28

issue twenty eight
october 2007

SOVEREIGN

report

Bahamas Bahrain British Virgin Islands China Denmark Dubai Germany Gibraltar Hong Kong Isle of Man Malta Mauritius The Netherlands Netherlands Antilles Portugal Singapore South Africa Switzerland Turks & Caicos Islands United Kingdom Uruguay

contents

introduction 3

4 european news

5 usa + caribbean news

6 asia + pacific news

7 legal news

8 fiscal news

9 profile: **Private Trust Companies – Technical briefing**

10 contact + info

© The Sovereign Group 2007

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by means, electronic, mechanical, photocopying, recording or otherwise, without the prior written permission of The Sovereign Group.

The information provided in this report does not constitute advice and no responsibility will be accepted for any loss occasioned directly or indirectly as a result of persons acting, or refraining from acting, wholly or partially in reliance upon it.

Sovereign Trust (Gibraltar) Limited is licensed by the Financial Services Commission – Licence No: FSC 00143B.

Sovereign Trust (Isle of Man) Ltd is licensed by the Isle of Man Financial Supervision Commission as a Corporate Services Provider.

Sovereign Trust (TCI) Limited is licensed by the Financial Services Commission – Licence No: 029.

Sovereign Group Partners LLP is regulated by the FSA – No. 208261.

The Sovereign Asian Art Prize

This year's Sovereign Asian Art Prize, and a cheque for US$25,000, has been awarded to Kumi Machida for her work entitled "A Boy and a Girl". The Sovereign Art Prize was presented at a gala dinner and auction for 330 guests held at the Hong Kong Four Seasons Hotel on Friday, 21 September. Generously sponsored by Louis Vuitton, the event raised US$400,000.

The funds raised this year will be applied towards a programme run by the Hong Kong Youth Arts Festival that teaches disabled children how to paint, and towards setting up an art school within the M'Lop Tapang project in Cambodia, a community-based organisation that aims to empower street children by giving them access to learning tools and resources. Both these projects will give opportunities to children who would ordinarily have none.

The Sovereign Art Prize has now become an established fixture on the Asian art scene and the entry standard this year was particularly high. On behalf of the Foundation, and all the people who benefit from its charitable contributions, I'd like to say a big thank you to everyone involved in this year's event.

28

The Pope pontificates

Pope Benedict XVI recently denounced the use of tax havens and offshore bank accounts by wealthy individuals, saying that this reduces tax revenues for the benefit of society as a whole. I do not doubt his sincerity, or his right to speak out on this or any other issue of concern. But it should not be forgotten that the pontiff does not pay any personal income tax and that the Vatican is, in effect, a tax haven itself because it exempts all its income from taxation. If only we could open an office there!

Sovereign recruitment

As a result of business expansion across the Group, Sovereign is actively looking for qualified professionals to assist senior management teams in several of our worldwide offices. Applications from new, or recently qualified, lawyers or accountants are especially welcome, but we would also be

chairman

interested to hear from more experienced professionals – particularly those with an established client following. Anyone who is interested to learn more about the opportunities currently available within Sovereign can find more information, and application procedures, on our website.

Caruana wins fourth straight term in Gibraltar

Just before going to press, Peter Caruana was re-elected as Chief Minister of Gibraltar for a fourth consecutive term. His party, the Gibraltar Social Democrats won 49% of the votes beating his main rival, the GSLP/Liberal Alliance led by former Chief Minister Joe Bossano who secured 45% of the vote. Mr Caruana's most notable achievement during his last term of office was to steer the Rock towards an historic agreement with the UK and Spain which normalised relations with Spain over the Rock and should allow for greater prosperity for the Gibraltar financial sector. Congratulations to Mr Caruana.

Sovereign Insurance Services Limited ("SIS")

Sovereign is delighted to announce that its new insurance subsidiary, Sovereign Insurance Services, is now open for business in Gibraltar having just received a licence from the Financial Services Commission.

SIS is headed up by Steve Armstrong, who has over 27 years insurance experience in both the Australian and UK insurance markets, having held a number of senior management positions with leading insurance firms. The new company has been established specifically to assist Sovereign clients with their insurance related affairs, following a clear demand for this service. Contact sarmstrong@SovereignGroup.com for more details.

Howard Bilton BA(Hons)
Barrister-at-Law (England, Wales & Gibraltar)
Professor of Law, St. Thomas School of Law, Miami, USA
Chairman of The Sovereign Group

Gibraltar to go for low flat corporate tax regime

Chief Minister Peter Caruana announced, in the Budget on 26 June 2007, a significant move away from a "zero-10" tax strategy, in favour of a flat low tax regime, probably set at 10%.

