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Sovereign

report

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

contents

Welcome to a slightly enlarged Sovereign Report. For the first time, we are carrying some advertising from companies we think will be of interest to our readers. The next edition of the *Sovereign Report* is due out in autumn of this year and our plan is to incorporate it into an expanded general interest magazine. This will carry the same technical information that we usually publish within the Report, together with our regular newsletter about the Sovereign Art Foundation, and further commissioned articles which will, we hope, be of interest and some carefully selected advertisements. Watch this space.

The Sovereign Art Foundation

We are now closed to entries for the Asian Art Prize for this year and have attracted a record number. We are still counting, but it looks like we will have over 1,100 entries from all parts of Asia and the quality, as ever, continues to get better and better. During the course of this year we have again seen many of last year's finalists achieving record prices at auction. The selection process for this year's finalists should be completed in August this year and we will post them on the website – so don't forget to log in. Absentee bids are always welcome, so pick yourself up a bargain/investment and help a worthy cause at the same time.

Entries for the European Art Prize close at the end of June and, similarly, the finalists will be selected during the course of August.

A limited number of sponsorship opportunities still exist for the European Art Prize event. In addition to the other benefits, "Gold Sponsors" will be permitted to host a private viewing evening during the course of the exhibition. This sponsorship category is available from as little as £6,500. Please contact Tiffany Pinkstone at TPinkstone@SovereignGroup.com for further details of this exciting way to both promote your business and help us raise funds.

UK Revenue targets 5,000 accounts for offshore investigation

The UK Revenue (HMRC) will be targeting around 5,000 UK residents who, believes, have not declared earnings made in offshore bank accounts. Many of these account holders now face a

rather aggressive investigation, which could lead to stiff penalties. At the same time, the European Union has announced that it wishes to close the loophole on reporting of "offshore accounts", whereby banks need not report details of accounts held by offshore companies or trusts that are beneficially owned by EU residents.

As ever, Sovereign has legitimate and compliant solutions available to EU residents who wish to bank offshore and defer tax on the earnings indefinitely. Offshore planning is still alive and well for EU residents but cheap short cuts may prove to be extremely expensive in the long run. Contact us for advice if you think this may be of relevance to your situation.

Seychelles office opens

We have recently established a new office in the Seychelles, which is now open for business. Neil Puresh has been appointed as Managing Director. We have seen an increasing interest in this jurisdiction, which is noted for being both well-regulated and business-friendly. New companies are incorporated swiftly, and at modest cost, and these can be used as a viable alternative to the Caribbean jurisdictions. Details of the new office are contained in the Contacts page of this report.

New appointment – Group Tax Manager

I am also delighted to announce the appointment of Stephen Barber, based in our London office, as Group Tax Manager. Stephen has over 20 years of experience and has been instrumental in developing and managing Sovereign's Accounting Services division where he will remain a director. Stephen's new role will be to provide in-depth tax advice, concentrating on all aspects of UK taxation. In conjunction with our worldwide network, Stephen can also coordinate tax advice for international clients. For further information, contact Stephen on SBarber@SovereignGroup.com.

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

UK to extend tax avoidance disclosure to residential property

HM Revenue & Customs issued, on 30 April 2008, a paper on extending disclosure of tax avoidance scheme (DOTAS) rules to stamp duty land tax (SDLT) on residential property worth £1 million or more.

SDLT is a UK transaction tax, payable by the buyer, on the purchase of land or property, or any consideration for the acquisition of an interest in land or property. Last December the UK government published a consultation document setting out the case for extending the DOTAS regime, currently applied to non-residential transactions above £5 million, to residential transactions above £1 million.

It also set out how the government intends to address the increasing use of special purpose vehicles (SPVs) on high value residential transactions in order to minimise SDLT liability and sought to explore the practicalities of introducing a charge on the use of SPVs.

DOTAS requires promoters of tax schemes falling within certain descriptions to provide information about the scheme to HMRC within prescribed time limits. DOTAS was extended to SDLT with effect from 1 August 2005, but limited to schemes that concern non-residential property with a value of at least £5 million.

Subsequently HMRC said it became aware of SDLT avoidance schemes being marketed that concerned high value residential property only. The government announced at Budget 2008 that it would legislate later in 2008 to extend the SDLT disclosure regime to residential property worth £1 million or more.

Extending the SDLT disclosure regime requires secondary legislation only. The government said it intends to publish draft regulations for consultation with keystakeholders, with an updated consultation stage impact assessment, before the summer recess with a view to introducing the legislation in Parliament in the autumn.

Sovereign Comment
If approved, these proposed legislation changes could have serious implications for those investing in high value UK real estate. As noted on the Chairman's Page, Sovereign has recently appointed a Group Tax Manager who has vast experience in this area. He can provide up to date advice on the present rules and any proposed amendments in the law. Fees are well below that charged by the major tax advisory firms. Affected clients are strongly advised to seek guidance sooner rather than later – SBarber@SovereignGroup.com.

europe

Big firms quit UK over tax regime

United Business Media became the second high-profile business to flee the UK's tax regime for the more favourable environment in Ireland.

On 28 April 2008, UBM announced plans to reorganise under a holding company incorporated in Jersey with a tax residence in Ireland. If approved, the reorganisation will be effective 30 June.

