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SOVEREIGN

report

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

Pressure continues to mount on OFCs

The financial press has been dominated in recent months by stories relating to clampdowns on the offshore tax havens, the OECD's black, grey and white lists, and various declarations from the G-20. Shortly before this edition went to press, the latest G-20 summit in Pittsburgh set out a timescale for international action against jurisdictions that refuse to abandon banking secrecy. The G-20 countries stated that they now "stand ready to use countermeasures against tax havens from March 2010" in order to force banks to reveal client information. The main developments arising from these meetings are discussed in this edition's special Profile section on page 13. We repeat our message to clients – they should re-examine their arrangements to make sure that they are fully compliant. If they are not, then please ask us for assistance. Urgent action is advised.

New Abu Dhabi office

We have now officially opened an office in Abu Dhabi to meet demands from existing clients and hopefully connect with many new ones. Contact details appear on the back of this report. We hope to be announcing two further office openings in the coming months.

The Sovereign Art Foundation

As you know, The Sovereign Group sponsors a charity known as The Sovereign Art Foundation, which organises annual Art Prizes in Europe and Asia. The Foundation has now agreed with The Barbican centre in London that it will host the European event for the next three years, commencing in the spring of next year. Our Asian events will be taking place in Hong Kong before the end of this year, but dates have yet to be finalised. We are still looking for sponsors for both Europe and Asia. In past years our sponsors have included Barclays Bank, Louis Vuitton, Bulgari and Jaeger-Le Coultre. Sponsors of these high-profile events obtain a gilt-edged publicity and marketing opportunity whilst helping to raise money for various charities dedicated to bringing art to disabled children. If you know anybody who might be interested in sponsoring the events – in either London or Hong Kong – then do please contact us.

Sovereign Asset Management (SAM)

Sovereign Asset Management, the division of The Sovereign Group that provides free investment advice and other asset management services to Group clients, has prepared a new brochure which we hope will be of interest. SAM is not tied to any private bank or asset manager and is committed to delivering genuinely objective and impartial investment advice, as well as enhanced levels of oversight and security. All client funds are lodged with major institutions but SAM will supervise them on your behalf to ensure that its clients receive the best levels of service and to ensure that your assets are not invested in inappropriate products. Please contact us if you would like to receive a brochure.

And now for something completely different . . .

We thought a little light relief might be warranted in these tough times, so I would like to share with you a study that found that an estimated 25 million British adults have been injured while eating biscuits during a tea or coffee break – with at least 500 landing themselves in hospital. Hidden dangers included being hit by flying biscuit fragments, being scalded while dunking, missing the mouth and poking yourself in the eye with a biscuit, falling off a chair reaching for the tin or being bitten by a pet or "other wild animal" trying to get your biscuit. The study was conducted by BITE (Biscuit Injury Test Evaluation). The custard cream biscuit, with a risk rating of 5.63, was found to be the worse offender. This compared to 1.16 for the Jaffa cakes, which was the safest biscuit of all. It's clearly a dangerous world out there for biscuit lovers.

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

UK announces Offshore Disclosure initiatives

HM Revenue & Customs announced, on 28 July 2009, details of the New Disclosure Opportunity (NDO), the second HMRC-run offshore disclosure initiative, which will be the last chance to settle unpaid taxes linked to offshore accounts or assets to settle tax liabilities at a favourable penalty rate.

Under the NDO, taxpayers who make a complete and accurate disclosure between 1 September 2009 and 12 March 2010 will qualify for a 10% penalty. Those who choose not to take this opportunity and are subsequently found to have undeclared tax liabilities are likely to face a 30% or higher penalty and also run an increased risk of criminal prosecution.

"I know there are people who regret not taking advantage of our Offshore Disclosure Facility (ODF) in 2007 which focused primarily on the customers of five large banks. Now everybody who has not paid the tax they should in relation to offshore accounts or assets has this NDO to pay what they owe with penalties on more favourable terms than normal," said Dave Hartnett, HMRC Permanent Secretary for Tax. "This will be the last opportunity of its kind."

To use the NDO a notification of the intention to disclose must be made to HMRC between 1 September and 30 November 2009. Disclosures can then be made on paper from 1 September 2009 to 31 January 2010 and electronically from 1 October 2009 to 12 March 2010. Taxpayers contacted by HMRC in 2007 offering the 10% rate, who did not complete the ODF procedure and now want to disclose, will have an opportunity to do so with unpaid tax attracting a penalty of 20%.

The UK also signed two agreements with Liechtenstein, on 11 August 2009, to provide for exchange of tax information and implement a five-year tax compliance programme, which will provide UK residents a five-year period to declare unreported assets in Liechtenstein in exchange for reduced penalties. The agreement will require Liechtenstein financial institutions for the next five years to ensure that UK clients are reporting their investments to HMRC.

The LDF applies to UK residents who held investments in Liechtenstein on or after 1 August 2009. Participants will be required to pay all tax and interest on undeclared offshore income going back 10 years, with penalties capped at 10%. Taxpayers have the option of paying back taxes at a flat rate of 40% for each tax year or of calculating the actual liability for each year. The disclosure programme, known as the Liechtenstein Disclosure Facility (LDF), will operate from 1 September 2009 to 31 March 2015.