Under a zero-10 system, first introduced by the Isle of Man on 1 July 2006, all companies qualify for a zero rate of tax except financial services companies, which pay a 10% flat tax. Guernsey is due to introduce a zero-10 system on 1 January 2008, and Jersey one year later.

Caruana said Gibraltar would instead introduce a flat corporate tax by mid-2010. "We are moving away from zero tax to low tax. An internationally competitive tax rate is an important attraction for business. Our philosophy remains that a low tax rate encourages investment and delivers wealth," he said.

"This will most probably be set at 10%, but in any event not higher than 12%. This will be similar to arrangements that exist in Ireland, Cyprus, Malta and other EU countries."

In the meantime the corporate tax rate is to be reduced from 35% to 33% for the 2007/2008 tax year, and to 30% for the following year. He further signalled the intention of a further reduction the year after that to 27% in anticipation of the flat low tax rate in 2010.

The tax cuts are intended to lessen the effects of the phasing out of the existing tax-exempt company regime, which the European Commission challenged on grounds that it breached EU state aid rules. Gibraltar has agreed to end the regime by 2010.

The Budget included changes to taxes imposed on Category 2 Status Individuals, who establish a residential address and reside in Gibraltar for a minimum of 30 days in each calendar year. It also abolishes category 3 and 4 status for new entrants.

From 1 July this year, the minimum tax payable by Category 2 Individuals is increased from £14,000 to £18,000 while the taxable income level increases by £10,000 to £60,000. Existing Category 3 and 4 status individuals will retain that status until June 2009 – unless their certificates lapse sooner – but taxes for the former will rise from £10,000 a year to £15,000, and the matter from £5,000 to £7,500.

Sovereign Comment

This announcement has helped to clarify matters although there has been disappointment that corporate tax rates are not further reduced before 2010. The HNWI residency programme has also now been clarified. There is a significant amount of top end property development in Gibraltar at present, and Cat 2 Status may be of particular appeal to expatriates presently living elsewhere, such as the Middle East. Sovereign is able to handle such applications as well as providing ancillary services including yacht registration. Contact the Gibraltar office for more information on this innovative residency programme and for introductions to property developers.

28 europe

Cyprus and Malta gain Euro entry

EU finance ministers at the ECOFIN meeting on 10 July 2007 gave final approval for Cyprus and Malta to enter the Eurozone on 1 January 2008. This brings to 15 the number of countries sharing the single European currency.

The two islands have taken various measures to meet EU economic rules; Cypriot workers accepted lower wage rises to avoid inflation, while Malta paid off debt to cut its budget deficit.

Portuguese finance minister Teixeira dos Santos chaired the ministers monthly meeting in Brussels because Portugal holds the rotating presidency of the European Union until the end of the year.

He said: "Cyprus and Malta will join the Euro on 1 January next year. I would like to congratulate these two countries for this achievement, which is the result of appropriate policies."

Sovereign Comment

It is indicative of the importance of EU accession to these two smaller countries that just three years after becoming members, they have passed the necessary tests to allow entry into the Eurozone. Both countries have robust low corporate tax regimes in place and are of increasing importance to international tax planners. EU membership aside, their geographical location and well-developed infrastructure are also reasons to consider using them when structuring international tax affairs. Entry into the Eurozone should further enhance their international standing.

France introduces Fiducie trust structure

The French government, by Decree 2007-725 of 7 May 2007, has introduced a new structure – the so-called Fiducie – which is in many respects similar to the English law trust, although its role is more limited.

The fiducie is an agreement whereby one or more constituents (settlors) transfer assets, rights, or collateral to a fiduciaire (similar to a trustee) who agrees to manage them for a given period of time (not to exceed 33 years) and to return the assets to certain designated beneficiaries on termination of the fiducie.

The constituent, the fiduciaire or third parties can all be designated as beneficiaries. But it should be noted that only entities subject to corporate income tax may act as constituent of a fiducie, and the legislation clearly states that any structure that involves a fiducie with a view to achieve a gift of assets shall be null and void.

New French President Nicolas Sarkozy's flagship package of tax breaks came into effect on 1 October 2007. The cap on the amount of direct tax that can be levied on income is lowered from 60% to 50%, and tax relief of up to 20% is offered on mortgage interest rate repayments during the first five years.

The fiscal package also introduces some tax breaks to those paying the wealth tax known as the ISF. Those subject to the ISF will be allowed to invest in small- and medium-sized enterprises and be credited with an equivalent amount against the ISF they are due to pay.

Sovereign Comment

The development of the Fiducie structure gives tax planners a new tool but it is interesting that the legislation comes with the "gift of assets" restriction. Coupled with the tax cuts by the incoming administration, there are exciting times ahead in this market and Sovereign is well placed to offer its clients a wide range of options. Contact our London office for an initial consultation without obligation.

