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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

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Our man in Valetta

Congratulations to Mark Miggiani, our Managing Director in Malta, on his recent appointment as Malta's ambassador to France. This posting is for a minimum of three years. We wish him the best of luck and look forward to his return to the fold at the end of his term ... and perhaps even some lavish entertaining at his fine Parisian residence!

Sovereign Art Foundation at ART HK 09

In mid-May, the Sovereign Art Foundation once again exhibited at ART HK event in Hong Kong. The Foundation invited tennis ace Martina Navratilova and her artist partner Juraj Kralik to demonstrate their unique picture-making technique in front of a 5,000 strong audience. See www.artgrandslam.org for art images and www.SovereignArtFoundation.com for a video clip. ART HK 09 attracted over 27,000 people in total and the Foundation was delighted to have the opportunity to showcase its contribution to artistic charitable causes.

Scoffshore at FT.Com

Where do you get a good meal offshore? See the Scoffshore restaurant reviews in The Long Room section of the FT Alphaville's website at http://ftalphaville.ft.com/longroom (you will need to register). And if anyone would like to write a review of a dining experience in an offshore jurisdiction, then please send it to us and we will get it posted on the site.

Cyprus office expands

As you will read on the *Fiscal* page of this issue, Cyprus and Russia have recently signed a new tax treaty. As a full member of the European Union, Cyprus is becoming an ever more important international finance centre and we are expanding our office there to meet the increased demand for Cypriot corporate structures. For further details please contact our Managing Director in Cyprus, Richard Melton.

chairman

Our Amsterdam office masquerading as the "Blue Shrimp Hotel".

Double take in Amsterdam

Our Amsterdam office was recently transformed into the "Blue Shrimp Hotel" to feature in a new Russian movie titled "Two Ladies in Amsterdam". Before anyone jumps to the wrong conclusions, I should add that it is about the wife of a Russian diamond dealer, and her mother, who follow him to Amsterdam to find out whether his frequent trips there are strictly for business. We understand that the film is to be released later this year.

HNWIs review UK residence

Tax at 50%, National Insurance, government rates, duties on fuel, tobacco and alcohol and then VAT on nearly everything. We estimate that a higher rate taxpayer in the UK can expect to hand about 80% of his income over to the government! There are a number of jurisdictions around the world that offer attractive packages to inbound expats – Cyprus, Gibraltar, Hong Kong, Malta, Monaco or Singapore – to name but a few. If you, or your clients, are actively thinking about such a move, please contact Sovereign to find out how we can assist.

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

G-20 declares an end to bank secrecy

The leaders of the G-20 countries, meeting in London on 2 April 2009, called for an end to bank secrecy and threatened sanctions against jurisdictions identified by the OECD as “uncooperative” in respect of tax information exchange in a new Progress Report.

As part of the G-20 summit to tackle the financial crisis, leaders made commitments toward strengthening international financial supervision and regulation, and agreed, "to take action against non-cooperative jurisdictions, including tax havens”.

"We stand ready to deploy sanctions to protect our public finances and financial systems," the G-20 leaders wrote in a communiqué. "The era of bank secrecy is over." To this end, the G-20 agreed to develop a toolbox of counter measures for its members countries to consider.

europe

These included: increased disclosure requirements on the part of taxpayers and financial institutions to report transactions involving non-cooperative jurisdictions; withholding taxes in respect of a wide variety of payments; denying deductions in respect of expense payments to payees resident in a non-cooperative jurisdiction; reviewing tax treaty policy; asking international institutions and regional development banks to review their investment policies; and giving extra weight to the principles of tax transparency and information exchange when designing bilateral aid programmes.

"We have agreed that there will be an end to tax havens that do not transfer information on request. The banking secrecy of the past must come to an end," said UK Prime Minister Gordon Brown, who chaired the summit. "We have agreed [on] tough standards and sanctions for use against those who don't come into line in the future."

To coincide with the summit, the OECD published a Progress Report that consisted of a new “tiered” list assessing the implementation of information exchange standards among jurisdictions surveyed by the OECD’s Global Forum on Transparency and Exchange of Information. This breaks the jurisdictions down into: a “white list” of those jurisdictions that have substantially implemented OECD standards; a “grey list” of those that have made, but not yet substantially implemented, commitments; and a “black list” of those that have not committed to OECD standards. (For further information see *Profile* on page 13)

Sovereign Comment

These developments had been well-trailed and the resulting OECD list has generated considerable interest in our business. Sovereign has always stressed the importance of using only legal, compliant structures. It is pleasing to see that international bodies such as the G-20 and the OECD are taking serious steps to create a true level playing field, although there is a long way to go. But we hope that in working towards these goals, the well-regulated offshore centres are not stifled by an excess of red tape; also that those who have worked hard to develop their regulation are not grouped together with the less co-operative centres.

UK review clears OFCs

Lord Adair Turner, chairman of the UK's Financial Services Authority, found that offshore financial centres did not play a central role in the origins of the financial crisis in his Review of Global Banking Regulation published on 18 March 2009.

Turner said: "It is important to recognise the role of offshore financial centres was not central in the origins of the current crisis. Some SIVs were registered in offshore locations; but regulation of banks could have required these to be brought on-balance sheet and captured within the ambit of group capital adequacy requirements. And many of the problems arose from the inadequate regulation of the trading activities of banks operating through onshore legal entities in major financial centres such as London or New York.”