Sovereign Comment

According to HMRC this really is the last opportunity for those who have undeclared offshore assets to come forward. Time is short, so we recommend anyone in this position to seek professional advice without delay. The Liechtenstein facility is the first time an individual jurisdiction has been targeted in this way. Interestingly, British holders of offshore accounts in other countries may be able to transfer their funds to Liechtenstein to take advantage of the LDF. Sovereign can assist and a no obligation call to any one of our worldwide offices should be the first step in regularising outstanding non-compliant situations.

europe

Norwegian billionaires to leave over wealth tax

Stein Erik Hagen, one of Norway's richest businessmen, announced on 23 July that his three children are to leave Norway and settle in Zurich, reportedly in protest at Norway's net wealth tax. Hagen's children – Caroline Marie Hagen, Carl Erik Hagen and Nina Camilla Hagen – own 90% of the family's investment company, Canica. The family paid about NOK 50 million in wealth taxes last year.

Hagen built up his wealth through the RIMI grocery store chain but sold it and now has a large stock portfolio. He also announced that the family's investment company would move its activities abroad in the future. The move may be related to the recently introduced exit tax for companies. The exit tax for individuals' capital gains on shares is not applicable if the shares remain unsold for a five-year period, so the Hagen family are expected to keep the Canica shares for at least that period.

The government was quick to criticise the move, stating that Hagen and his family should pay their fair share of taxes and noting that Norway's infrastructure has helped him build up his fortune. The government has made the net wealth tax a cornerstone of its tax policy in order to shift more of the tax burden to the rich. Norway is one of the few countries that still levy a net wealth tax.

Ship-owner John Fredriksen, formerly Norway's richest man, chose to abandon his Norwegian citizenship in 2006 in protest over Norway's tax system and is now a citizen of Cyprus.

Jersey brings new Foundations Law into force

The Foundations (Jersey) Law 2009 was brought into force on 17 July 2009, having been approved by the Privy Council in June, making it the first UK Crown Dependency to offer Foundations. Foundations are commonly used for wealth management, and are more familiar to residents of civil law jurisdictions than trusts, which do not exist in their legal systems.

The Law will permit the establishment of Jersey Foundations which will be incorporated bodies that can hold assets, transact business and sue and be sued in their own name. Whilst similar in design to Foundations in other jurisdictions, the Jersey structure has mandatory requirements for one member on its council to be licensed as a Qualified Person by the Jersey Financial Services Commission and for the Foundation to have a "guardian", who has a duty to supervise the council's activities.

Regulations have also been lodged with Jersey's States assembly that will allow Foundations to migrate to Jersey from other jurisdictions.

Sovereign Comment

The introduction by Jersey of its own Foundation legislation is significant, particularly as the vehicle is typically promoted as an alternative to the trust concept. For many years, Foundations were only to be found in Liechtenstein and Panama. Some Caribbean jurisdictions have also now either introduced Foundations or are considering doing so, but Jersey is the first UK Crown Dependency to go down this route. We shall report more in future editions but, in the meantime, contact your local Sovereign office for further information on Foundations and how they can be used.

UK imposes direct rule over Turks and Caicos

The UK imposed direct rule on the Turks and Caicos Islands (TCI) on 14 August 2009 after an inquiry commissioned by the UK Foreign Office into the actions of the TCI cabinet and assembly found "information in abundance pointing to a high probability of systematic corruption or serious dishonesty". The administration of the UK Overseas Territory in the Caribbean has been suspended for up to two years and power transferred to the UK-appointed governor.

The inquiry concluded there were "clear signs of political amorality and immaturity and of a general administrative incompetence". It alleged that former premier Michael Misick built up a multi-million dollar fortune since coming to power in 2003. He resigned in March, but has denied the allegations and says he attracted valuable foreign investment to the islands. The imposition of direct rule went ahead after a legal challenge by Misick failed at the UK Court of Appeal.

UK Foreign Office Minister Chris Bryant said the decision to impose direct rule had not been taken lightly, but he described the measures as essential to restore good governance and sound financial management. "It remains our intention that elections should be held by July 2011, if not sooner," he said.

Gordon Wetherell, who took over as governor last year, said. "Our goal is to make a clean break from the mistakes of the past by establishing a durable path towards good governance, sound financial management and sustainable development."

TCI is a UK overseas territory and a leading offshore financial centre. Once a dependency of Jamaica, the islands become a crown colony when Jamaica gained its independence in 1962. Its 30,000 residents have British citizenship.

Sovereign Comment

It should be borne in mind that the TCI finance centre was established some years ago with a grant and encouragement from the UK government. The TCI has an English common law legal system and is a British dependent territory. Therefore, we regard the move by the UK government to wrest control from the previous corrupt regime as a positive development. In the short term we do not believe that it will have any effect on existing laws governing companies and trusts. It should also be noted that TCI signed a tax information exchange arrangement (TIEA) with the UK in London on 22 July 2009. The TIEA provides for comprehensive exchange of information to the OECD and international tax standard in respect of UK direct taxes and VAT.