BVI simplifies bearer shares phase out, introduces PTCs

The BVI Financial Services Commission made an order, on 3 July 2007, to establish simplified provisions for the transition of bearer share companies to non-bearer share companies. The transition date has also been brought forward by one year to 31 December 2009.

The BVI Business Companies Act (BVIBCA), enacted in 2004 in response to OECD demands that the BVI eliminate the ring fencing of non-resident entities, introduced a new company registration regime and included transitional arrangements for existing companies.

It also included provisions, originally enacted for International Business Companies (IBCs) in 2003, for transitioning bearer share companies to non-bearer share companies. These required companies to fully immobilise their shares by 31 December 2010 and, to encourage companies to begin the process as early as possible, the provisions set out phased increases in the annual fees of bearer share companies as from 2008.

This measure would have affected every IBC that had been automatically re-registered under the BVIBCA, whether or not they had actually issued bearer shares, and would have caused considerable inconvenience to the directors and owners of former IBCs. The Commission therefore sought to find an alternative solution.

The new order deems that on 31 December 2009, the memorandum of every former IBC is to be automatically amended to prohibit the issue of bearer shares, unless a company specifically elects that this deeming provision should not apply. It has also abolished the phased increases in annual fees between 2008 and the transition date.

Regulations providing for the establishment of BVI private trust companies (PTCs) came into force on 1 August. To be exempt from requiring a full trust licence, a PTC must have a licensed registered agent and must not carry on any business other than "unremunerated" or "related" trust business.

Sovereign Comment
This is a pragmatic step by the BVI and is to be welcomed. It demonstrates a commitment to necessary change whilst maintaining a workable operation for the several hundred thousand companies domiciled in BVI. Confirmation that legislation is imminent relating to private trust companies is a further sign that BVI continues to develop their offering. See the story on Bahamas PTCs on this page for comparison. If you are affected by the bearer share issue in relation to a BVI company, contact your local Sovereign office for advice.

Bahamas introduces PTCs

Legislative amendments to provide for the formation of Private Trust Companies (PTCs) have been introduced in the Bahamas. A PTC provides a means by which a trust settlor can retain a greater degree of control over the affairs of the trust.

A PTC is formed for the specific purpose of acting as trustee of a single trust, or a group of related trusts for the benefit of members of the same family. Generally it has no intrinsic value; its sole purpose is to act as trustee of the family trust and so its value is usually no more than the amount of its paid-up share capital. The minimum capital requirement is $5,000.

Under the Banks & Trust Companies Regulation (Amendment) Act, which came into force on 27 December 2006, a Bahamian PTC, like other structures such as foundations, will not require regulatory approval. The PTC need only arrange its affairs with a regulated Bahamian service provider or registered representative - a bank or trust company, or financial and corporate services provider licensed by the Central Bank of the Bahamas.

This feature distinguishes the Bahamian PTC from those that are available in other jurisdictions and allows for exclusive interaction between the client and its registered representative without additional regulatory involvement. As a result, client information need only be delivered to the offices of the client's service provider.

Directors of the PTC are not required to be resident in the Bahamas. While the growth of PTCs may spur the establishment of family offices in the Bahamas, there is no requirement for a PTC to establish a physical presence in the jurisdiction.

Sovereign Comment
As with BVI (see item above), the Bahamas is another jurisdiction determined to stay ahead of the game with bespoke legislation relating to private trust companies. The move to become more competitive in this field is a necessary step given the stiff competition in other leading centres. Sovereign has developed considerable expertise in the establishment of PTCs, particularly for clients in Asia. See the article on the use of PTCs on page 9 of this issue for more information on PTCs.

Joint anti-tax shelter body to be expanded

The tax administrations of Australia, Canada, the UK and the US announced, on 23 May 2007, that they are to open a second Joint International Tax Shelter Information Centre (JITSIC) office in London in the autumn of 2007.

Japan has also accepted an invitation to join JITSIC, and a representative of the National Tax Agency will be present at the London centre.

The tax administrations have also made plans to expand the focus of its activities, further sharing best practice on risk assessment and other key areas of interest, and particularly increasing the transparency of cross-border transactions in order to create a level playing field for taxpayers who are voluntarily compliant.

JITSIC was established in 2004 to supplement the ongoing work of the Australian Taxation Office, the Canada Revenue Agency, HM Revenue & Customs, and the Internal Revenue Service in identifying and curbing tax avoidance and shelters and those who promote them and invest in them.

Based in Washington DC, JITSIC delegates from each of the four countries exchange information on abusive tax schemes, their promoters and investors, consistent with the provisions of bilateral tax conventions.