UBM said it generates more than 85% of its income outside the UK. The firm last year reported an after-tax profit of £108 million on revenue of £801.6 million. Those figures include a tax liability of £21.5 million and a one-time charge of £19.6 million.

UBM said it has been a tax resident of the UK for "historical reasons," but that it has sought to divest itself from UK media concerns in recent years. It added that is seeking to benefit from Ireland's "less complex system of taxation."

UBM's declaration followed the 15 April announcement that pharmaceutical giant Shire would perform a similar manoeuvre. After reorganising, both Shire and UBM will be taxed under Ireland's low 12.5% corporate tax rate. Both companies are now subject to a corporate tax rate of 28% in the UK.

Richard Lambert, director-general of the Confederation of British Industry, said: "Firms are seriously concerned about the high level and rising complexity of taxation in the UK and are increasingly prepared to vote with their feet. The Treasury cannot ignore this issue or argue that companies are crying wolf."

UK Chancellor Alistair Darling announced plans for a new tax issues working group comprising both government and business representatives. The new group will be led by Financial Secretary Jane Kennedy and will include up to ten senior representatives of multinational companies.

Guernsey publishes new Companies Law

A proposed new Guernsey Companies Law has been published. If approved, the new law is due to gain Royal Assent in time for it to come into force in July 2008, alongside the new Guernsey Companies Registry that was approved by the Guernsey parliament last year.

The revised companies law has two purposes – to consolidate the existing law, ordinances and regulations which make up the current companies law, and to introduce substantial legislative changes following an assessment of company law developments in other jurisdictions, including New Zealand, Jersey, the Isle of Man, the Cayman Islands and the UK.

Under the new Law, incorporation will cease to be a judicial process and can therefore be conducted through the new companies registry. The current requirement for advocates to incorporate companies will also disappear, permitting regulated company formation agents to incorporate companies. Company formation agents are to be named Corporate Service Providers and will be required to hold a fiduciary licence regulated by the Guernsey Financial Services Commission.

The incorporation process is to be simplified by the creation of standardised articles of incorporation. Single member companies will also be permitted and a company will be deemed to have unlimited objects unless it elects specifically to limit its objects. The Law will also introduce the UK concept of a "shadow director" – a person who is not a director but whose directions or instructions the directors of a company are accustomed to follow and who is treated as a director for certain purposes under the Law. Members may also waive, by resolution, the requirement that companies must always hold an annual general meeting.

Sovereign Comment
We welcome this initiative. Guernsey benefits from its European location whilst not being part of the EU. There is no VAT (unlike the Isle of Man – where other advantages accrue despite VAT being applied). Sovereign works closely with a number of professional firms and banks in Guernsey. For details of how we can assist, including a balanced view on the advantages of either jurisdiction, or for more information, please contact our Channel Island team on guernsey@SovereignGroup.com.

France to push for common consolidated corporate tax in EU

France is "determined to push" for the introduction of a common consolidated corporate tax base (CCCTB) when the country takes over the EU rotating presidency in July, said French Finance Minister Christine Lagarde following a session of the Brussels Tax Forum on 7 April.

The European Commission has been advocating the introduction of an EU-wide CCCTB for several years. EU Tax Commissioner László Kovács has argued that such a move would simplify cross-border business and reduce tax compliance costs for European companies by establishing a single system for calculating taxes across the 27 EU member states.

The plan has the support of France and Germany but has faced strong resistance from several countries, particularly the UK and Ireland, who fear the CCCTB would lead to tax harmonisation among EU states and undermine member states' fiscal sovereignty.

Lagarde dismissed those concerns to reporters following her remarks at the tax forum. "Whether you have 12% in Ireland, or 33% in France, or 15% in Germany is irrelevant," she said. "What matters is the ultimate taxation paid by companies," Lagarde added. "That depends on two things, the tax rate and the basis. Agreeing on the basis would be extremely positive. So we will push for that." Under EU procedural rules, taxation is a policy area that normally requires unanimous approval to pass legislation. Kovács, who expects to present a legislative proposal in the autumn, has said that if the plan lacks unanimous support among member states, he will support enhanced cooperation to pass it.

The enhanced cooperation procedure allows as few as eight member states to adopt a legislative initiative, and no member state can veto their action. Legislation passed in that manner binds only the member states that approved it, but other member states are free to adopt the legislation later.

Sovereign Comment

This is a very important story with far reaching implications. The EU now comprises 27 member states, with widely differing tax rates and bases. As reported above, there is no unanimous view across the EU on how to proceed and we await future developments with interest. In the meantime, fully-compliant solutions exist using the varying tax rates, double tax treaties and differing tax bases throughout the trading bloc and further afield.

Cyprus remains one of the most attractive jurisdictions given its full EU membership, low corporate tax rate and recent adoption of the Euro as its currency. Contact your local Sovereign office for details of how careful corporate structuring might benefit your business. Future editions will continue to update readers on important changes to the tax rules across the EU.

Germany launches second wave of tax probes

The German tax authorities announced a new wave of 20 separate tax evasion investigations on 25 April, after a first push netted hundreds of millions of euros.

According to German newspaper reports, the inquiries would focus mainly on family foundations suspected of being used to hide between ¤10 to 20 million of fraudulent monies.