But he noted that: "Tighter effective controls in offshore centres will, however, become more important over time as regulation is improved in the major onshore locations and as the incentives for regulatory arbitrage through movement offshore therefore increase.”

In particular, Turner added that greater regulation of hedge funds may be required if they become more systemically important and this should be extended to offshore financial centres. “Global agreement on regulatory priorities should therefore include the principle that offshore centres must be brought within the ambit of internationally agreed financial regulation (whether relating to banking, insurance or any other financial sector),” he said.

Mobile wealthy choose Switzerland

Switzerland is the most popular destination for the mobile wealthy as the rich become increasingly concerned about the UK's tax regime, according to a Scorpio Partnership survey published on 13 May 2009. It said the Alpine state beat London, Singapore, New York and Hong Kong because of its “rounded offer”.

“To the mobile wealthy, Switzerland is still very nearly all things to all people. Right across the spectrum of criteria it scores well in this index, offering the mobile wealthy the headline fiscal incentive as well as all the underlying criteria such as stability, employment and business opportunities, infrastructure and education for their children,” said Stephen Wall, a director at Scorpio.

London took second spot in the survey. Scorpio said while London remains the dominant centre internationally for the mobile wealthy given its convenient time zone, strong professional services industry and numerous good travel links, the damage done by recent regulatory and fiscal changes have left the UK capital trailing Switzerland.

The remaining nine jurisdictions covered in the survey were placed as follows: Singapore, New York, Hong Kong, Jersey, Cayman Islands, Isle of Man, Monaco, Dubai and Guernsey.

Sovereign Comment

Sovereign offices around the world are reporting increasing interest from UK residents who are considering moving in advance of the hefty rises in personal taxation that will come into force next year. Our own conclusions are that whilst Switzerland is indeed a popular option, other jurisdictions that offer attractive terms for HNWI residents, such as Gibraltar and Malta, are also worth considering. Anyone thinking about leaving the UK should contact our London office at the earliest possible opportunity to see how Sovereign can assist throughout the process.

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UK set to take control of Turks & Caicos Islands

The UK was, at the time of going to press, preparing to suspend the constitution of the Turks & Caicos Islands as a long-awaited inquiry was expected to show evidence that the country has been engulfed by endemic corruption.

The inquiry was carried out this year by a former UK High Court judge, Sir Robin Auld, after visiting British MPs expressed alarm about allegations of corruption. It is reported to point to the "high probability of systemic corruption" in the administration of the TCI. It also concludes there were "clear signs of political amorality and immaturity and of a general administrative incompetence".

TCI Prime Minister Michael Misick resigned, on 23 March 2009, and a draft order was laid before the UK Parliament on 25 March to empower it to hand control of TCI to the UK-appointed governor. It reads: "This order is being made because an accumulation of evidence in relation to the TCI over the past year or so has led to a provisional decision by British ministers that parts of the constitution of the TCI will need to be suspended and replaced by other provisions on an interim basis."

Misick is alleged to have built up a multi-million dollar fortune since coming to power in 2003. The islands have been the subject of extensive redevelopment for tourism, but many of the luxury developments have provoked allegations that they were the product of corrupt deals between local politicians and foreign businessmen.

UK Foreign Office Minister Gillian Merron said the draft order would seek a suspension of parts of the islands' constitution and transferring powers to Governor Gordon Wetherell, who succeeded Richard Tauwhare last year. Tauwhare instigated the inquiry, but was criticised by the Foreign Affairs Select Committee for not acting sooner to tackle what it said last year was "a climate of fear" on the islands. Once a dependency of Jamaica, the TCI became a crown colony when Jamaica gained its independence from the UK in 1962. Residents of the TCI have British citizenship.

Sovereign Comment

TCI has been a key jurisdiction for Sovereign over the years and continues to be so. At first sight, this news is not positive to the image of TCI internationally but we consider that in the long run TCI will benefit from this approach. Alongside tourism, the international finance services industry is key to the local economy. This move by the UK government should ensure a period of stability and we welcome the move. TCI remains a good jurisdiction in which to domicile companies and we look forward to continuing to develop our business in the jurisdiction.

usa + caribbean

Obama's US crackdown

US President Barack Obama announced, on 4 May 2009, proposals designed to "level the playing field" by tightening up the system that allows US multinationals to defer paying US taxes on profits made on overseas investments. Under the reforms, multinationals would no longer be able to claim tax deductions on most foreign expenses, such as interest costs, until they repatriate earnings.

The reforms, which are likely to be included in this year's Budget, would also close loopholes that allow businesses to inflate tax credits for foreign taxes that can be deducted against US tax bills, and reform the "check the box" rules that allow entities to elect whether to be taxed as corporations or partnerships.

The administration estimated that US companies paid an effective tax rate of just 2.3% on the $700 billion they earned in foreign profits in 2004. It also highlighted Ireland, the Netherlands and Bermuda as examples of how existing tax policies create distortions, saying the three accounted for more than a third of US foreign profits in 2003.

The moves are also likely to be felt in Luxembourg, Switzerland and Singapore where profits reported by US subsidiaries appear disproportionately high for the size of these jurisdictions. Critics of the proposed reforms said the move would impede US multinationals' ability to compete abroad, as most other countries exempt foreign profits from tax.