Mauritius passes Financial Services Bills

The Mauritius National Assembly has adopted three financial services bills, which establish the independence of the Financial Services Commission and liberalise the international "global business companies" regime.

Introducing the Bills to Parliament, Deputy Prime Minister Rama Sithanen said that modernising the legal framework was, "in line with our philosophy to simplify processes and procedures, to remove hurdles to investment, to facilitate delivery of services, and to achieve international standards in every activity so as to be globally competitive."

The Financial Services Bill will replace the Financial Services Development Act 2001 and provide a common framework for licensing and supervision of all financial services other than banking and for the global business sector. It specifically provides for the independence of the Financial Services Commission as a regulatory body.

The Bill redefines the concept of global business. Under the new provisions, all resident companies conducting business outside Mauritius may opt for an alternative legal regime. The former restrictions on activities conducted by Category 1 Global Business Companies are being removed.

The Securities (Amendment) Bill extends the scope of "securities" and "exchanges", thereby enabling the Commission to approve the trading of a wider range of instruments and license commodity and other exchanges.

The Insurance (Amendment) Bill removes certain administrative obligations on branches of foreign insurers operating in Mauritius and provides for greater flexibility in exceptional circumstances.

The protocol to the 1994 China-Mauritius income tax treaty, which was signed on 5 September 2006, came into force on 25 January 2007. The new protocol contains two major changes: a new Capital Gains clause; and an Exchange of Information Article based on the 2005 OECD model convention. These changes may affect multinationals that hold subsidiary investments in China through intermediary Mauritius holding companies.

Sovereign Comment

For some years the Mauritius "Category 1" company has been used effectively to reduce withholding tax, particularly in India. We will report on how the new regime is working in practice in future issues. If you are considering using a Mauritius structure in the meantime, please contact us to find out how these changes will affect the existing regulatory rules. The independence of the Financial Services Commission is to be welcomed.

28 asia+ pacific

OECD de-lists Liberia and Marshall Islands

The OECD removed Liberia and the Marshall Islands, on 24 July and 7 August respectively, from its list of non-cooperative tax havens, following commitments made by their governments to implement programmes to improve transparency and establish effective exchange of information in tax matters.

They join 33 other jurisdictions that have made similar commitments in relation to OECD's work to curb harmful tax practices. Just three jurisdictions now remain on the OECD blacklist, first published in April 2002. These are Andorra, Liechtenstein and Monaco.

OECD Secretary-General Angel Gurría welcomed the latest commitments and said the OECD would be ready to assist them as they took forward reforms in the tax area.

Sovereign Comment

It is interesting to note that the three remaining "blacklisted" territories are all European. The previous listing of Liberia and the Marshall Islands has certainly not helped either jurisdiction in attracting business and time will tell if this changes as a result of the OECD's recent move. Increasingly yacht owners use the Marshall Islands so that their pleasure craft can then be registered in the port of Bikini! Should this be of interest, please contact our Gibraltar-based yacht subsidiary RegisterAYacht.com – contact details may be found on the back page of this issue.

Hong Kong company registrations rise by 19%

The number of new local companies registered under the Hong Kong Companies Ordinance in the first six months of 2007 totalled 47,417, an increase of 19.12% on the same period last year.

Statistics from the Companies Registry show the total of live companies registered at the end of June was 622,318, up 30,374 on the end of 2006. The total number of documents received for filing rose 8.72% to 929,225.

In the first half of 2007, 316 new overseas companies established a place of business in Hong Kong and registered under Part XI of the Companies Ordinance, up 12.46% on the same period last year. The total number of overseas companies stood at 7,854 at the end of June, 145 more than last year's total.

According to the Securities & Futures Commission's latest fund management activities survey, meanwhile, the combined fund management business in Hong Kong rose 36% to HK$6.15 trillion (US$786.4 billion) in 2006.

Asset management, which accounted for the largest share of the combined fund management business, recorded growth of 27.5% last year. Advisory business and other private banking activities grew 67.1% and 54.5% respectively, indicating a broadening in the range of fund management activities conducted in Hong Kong.

The Commission's executive director of Intermediaries & Investment Products, Alexa Lam said: "The SFC will continue to work in close partnership with the Mainland regulators to ensure that Hong Kong provides the Mainland with the best wealth management platform. In short, our aim is for Hong Kong to become the one-stop supermarket where Mainland investors can shop for the best wealth management service and products the world has to offer."

Sovereign Comment

This is all extremely positive and confirms Hong Kong as one of the leading international finance centres in the world. Of particular interest is the significant growth in companies registered under Part XI of the Companies Ordinance. This allows companies established elsewhere to become "Hong Kong" companies and avoid restrictions of a full Hong Kong entity. Sovereign has a highly effective method to achieve this and details can be obtained from your local office.