Since late March, there have been about 30 raids, with 120 residences and offices searched, the newspaper said. Most of those cases involved Germans allegedly avoiding tax by shifting funds to the tax haven of Liechtenstein.

SuddeutscheZeitung said authorities had recovered about ¤500 million from about 200 people who came forward.

The government admitted in February that it had paid more than ¤4 million to an informer for bank data allegedly stolen from Liechtenstein bank LGT by a former employee.

Another 230 people not related to the Liechtenstein affair have also contacted authorities about unpaid taxes, the report said. Prosecutors plan to start bringing charges against suspects within a few months.

Germany has shared the information with other countries and as a result many, including Australia, the UK, Canada, France, Greece, Italy, New Zealand, Spain, Sweden and the US, are investigating their own citizens.

Sovereign Comment

Readers may well have noted several stories in the international press in recent months on this topic. The Liechtenstein bank story is of particular concern because it involves the alleged plundering of client data by a former bank employee.

For many years Sovereign has stressed to its clients the importance of well-thought-out, compliant solutions. Simply hiding money in an offshore bank account is NOT tax planning. If you are concerned about your situation, we recommend that you obtain professional advice as soon as possible.

Isle of Man disputes "Tax Haven" Label

Government officials from the Isle of Man on 8 May 2008 disputed their designation as a "tax haven" based on an OECD report issued in 2000.

Speaking before the Multistate Tax Commission Executive Committee in Washington, DC, Isle of Man Chief Secretary Mary Williams and Chief Financial Officer Mark Shimmin said the OECD's tax haven list is out of date, and urged the Commission to use objective tax haven criteria in its combined reporting model statute.

Both officials stated that despite the Isle of Man's continued inclusion on the list, the country's current characteristics do not align with the definition of a tax haven.

Shimmin said the Isle of Man's tax revenue equalled 34% of the country's GDP, only 2 percentage points below the average of EU member countries. The island also imposes a 17.5% VAT, as well as payroll and property taxes, he said.

Further, the Isle of Man has a balanced budget requirement and recently received a positive review from the IMF on the country's fiscal processes. Williams and Shimmin said the Isle of Man also has developed a reputation for preventing tax evasion, having entered into information sharing agreements with 10 countries.

The Isle of Man is "not a low-tax jurisdiction," Shimmin said.

Netherlands Antilles to discuss "black lists" with EC

The Netherlands Antilles State Secretary of Finance, Alex Rosaria announced on 2 May 2008 that he was to hold talks with the European Commission regarding the inclusion of the Netherlands Antilles on negative fiscal lists of some EU member states.

Among others, Portugal, Poland, Greece and Italy consider the Netherlands Antilles as a "tax haven" and have included the Netherlands Antilles on their "black lists".

The talks with the Directorate General on Tax matters of European Commission are aimed at bringing to an end the inclusion of the Netherlands Antilles on such lists, Rosaria said.

"Calling us a tax haven is inaccurate and a totally misguided labelling of our country. In fact, the Netherlands Antilles complies with OECD and EU regulations making it a first class international business and financial services jurisdiction," the Finance Secretary stated.

He went on to express surprise that certain EU countries can have tax treaties and/or be in the process of negotiating such agreements with the Netherlands Antilles, while other members of the same bloc consider it a tax haven.

For example, he said the Netherlands Antilles would be signing a Tax Information Exchange Agreement with Spain in June 2008, and was negotiating similar treaties with Denmark, Sweden and Finland.

"These countries don't negotiate or sign treaties with tax havens or secrecy jurisdictions. It should become clear that he Netherlands Antilles complies with the same standards applicable to EU members. We will therefore not permit that the Netherlands Antilles is held to a higher tax standard than what is demanded of the EU," Rosaria added.

Sovereign Comment

The Netherlands Antilles is just one jurisdiction looking to engage with the European Commission in this way. We await developments with interest. The planned implementation of a new treaty with Spain is of particular importance. As a result, we expect to see a significant increased level of interest in this jurisdiction given the boost this will provide to Spanish speaking clients in Latin America doing business with Spain. Our Netherlands Antilles office is well placed to advise on these changes. The office can be contacted by e-mail na@SovereignGroup.com.

30 usa + caribbean

Cayman publishes new law changes

Amendments to the Banks & Trust Companies Law and the Mutual Funds Law were published on 14 April and are due to be tabled in the Cayman Islands Legislative Assembly for debate.

Among the proposed changes in the Banks and Trust Companies (Amendment) Bill is a general provision for trust company licensing exemptions to be made by regulations. Regulations under consideration include a registration regime for private trust companies and expanding the scope of activity for controlled subsidiaries of full trust companies.

The Mutual Funds (Amendment) Bill includes provision for funds from foreign jurisdictions that may not be on the Cayman Islands Monetary Authority's approved list to be administered by Cayman administrators, where such funds are otherwise regulated funds under the Mutual Funds Law.

Sovereign Comment

We welcome these proposed changes. Cayman continues to be regarded as the premier jurisdiction in the Caribbean region, particularly for mutual funds where we have considerable expertise. Sovereign is developing its links in Cayman still further and updates will be published in future editions.

The standards of regulation are second to none. Cayman is a relatively expensive place to do business, but clients may be assured of first class service and attention to detail when establishing corporate structures, and especially mutual funds, in this jurisdiction.