Cayman, BVI and Bermuda sign new TIEAs

The Cayman Islands announced, on 19 March 2009, the extension of comprehensive tax information assistance to seven new countries, under provisions in the Tax Information Authority Law introduced in 2008, which do not require a bilateral treaty.

The seven countries now able to request tax information from the Cayman Islands under this unilateral mechanism are Germany, Austria, Belgium, the Czech Republic, Luxembourg, the Slovak Republic and Switzerland. Requests may be made in relation to both civil/administrative and criminal tax matters.

The unilateral mechanism is complementary to Cayman's bilateral negotiation programme. Having signed a bilateral TIEA with the US in 2001, on 1 April it signed seven new TIEAs in Stockholm with the Nordic Council of Ministers, with commercial agreements to follow in June.

The seven Nordic countries – Denmark, Faroe Islands, Finland, Greenland, Iceland, Norway and Sweden – had already entered into similar agreements with the Isle of Man, Jersey and Guernsey. They have further signed TIEAs with Bermuda on 16 April and the BVI on 18 May this year.

Bermuda, which already had TIEAs in place with the US, Australia, and the UK, also signed TIEAs with New Zealand on 16 April and the Netherlands on 8 June to bring its total to 12. This is now regarded as the minimum threshold for inclusion on the OECD's "white list" of co-operative jurisdictions, and accordingly Bermuda was upgraded to the OECD's "white list" of jurisdictions in its latest Progress Report issued on 8 June 2009.

The BVI concluded a TIEA with the US in April 2002 and further TIEAs were signed with the UK and Australia in October 2008, and France on 17 June 2009 to bring its total to 11.

Sovereign Comment

These developments are highly topical following the publication of the OECD's "Progress Report" – see the *European* page. As a leading offshore jurisdiction, Cayman is positioning itself well by pro-actively entering into these agreements. So too is the BVI. A further update is expected from the OECD at the end of 2009. See the *Profile* page in this edition for a more in-depth view of this subject.

China implements measures to combat treaty abuse

China's State Administration of Taxation (SAT) issued, on 20 February 2009, a Notice on Issues Relevant to the Implementation of Dividend Provisions in Tax Treaties (Notice 81). Taken together with two recent tax decisions in Chongqing and Xinjiang, it shows that special purpose vehicles (SPVs) will be subject to increased scrutiny and benefits in China may be denied to investors who misuse them to reduce tax liabilities or circumvent exchange controls.

SPVs enable foreign investors to benefit from preferential withholding tax rates on dividends and other forms of passive income where tax treaties permit. China's tax treaties with Hong Kong, Singapore and several other jurisdictions reduce the withholding tax rate on dividends from 10% to 5%. And, if the foreign investor wishes to dispose of the investment in China, it may sell the shares of the SPV without paying income tax in China on the capital gain from the sale. Typically, the jurisdiction where the SPV is established will also exempt the capital gain from local taxation or levy tax at a low rate.

Notice 81 addresses the situation where the withholding tax rate on dividends under a tax treaty is lower than the 10% rate under domestic law in China. To enjoy the treaty benefit, the recipient of the dividend must be a tax resident of the other treaty jurisdiction and the beneficial owner of the dividend, and the dividend must qualify as a dividend under the tax law of China.

A major change under Notice 81 is that SAT will now require the non-resident taxpayer or the withholding agent to provide documentary evidence to prove that the recipient of the dividend meets these requirements. Article 4 also empowers tax bureaus in China to investigate and deny treaty benefits where the main purpose of a transaction or an arrangement is to obtain more favourable treatment of dividends under a tax treaty.

Sovereign Comment

This story should be read in conjunction with the other news item on this page concerning the new tax treaty recently signed between China and Vietnam. This again demonstrates the importance of Hong Kong as a jurisdiction to consider when doing business in the region. It is interesting to note that the Hong Kong authorities are continuing to negotiate comprehensive treaties with their near neighbours and this means that it is more important than ever to ensure that any tax planning being considered is fully compliant and up to date. Sovereign has considerable expertise in this area and our senior staff are regular visitors to such countries. If you are based in the region, contact our Hong Kong office to arrange a no obligation consultation to see how international structuring of your business could be achieved.

33 asia+ pacific

HK gazettes Vietnam treaty

An order made under the Inland Revenue Ordinance to implement the tax treaty signed with the Socialist Republic of Vietnam on 16 December 2008, was gazetted on 30 April 2009.

There is no withholding tax on dividends paid out of taxable profits in Vietnam. The 10% treaty rate represents the maximum rate applicable to dividends received by a Hong Kong resident should a withholding tax on dividends be levied in Vietnam in the future. A 7% rate applies to royalties for the use, or the right to use, any patent, design or model, plan, secret formula or process. A 10% rate applies to all other cases. The treaty offers tax exemption in relation to capital gains derived by a Hong Kong resident from the alienation of less than 15% interest in a Vietnamese company that does not derive 50% or more of its asset value directly or indirectly from immovable property situated in Vietnam. The business income tax component of Foreign Contractor Withholding Tax in Vietnam will also be eliminated provided that a Hong Kong company does not carry on business in Vietnam through a permanent establishment in Vietnam.

The treaty is the fifth comprehensive double taxation agreement (CDTA) signed by Hong Kong, following those with Belgium, Thailand, the Mainland of China and Luxembourg. The expansion of Hong Kong's treaty network will strengthen Hong Kong's position as the preferred location for multinational corporations to set up their regional headquarters in the Asia-Pacific region. We expect that the HKSAR government to conclude more preferential taxation terms with other countries so as to promote foreign trade and investments in Hong Kong.