UK to revise draft Money Laundering rules for trusts

The UK Treasury has agreed, in response to intense industry lobbying, to revise the definition of "beneficial ownership" in relation to trusts in the draft Money Laundering Regulations 2007.

Trust practitioners had argued that the Directive was applying "beneficial ownership" to beneficiaries of trusts in the same way as to shareholders of companies. The Treasury had agreed that, on implementation, the definition would be reviewed to ensure risk-based and proportionate regulation.

Ed Balls, then Economic Secretary to the Treasury, wrote to the Law Society to outline the government's "current thinking" on the best way to implement the requirement to "identify and verify the beneficial owner with regard to trusts".

In the letter he admitted that requiring the regulated sector to identify all those who have influence over a trust was a "disproportionate response" to implementing the Third EU Money Laundering Directive, and instead suggested limiting identification requirements only to those individuals with legal control.

He said: "Given the risks associated with control of a trust it is important for the regulated sector to seek to identify all those in a position of control be it direct or indirect and exercisable in relation to capital or income. We propose to take into account different aspects of control including powers of veto and powers to add beneficiaries. We also propose removing the 25% limit for control."

The EU guideline requires that due diligence checks should be performed on anyone with a significant stake in a trust of 25% or more, but industry practitioners have argued that this is not a concept which make sense under UK law.

Balls admitted that the 25% test "presents real difficulties that would be impracticable and disproportionate for the regulated sector to apply if income were included", and so suggested the checks should only be necessary for those with at least a 25% capital stake in a trust.

"I believe it is important any requirements that are imposed should be as clear and certain as possible. The definition should include all those with a vested interest, and should extend to both indefeasible and defeasible interests. This provides certainty while reflecting the existing economic reality," said Balls.

The letter also highlights potential issues with discretionary trusts. Balls said he did not believe that the Directive envisaged the identification of discretionary beneficiaries who receive distributions from the trust, apart from those with vested interests. The government therefore proposed to address the risks by ensuring "all those who have legal control over a trust are identified, and that ongoing monitoring of such trusts is undertaken."

US Court lacks jurisdiction over Cayman bank

A US district court dismissed, on 26 February 2007, a petition to enforce a US IRS summons issued against a Cayman Islands bank because the Internal Revenue Code confers jurisdiction only if the bank "resides" or "is found" within the court's judicial district; doing business with US citizens was not sufficient.

In *Cayman National Bank v United States*, before the court of the Middle District of Florida, Tampa Division, a Cayman bank applied to dismiss a US petition to enforce a summons for lack of subject matter jurisdiction, or failing that for a stay of enforcement.

The IRS was conducting an investigation of a taxpayer, Robert Penrod, when it found that he had guaranteed a loan made by Cayman National that went into default. Cayman National obtained a judgment against Penrod and another guarantor in the Grand Court of the Cayman Islands.

On 3 May 2006, the IRS served a summons on Cayman National for documents relating to the transaction. Cayman National filed a petition to quash the summons and, in response, the US filed a petition to enforce it.

The point at issue was whether Cayman National was "found" in the Middle District of Florida under the "resides" or "found" provisions in ss7402 and 7604 of the Code. Cayman National argued that it was a subsidiary of a Cayman-based corporation, and did not have any branches or offices in the US, nor any agents for service of process in the US.

The US claimed that the bank could be found within the district because it chose to do business with US citizens, retained a Tampa law firm in order to pursue collection efforts, and had filed its petition to quash the summons in this district.

The Court rejected the US argument. It found that the branch office test was an appropriate test for determining whether a summoned party was found within the district, because it required a physical presence within the district. There was no evidence that Cayman National had an actual physical presence within the district, so the Court held that it could not be "found".

EU takes issue with Germany and Austria

The European Commission has stepped up legal proceedings against Austria and Germany, by formally requesting that they amend their tax laws to remove the discrimination between dividends paid to foreign and domestic companies.

Dividends paid to resident shareholders in Germany and Austria are generally exempt from tax, whereas outbound dividends are subject to withholding taxes ranging from 5% to 25%. Should the States fail to give a satisfactory response, the Commission may refer the matter to the European Court of Justice.

The Commission has also sent letters of notice, the first step in the legal infringement procedure, to Italy and Finland, both of which tax dividends paid to foreign pension funds more heavily than domestic funds. In May, the Commission made similar requests to the Czech Republic, Denmark, Spain, Lithuania, the Netherlands, Poland, Portugal, Slovenia and Sweden. It said it is, "still examining the situation in other Member States".