US to seek client names from Swiss bank

The US Federal Bureau of Investigation made a formal request to travel to Switzerland to probe a multi-million-dollar tax evasion case involving top Swiss bank UBS, according to news reports on 22 June 2008.

The move follows the confession by former UBS banker Bradley Birkenfeld to a Florida court the previous week that he conspired to help wealthy American clients dodge millions of dollars in taxes. Swiss officials from the justice and finance ministries have already travelled to Washington for talks with their US counterparts amid fears the case could damage the overall reputation of Switzerland's financial sector.

"In the context of legal cooperation, it is possible that foreign authorities can be present during investigations," justice ministry spokesman Folco Galli told the Swiss weekly Sonntag. "However, they are not allowed to conduct the investigations themselves, that is for the Swiss authorities," he said.

Birkenfeld pleaded guilty to conspiring with co-defendant Mario Staggl, a Liechtenstein-based trust specialist, to defraud the US by creating fictitious trusts, bogus corporations and other false entities to hide some $200 million in assets. One such client, California-based property developer Igor Olenicoff, pleaded guilty last December to a charge of filing a false 2002 tax return and agreed to cooperate with investigators.

The Justice Department investigation is now expected to pursue other US clients. In 2001, UBS agreed to provide US tax officials with information on any customers receiving taxable US income under the new Qualified Intermediary Agreement. The same year, according to the Florida indictment, Birkenfeld teamed up with Staggl to assist clients to circumvent the agreement.

Birkenfeld admitted that between 2001 and 2006, while he was a director of UBS's private banking division, he had met frequently with wealthy Americans who wanted to conceal their assets abroad. He and Staggl, as well as other managers, also advised clients to conceal their assets by buying jewels, art and luxury goods using the money in their Swiss accounts and then deposit them in Swiss safety boxes.

The New York Times reported that the case could involve some 20,000 US citizens. Meanwhile the Swiss banking commission is also investigating UBS to see whether the bank violated oversight regulations through its dealings with US clients.

Hong Kong seeks views on Companies Ordinance rewrite

The Financial Services & the Treasury Bureau launched, on 2 April 2008, a three-month consultation on the Companies Ordinance review, covering measures to improve provisions on company names, directors' duties, corporate directorship and registration of charges. The consultation is the second of a series in the Companies Ordinance rewrite exercise.

In respect of company names, the bureau is proposing to empower the Registrar of Companies to act on a court order to tackle possible abuse of the company name registration regime by "shadow companies".

The consultation paper also suggests considering whether directors' general duties – which are found mainly in case law – should be codified. And if so, whether the UK's approach, which imposes a duty on directors to promote the success of the company having regard to a wider list of factors, such as the interests of employees, and the impact of the company's operations on the community and the environment, should be followed.

The bureau also proposes abolishing corporate directorship altogether, subject to a reasonable grace period, or following the UK approach which requires every company to have at least one person as a director for the purpose of improving accountability and transparency of company operations and the enforceability of directors' obligations. The document also recommends improving the procedure for registration of charges by making the instrument of charge available in full on the public register, and shortening the registration period from five to three weeks to reduce the period whereby the charge is "invisible" to third parties.

The government has invited views on whether there is any need to introduce an administrative mechanism for late registration of charges to replace the current system of applying to the court.

The views collected from consultation will be considered for incorporation into a White Bill to be issued for public consultation in mid-2009. The new Companies Bill is due to be introduced into the Legislative Council in the third quarter of 2010.

Sovereign Comment

We await the results of this consultative phase with considerable interest. As readers may know there are two options when establishing corporate entities in Hong Kong – either a Hong Kong company or the registration of a foreign company (eg. Turks & Caicos Islands) in Hong Kong can be arranged.

Expert advice should always be sought when considering the merits of using either option.

Our Hong Kong office should be contacted at the earliest possible stage for advice. Further details about this consultative process will be published in future editions as the implications of any changes affect the best way to establish company structures in Hong Kong in the future.

South African Budget phases out STC

Confirmation that the Secondary Tax on Companies (STC) is to be replaced with a withholding tax on dividends was the key feature of the 2008 budget announced by South African Finance Minister Trevor Manuel on 20 February. It also included a cut in the headline corporate tax to 28% from 29%.

In the first phase of the reform process, STC was reduced from 12.5% to 10% with effect from 1 October 2007. This was coupled with a broadening of the tax base through the closure of a number of loopholes. A further broadening of the base is planned for 2008.

The second phase of reform is the conversion of the STC into a dividend tax on shareholders. As stated in the 2007 Budget Review, the implementation of this second phase is contingent on the revision of international tax treaties that limit the withholding tax on dividends to zero percent. These treaties are Australia, Cyprus, Ireland, Kuwait, The Netherlands, Oman, the Seychelles, Sweden and the UK. Most of these treaties have been renegotiated and are awaiting signature and ratification. It is anticipated that this phase will be completed by 2009.

Manuel said the new STC regime would be a separate final withholding tax – dividends will not form part of shareholder income and the new tax will apply to distributions during the life of the company as well as in liquidation.

Non-corporate and non-resident shareholders will generally be subject to tax at a 10% rate on the full amount of dividends received, with limited exemptions and deferrals for: distributions to exempt entities, beneficiaries of treaty relief where, depending on the proposed renegotiation of treaty rates, a 5% limit may apply, and intra-company dividends.