China issues guidance on offshore companies

China's State Administration of Taxation (SAT) issued a Notice, on 22 April 2009, to provide guidance on the determination of tax residence status of Chinese-controlled offshore companies under the new place of effective management and control rule in the 2008 Enterprise Income Tax Law (EIT Law). The Notice may have a significant impact on Chinese companies listed on a foreign stock exchange and the round tripping of investments. The provisions apply retrospectively from 1 January 2008.

The Notice sets out detailed rules for determining whether a Chinese-controlled offshore-incorporated enterprise is a tax resident of China, describes the tax implications of being regarded as a tax resident, and sets out the procedures for an assessment of residence status by the relevant local tax bureau.

A Chinese-controlled offshore enterprise is defined as an enterprise that is incorporated under the laws of a foreign country or territory but which has a Chinese enterprise or enterprise group as its primary controlling shareholder. It will be regarded as a Chinese tax resident if its place of effective management and control is deemed to be in China and will be subject to EIT on its worldwide income, if all the following conditions are satisfied: the primary location is in China; decisions concerning the enterprise's financial and human resource matters are made in China or are subject to approval by organizations or personnel in China; the enterprise's primary assets, accounting books and records, company seals, and board and shareholder meeting resolutions are located or maintained in China; and 50% or more of the voting board members or senior executives habitually reside in China.

Sovereign Comment

It is not clear whether foreign-incorporated enterprises that are controlled by Chinese individuals or foreign-incorporated enterprises that are controlled by foreign companies also fall within the scope of the notice. Any company that is unsure of its tax status should take advice and, if need be, apply at the local tax bureau for a determination. All companies should ensure that they could produce compelling evidence to support their positions concerning their tax status.

Last cool... for Red Sea paradise...

A SLICE OF RED SEA LAGOON PARADISE, A FIXED 3.25% ANNUAL INCOME ON YOUR INVESTMENT UNTIL 2011. AN INFLATION PROOF US DOLLAR BASED FIXED ASSET. A PROPERTY IN ANCIENT SANDS RESORT IN EGYPT IS NOT AN EXOTIC EXTRAVAGANCE, IT IS VERY SOUND FINANCIAL PLANNING.

Set in El Gouna, the "Venice of the Red Sea" Ancient Sands Golf Resort is a joint venture between Orascom Developments, a property and telecom multinational listed on the Swiss stock exchange, and IFB Resort Developers Ltd. It sits more than pretty on the last of the Red Sea filtered lagoons just 30 minutes from Hurghada airport. Even in this global financial crisis, this limited inventory project built on the established success of Egypt's most exclusive resort, investors and cash savers who want more than a view in 2011 should take serious note.

Bursting out from a new Super yacht marina, the Red Sea waters are poised to make their debut to create the lagoons of Ancient Sands Golf Resort complete with a hill top village, five star hotel and full spa and sports facilities. Ancient Sands is the final compliment to the beauty of El Gouna, Egypt's most elegant resort.

Totally European look

However, Ancient Sands will be El Gouna with a twirl. It is the first Orascom Real Estate joint venture with a UK developer, IFB Resorts, which is presently being marketed only to the international market. "It will have a totally European look and feel about it, "comments Resort Director, Jeremy Sturgess," it will adhere to the highest levels of European standards of construction and finishings. Our aim is to create a fully serviced golf resort but we never forget that we are only 1000m from the main kitesurf beach. Many of our purchasers have literally come into the office dripping with their kites in tow. They will be able to take a water taxi with their kit straight to the action."

The mood is very much for fixed assets to counter European Currency weakness and future inflation issues; we are doubly financially attractive.

Jeremy's optimism seems to be shared by the many visitors who come to El Gouna. "Even in the midst of a global financial crisis, we are seeing at least 4 potential buyers a day. With European inflation about to go through the roof as governments print money to cover their debts, the mood is currently VERY MUCH for fixed assets and as we are priced in US dollars we are DOUBLY attractive on that front. Most first time visitors are overwhelmed with the beauty of the place. Where else can offer 28 degrees in January for the price of an EASY JET ticket ? They feel that it is a real find. They also soon realise that inventory within El Gouna is in fact very limited and very controlled. Orascom's strict pricing policy means that their investment is well protected."

Eagle-eye views over golf and the Red Sea; only 1000 metres from the beach.

All excellent reasons one might say, but what is the product? The first phase of Ancient Sands is the HILLTOP VILLAGE White Andalucian in style complete with 18 hole golf course, a five star hotel, quality commercial space bubbling with multiple swimming pools, cooling fountains, babbling streams and acres of palm shaded gardens. The village rising to about 33m above sea level will give all the owners an excellent eagle-eye view over the golf course, lagoons, beach and the Red Sea. The height is very significant.. The view over the entire resort will be staggering. "You can only really appreciate the genius of El Gouna from on high," adds Jeremy, "it is a masterpiece. We are the last piece of the jigsaw. It is indeed the jewel in the crown."

