality and the fact that he was legally resident in Monaco did not prevent him from being liable to tax in Italy.

## ENGLAND & WALES

In *Carstairs (Inspector of Taxes) v Sykes*, the taxpayer, Christopher Sykes, had lived and worked in Asia for about six years until 15 February 1993 when he resumed his UK residence. The issue was whether he was entitled to include that six-year period in aggregating a qualifying period of days of absence from the UK.

The general commissioners had upheld an appeal by the taxpayer and discharged an assessment to Schedule E income tax raised on him for 1993-94. The Crown appealed. Allowing the appeal, the High Court said the question was whether somebody was at a particular moment absent from the UK had to be answered by reference to the status of that person in relation to which the question was asked. On that basis the only sensible meaning to give to the definition of a qualifying period was absence in the sense of not being physically present in the place of residence.

## JERSEY

Sheikh Fahad, the former chairman of Group Torras S.A. (‘GT’), was found by the High Court in England in 1999 to have defrauded the company. In 1993, the Court had granted a worldwide injunction freezing his assets. He had established two discretionary trusts in Jersey of which he and his family were the beneficiaries.

GT applied to the Jersey Royal Court seeking a distribution out of the two trust funds to Sheikh Fahad for the purpose of his reducing his debt to GT. The trustee applied to the Royal Court for directions.

The Royal Court declined to make any such distribution. It held that a trustee (and therefore the Court) does have the power to make a distribution for the benefit of a beneficiary against the objections of that beneficiary. Sheikh Fahad’s objection to the proposed distribution was not therefore a bar to the trustee exercising the appropriate powers in the trust deeds. But, on the facts of the case, a distribution by way of payment to GT in reduction of Sheikh Fahad’s debt would not be a payment for the benefit of Sheikh Fahad or any of the other beneficiaries. Any such payment would in reality be for the benefit of GT and an improper purpose for the trustee.

## BARBADOS

More than forty jurisdictions attended a joint Commonwealth-OECD meeting in Barbados in January to discuss the OECD's initiative on 'harmful' tax practices. It followed a demand by Commonwealth governments at the annual meeting of finance ministers in Malta last September for the initiation of talks as soon as possible with a view to promoting consensus. The Commonwealth Secretariat agreed to mediate in the dispute.

Commonwealth jurisdictions had been particularly angered by the OECD's Collective Memorandum of Understanding which set out the steps to be taken to end 'harmful' tax competition by stated deadlines, backed up by the threat of punitive sanctions against jurisdictions that failed to comply.

It was agreed to set up a joint Working Group to find a mutually-acceptable political process by which the OECD's principles of transparency, non-discrimination and exchange of information could be transformed into commitments.

Jointly-chaired by Barbados Prime Minister Owen Arthur and the Australian Ambassador to the OECD Tony Hinton, the members of the working party are Antigua, Australia, Barbados, British Virgin Islands, Cook Islands, France, Ireland, Japan, Malaysia, Malta, Netherlands, Vanuatu and the UK.

## EUROPEAN UNION

The European Commission has written to non-EU financial centres requesting negotiations to bring rules for the taxation of non-resident savings into line with a proposed EU Directive.

The move follows the interim accord brokered in advance of last year's Nice summit by which the majority of member states agreed to adopt a system of information exchange as the basis for securing payment of tax on non-resident savings income.

The accord is due to take effect in 2003 but is contingent on persuading, by 31 December 2002, third countries to agree to adopt equivalent measures. Member states with dependent territories were also asked to commit themselves to promote adoption of the same measures in these territories.

Letters have been sent to the US, Switzerland, Liechtenstein, Monaco, Andorra and San Marino inviting them to start discussions. The EC hoped to begin technical discussions in March.

## NETHERLANDS ANTILLES AGREE NEW TAX TREATY REGIME

The Netherlands Ministry of Finance and the Netherlands Antilles Ministry of Finance are understood to have reached agreement on a new Kingdom Tax Treaty (BRK) and the New Fiscal Framework (NFF).

Under the terms of the agreement, which has not yet been ratified, the NFF will become effective as from 1 January 2001 and, for the time being, the proposed Netherlands Antilles' dividend withholding tax of 10%, will not enter into force.