The company declaring the dividend will be required to withhold the tax upon declaration. Under transitional arrangements, taxpayers can utilise STC credits but these will be forfeit upon implementation of the new system.

Hong Kong announces trust law review

Hong Kong Financial Secretary John Tsang confirmed in his budget speech, on 27 February 2008, that the government is to review the Trustee Ordinance, which was modelled on the English Trustee Act of 1925 and has not been amended since 1934.

"We will review the Trustee Ordinance in order to increase the competitiveness of our trust services industry," said Tsang.

The move follows a detailed review of the existing Ordinance that was submitted to the government by the Society of Trust & Estate Practitioners Hong Kong and the Hong Kong Trustees' Association in 2006.

It said private and commercial trust business was moving from Hong Kong to other jurisdictions, principally Singapore, and that Hong Kong was being bypassed for new business. They recommended far reaching reforms to Hong Kong's trust law, including provisions for purpose trusts.

The Hong Kong government is also to review the regulatory framework for the securities market, to improve market quality and reduce compliance costs for the industry, and has launched a rewrite of the Companies Ordinance with a view to developing modernised company legislation.

To tie in with the implementation of Qualified Domestic Institutional Investor (QDII) arrangements by the Chinese Mainland, the Hong Kong government and regulatory bodies will continue to liaise with the Mainland, improve market infrastructure, promote financial intermediary activities, encourage financial innovation and launch new financial products.

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EU finance ministers agree to expand Savings Tax Directive

EU finance ministers agreed, on 14 May, to an overhaul of the Savings Tax Directive, in a bid to clamp down on tax evasion. The move to expand the Directive - which came into force in 2005 – came following pressure from Germany, which launched an unprecedented tax fraud investigation in February after the disclosure of some 1,400 individuals, including 600 German taxpayers, with secret banks accounts in Liechtenstein.

The German government urged other European states to force banks and financial institutions in tax havens to disclose information about their clients based in EU member states. According to a European Commission report presented to EU finance ministers, European citizens are using trusts, foundations and other investment vehicles to circumvent the EU savings tax directive on interest income.

Following the meeting, EU tax commissioner Laszlo Kovacs said he would amend the current rules in a way advocated by Germany, improving the exchange of information between banks and extending the scope of the directive.

At present, common types of investment not covered by the directive include dividends, capital gains and payments from life insurance policies and pension schemes. And the directive only applies to individuals but not to legal entities, making it possible for people to set up investment vehicles or otherwise define themselves in a way that excludes them from the EU's rules. Certain foundations and trusts manage to avoid tax liabilities by arranging for the beneficiaries to receive income that is classified for legal purposes as an asset.

Germany claims it loses as much as ¤30 billion each year in tax fraud and the EU executive has been asked to provide an interim report on how the current rules work by the end of September.

The Savings Tax Directive took 14 years to be adopted and a protracted legislative procedure can be expected before a new compromise is reached. Luxembourg has already signalled opposition to the idea, while Austria and Belgium suggested they would not be willing to supply information on savers' accounts to other countries. All three negotiated an opt-out from the EU directive, instead introducing a withholding tax on interest payments that started at 15% in 2005, is due to rise to 20% in July this year and to 35% in July 2011.

Sovereign Comment
It is difficult to obtain precise figures but the overall message emanating from the EU is that the Directive has not had the desired effect in terms of total net tax raised since implementation and this is the main driver behind this attempt to widen the scope of the Directive. Any significant changes are likely to take some time. The most important message is that clients who may be affected by these rules (eg. anyone holding personal bank accounts in an offshore jurisdiction) should seek advice. A related issue is the recent attempt by UK authorities to obtain details of UK residents with offshore bank deposits. We strongly recommend that the time to act is now.

fiscal

OECD proposes update to tax haven listings

The OECD is proposing to amend the way it classifies different jurisdictions in respect of transparency and exchange of information following the recent exposure of tax evasion on a massive scale in Liechtenstein.

The OECD currently lists only three jurisdictions – Andorra, Monaco, and Liechtenstein – as uncooperative tax havens. All other jurisdictions previously on its blacklist have been removed after making commitments to implement some level of transparency or exchange of information.

Pascal Saint-Amans, head of the International Co-operation and Tax Competition Division at the OECD's Centre for Tax Policy and Administration, said during a speech in Washington, D.C. on 8 April, that the OECD is interested in moving away from the current listing system in favour of a more fluid ranking system.

Jurisdictions would receive a grade that reflects not only their commitments to OECD principles, but also the extent of implementation. Such a system would more accurately reflect what is really happening around the world, he said.

Saint-Amans said that, because some jurisdictions had signed commitments but not adequately carried them out, the current list did not necessarily provide an accurate reflection of which jurisdictions currently met the OECD's criteria.

Spain signs tax treaty with the Netherlands Antilles

Spain's Council of Ministers approved the signing of a tax treaty with the Netherlands Antilles on 28 March 2008. Negotiations started in 2006. When the treaty enters into force, the Netherlands Antilles will be removed from the blacklist established under Spain's Law on Measures for the Prevention of Tax Fraud 2006, which introduced anti-abuse measures for tax structures involving blacklisted countries and Spanish residents.