Studios, apartments, townhouses... generous in size, excellent quality, very reasonably priced... from $174,000 (£108,000)

Investors are pleasantly surprised by the generous size of the units, with even the studios being a very livable 68sqm and the one bedroom apartments (95sqm) some of which came with an amazing 33sqm of roof terrace. The town houses, which are a very real alternative to villas in El Gouna, are an easily manageable 200sqm in a "lock up and go" fully serviced environment. "Many buyers do not want the hassle of a villa and all the ancillary work", explains Jeremy, "our town house solution has proved ideal. They want the space but also someone to serve them breakfast on their terrace... they don't want to spend their whole holiday doing renovations!"

Free golf membership for 1 year, a rental guarantee contract of 6% per annum for 2 years (2011 / 2012)

What are the enticing "come on's"? The 6% net yield on the rental contract for 2 years.. In the case of a 250,000 USD investment, one stands to claw back around 30,000 USD provided one restricts one's use to 45 days per annum. The Free golf membership for one year, and the El Gouna owners discount card are a huge pull.

EL GOUNA AT A GLANCE.

- The Venice of the Red Sea. Egypt's most established semi-residential elegant resort.
- Strictly controlled and very limited inventory
- Warm guaranteed sunshine ALL year round.
- Typical December and January temperatures 28°C.
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ACTION

Please call UK +44 (0) 207 873 2034 and arrange an appointment to meet one of our property advisers to discuss your needs, take you through the scheme, work through the documentation and to make sure it is ENTIRELY suitable for your current financial needs.

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As interest rates fall to historic lows, stock markets look flat and currencies devalue in front of your eyes. For a select group of qualified investors, you have a limited opportunity to hedge against this scenario by investing in Ancient Sands Golf Resort, El Gouna, Egypt. All the benefits of the above, come with a beautiful property in the all year round warmth of Egypt's most select, established and elegant semi-residential resort.

HOW TO QUALIFY... FROM ONLY £108,000

Select a property of your choice studio, apartment or town house..commencing from 174,000 US DOLLARS (approx. £108,000). Pay for the property by September 2009 and we will pay you an annual 3.25% on your investment until the property is delivered in 2011. Join our rental management and furniture pack scheme at the time of purchase and you will then earn a net guaranteed yield of a further 6% for the first TWO years of ownership.

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We always encourage clients to consult with independent financial advisers for their own due diligence.

We will refuse investor applications if we feel that a particular financial situation is not suited to make such an investment or if the amount is not in balance with other capital assets in the client portfolio.

UK Revenue wins offshore bank disclosure ruling

The UK Tribunals Service ruled, in May 2009, that four unnamed banks must disclose depositors' details to HM Revenue and Customs. The move marks the start of the Revenue's effort to extend its crackdown on evasion to all the 500 foreign banks and building societies with a UK presence.

HMRC convinced the tribunal, based on evidence from its 2007 tax "amnesty" in which some of the banks' customers came forward, that there was a significant degree of non-compliance among customers. The Revenue said it expected to find unpaid tax in only one in 20 of the accounts and anticipated raising at least £18 million.

The disclosure notices issued by the Tribunals Service do not name the financial institutions. One concerns a bank with a branch in Luxembourg, Austria or Belgium used by 400 British residents thought to have evaded between £5.2 million and £41.25 million between them. Another, expected to yield £9.5 million of tax, concerns two financial institutions belonging to the same group with operations in various jurisdictions, including Jersey. The fourth case concerns a financial institution with a branch in the Channel Islands, expected to yield between £3.9 million and £33 million.

Similar notices in 2006 and 2007 obliged five British high street banks to disclose details of secret offshore accounts. Accompanied by the offer of a partial amnesty, HMRC recovered about £400 million in unpaid taxes. It expects to raise £500 million over the next four years under this new initiative and is seeking to "industrialise" the process of issuing disclosure notices to the 500 financial institutions rather than having to address each institution individually.

Sovereign Comment

See the related story on the *Fiscal* page of this edition for more details of the second Offshore Disclosure Facility. We have reported on this topic several times in past editions of *Sovereign Report*. Despite considerable publicity, it appears that many UK tax payers who have undeclared offshore bank accounts are simply ignoring these rulings from HMRC. This is not advisable – not declaring offshore accounts as a UK resident is not tax planning. It is illegal and the time to act is now. There may still be legitimate ways of structuring your affairs internationally but, at the very least, people in this position should consider declaring these assets now. Reduced penalties will be imposed but the alternative is to wait for HMRC to track such accounts down in the future – when the consequences will be far worse. If you or your clients are in this position, contact your local Sovereign office for a confidential consultation. There is no time to lose.

33 legal

Spanish exit taxes referred to ECJ

The European Commission decided, on 19 March 2009, to refer Spain to the European Court of Justice in respect of its tax provisions that impose an exit tax on individuals who cease to be tax resident in Spain and which are deemed to be incompatible with the free movement of persons under the EC Treaty.

Under Spanish law, a taxpayer who transfers their residence abroad has to include any unallocated income – income that has still to be taxed – in their tax declaration for the last tax year in which they are still considered a resident taxpayer. They will therefore be taxed on such income immediately, contrary to those taxpayers that maintain their residence in Spain.

The Commission considered that such immediate taxation penalises those persons who decide to leave Spain, by introducing less favourable treatment for them in comparison to those who remain in the country. The Spanish rules in question are therefore likely to dissuade individuals from exercising their right of free movement and, as a result, constitute a restriction of Articles 18, 39 and 43 EC Treaty and the corresponding provisions of the EEA Agreement.