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BVI opens new specialised Commercial Court

A new Commercial Court has opened in the British Virgin Islands to focus on cross-border commercial and insolvency matters. In two ceremonies in early May 2009 the government formally opened the court and signed a memorandum with the Eastern Caribbean Supreme Court for its operation and administration.

The new court is a division of the regional Eastern Caribbean Supreme Court and will hear commercial matters from nine Caribbean nations and territories, including: Anguilla; Antigua and Barbuda; Dominica; Grenada; Montserrat; St Kitts and Nevis; St Vincent; St Lucia; as well as the BVI.

However, it is expected that much of the court's calendar will be taken up with matters stemming from the 800,000 companies that have been incorporated in the British Virgin Islands since the advent of its international finance centre in the 1980s. The move comes at a time when the volume of commercial litigation and insolvency is increasing in the BVI.

Sovereign Comment

This is a much needed development and is to be welcomed. The sheer volume of existing companies and the worldwide structuring for which they are used means that initiatives such as this are going to be increasingly demanded by the international professional community. The relatively new BVI Business Company legislation is much stricter on issues such as company solvency. As a result, the new Commercial Court is likely to be kept fully occupied.

Switzerland and US reach agreement over UBS

Switzerland and the US signed an agreement over Swiss bank UBS, on 19 August 2009, which entered into force immediately. The US is to submit a new treaty request to Switzerland and withdraw the “John Doe” summons that demands disclosure of the identity of 52,000 UBS account holders. In return, Switzerland has undertaken to process the new treaty request, concerning about 4,450 accounts, within a year.

Switzerland will set up a project team to accelerate handling of the new treaty request. Under the terms of the agreement, the Swiss tax authority (SFTA) must issue final decisions on the first 500 cases within 90 days of the request being received. It has 360 days to make a final decision on whether the requested information may be issued in each of the 4,450 cases. UBS must make the account information covered by the treaty request available and prepare it for processing.

Under a previous agreement, UBS settled criminal charges that it had facilitated tax fraud by paying $780 million and handing over data on about 250 US clients.

On 21 September, the IRS announced that it had extended the deadline – from 23 September to 15 October – for US taxpayers with previously undisclosed offshore accounts to come forward and participate in the Offshore Settlement Initiative Programme, which was announced in March. It warned there would be no further extensions.

The IRS said that tax practitioners had requested an extension because they were having trouble interviewing and advising the large number clients who had come to them for help. More than 3,000 people had come forward, compared with fewer than 100 in 2008. There was a surge following the agreement with Switzerland.

Sovereign Comment

The UBS story has been the subject of much international press comment in recent months. Now that blue chip banking centres like Switzerland are being made to revise their laws, there really is no place for a non-compliant bank account anywhere in the world. As regular readers of *Sovereign Report* will know, Sovereign has been advocating a policy of legal and compliant structuring on behalf of its clients for many years.

Hong Kong reviews Trustee Ordinance

The Hong Kong government announced, on 22 June 2009, a three-month public consultation on proposals to modernise the Trustee Ordinance. The consultation will reference recent reforms in comparable common law jurisdictions including the UK and Singapore.

The key reform proposals include introducing statutory duty of care for trustees, enhancing some of the powers of the trustees and protection of rights of beneficiaries such as their rights to information relating to the trust. The Financial Services and the Treasury Bureau (FSTB) also proposes to update those complex and outdated rules such as the rule against perpetuities or the rule against excessive accumulation of income.

The FSTB is also to consult on several proposals which concern more unconventional trust concepts which are more commonly practised in offshore jurisdictions, such as defining the role of protectors in statutes and permitting non-charitable purpose trusts.

The principal feature of a non-charitable purpose trust is that it need not have ascertainable beneficiaries. When utilising offshore structures for complex tax estate planning or balance sheet restructuring, it may be of considerable assistance to create a vehicle that may be truly said not to belong to anyone beneficially, yet remains able to integrate itself into a commercial transaction without the problems associated with ownership by a person or company.

Typically purpose trusts can be used to: incorporate and hold shares in a private trust company to act as trustee of a particular trust or group of trusts; hold shares in Special Purpose Vehicles (SPVs) for off-balance sheet and securitisation transactions; and promote objects which are for good causes that are not strictly charitable – such as for humanitarian, ecological, environmental or research objects – or to promote the interests of an association or a club.

A government spokesman said: "Reforming the trust law is a key component in the government's strategy to enhance Hong Kong's position as a major asset management centre in Asia. Modernising our trust law will strengthen the competitiveness and attractiveness of our trust services industry. It will encourage more local and overseas settlors to choose Hong Kong law as the governing law of their trusts and to administer their trusts in Hong Kong."

The government aims to release consultation conclusions by the end of this year and introduce legislative amendments to the Legislative Council in 2010 to 2011.