The Netherlands Antilles' removal from the Spanish blacklist may create advantageous tax planning opportunities in future, because corporate taxpayers may be able to structure their investments in Europe and Latin America using the Spanish tax regime for an Entidad de Tenencia de Valores Extranjeros (ETVE), a form of international holding company, and the Spanish tax treaty network.

The Netherlands Antilles is pursuing an ambitious programme of entering into tax treaty agreements with other countries. On 17 May 2004 it was announced that negotiations for a double taxation treaty with Venezuela had been concluded, although this treaty is still not in force. Negotiations for a tax treaty with Surinam were held in March. The policy also resulted in tax information exchange agreements with the US, Australia and New Zealand. The first round of negotiations for a TIEA with Mexico took place in 2007. Talks with the UAE are also under way.

Sovereign Comment
The removal of the Netherlands Antilles from Spain's blacklist is particularly welcome news for Latin American clients as the jurisdiction can now be used in conjunction with a Spanish entity, which of course will allow all the benefits allowed to EU states. Our Curaçao office is well placed to provide up-to-date information on these developments in conjunction with our legal network based in Spain. We anticipate considerable interest in Netherlands Antilles/Spanish corporate structures as a result of this new agreement and we can provide meaningful advice at reasonable cost.

India seeks to close tax treaty loopholes

India is looking to include limitation on benefits clauses and switch to taxation based on where the profits arise rather than where the taxpayer is resident in its renegotiation of tax treaties with Cyprus, the United Arab Emirates and Mauritius.

Previously capital gains taxes were levied based on the residency of the taxpayer rather than on the jurisdiction in which the gains arose. The Indian Department of Revenue has estimated that treaty shopping has cost the government INR 50 billion (about $1.3 billion) from 1991 to 2006.

The Indian government said it will issue a notification that the terms of the Cyprus-India treaty have been renegotiated to institute a 10% capital gains tax on both Cypriot individuals and companies doing business in India when those capital gains arise in India. Dividend income will retain its exemption from withholding tax.

Previously, CGT was levied based on the residency of the taxpayer rather than on the jurisdiction in which the gains arose. Because Cyprus does not impose a CGT on its residents, taxpayers resident in Cyprus but doing business in India were able to avoid paying any CGT.

The changes to the 1992 Cyprus-India agreement are similar to changes made to the India-UAE treaty, which took effect from 1 April 2008. The new limitation on benefits (LOB) clause will particularly affect investment companies that have been using the UAE as a conduit into the Indian market. It states that treaty benefits will be denied, "if the main purpose or one of the main purposes of the creation of such an entity was to obtain the benefits of the [double taxation avoidance] agreement."

Residency has also been addressed in the protocol, with a UAE resident now defined as an individual who resides in the UAE for at least 183 days in a calendar year. For a company to be a UAE resident, it must be incorporated, managed and controlled wholly in the UAE.

India is also trying to renegotiate its treaty with Mauritius, particularly seeking to add an LOB clause to the text of the treaty in order to stop abuse.

Mauritius has resisted amending the treaty. With nearly 70% of Mauritians being of Indian origin, the country is heavily dependent on revenue generated through investments passing though Mauritius because of its privileged treaty position. About 40% of the $45 billion to $50 billion of foreign direct investment flowing into India between 1991 and 2006 was routed through Mauritius. A similar percentage of foreign institutional investor inflows are also coming from Mauritius.

Mauritius has no capital gains tax and has a corporate tax rate of only 3% to 4%, making it an advantageous jurisdiction from which to enter the Indian market. The Indian Ministry of Finance has suggested giving aid of INR 5 billion to INR 6 billion (about $126 million to $151 million) to offset any losses suffered by Mauritius due to changes in the treaty, according to a Times of India report.

EC requests Portugal to end discrimination

The European Commission sent Portugal, on 28 February 2008, a formal request to amend its legislation concerning the tax rules applicable to investments held in financial institutions established outside Portugal.

The income flowing from these investments may, in certain cases, be more heavily taxed than the income of investments held in Portugal. The Commission considers that these rules are incompatible with the EC Treaty, which guarantees the free movement of capital.

The request is in the form of a “reasoned opinion” under Article 226 of the EC Treaty. If Portugal does not reply satisfactorily to the reasoned opinion within two months the Commission may refer the matter to the European Court of Justice (ECJ).

According to Portuguese rules capital income derived either from national or foreign sources is subject to final withholding tax at a 20% rate. But, for certain categories of capital income derived from national or foreign sources, which are put at their disposal by financial institutions established in Portugal, resident taxpayers can opt for taxation under the progressive tax rates.

Progressive tax rates imposed on the income of individuals range from 10.5% to 42%, such that the tax treatment of the income obtained from financial investment within the Portuguese territory results in a lower tax burden than that imposed on income flowing from investment held outside Portugal.

The ECJ has already stated that measures taken by EU member states that are liable to dissuade its residents from making investments in other member states constitute restrictions on the free movement of capital of Article 56 of the EC Treaty.

Singapore budget ends estate duty

Singapore Finance Minister, Tharman Shanmugaratnam announced the abolition of estate duty, as of 15 February 2008, as one of a number of new Budget initiatives to make the city-state's tax regime more attractive.

In his statement the minister said estate duty, which had been inherited from the British during Singapore’s colonial era, was to be abolished to improve Singapore’s attractiveness as a place for wealth to be invested and built up, whether by Singaporeans or foreigners.