*"The Netherlands Antilles was the preferred exit route out of the Netherlands – the so-called 'Dutch Sandwich'".*

The dividend article in the current BRK will be amended in such a way that dividends from a Dutch corporation to Netherlands Antilles corporate shareholders, owning at least 25% of the shares in the Dutch corporation will be exempted from dividend withholding tax, provided the dividend is subject to Netherlands Antilles surtax at a rate of at least 8.3%. Dividends and capital gains derived from shareholdings in a Dutch corporation will also be fully exempted from profit tax.

The Dutch corporation will nevertheless have to withhold 8.3% from the gross dividend. This amount will be paid to the Netherlands Antilles tax authorities via a special procedure. The 8.3% which has been withheld upon the dividend distribution in the Netherlands can be credited against the surtax in the Netherlands Antilles.

The new dividend article in the BRK will also apply to Netherlands Antilles offshore companies. As from 1 January 2001 dividends paid by Dutch corporations to Netherlands Antilles corporations will be subject to 15% Dutch dividend withholding tax. Netherlands Antilles offshore corporations may elect for the new dividend article but grandfathering rules may be introduced such that they will be able to use the existing article 11 of the BRK during 2001.

**SOVEREIGN COMMENT:** The Netherlands Antilles was the preferred exit route out of the Netherlands – the so-called 'Dutch Sandwich'. The attractions of this structure have now diminished and we would advise clients to look at alternative holding company structures. Various possibilities exist but perhaps the Danish and UK holding company structures are now amongst the most favourable. Advice on holding company structures is available from your most conveniently located Sovereign office upon request.

## OECD REACHES CONSENSUS ON E-COMMERCE TAXATION

The OECD's Committee on Fiscal Affairs has reached a consensus on the interpretation, as regards e-commerce, of the conditions under which business activities of an enterprise in a given country are or are not carried out through a permanent establishment. The agreement defines, for the first time, how business conducted through internet servers and web sites can be taxed.

The main elements of the consensus are:

- A web site cannot, in itself, constitute a permanent establishment;
- A web site-hosting arrangement does not usually result in a permanent establishment for enterprises that carry on business through that web site;
- An Internet Service Provider will not, except in

very unusual circumstances, constitute a dependent agent of another enterprise so as to constitute a permanent establishment of that enterprise;

- While a place where computer equipment, such as a server, is located may in certain circumstances constitute a permanent establishment, this requires that the functions performed at that place be significant as well as an essential or core part of the business activity of the enterprise.

**SOVEREIGN COMMENT:** Clarification of how profits generated by an internet business will be treated is welcomed. It is likely that relevant provisions will be inserted into the model OECD treaty and be adopted by member states as and when they revise their agreements with other treaty partners. This will be a long process.

## SOVEREIGN ASSET MANAGEMENT – A BALANCED APPROACH TO INVESTMENT

It has been 12 months since the NASDAQ index reached its peak of 5,078 points from where it has continued its gradual slide to the level where, at the time of writing this article, the value is hovering around the 2,000 mark. The reasons for this 60% slide in value are many fold. With the benefit of hindsight, analysts now tell us the markets were generally overvalued. In addition the shake out in the new technology companies, the so called dot.com companies, plus the realisation that the next

The US Federal reserve also continued the downward pressure on interest rates in March with another 0.5% cut in rates maintaining the downward trend. The Fed has now reduced rates by 1.5% during the last two months increasing the likelihood of further rate cuts in Europe.

Whilst the focus in the past 12 months has been on finding a stimulus to revive the new economy stocks, we suspect the incentives may have a greater impact on old economy

volatile investments are once again drawing investors and the balanced investment approach is growing in popularity. It is also important in these uncertain times to bear in mind that over the long term equities outperform bank and building society returns.

*“Look out for the performance of companies that have taken advantage of lower interest rates to invest in improving products”.*



Source: Bloomberg Info Service.

companies. Look out for the performance of companies that have taken advantage of lower interest rates to invest in improving products and productivity.