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Sovereign Comment
Some of the provisions in the Trustee Ordinance, especially those concerning the powers and duties of trustees, are outdated – they were last enacted in 1934. The rules against perpetuities and excessive accumulations of income in trusts are also complex and fail to meet market needs. Other proposals concerning more unconventional trust concepts that are commonly practised in offshore jurisdictions, such as defining the role of protectors in statutes and permitting non-charitable purpose trusts, will provide further flexibility in the creation of trusts.

Mauritius GBC2s to file annual financial summaries

The Finance Act, which was adopted in the Mauritian National Assembly on 21 July 2009, included a new requirement for Category 2 Global Business Companies (GBC2) to file financial summaries every year with the Financial Services Commission.

This includes a Profit and Loss Statement (P&L) and Balance Sheet, which will state the date of approval by the board of directors and will have to be signed by a director of the company. There is no requirement for the financial summary to be audited and no other return is required to be filed with the Registrar of Companies or tax authorities, but an outlined brief business plan must also be submitted as part of the application documents for the incorporation of a GBC2.

Other changes include that the Revenue Authority will be bound under a memorandum of understanding to be signed with the Financial Services Commission to respond quickly to demands from foreign authorities for information on Global Business Companies and amendments will be made to the tax laws to enable the exchange of information even with respect to companies that are not considered resident for tax treaty purposes.

Sovereign Comment
In setting out these new rules, Mauritius is following a growing trend by a number of jurisdictions to ensure that companies are seen to be solvent and properly managed. Readers may recall for example that BVI introduced a solvency test in the latest legislation changes to their company law. In this case, Mauritius will require annual financial statements from now on. Sovereign Accounting Services is well-placed to produce these documents at comparatively low cost and with the benefit of many years' experience. Assistance can also be provided to clients seeking to prepare a business plan as part of the more involved incorporation procedure as set out above.

UAE scraps minimum capital requirement

The United Arab Emirates abolished, on 10 August 2009, the AED150,000 (US$40,800) minimum capital requirement for limited liability companies in order to encourage more start-ups and limit bureaucratic procedures.

Under a decree issued by President Sheikh Khalifa bin Zayed Al Nahyan, the minimum capital requirement was scrapped enabling partners in limited liability companies to "determine sufficient capital requirements" for setting up their companies.

The move reflects the federal government's aim to boost investment. It is hoped the move will benefit the small and medium-sized business sector in the UAE and will "promote innovation and the spirit of entrepreneurship among business leaders".

Sovereign Comment
This is a positive development that had been necessary for some time. It removes an important obstacle for anyone considering setting up a company in the UAE and for further information, readers should contact our Dubai office or, if more convenient, our new operation in Abu Dhabi to discuss their plans. Contact details are on the back page of this edition. In addition to these changes, our Dubai office has also recently reported an upsurge in interest in the Ras al Khaimah structure (or RAK company). This is a very flexible, relatively low cost, corporate vehicle that can be used for a wide range of international planning. Again, contact our office to find out if this type of company may be appropriate for you.

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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- Luxury but low cost of living, out of Euro-zone.
- Fully managed Five star residential, hotel and golf resort.

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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- **EARN A FURTHER 6% ANNUM (RENTAL MANAGEMENT SCHEME) FOR THE FIRST 2 YEARS OF YOUR OWNERSHIP (2011 to 2012).**
- **BENEFIT FROM A LONG TERM US DOLLAR BASED FIXED ASSET.**
- **INVESTMENT UNDER WRITTEN AND 100% GUARANTEED BY ORASCOM, A MAJOR MULTINATIONAL LISTED ON BOTH THE SWISS AND CAIRO STOCK EXCHANGES.**

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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THE SAFEGUARDS... ORASCOM GUARANTEE

Orascom is a fully regulated multinational corporate with the highest levels of regulation and due diligence. In offering such a return on your capital, we adhere to the strictest guidelines in product presentation and the total availability of transparent information. Full details on the maintenance and full financial protection of your investment will be provided at all times.

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.

300 UK banks to disclose offshore account information

The Tax Chamber of the First-tier Tribunal ordered, on 12 August 2009, over 300 banks to give details to HM Revenue & Customs (HMRC) about their customers who hold offshore accounts. HMRC will use this information to ensure everyone pays the right tax and to check that disclosures under the New Disclosure Opportunity (NDO) are complete.

The orders followed similar writs being obtained against a handful of banks, as well as in 2007 against the five major UK High Street banks, Barclays, HBOS, HSBC, Lloyds TSB and Royal Bank of Scotland. The new orders apply to an estimated 500,000 offshore bank accounts. HMRC can now issue the information notices to banks ahead of the NDO, which will enable people with unpaid taxes linked to offshore accounts or assets to settle their tax liabilities at a favourable penalty rate.

The details that the banks will be required to furnish include payments and transfers to overseas accounts that they have handled on behalf of customers. The information that is supplied by the banks will be then used to double check the disclosures that people make voluntarily on their offshore assets to ensure the two tally and that the correct amount of tax is being paid. HMRC is also tracking tax owed on other assets such as holiday homes which have produced income from lettings.