“If we make Singapore an attractive place for wealth to be invested and built up, whether by Singaporeans or foreigners who bring their assets here, it will benefit our whole economy and society, not just the individuals who build up their wealth. It is not a zero sum game," he said.

Tharman further announced the introduction of a new tax incentive that grants tax exemption on locally-sourced investment income and foreign-sourced income received by qualifying family-owned investment holding companies. The new exemption will run from 1 April 2008 to 31 March 2013.

Sovereign Comment

We continue to see considerable interest in Singapore from clients across the world and it is notable how European clients in particular are considering using Singapore for a wide range of wealth management issues. Many world-class banks, law firms and other professionals are represented in Singapore and we have recently expanded our own office in the country. The changes outlined above can only increase Singapore’s attractiveness to international business and the high net worth community.

UK Court finds pilot with UK property is not a resident

The UK Special Commissioners held, on 29 January 2008, that a British Airways' pilot with a house in South Africa and property in the UK was not a UK resident for tax purposes.

In *Lyle Dicker Grace v Revenue & Customs* ([2008] UKSPC SPC00663), Mr Dicker Grace appealed against a notice of determination dated 10 June 2004 that he was ordinarily resident in the UK for the six years from 1997/98 to 2002/2003 inclusive.

The Appellant claimed that he had left the UK on 6 August 1997 to live outside the UK permanently and that thereafter he was not resident in the UK. He had removed the centre of his life to South Africa in 1997, since when he had kept his visits to the UK to a minimum. He kept his private airplanes in South Africa and did no private flying in the UK. He had retained a house in the UK as an investment but could have stayed in hotels.

He argued that he was in the UK for a temporary purpose only to rest before or after his flights. His visits to the UK were short and only on three occasions were they longer than seven days. He argued that he was a temporary resident in the UK and had not spent more than six months in the aggregate in the UK during any of the years in question.

Special Commissioner Dr Brice agreed. He said whether the appellant was resident and ordinarily resident in the UK in the years in question were matters of fact and degree. Taking into consideration the evidence before him, especially having regard to the appellant's past and present habits of life, the reasons for his visits to the UK, the temporary nature of his ties with the UK, the more permanent nature of his ties with South Africa, and the distinct break made in 1997, he came to the conclusion that from 1 September 1997 he ceased to be resident and ordinarily resident in the UK.

"After that date this was not where he dwelt permanently nor where he had his settled or usual abode which was in South Africa. Residence here did not have a settled purpose. I also conclude that the appellant was not ordinarily resident here," he held.

Sovereign Comment

This was an interesting case where the Appellant's claim prevailed. Increasing globalisation means that we are likely to see more instances where individuals will have to prove residency away from the UK. We have reported in recent editions that the UK rules on residency and domicile have recently changed – particularly concerning days of arrival and departure from the UK – and professional advice is always recommended. Our new Group Tax Manager Stephen Barber will be happy to provide specific, up to date, advice on individual cases.

30 legal

Hollywood actor jailed over tax evasion

US movie actor Wesley Snipes was sentenced to three years imprisonment on 24 April for his "brazen defiance" of US tax laws. It was the maximum sentence.

The decision by a US District Court judge in Florida came two months after a jury convicted Snipes on three counts of wilfully failing to file Federal tax returns from 1999 to 2001. The 45-year-old star was described by prosecutors as a "truly notorious offender".

The court heard that Snipes had evaded $15 million in taxes through a campaign in which he concealed millions offshore, falsely applied for tax refunds and bombarded the Internal Revenue Service with frivolous correspondence.

Prosecuting attorney Robert O'Neill said: "In the defendant Wesley Snipes, the court is presented with a wealthy, famous and inveterate tax scofflaw. If ever a tax offender was deserving of being held accountable to the maximum extent for his criminal wrongdoing, Snipes is that defendant."

At the hearing Snipes' lawyers tried to give the court three envelopes with cheques amounting to $5 million, but the judge and prosecutor said that they could not accept them. An official of the Internal Revenue Service collected the money during a recess.

Snipes' tax advisors, Eddie Ray Kahn — who has previous convictions for tax crimes — and Douglas Rosile were also jailed, for 10 years and 4.5 years respectively.

EU requests Spain to amend CFC regime

The European Commission sent Spain, on 28 February 2008, a formal request to amend its discriminatory anti-abuse rules in the corporate tax area under which income originating from specific member states or territories of the EU is taxed more heavily than domestic income.

Under Spanish Controlled Foreign Company legislation, the profits of a subsidiary established in EU member states or territories classified as tax havens are taxed in the hands of the parent company in Spain as they arise rather than just upon distribution, as would have been the case if the subsidiary had been located in another EU member state or in Spain.

The Commission considers these rules to be incompatible with the freedoms of the EC Treaty. The request is in the form of a reasoned opinion, the second stage of the infringement procedure under Article 226 of the Treaty. If Spain does not amend its law within two months, the Commission may refer the case to the Court of Justice.

Làszlo Kovàcs, EU Commissioner for Taxation and Customs Union said: "The Commission ... cannot tolerate disproportionate obstacles to cross-border activity within the EU. The infringement at stake again reveals that there is a need for better coordination of national anti-abuse tax rules as the Commission stressed in its December 2007 Communication on anti-abuse rules in the area of direct taxation."