Understandably, this fall in value has greatly undermined confidence in the equity markets and investors are now looking for products

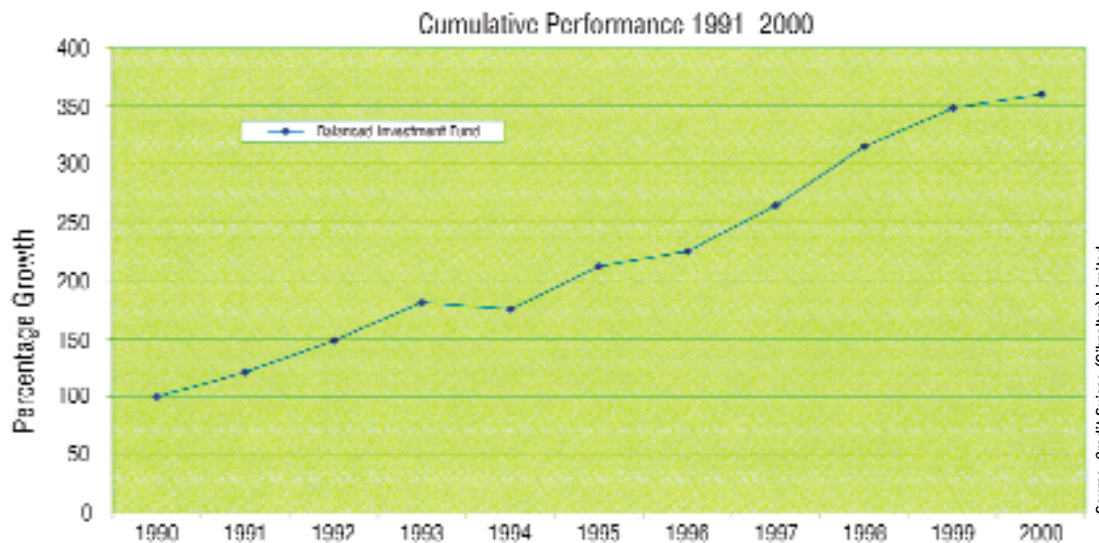
generation of mobile phones could not recoup the vast sums being paid to governments for the new licences combined with concerns about the slow down in the US economy and the subsequent effect on the rest of the world economies all contributed to the collapse.

We are regularly asked to speculate when this slide will stop and signals are generally mixed. Political problems in Japan exacerbated by further difficulties with that country's banking system have led the central bank there to increase liquidity through an effective return to zero interest rates. This, together with an increase in the outright purchase of Japanese government bonds, has caused share prices to rally.

that will offer some degree of protection for the capital sums they are investing. Recent experiences have reinforced the message that the value of investments, particularly shares, can go down as well as up. The attractions of less

The balanced investment approach offers some protection against market fluctuations by adopting an investment strategy that takes a spread of investments in both the bond and equity markets. Typical funds average at a 50:50 spread but include policies allowing the asset manager to vary the holdings of cash, bonds and shares to take advantage of market changes. Whilst all investments carry a degree of risk, this approach should cushion the investor against the extremes of market fluctuations. Benchmark performance for this type of investment shows profits averaged at around 15% over the past ten years. This is illustrated below.

**Sovereign Asset Management** is able to advise clients on a range of investments. If you would like to know more please contact David Gilburt at our Gibraltar office (Tel: +350 76173) or email: [dgilburt@SovereignGroup.com](mailto:dgilburt@SovereignGroup.com).



Source: Credit Suisse (Gibraltar) Limited.

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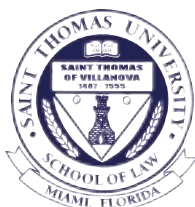
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Tel: UK +44 (0)20 7266 9920 Fax: UK +44 (0)20 7266 9940

## BAHAMAS

**Paul Winder**  
Tel: +1 242 322 5444  
Fax: +1 242 325 8445  
[bh@SovereignGroup.com](mailto:bh@SovereignGroup.com)

## BRITISH VIRGIN ISLANDS

**Tracey Chea**  
Tel: +1 284 495 3232  
Fax: +1 284 495 3230  
[bvi@SovereignGroup.com](mailto:bvi@SovereignGroup.com)

## CYPRUS

**Vassos Hadjivassiliou**  
Tel: +357 2 676519  
Fax: +357 2 679079  
[cy@SovereignGroup.com](mailto:cy@SovereignGroup.com)