The Commission's opinion is based on the EC Treaty as interpreted by the Court of Justice of the European Communities in its judgment of 11 March 2004, in *De Lasteyrie du Saillant*, as well as on the Commission's 2006 Communication on exit taxation. Given that the Spanish tax rules were not amended to comply with the reasoned opinion sent to Spain in October 2008, the Commission has decided to refer the case to the ECJ.

UK Revenue ends individual domicile status rulings

HM Revenue & Customs (HMRC) announced, on 25 March 2009, that it would no longer give rulings on individuals' domicile status. HMRC said it would not process applications for such rulings received after 25 March 2009. Initial non-UK domicile claims received on or before that date will be processed.

Previously, where an individual's domicile was relevant to determining their tax liability, they could apply to obtain a ruling on whether or not they were UK domiciled. This provided certainty where the circumstances of the family or individuals involved were of a complex nature. Unlike residence which is defined by tax case law and some tax legislation, domicile is not a tax concept but a general legal concept derived from general case law.

On 31 March, HMRC published nearly 500 pages of new guidance on the rules for residence, domicile and the remittance basis introduced in Finance Act 2008 and has withdrawn most of its earlier guidance. It considers that the new guidance will enable individuals to self assess their domicile position without the need to apply for rulings.

Over the longer term HMRC will be producing two new guidance manuals, the "Residence and Domicile Manual" and the "Transfer of Assets Manual".

Sovereign Comment

As reported many times over the years in *Sovereign Report*, the whole area of domicile for UK citizens is a minefield and each case must be considered carefully. Domicile must not be confused with residency. UK inheritance tax is charged at 40% on worldwide assets, so individuals who have left the UK for good must consider their own circumstances. In particular, expatriates who have lived in (say) the Middle East for many years but are now thinking about retiring somewhere else, perhaps Spain, should act before they leave their current location. Contact your local Sovereign office if this affects you; action now could save your heirs a fortune in years to come. As this item demonstrates, it is an extremely complex area and professional advice should be sought.

European Commission appeals to ECJ on Gibraltar tax reform

The European Commission appealed to the European Court of Justice, on 18 March 2009, to set aside the Court of First Instance judgment that had annulled a Commission decision that Gibraltar's planned corporate tax reforms were unlawful state aid; alternatively, the Commission would refer the cases back to the court for rehearing.

Last December, the ECJ reversed the Commission's 2004 ruling that Gibraltar's proposed corporate tax reform, which included the repeal of the existing “discriminatory” tax system and its replacement with a uniform low corporate tax rate, constituted unlawful state aid.

The ECJ found the Commission had gone beyond the limits of its review by deciding that Gibraltar was a “region” of the UK and had no powers to set its own tax regime. The UK Foreign Office said the judgment made it “abundantly clear” that Gibraltar was fiscally autonomous from the UK and had full competence for its domestic economic affairs

The Commission now maintains that the ECJ's judgment should be set aside on the grounds that, in its view, the Court erred in assessing the relationship between the European Treaty and the competence of the Member States in tax matters, and in imposing an unjustified constraint on the assessment of suspected state aid measures and the exercise of review powers in respect of the identification of a common or "normal" tax system.

Separately, Gibraltar signed a tax information exchange agreement (TIEA) with the US in London on 31 March 2009. It is the first such agreement signed by Gibraltar and will enable exchange of information in both civil and criminal tax matters. If it enters into force this year, the TIEA will become effective for tax years beginning after 2008.

"We are delighted that our first agreement of this kind is with the US," said Chief Minister Peter Caruana. Gibraltar has concluded negotiations for the operative parts of the text with another of the largest OECD countries. In November last year Gibraltar offered such agreements to all OECD member countries, through the OECD itself. Others have also received the offer by direct bilateral approach.

Sovereign Comment

Despite the European Commission's move, we are anticipating significant corporate tax changes in Gibraltar shortly. A uniform rate of 10% is likely to be set from 2010. This will mean that Gibraltar companies will become far more attractive for international business but Gibraltar also recognises that, to comply with OECD standards, it must enter into a number of TIEAs as soon as possible. It is therefore significant that the first to be signed is with the largest OECD country – the US. More are currently in negotiation and we await developments with interest. Further news will be reported in future editions but in the meantime, contact our Gibraltar office for the latest information.

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UK Budget launches second Offshore Disclosure Facility

The UK government released its 2009 Budget, on 22 April 2009, which included new anti-avoidance measures, the launch of a second offshore tax amnesty and the introduction of a new top income tax rate.

The government said it would step up efforts to fight tax evasion and challenge tax avoidance schemes, saying it expected to raise £1 billion by closing loopholes over the next three years.

The proposed measures include: HMRC's publication of the names of deliberate tax defaulters; new reporting requirements for tax defaulters; new duties on senior accounting officers to ensure that corporate tax returns are accurate; an expansion of the Disclosure of Tax Avoidance Schemes regime; and the introduction of a taxation code of practice for the banking sector.

As previously announced, the government said it was to launch a second Offshore Disclosure Facility (ODF) in the third quarter of 2009. As with the first ODF, introduced in April 2007, UK citizens will have a limited period to come forward and settle undisclosed offshore tax liabilities. Participants will be required to pay back taxes, interest and a penalty. The government said the penalty regime would be announced before the ODF opens.