Sovereign Comment

This is an important issue given Spain's position as one of the larger EU economies with an ever-increasing international reach. Spain exerts considerable influence in certain parts of the world, notably across Latin America, with which she enjoys economic ties, often for historic reasons. In recent years we have also seen a massive increase in outward investment from Spain into other parts of the EU, particularly the so-called "accession states" in Eastern Europe.

There remain a number of areas where Spain's domestic tax law has not been brought into line with EU rules and it is vitally important that clients are aware of these discrepancies when doing business involving Spain. Sovereign has close links with lawyers based throughout the Iberian peninsula who should be consulted at the earliest possible opportunity.

UK Budget 2008 – changes to UK non-domicile tax regime

Following the pre-budget statement in October last year, the Budget speech made on 12th March 2008 included a number of welcome changes to the government's proposals for the tax treatment of non-UK domiciles. Stephen Barber, our Group Tax Manager, summarises the changes.

Remittance basis – £30,000 annual charge

Individuals can elect each year whether they wish to claim the remittance basis of taxation. Those who have been resident in the UK for more than seven tax years of the preceding nine, and have unremitted income and gains in excess of £2,000, will have to pay an additional £30,000 tax charge to apply the remittance basis. This takes effect from 6th April 2008, but will not now be extended to those under 18-years old.

Providing the charge is paid to HM Revenue & Customs directly from an offshore account it will not be treated as a remittance, but there are complex rules relating to the identification and taxation of remittances of income and capital gains. Professional advice should therefore be sought to complete your annual tax return and to record income, gains and remittances in order to minimise your overall UK tax exposure.

A number of significant "loopholes" have been closed. The "source ceasing" principle – whereby foreign investment income could escape tax if remitted in a tax year after the recipient had ceased to hold the asset that generated the income – has been abolished.

Remittances will not just be limited to cash receipts in the UK, but extended to property brought into the UK and also services derived from relevant foreign income. Exemptions will apply for personal effects, assets with values of less than £1,000 and some assets brought into the UK for repair as well as works of art for public display.

This will not have retrospective effect and any asset owned on 11th March can still be remitted to the UK at a later date without charge. Any assets within the UK on 5th April 2008 can be exported and subsequently re-imported at a later date without charge. But a disposal of such an asset within the UK will continue to give rise to a taxable remittance.

It will not be possible to avoid tax on remittances by enabling a third party to remit funds, which are then subsequently available to benefit a taxpayer (or immediate family member) who, if they had remitted the funds directly, would have suffered a UK tax charge.

Personal allowances and the capital gains annual exempt amount will no longer be available to those claiming the remittance basis of taxation.

But the threshold for overseas income and gains has at least been raised to £2,000 per annum, from the £1,000 proposed initially.

Foreign income used to pay the interest on offshore mortgages will now be taxed. This does not apply to mortgages taken out before 12 March 2008, unless the terms of the loan are subsequently varied.

Employment related securities legislation is also extended to employees, who are resident but not ordinarily resident in the UK, increasing the income tax due on shares or options.

"It will no longer be prudent to simply work on the basis that all the foreign income and gains can just be ignored".

Apportionment will be available where non-UK duties are carried out and this can be extended to non-domiciles in certain cases.

Offshore planning

It was previously announced that gains on UK assets within offshore structures, such as trusts, would be attributed back to individuals in the UK, irrespective of whether funds were received in the UK or not. Gains on non-UK assets would be subject to the remittance basis of taxation.

It is now the case that the remittance basis will apply to all disposals of assets within offshore structures. As a result planning can still be used to preserve inheritance tax savings, as well as capital gains tax savings, provided funds remain outside the UK where the remittance basis is claimed.

Attribution rules for gains of non-resident companies in respect of employment related securities have now been extended to include non-domiciled taxpayers. These proposals are currently being debated and may be relaxed in the final version. UK resident non-domiciled individuals with directly held assets that have significant inherent gains should contact us so that we can provide advice on the options available.

30 profile

Residency "day counting" rules

The method of calculating an individual's residence Position in the UK has been changed from 6 April 2008. Rather than counting days of arrival and departure in the UK, the test of whether a day will count will now be whether the individual is resident in the UK at midnight on a given day.

The rule changes mean that certain business people, who are genuinely not living in the UK, will not be deemed UK resident merely by holding regular business meetings in the UK.

There has also been a relaxation of the rules regarding passengers in transit through the UK. Provided they do not spend time doing other activities, such as holding a business meeting, passengers are now permitted to change terminals, airports and modes of transport, without that day in transit in the UK being counted.

Sovereign Comment

It seems evident that the UK government intends to seek greater disclosure, and taxes, from UK resident but non-domiciled individuals. It will no longer be prudent to simply work on the basis that all the foreign income and gains can just be ignored. More than ever it will be important that individuals seek appropriate advice and ensure that detailed records are maintained.

At the time of going to press the legislation has still not been signed into law and a number of minor amendments have been tabled. Of particular note, are two from the Liberal Democrats that propose to increase the de minimis amount of unremitted foreign income that can be excluded from UK tax from £2,000 to £5,435, and to introduce a statutory definition of residence – that mirrors the US substantial presence test – by reviewing three year's presence in the UK.

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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 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.

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