Sovereign Comment

Under the terms of the relevant Directive, this anomaly should have been closed some time ago and it is interesting to see that the Commission is taking determined steps in this area. Note that a number of the recent "Accession States" are also included. Once a level playing field has been achieved, further exciting opportunities will present themselves to tax planners and Sovereign is able to advise on the use of companies structured in any one of the 27 EU countries.

UK's Offshore Disclosure Facility expires

The UK's partial tax amnesty programme, known as the Offshore Disclosure Facility, expired on 22 June 2007. Some 60,000 taxpayers with undisclosed offshore holdings registered to qualify for reduced penalties after a last-minute rush.

The ODF was introduced after the Her Majesty's Revenue & Customs obtained information about holders of offshore accounts from banks through successful legal actions, as well as through the EU savings tax directive.

Taxpayers who disclosed offshore income during the amnesty period will now have until 26 November to pay any unpaid taxes on that income, along with interest, duties, and penalties. Disclosures accepted by the Revenue under the ODF will be subject to a fixed penalty of 10% of the underpaid taxes or duties and no penalty for untaxed amounts under £2,500.

It is understood that of those who registered, just over half were customers of banks that had handed over information to the Revenue. The remainder involve taxpayers whose offshore accounts were not previously reported to the tax authorities.

Taxpayers with undeclared income in offshore accounts that did not participate in the ODF face the possibility of penalties ranging from 30% to 100% of the tax due. The Revenue has said it would begin investigations on those accounts after the amnesty deadline closed.

Taxpayers who notified the Revenue of their intention to participate in the ODF should have received a letter containing a disclosure reference number. To qualify for the reduced penalties, participating taxpayers must disclose all their undeclared taxable income, not just amounts related to offshore holdings.

The Revenue will notify taxpayers of its decision to accept or deny their disclosures by 30 April 2008.

The ODF is reminiscent of the 2003 US Internal Revenue Service's Offshore Voluntary Compliance Initiative (OVCI) under which the IRS gave participating taxpayers relief from some penalties. The OCVI program resulted in only 1,300 applications, more than 90% of which were accepted.

Sovereign Comment

Although there was a last minute rush, it is clear that many people have opted not to declare and this is likely to cause them problems in the years ahead. Sovereign has established working relationships with a number of experts in this field and if you are concerned about your own position, the time to act is now. Although the deadline under this facility has passed, it would be advisable to alert the Revenue in advance of them contacting you so please do act without delay if this affects you.

fiscal 28

China and Singapore sign new tax treaty

A new tax treaty between China and Singapore has been ratified by both countries and entered into force on 18 September 2007. The provisions of the new treaty, which was signed on 11 July 2007, will have effect on income derived on or after 1 January 2008 on both sides. The new treaty replaces the existing treaty, which has been in force since 1986.

Under the new treaty, withholding tax on dividends will be reduced from the current 7%, for corporate shareholders holding at least 25% of the share capital, and 12% for others, to 5% and 10% respectively. Withholding tax on interest is 7% for interest paid by a Chinese company to a Singapore bank or financial institution; and 10% for all other cases.

Gains from the disposal of shares of Chinese companies by a Singapore investor will be taxed in China only if the vendor has held at least 25% of the share capital of the company at any time during the preceding 12-months or more than 50% of the value of shares disposed is derived, directly or indirectly, from immovable property situated in China.

The treaty will help to restore parity with Hong Kong, which signed a new treaty with China last year to secure some attractive new terms, such as 5% and 7% withholding tax rates on dividends and interest respectively. Since then, Singapore government has been very keen to revise the China-Singapore treaty.

Netherlands signs tax treaty with Emirates

The governments of the Netherlands and the United Arab Emirates (UAE) signed a tax treaty and protocol on 8 May in Abu Dhabi. It is the first tax treaty between the two states although a bilateral treaty on income and profits derived from international air transport was concluded in 1992.

The new treaty will make investing more attractive for Dutch companies that wish to invest in the UAE and for UAE companies that wish to invest in the Netherlands. It will provide companies with more certainty and will help to avoid double taxation.

The UAE has now concluded 44 income tax treaties, of which 35 are currently in force, including Germany, France, Belgium, Italy, Austria, Canada, and New Zealand

The Dutch Finance Ministry said, that in order to combat tax evasion, it intends to sign a considerable number of Tax Information Exchange Agreements with offshore financial centres.

"The main reason we're doing this is to exchange information, so that the Tax & Customs Administration can see what's going on in these territorial jurisdictions," said Robert van der Have, head of the bilateral tax treaties department of the Dutch Finance Ministry.

The Netherlands recently concluded treaties with the UK Crown Dependencies of the Isle of Man and Jersey, and negotiations are underway with Guernsey.

Van der Have said the next round of talks would be held with UK Overseas territories in the Caribbean, including Bermuda, the British Virgin Islands and the Cayman Islands.