The biggest change to personal income taxes was the introduction of a third tax rate, to be levied at 50% on income over £150,000. The new rate will take effect in April 2010. (There are currently two personal income tax rates – the basic 20% rate, which applies to taxable income up to £37,400, and the higher 40% rate, which applies to taxable income over £37,400.)

The government had originally said in the November 2008 pre-Budget report that the new tax rate would be 45% and that it would take effect in April 2011. In his Budget speech, Chancellor of the Exchequer Alistair Darling said he decided to increase the new tax rate and implement it a year earlier "to help pay for additional support for people now".

Cyprus and Russia sign new treaty

Cyprus and Russia signed a new tax treaty on 16 April 2009 that should ensure the island's removal from Russia's tax haven "blacklist". Cypriot Finance Minister Charilaos Stavrakis said the agreement was "very significant and beneficial" for both countries because it would remove double taxation on assets and business activities for both individuals and companies”.

Russia is one of Cyprus's biggest trading partners. Ministry officials estimate Russian deposits in Cypriot banks to exceed €20 billion. But Russia blacklisted Cyprus in early 2008 on grounds that there was insufficient cooperation on exchange of information. Ilya Trunin, director of the Russian Finance Ministry's tax department, said Cyprus would be dropped from the blacklist when the agreement comes into effect.

Sovereign Comment

For Cyprus, this is a very important development. Russia is a vital market for Cyprus but since its blacklisting by Russia last year, Cypriot authorities have been taking steps to reverse this decision. As a full member of the EU with a low corporate tax rate of 10% across the board, Cyprus is an attractive jurisdiction for international business from Russia, other CIS and former Warsaw Pact countries. Sovereign is expanding its presence on the island. Contact Richard Melton in Limassol for details of how Sovereign can assist. Details are listed on the back page of this issue.

in the press:

Kiss goodbye to offshore confidentiality

(A version of this article, by Sovereign Group Chairman Howard Bilton, first appeared in The South China Morning Post)

The G20 and OECD are demanding that Offshore Financial Centres (OFCs) bring an end to confidentiality and secrecy – even though most have already done so. But how will this work in practice?

If you have ever set up an offshore company or trust, you will be familiar with the amount of "due diligence" paperwork that you must provide to your service provider. The service company must confirm your identity, residential address, source of funds and fully understand the intended business of the structure. Normally this requires the production of a certified copy of your passport, an original utility bill or bank statement, an explanation of the source of any funds you will be placing into the structure and the business that the structure will undertake.

Although service companies can provide you with nominee shareholders, professional directors and trustees, they must identify the "beneficial owners" of a company or the real settlor and beneficiaries of a trust. This information must either be lodged with the agent who forms the entity or the professional must undertake to provide it to them upon request.

Most OFCs have now signed Tax Information Exchange Agreements (TIEAs) with a number of onshore jurisdictions – as can be seen from the *Profile* on the page opposite – or are going to have to sign such agreements with any OECD member country that requests one. The OECD has said that jurisdictions should sign a minimum of 12 TIEAs to gain inclusion on its "white list".

Now let us presume that an offshore company is used to purchase a property in the UK and the company later sells that property for a profit. If the offshore company is owned by a resident of the UK, then that transaction would give rise to a tax liability for the beneficial owner, whether or not the company pays out the profit to the owner. The UK Revenue will therefore be very interested to find out if the owner is a UK tax resident.

If a UK resident has been involved in the purchase or sale by, for example, instructing estate agents, lawyers or arranging finance for the company, the UK can ask the OFC to confirm who owns the company. If the "Competent Authority" in the OFC does not already have the information it will request the service provider to provide details of the company's ownership – or risk losing its licence to do business. The information will then be passed on to the UK authorities.

If it transpires that the owner of the company is based in, say, Hong Kong the UK would lose interest in the matter. If, however, the owner is a UK tax resident, then the gain made by the company could be cross referenced to that individual's UK tax return to ensure that it has been correctly declared. If it has not been declared the UK revenue could investigate, audit, fine, imprison and generally be quite unpleasant to the miscreant UK taxpayer.

Various safeguards to protect the taxpayer have been built in to TIEAs. The country requesting the information must follow a strict set of rules designed to protect the legitimate confidentiality of taxpayers and the holders of the information. In particular, these rules are supposed to guard against "fishing expeditions", where a tax authority might look for a large amount of general information, hoping that some of it might be useful.

So, information is requested only in respect of individual cases and when a TIEA partner country sends a request for information to the other partner country it must make clear:

- the identity of the person or business under investigation;
- whether the investigation is being dealt with as a criminal or civil matter;
- the period for which the information is requested;
- what type of information is being requested;
- the tax purpose for which the information is sought;
- the reasons for believing that the information requested is relevant;
- why it is thought that the information requested is in the partner country;
- to the extent known, the name and address of any person believed to have the information; and
- that the other country has done everything reasonably possible in its own territory to obtain the information.

If these rules are not followed, the request for information should be declined. A TIEA partner country that receives information must keep it confidential and only use it for the purposes of the administration or enforcement of their tax laws. It cannot be passed to any other country without the written consent of the tax authority that supplies it.

This is all fine in theory but it seems to me that all these "safeguards" may amount to very little. The big onshore countries will likely seek to pressure OFCs into providing whatever information they need, whenever they need it. And, in practice, it's difficult to see the little OFC being able to resist such pressure for too long.