## DENMARK

**Jan Eriksen**  
Tel: +45 44920127  
Fax: +45 43690127  
[dk@SovereignGroup.com](mailto:dk@SovereignGroup.com)

## GIBRALTAR

**Les Roberts**  
Tel: +350 76173  
Fax: +350 70158  
[gib@SovereignGroup.com](mailto:gib@SovereignGroup.com)

## HONG KONG

**Stuart Stobie**  
Tel: +852 2542 1177  
Fax: +852 2545 0550  
[hk@SovereignGroup.com](mailto:hk@SovereignGroup.com)

## ISLE OF MAN

**Paul Brennock**  
Tel: +44 1624 699800  
Fax: +44 1624 699801  
[iom@SovereignGroup.com](mailto:iom@SovereignGroup.com)

## JAPAN

**Shiho Fujio**  
Tel: +81 3 3201 8008  
Fax: +81 3 3201 2002  
[japan@SovereignGroup.com](mailto:japan@SovereignGroup.com)

## MALTA

**Mark Miggiani**  
Tel: +356 339 218  
Fax: +356 322 531  
[ml@SovereignGroup.com](mailto:ml@SovereignGroup.com)

## MAURITIUS

**Ben Lim**  
Tel: +230 208 1747  
Fax: +230 208 1736  
[mu@SovereignGroup.com](mailto:mu@SovereignGroup.com)

## NETHERLANDS

**Edward Paap**  
Tel: +31 (0)20 428 1630  
Fax: +31 (0)20 620 8046  
[nl@SovereignGroup.com](mailto:nl@SovereignGroup.com)

## PORTUGAL

**Nigel Anteney-Hoare**  
Tel: +351 282 342601  
Fax: +351 282 342259  
[port@SovereignGroup.com](mailto:port@SovereignGroup.com)

## SOUTH AFRICA:

**CAPE TOWN**  
**Timothy Mertens**  
Tel: +27 21 418 4237  
Fax: +27 21 418 2196  
[sact@SovereignGroup.com](mailto:sact@SovereignGroup.com)

## SOUTH AFRICA: JOHANNESBURG

**Carlos Correia**  
Tel: +27 11 486 0123  
Fax: +27 11 646 0586  
[sajb@SovereignGroup.com](mailto:sajb@SovereignGroup.com)

## SPAIN: MADRID

**Carlos Chavarri**  
Tel: +34 915 336 500/532 003  
Fax: +34 915 548 788  
[madrid@SovereignGroup.com](mailto:madrid@SovereignGroup.com)

## SPAIN: MARBELLA

**Rafael Rodriguez**  
Tel: +34 952 764 168  
Fax: +34 952 825 637  
[spain@SovereignGroup.com](mailto:spain@SovereignGroup.com)

## TURKS & CAICOS ISLANDS

**Coretta Dames**  
Tel: +1 649 946 2050  
Fax: +1 649 946 1593  
[tci@SovereignGroup.com](mailto:tci@SovereignGroup.com)

## U.A.E.: ABU DHABI

**Cecilia D'Cunha**  
Tel: +971 2 6715145  
Fax: +971 2 6715150  
[abudhabi@SovereignGroup.com](mailto:abudhabi@SovereignGroup.com)

## U.A.E.: DUBAI

**Kevin O'Farrell**  
Tel: +971 4 3976552  
Fax: +971 4 3978355  
[dubai@SovereignGroup.com](mailto:dubai@SovereignGroup.com)

## UNITED KINGDOM

**Simon Denton**  
Tel: +44 (0)20 7479 7070  
Fax: +44 (0)20 7439 4436  
[uk@SovereignGroup.com](mailto:uk@SovereignGroup.com)

## UNITED KINGDOM:

**Sovereign Accounting Services**  
**Stephen Barber**  
Tel: +44 (0)20 7434 3200  
Fax: +44 (0)20 7434 3288  
[sas@SovereignGroup.com](mailto:sas@SovereignGroup.com)

## UNITED STATES OF AMERICA

**William H. Byrnes**  
Tel: +1 305 474 2468  
Fax: +1 305 474 2469  
[usa@SovereignGroup.com](mailto:usa@SovereignGroup.com)

## URUGUAY

**Maria Noel Otero Perroni**  
Tel: +598-2 900 3081/1932  
Fax: +598-2 902 1246  
[uy@SovereignGroup.com](mailto:uy@SovereignGroup.com)