Sovereign Comment

We reported in the last issue (*Sovereign Report 27*) on a similar treaty that Spain had signed with UAE that came into force in April of this year. Once again, the Dutch move signals the growing importance of the Emirates to European governments and indeed the seriousness with which UAE intends to cooperate moving forward. We have long established offices in both the UAE and the Netherlands and either office should be contacted if your business wishes to take advantage of this new treaty.

Private Trust Companies

Private Trust Companies (PTCs) provide a means by which a trust settlor can retain a greater degree of control over the affairs of a trust without compromising its validity. Sovereign has seen a significant rise in their popularity over recent years.

There are a large number of people who are not familiar with the concept of trusts – particularly those from Civil Code law jurisdictions where the Common Law trust is not necessarily recognised – and who are consequently reluctant to give third-party trustees, even major institutions such as banks, control over their assets.

A PTC is a company formed for the specific purpose of acting as trustee of a single trust, or a group of related trusts. Family members can participate in the management of the company and therefore in the decisions that need to be taken by the PTC as trustee, including decisions relating to the control and management of companies owned by the trustee. Such participation would not be possible if the trustee was an independent trust company.

Traditionally there have been various options available to settlors who wish to retain a degree of control – specific powers can be reserved to the settlor under the terms of a trust, "a protector" can be appointed by the settlor to protect the interests of the beneficiaries, or a settlor can provide a "letter of wishes" to the trustee – but none so effective or flexible as a PTC.

With a PTC, on the other hand, the settlor, members of their family or advisors can be appointed to the board of directors and in this capacity they are in a position to influence the manner in which the trust is administered. The composition of the board can also be changed to bring in members of succeeding generations and thereby involve them in the management of the family affairs.

A professional trust company will not necessarily be able to offer the same degree of flexibility and the speed of response, and its employees cannot be expected to be as familiar with the business of companies owned by the trust as the family members themselves. Decisions may have to be referred internally and independent advice taken before they can be put into effect. And, if a change of trustee is desired, this can be a lengthy and expensive process.

Problems such as these can be largely avoided with a PTC. Directors familiar with the business make the decisions and, if a change of direction is desired for the management of the trust, this can be achieved by changing the board.

A PTC can therefore provide greater comfort for the settlor that his, or her, objectives in creating the trust will be met. We believe it is vital that at least one director is a trust expert to add substance and credibility to the PTC, as well as to ensure that the PTC and the trust(s) that it administers are run correctly.

The directors must remember at all times that when they are taking decisions in relation to the trust that it is the interests of the beneficiaries as a whole that must be considered. They should not be unduly influenced by their own personal circumstances.

The settlor may be one of the directors, but this may not be desirable because it may adversely affect the tax position of the trust. Tax advice should always be sort before any other beneficiaries or family members are appointed as directors.

"The composition of the board can also be changed to bring in members of succeeding generations."

It will also generally be necessary to ensure that a majority of the directors are resident offshore so as to avoid issues of onshore management and control. Onshore family members, including the settlor, should not form a majority on the board.

More important In terms of controlling the trust(s) is the ultimate ownership of the PTC because this carries the power to remove and replace directors. In other words, even if no family members were represented on the PTC board, controlling the affairs of a trust would not be compromised provided that the ownership was in the hands of the settlor or their family.

For this reason a PTC is often set up as a company limited by guarantee whose members can be appointed and removed, or who cease to be members on death or the attainment of a certain age. In this way ultimate control of the PTC can rest with the family irrespective of the constitution of the board of directors, giving the settlor added comfort and avoiding the difficulties of transferring shares on the death of a member.

All the principal offshore locations now have in place licensing regimes for professional trustees. But many jurisdictions now specifically exempt PTCs from the requirement to be licensed and regulated, provided that the PTC acts as trustee solely of a specific trust or group of trusts and does not solicit from, or provide trust company business to, the public. In most cases there is also no requirement to submit to any reports or accounts to any statutory body of either the PTC itself or of the trusts of which it acts as trustee.

Although the costs of establishing both a PTC and the underlying trust(s) are generally higher than the cost of simply establishing a trust, the ongoing costs may be less than the trustee fees that would be charged by an independent third-party trustee. This is particularly the case where the trust assets are very substantial because independent trustees will often charge fees based on a percentage of the assets.

In summary:

1. The PTC should be set up as a company limited by guarantee.
2. Ownership, and therefore ultimate control, would rest with the family.
3. The directors may include family members but should always include a majority of offshore directors, at least some of who should be trust experts.
4. The PTC would administer one or more family trusts only, and not offer trust services to the public or for reward.
5. The terms of the trust administered by the PTC require the same careful drafting as usual.
6. Set up costs may be higher, but annual fees would normally be lower.

the sovereign mastercard®

The ultimate offshore credit card.