So that's the way it is. The OECD has been working on this issue since 1996, when the "harmful tax practices" project was launched. The call for action at the recent G20 summit has merely accelerated the process of information exchange and brought it to the top of the international agenda. There is no confidentiality offshore – or there won't be very shortly.

If you have made arrangements offshore that you wouldn't want revealed to your home tax authority – or wouldn't stand up to scrutiny by them – you should think again and seek advice.

OECD updates list of "uncooperative jurisdictions"

To coincide with the G-20 summit in London on 2 April 2009, the OECD published a Progress Report that consisted of a new "tiered" list assessing the implementation of information exchange standards among jurisdictions surveyed by the OECD's Global Forum on Transparency and Exchange of Information.

This Progress Report broke the jurisdictions down into: a "white list" of those that have substantially implemented OECD standards; a "grey list" of those that have made commitments but have not yet substantially implemented the standards; and a "black list" of those that have not committed to OECD standards.

The OECD said the internationally agreed standard required exchange of tax information on request in all tax matters, civil as well as criminal, for the administration and enforcement of domestic tax law without regard to a domestic tax interest requirement or bank secrecy for tax purposes. In 2008, an OECD sub-committee recommended that the new standard for countries should be to have a minimum of 12 signed Tax Information Exchange Agreements (TIEAs).

The "white list" of jurisdictions that have substantially implemented the internationally agreed tax standard comprises: **Argentina, Australia, Barbados, Canada, China, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Guernsey, Hungary, Iceland, Ireland, Isle of Man, Italy, Japan, Jersey, Korea, Malta, Mauritius, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Russian Federation, the Seychelles, Slovak Republic, South Africa, Spain, Sweden, Turkey, United Arab Emirates, the UK, the US** and the **US Virgin Islands.**

The "grey list" of jurisdictions that have committed to the internationally agreed tax standard, but have not yet substantially implemented was divided into two categories – Tax Havens and Other Financial Centres.

The "tax havens" comprised: **Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain, Belize, Bermuda, British Virgin Islands, Cayman Islands, Cook Islands, Dominica, Gibraltar, Grenada, Liberia, Liechtenstein, Marshall Islands, Monaco, Montserrat, Nauru, Netherlands Antilles, Niue, Panama, St Kitts & Nevis, St Lucia, St Vincent & Grenadines, Samoa, San Marino, Turks & Caicos Islands** and **Vanuatu.**

The "other financial centres" comprised: **Austria, Belgium, Brunei, Chile, Guatemala, Luxembourg, Singapore** and **Switzerland.**

A flurry of commitments received by the OECD prior to the G-20 summit brought 11 jurisdictions – Switzerland, Liechtenstein, Austria, Belgium, Luxembourg, Andorra, Monaco, San Marino, Hong Kong, Singapore and Macau – into this category. But the Report also showed that more than half of these "committed" jurisdictions had not yet entered into any TIEAs.

The "black list" of jurisdictions that had not committed to the internationally agreed tax standard comprised: **Costa Rica, Malaysia (Labuan), Philippines** and **Uruguay.**

> **"The new standard for countries should be to have a minimum of 12 signed Tax Information Exchange Agreements."**

By 7 April, the OECD announced that these four jurisdictions had officially made commitments to co-operate and would be proposing legislation this year to remove the impediments to the implementation of the OECD standard. As a result, they had all been moved to the "grey list" category and the OECD's three-tiered list was therefore effectively reduced to a two-tiered list.

Hong Kong and Macau were notably absent from the lists but were mentioned in a footnote as having committed to implement the OECD standards on information exchange. The OECD had asked for and received assurances that the standard would be adopted, and the OECD stood behind Hong Kong and Macau's adoption of the standard, said OECD Secretary General Angel Gurria.

The Chinese government's position was important because of Hong Kong and Macau's status as Special Administrative Regions of China, and the OECD believed there was "a very strong encouragement by the Chinese government for them to move to the standard", he added.

UK Prime Minister Gordon Brown subsequently set a September deadline for British Crown Dependencies and Overseas Territories to meet OECD standards of tax information sharing or face sanctions. He acknowledged the progress made by them in committing to OECD standards.

Seven UK overseas territories – Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Gibraltar, Montserrat and Turks & Caicos Islands – remain on the OECD "grey list" for failing to agree a sufficient number of information sharing agreements. He urged them to achieve the standard of 12 TIEAs, or equivalent arrangements, before the UN General Assembly met in September.

He also urged the three Crown Dependencies – the Isle of Man, Jersey and Guernsey – which were all included on the OECD's "white list", to continue to set the pace and put clear water between themselves and those jurisdictions which only just meet the international standard.

On 27 May, the OECD's Committee on Fiscal Affairs said it was removing Andorra, Liechtenstein and Monaco from its list of Uncooperative Tax Havens in the light of recent political commitments made by them to implement the OECD standards of transparency and effective exchange of information and the timetable set for the implementation.

The OECD said it now considered that these jurisdictions had committed to the internationally agreed tax standard but not yet substantially implemented it, as shown in the Progress Report. It expected that all three jurisdictions would now implement their commitments swiftly.

In a further Progress report, issued on 8 June 2009, the OECD upgraded Bermuda to its "white list" of jurisdictions that have substantially implemented the internationally agreed tax standard. Bermuda had met the OECD standard by signing 12 TIEAs.

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