Dave Hartnett, HMRC Permanent Secretary for Tax, said: "I know there are people who regret not taking advantage of our Offshore Disclosure Facility (ODF) in 2007 which focused primarily on the customers of five large banks. Today we have successfully applied to get information on the offshore accounts and assets of customers of over 300 further banks. I urge any of them who have unpaid tax liabilities connected to these accounts now or in the past to come forward and make a full disclosure during the NDO."

Sovereign Comment

See the item on the European page of this edition for more details on the UK government's NDO. If one is a UK resident with an offshore bank account then it may be fairly assumed that details relating to that account are now known to HMRC. For many people, this will not be a problem as the account will have been established for entirely genuine reasons and also declared. For those holding undeclared bank accounts, we cannot stress too highly the need to declare and regularise the position – before HMRC does it. Any concerned readers should contact our London office for assistance.

34 legal

HK rules on transfer pricing

Hong Kong's Court of Final Appeal (CFA), on 24 July 2009, confirmed that when the general anti-avoidance provision in section 61A of the Inland Revenue Ordinance (IRO) is successfully invoked and a tax benefit is conferred through a non-arm's-length pricing arrangement, the Inland Revenue Department can raise an assessment to adjust the assessable profits of the taxpayer to restore what should be the arm's-length price.

In *Ngai Lik Electronics Co. Ltd. v. CIR,* the dispute arose over assessments raised by the Hong Kong tax authorities for the fiscal years between 1991/92 and 1995/96. As a result of a series of restructuring transactions within the group in 1992 and 1993, three newly incorporated British Virgin Islands companies took up manufacturing activities in mainland China, and the taxpayer purchased the finished goods from one of the companies for sale to unrelated third parties, generating trading profits from those sales.

The main thrust of the IRD's complaint was that this price-fixing mechanism resulted in the company paying an inflated price for goods, and in a corresponding reduction to its tax-assessable profits. The previous court upheld this view.

The Court of Final Appeal rejected both the IRD's formulation and the company's contention that there was no "tax benefit" under section 61A. The court found that section 61A did apply to the pricing scheme for three of the assessment years but annulled current assessments and directed the IRD to determine new assessments for those years based on the tax benefits derived from the non-arm's-length pricing scheme.

ECJ finds Belgian treatment of foreign dividends compatible

The European Court of Justice (ECJ) held, on 16 July 2009, that the non-discriminatory levy of a dividend withholding tax by the state of residence of the shareholder without granting relief for the tax paid abroad did not violate the free movement of capital principle of the European Union.

In the case of *Jacques Damseaux v. Belgian State* (C-128/08), the taxpayer, an individual resident in Belgium, received dividend income from a company resident in France in the period 2005-2007. The dividends were subject to a 25% withholding tax in France (of which 10% was reimbursed under the Belgium-France tax treaty), and then again to the reduced 15% dividend withholding tax in Belgium. France and Belgium signed a double tax treaty in 1964 that included a tax credit for foreign dividends, but the Belgian government later scrapped this.

The Liege Court of First Instance asked the ECJ whether the juridical double taxation in the source state (France) and the residence state (Belgium) without relief for double taxation in the residence state was compatible with the free movement of capital.

The ECJ said it was down to each Member State to organise its tax system (in compliance with European law) and, consequently, to determine the tax base and the tax rate for dividend income. This could result in juridical double taxation in the case of cross-border dividend distributions when both the source state and the residence state of the shareholder choose to exercise their powers to tax. Without discrimination or a restriction of a fundamental freedom (or EU citizenship) or the breach of some other rule of EU law, the Court had no jurisdiction to remedy this situation.

The case has now been referred back to the Liege court. A decision is expected towards the end of the year.

Sovereign Comment

This is an interesting case and the appeal decision will be closely analysed when it is handed down. The story proves once again that in the absence of a unified corporate taxation system, European law can often be at odds with domestic legislation in any of the 27 countries that now make up the trading bloc. With other countries lining up to join the EU, combined with the increasingly obvious financial requirement by member states to maximise tax revenues, such anomalies are likely to be highlighted on a more frequent basis.

Gibraltar proposes 10% corporate tax rate

The Gibraltar government proposed, on 25 June 2009, to introduce a new corporate tax rate of 10% for both international and domestic companies within Gibraltar when the existing exempt status regime for foreign companies ends in 2010 to bring Gibraltar's corporate tax system in line with EU law.

The exempt foreign company regime offered foreign companies a 0% corporation tax rate, while local companies paid a rate of 35%. This system was challenged by the European Union, which argued that it was a breach of EU state aid rules by the UK and Gibraltar.

In his Budget speech, Chief Minister Peter Caruana announced that the regime was to be repealed in the middle of the 2010-2011 assessment year, effective at midnight on 31 December 2010. From 1 January 2011, all Gibraltar companies will be subject to a flat 10% corporate tax rate. Energy companies and utilities, however, will be subject to a 10% surcharge, resulting in a total tax rate of 20%.

Caruana said: “Most exempt status companies currently hold exemption certificates that are valid, subject to repeal of the legislation, for 25 years. The government therefore feels honour bound not to remove the tax benefit provided by the exemption certificate until the last possible moment."