Instant access to your offshore funds any place, anywhere. Contact your most convenient Sovereign office for further details.

information

For more information on the services provided by The Sovereign Group, please visit our website: **www.SovereignGroup.com** or contact your most convenient Sovereign office listed below.

change of address?

Have your subscription details changed recently? Do you wish to redirect your quarterly issue of *The Sovereign Report* to a different address? Or do you wish to unsubscribe? If so, please contact Michelle Gallardo by email: mgallardo@SovereignGroup.com or by fax on: +852 2545 0550. *Please note that The Sovereign Group is committed to ensuring that your privacy is protected. All details submitted will be held in the strictest confidence.*

contact

BAHAMAS Alan Cole
Tel: +1 242 322 5444
bh@SovereignGroup.com

BAHRAIN Hadi Daou
Tel: +973 1721 3199
bahrain@SovereignGroup.com

BRITISH VIRGIN ISLANDS
Susannah Musgrove
Tel: +1 284 495 3232
bvi@SovereignGroup.com

THE PEOPLE'S REPUBLIC OF CHINA, Shanghai
Sunny Liew
Tel: +8621 6103 7089
china@SovereignGroup.com

DENMARK Jan Eriksen
Tel: +45 4492 0127
dk@SovereignGroup.com

DUBAI
John Hanafin
Tel: +971 4 397 6552
dubai@SovereignGroup.com

GERMANY
Dr Norbert Buchbinder
Tel: +49 (0)911 92668 30
de@SovereignGroup.com

GIBRALTAR
Ian Le Breton
Tel: +350 76173
gib@SovereignGroup.com

RegisterAYacht.com
Gabriel González
Tel: +350 51870
ray@SovereignGroup.com

Sovereign Asset Management
Chris Labrow
Tel: +350 41054
sam@SovereignGroup.com

Sovereign Insurance Services
Steve Armstrong
Tel: +350 44609
sis@SovereignGroup.com

HONG KONG
Jacques Scherman
Tel: +852 2542 1177
hk@SovereignGroup.com

Sovereign Accounting Services
Tel: +852 2868 1326
sashk@SovereignGroup.com

ISLE OF MAN
Diane Dentith
Tel: +44 (0)1624 699 800
iom@SovereignGroup.com

MALTA Mark Miggiani
Tel: +356 21 228 411
ml@SovereignGroup.com

MAURITIUS Ben Lim
Tel: +230 403 0813
mu@SovereignGroup.com

THE NETHERLANDS
Susan Redelaar
Tel: +31 (0)20 428 1630
nl@SovereignGroup.com

NETHERLANDS ANTILLES
Rudsel Lucas
Tel: +599 9 463 6138
na@SovereignGroup.com

PORTUGAL
Nigel Anteney-Hoare
Tel: +351 282 340 480
port@SovereignGroup.com

SINGAPORE Joe Cheung
Tel: +65 6222 3209
sg@SovereignGroup.com

SOUTH AFRICA – CAPE TOWN
Timothy Mertens
Tel: +27 21 418 4237
sact@SovereignGroup.com

SOUTH AFRICA – JO'BURG
Chrizette Roets
Tel: +27 11 881 5974
sajb@SovereignGroup.com

SWITZERLAND
Dr Norbert Buchbinder
Tel: +41 (0)43 488 36 29
ch@SovereignGroup.com

TURKS & CAICOS ISLANDS
Ruth Beneby
Tel: +1 649 946 2050
tci@SovereignGroup.com

UNITED KINGDOM
Simon Denton
Tel: +44 (0)20 7389 0555
uk@SovereignGroup.com

Sovereign Accounting Services
Stephen Barber
Tel: +44 (0)20 7389 0644
sas@SovereignGroup.com

Sovereign Group Partners LLP
Hugh de Lusignan
Tel: +44 (0)20 7389 0655
capital@SovereignGroup.com

URUGUAY Noel Otero
Tel: +598 2 900 3081
uy@SovereignGroup.com

SovereignGroup.com

Editor Christopher Owen
Design Alan Pitchforth
Publisher Kamilian Limited
enquiries@kamilian.com
www.kamilian.com
Printer Pioneer Printers Limited
www.pioneerprinter.com

SOVEREIGN

SovereignGroup.com

28

SOVEREIGN

The material set out herein is for information purposes only and does not constitute legal or professional advice. No responsibility will be accepted for loss occasioned directly or indirectly as a result of acting, or refraining from acting, wholly or partially in reliance upon information contained herein.

Photocopying this publication is illegal.

© The Sovereign Group 2007

www. SovereignGroup.com