Caruana also proposed a reduction in the standard corporate tax rate from 27% to 22% for existing non-exempt companies, beginning on 1 July 2009, with a further reduction to 10% as from 1 January 2011. There will be a start-up company tax rate of 10% for corporations established in Gibraltar after 1 July 2009.

The Chief Minister further described proposed changes to the individual income tax system that are intended to encourage taxpayers to move from the allowance-based system to the simpler gross-income-based (GIB) system. Under the current GIB system, an individual pays 20% on all income up to £25,000, 30% on the next £75,000, and 38% on income exceeding £100,000, with no allowances. These are to be accompanied by planned reductions to 29% in the middle rate and to 35% in the top rate. All of the individual income tax changes take effect from 1 July 2009.

The government announced increases in the annual tax liability of High Net Worth Individuals and Category 2 Individuals from 1 July 2009. This results in an increase of the maximum annual tax liability from £21,880 to £25,880. High Executives Possessing Specialist Skills (HEPPS) will see a reduction in the effective tax rate to 26.75% on their capped taxable income of £100,000.

Isle of Man to move to automatic EU exchange of information

The Isle of Man announced, on 24 June 2009, its intention to move fully to automatic exchange of information in its application of the European Union Savings Directive from 1 July 2011, at which time the existing withholding tax option available to customers having accounts with Isle of Man banks as part of a transitional arrangement will be withdrawn.

Since the Directive entered into force in July 2005, most EU countries automatically report the savings accounts of EU residents to their home government. But Austria, Belgium and Luxembourg negotiated an opt-out to enable them to maintain bank secrecy. Instead of exchanging information, they imposed a withholding tax, called a ‘retention tax’, on certain types of payment, principally interest, made to residents of an EU country. Third-countries including Switzerland, Liechtenstein, Monaco, San Marino and Andorra, as well as the UK Crown Dependencies, agreed to do the same.

It was always the intention of the EU that the option to withhold tax on interest paid to EU savers instead of the exchanging of information on account holders' interest, would only be available to jurisdictions during a transitional phase. The Isle of Man is the first jurisdiction to make the transition.

Chief Minister Allan Bell said, “Our decision today to move to automatic exchange of information under the EU Savings Directive is a clear sign that we intend to continue to lead the way in international tax co-operation and transparency. This is a signal to our trading partners and investors alike that we can continue to be relied upon and that our name is associated with probity and foresight.”

Since 2000, the Isle of Man has signed 14 tax information exchange agreements and one double taxation agreement. The island was placed on the OECD's white list of compliant jurisdictions after the G20 summit in London in April.

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Sovereign Comment
These proposals have come about as a result of the positive European Court decision handed down in December last year that confirmed Gibraltar’s right to set its own corporate tax rate regime. This announcement has provided some much needed clarity although there are still one or two areas to sort out. Sovereign will be contacting any clients who own Gibraltar company structures in order to review whether any changes are required. In the meantime, readers who have any questions on this subject should contact gib@SovereignGroup.com for information.

San Marino to hold census

San Marino announced, in August, that it planned to conduct an emergency census of its population in September in an attempt to root out bogus residency claims. The republic has been under scrutiny by the OECD, due to its status as a tax haven. In order to avoid facing further inspection by the group, San Marino must carry out 12 procedures, with one being a nationwide census.

"We launched the census after taking office last December," Finance Secretary Gabriele Gatti told The Times Online. "We know what needs to be done."

In July, Giulio Tremonti, the Italian Economy Minister, announced a tax amnesty for Italians who repatriated assets held offshore, declaring that this would be regarded as tax evasion unless the account-holder could prove otherwise.

The Italian Revenue Agency confirmed that repatriation would be the only possible means of entering into the current tax amnesty for undeclared assets held in countries that do not have, with Italy, a tax information exchange agreement (TIEA) the meets the OECD standard.

San Marino, in particular, has been attempting to negotiate a TIEA with Italy. Entirely surrounded by Italy, San Marino is Europe's third smallest independent state with a population of 31,000. Despite its small size, it has 12 banks and 55 other financial institutions. In the absence of such an agreement, estimates of the reduction in San Marino’s bank deposits as a direct consequence of the tax amnesty range from the optimistic at only 15% to the pessimistic at 40%.

in the press:

"This is the broadband age, when voting with your feet – where tax is concerned – is a very viable option for many."

UK tax refugees stoke offshore property prices – new Sovereign survey

Most offshore tax jurisdictions within easy reach of Britain are bucking the European property market slump as wealthy Britons prepare for an exodus from harsh UK tax rises, according to a survey by The Sovereign Group.

Property values in Monte Carlo and Gibraltar, two of the most prominent European destinations for "ex-pat" money, are holding firm or increasing while prices around them on the Cote d'Azur and the Costa del Sol have plunged by up to 50%. Jersey, Guernsey, the Isle of Man and Geneva are also enjoying trend-bucking strength in their housing markets.

"The facts speak for themselves here," said Howard Bilton, chairman of The Sovereign Group. "Property prices in the south of France and southern Spain are languishing in the worst slump they've seen in many years but on their outskirts are two little areas – Monaco and Gibraltar – where the market is extraordinarily resilient. We believe, and all our local sources are telling us, that much of this disparity is because of interest from a new breed of British tax refugee as the UK government's tax-and-spend folly begins to bite."

"These findings confirmed what we already believed to be the case based on our own experience," added Bilton. "For many months now, 20% of all new business at our London office has been from wealthy individuals looking to move offshore to escape what they expect to be increasingly harsh tax rises. Very often, these clients are looking to take their businesses with them. It is no wonder that the offshore locations are benefitting with healthy property markets, but it is a very sorry situation for the UK and for those taxpayers who aren't able to go offshore."

"What is extraordinary is that the UK government appears to believe its most productive citizens will sit still to be fleeced," said Bilton. "This is not the 1960s, when currency controls and limited communications made it difficult to relocate yourself and your business. This is the broadband age, when voting with your feet – where tax is concerned – is a very viable option for many. Everyone has to compete these days and tax authorities should not be any different."

Against a background of falling property prices across Europe, Sovereign used its extensive network of expert property and investment contacts in all the jurisdictions surveyed, as well as local and international public record resources, to compile the survey since the beginning of this year.

In Monaco (which, significantly, now boasts 100% broadband coverage), for instance, there have been reports that property prices have risen by as much as 30% – the same amount that even the most optimistic observer would acknowledge they have fallen in neighbouring Provence. One leading Monte Carlo estate agent said in a recent report that Monaco's "tax haven status ensures the market remains buoyant and prices stable so investment in Monaco property continues to be attractive".

The situation is similar in Gibraltar where – despite prices on the Costa del Sol continuing to plummet by record levels – several major new residential property developments have recently been completed and the developers say they have been finished "in the nick of time" to satisfy a wave of new residents. Sovereign's own sources confirm this, including Gibraltar property agent Justin Bray of Bray Properties. "Recently we have noted a marked increase in interest for Gibraltar properties and a greater proportion of these enquiries are leading to actual sales, allowing us to be even more confident for the future."

Even closer to Britain, a few dozen miles from the English South Coast's languishing property market, Jersey's chief government statistician Dr Duncan Gibaut said property prices had risen 7% and the worst scenario to which homeowners and investors in Jersey might look forward in the coming months would be a period of "stabilising" house values. "Prices are still rising but at a lower annual rate," said Dr Gibaut.

A stone's throw away from Jersey, residential property prices in Guernsey were mixed, with small apartments falling in value by up to 17%, according to the island's Policy Council. However, at the same time the price of houses – representing 60% of residential property sales – were up a fraction at 0.1%. "From what we have heard," said Bilton, "that buoyancy at the wealthier end of the market comes from a steady stream of new interest from the UK mainland."

In the Isle of Man, property prices last year increased by 4% and this year are "holding steady" according to Chrystals estate agents, the leading commentator on Manx property trends. "Following the UK Budget where income tax was increased to 50% for those earning in excess of £150k pa it will come as little surprise to learn that enquires from UK applicants have risen strongly," said the company.

In Geneva, housing demand hit a new peak when the apartment vacancy rate fell to between 0.25% and 0.5% last year and it will continue to hold firm this year, according to "Swiss Issues Real Estate 2009," a report on Swiss housing published by bank Credit Suisse earlier this year. In addition, the international estate agents Savills have recently published extensive research on the residential market in Geneva, concluding: "The Geneva market is expected to plateau, but not decrease during 2009."

G-20 leaders agree to maintain pressure on tax havens

25 September, the G-20 summit in Pittsburgh announced its intention to maintain pressure on tax havens but failed, as anticipated, to announce countermeasures. Instead, having agreed at its last summit in April in London to "name and shame" offenders, the summit called for a system of review to ensure that countries abide by the OECD rules.

"Our commitment to fight non-cooperative jurisdictions (NCJs) has produced impressive results," said the group's communiqué. "We are committed to maintain the momentum in dealing with tax havens, money laundering, proceeds of corruption, terrorist financing, and prudential standards. We welcome the expansion of the OECD's Global Forum on Transparency and Exchange of Information, including the participation of developing countries, and welcome the agreement to deliver an effective programme of peer review."

The main focus of the Forum's work will be to improve tax transparency and exchange of information. "We stand ready to use countermeasures against tax havens from March 2010. We welcome the progress made by the Financial Action Task Force (FATF) in the fight against money laundering and terrorist financing and call upon the FATF to issue a public list of high-risk jurisdictions by February 2010. We call on the Financial Stability Board to report progress to address NCJs with regards to international cooperation and information exchange in November 2009 and to initiate a peer review process by February 2010," it said.

Prior to the Pittsburgh G-20 meeting, the OECD's Global Forum – which now numbers almost 90 jurisdictions around the world and a host of international organisations – met in Mexico on 1 September to decide next steps in its campaign to improve transparency and exchange of banking, ownership and other information for tax purposes. The Forum took the following key decisions to:

- put in place a robust, comprehensive and global monitoring and peer review process to ensure that members implement their commitments; a Peer Review Group has been established to examine the legal and administrative framework in each jurisdiction and practical implementation of these standards. A first report on monitoring progress will be issued by end 2009;

- further expand its membership and to enshrine the principle that all members enjoy equal footing;

- speed up the process of negotiating and concluding information exchange agreements including exploring new multilateral avenues.

- put in place a coordinated technical assistance programme to assist smaller jurisdictions to implement the standards rapidly.

OECD Secretary-General Angel Gurría reported to the G-20 that there had been unprecedented action to implement the OECD standards of transparency and exchange of information in tax matters since the G-20 summit in London in April, with over 90 tax information exchange agreements signed and over 60 tax treaties negotiated or renegotiated to incorporate the standards. All major on and offshore centres, he said, had now endorsed the standards and those that had impediments to implementing them were in the process of removing them.

> "We stand ready to use countermeasures against tax havens from March 2010."

"But the work is far from finished," said Gurría. "There are still some jurisdictions that committed long ago to implement the standards but have not delivered. We must also ensure that an effective network of agreements is in place to deter, detect and pursue tax evaders."

The OECD's priority for the next six months, he said, would be to advance quickly on the peer reviews and the monitoring of agreements. This was to begin on 14 October when the new Peer Review Group would have its first meeting. First results would be available early in 2010. Work on countermeasures would continue and in January 2010 the OECD will host a meeting between tax and aid officials to identify the ways that developing countries can benefit from the more transparent environment, including the use of multilateral instruments. Status reports in each of these areas would be made available to G-20 Finance Ministers when they meet in St Andrews, Scotland, this November.

The OECD announced on 24 September that Switzerland would be removed from its list of uncooperative tax havens when the Swiss government signed a tax information exchange agreement with Qatar.

"This will mark the twelfth agreement conforming to the OECD standard and will mean that Switzerland joins the category of jurisdictions that have substantially implemented the internationally agreed tax standard," it said.

Since the OECD unveiled its 'grey list' of jurisdictions that have not substantially implemented its standards on tax cooperation, 11 territories have been removed from the list after they implemented new rules allowing for greater transparency in their banking systems. The other ten were named as Austria, Belgium, Bermuda, the British Virgin Islands, Bahrain, the Cayman Islands, Luxembourg, Monaco, Netherlands Antilles and San Marino.

The G-20 communiqué also said rules had also been agreed at the summit for banks to be required to set aside much larger capital reserves by 2012 to minimise the need for future bailouts, but it would be left to individual national regulators to set their own capital requirements. It further agreed to restrictions on bankers' pay to discourage excessive risk-taking of the type that many regard as a primary cause of the financial crisis, but stopped short of French and German ambitions to impose a cap on bonus payments. Banks will be required to retain a larger part of their profits, to link pay more clearly to long-term performance, to conduct annual independent pay reviews and to provide greater transparency.

The meeting confirmed that the G-20 would become the permanent forum for international economic co-operation, with the G-8 continuing to meet on matters of common importance, such as national security. The G-20 will next meet in Canada in June 2010 and then in Korea in November 2010, meeting annually thereafter, starting in France in 2011.

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Contact

ABU DHABI
John Hanafin
Tel: +971 2 495 2786
ad@SovereignGroup.com

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

BRITISH VIRGIN ISLANDS
Rudsel Lucas
Tel: +1 284 495 3232
bvi@SovereignGroup.com

CHINA
Sunny Liew
Tel: +8621 6103 7089
china@SovereignGroup.com

CYPRUS
Richard Melton
Tel: +357 25 733 440
cy@SovereignGroup.com

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

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

GIBRALTAR
Ian Le Breton
Tel: +350 200 76173
gib@SovereignGroup.com

RegisterAYacht.com
Gabriel González
Tel: +350 200 51870
ray@SovereignGroup.com

Sovereign Accounting Services
Valery Filiaev
Tel: +350 200 48669
sasgib@SovereignGroup.com

Sovereign Asset Management
Richard Foster
Tel: +350 200 41054
sam@SovereignGroup.com

Sovereign Insurance Services
Steve Armstrong
Tel: +350 200 44609
sis@SovereignGroup.com

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

Sovereign Accounting Services
Tel: +852 2868 1287
sashk@SovereignGroup.com

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

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

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

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

NETHERLANDS ANTILLES
Rudsel Lucas
Tel: +599 9 465 2698
na@SovereignGroup.com

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

SEYCHELLES
Neil Puresh
Tel: +248 321 000
sc@SovereignGroup.com

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

SOUTH AFRICA
Tim Mertens
Tel: +27 21 683 1045
sact@SovereignGroup.com

SWITZERLAND
Dr Norbert Buchbinder
Tel: +41 (0)21 971 1485
ch@SovereignGroup.com

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

UNITED KINGDOM
Simon Denton
Tel: +44 (0)20 7389 0644
uk@SovereignGroup.com

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

SovereignGroup.com

Editor Christopher Owen
Design Alan Pitchforth
Publisher Kamilian Limited
enquiries@kamilian.com
www.kamilian.com
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