Sovereign

37 report

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contents

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

Kung Hei Fat Choi

Among Cantonese speakers that means Happy New Year. The Chinese New Year started on 3 February and this is a Year of the Rabbit. People born in this year are supposed to be articulate, talented and ambitious, have excellent taste and are financially lucky. They seldom lose their temper and are good at business and never back out of a contract. They seldom gamble – but would be good at it if they did. So there you have it. I hope the coming year will be prosperous.

Cape Town office expands and moves

The Sovereign office has expanded with the appointment of South African-qualified lawyer Bronwyn Simpson as Legal Consultant and has moved to new premises in the Central Business District of Cape Town. Coreen Hayman has been promoted to managing director, with Tim Mertens becoming chairman. The new address is on the back page. We also hope that our new office in Johannesburg, headed by Noelle McKean, will be completed in March so that we can move in. We will keep you updated in the next edition.

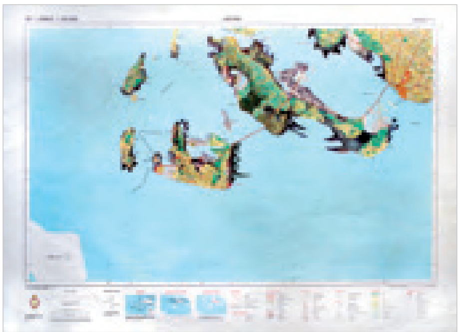
Sovereign approved as trustee in Monaco

Sovereign Trust International Ltd (STIL), our Gibraltar-licensed trust company, has been approved and registered as a foreign trustee in Monaco under Law 214, which enables STIL to act as trustee of foreign trusts established by foreign residents of Monaco. STIL has appointed a local representative in Monaco and is now able to offer trustee services to residents, particularly those from common law countries. Please contact Simon Denton in our London office (details on the contact page 14) for further information.

The Sovereign Art Foundation

Sri Lankan artist Pala Pothupitiye was declared the winner of the 2010 Sovereign Asian Art Prize for his work *Jaffna Map* (pictured below). The US$25,000 award was announced at the gala dinner held at the Four Seasons in Hong Kong on 16 March, kindly sponsored by bank Julius Baer, at which the works of the remaining 29 finalists were auctioned off. Sales totalled over US$300,000, with half of the proceeds going to the artists and the other half being donated to arts charities supported by The Sovereign Art Foundation. The winner of the US$1,000 Schoeni Prize, determined by a public vote, was Anton Del Castillo, for *Toy Soldier.*

chairman



Jaffna Map. Pala Pothupitiye.
1st Prize Winner, The 2010 Sovereign Asian Art Prize.

In addition to the exhibition in Hong Kong in February, the work of the 30 Asian finalists was also displayed in Singapore last November, alongside 20 additional works from local artists. A gala dinner at the Marina Bay Sands Hotel in Singapore raised some US$140,000 for Art Outreach, which runs an art education programme for children.

This year's entries were particularly strong. Those of you who bid successfully, either online or at the dinner, have not only acquired a work of art but have helped us to help some of the poorest and most disadvantaged children in the world. Over the years we have been particularly successful at featuring artists whose reputation – and prices – have grown quickly, so it's better than leaving your cash in the bank on zero interest!

Our European Art Prize is moving to Istanbul this September, where the exhibition of the 30 finalists will be a part of the Istanbul Biennale. We are also pleased to announce the launch of a new African Art Prize, which will feature 30 of the best artists from the continent. The finalists' exhibition will take place during the Johannesburg Art Fair in September.

Exchange of Information

As regular readers will know, an ever-increasing number of national and international initiatives are eradicating bank confidentiality and increasing tax transparency. And if there isn't a legal way to get the information, revenue departments also now seem happy to purchase stolen data. No one should assume that their affairs will remain confidential and everyone should plan accordingly. There are always legitimate ways to mitigate tax and we strongly recommend all clients to review their structures to ensure that they are fully compliant. Failure to report as required is tax evasion, which is a criminal offence, but intelligent tax planning can still be highly effective and totally legal. If you have any doubts about your structure then contact us and we will be happy to assist.

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

EU strengthens rules for tax information exchange

Tthe EU's Economic and Financial Affairs Council (Ecofin) agreed, on 7 December 2010, to amend the 1977 European Directive on Administrative Co-operation in tax affairs to set the basis for stronger cooperation and greater information exchange between tax authorities in the EU.

The Directive on Administrative Co-operation in the field of taxation provides rules for cooperation between Member States when it comes to assessing taxes and sets up common mechanisms and rules of procedure for the exchange of information.

One of the key aspects of amendment is that Member States can no longer use bank secrecy as a reason for refusing cross-border cooperation with another Member State in the assessment of taxes. A member state trying to assess the tax liability of one of its residents will therefore be able to request all relevant information held by any other EU country.

The amended Directive will be more stringent than the OECD model – now included in most bilateral tax treaties – which requires a request to identify the suspected individual's bank. A tax authority requesting co-operation under the EU Directive need only give the individual's name and the reason for the request. It need not identify the financial institutions that the individual is suspected of dealing with.

Algirdas Semeta, EU Commissioner for Taxation, said: "In the current economic climate, when public budgets are under such pressure, we need to work together as a Union and ensure that each Member State can collect the revenue that it is due. That is what today's agreement is about. It sends a strong signal to the world that the EU is serious about the fight against tax fraud and evasion, and that we will continue to insist on good governance, both at home and internationally."

Ecofin also agreed to amend the Directive to cover taxes of all types except those, such as VAT and excise duties, already covered under specific EU legislation. It will require tax information requests to be answered within a fixed time limit.

At the same meeting Ecofin agreed a staged move to automatic exchange of tax information. It will start in 2015 with partial automatic exchange and will be reviewed two years later.

Sovereign Comment

The Semeta proposals are not altogether surprising although it will be interesting to see how the EU manages to develop these ideas into workable practices. These are important developments given the raft of new tax information agreements that have been signed in last couple of years. Of course the ongoing financial crisis will incentivise European governments even more as they seek to maximise their tax revenues from every possible source.

37 europe

Valentino named in tax inquiry

The fashion designer Valentino Garavani appears on a list of some 700 Italian account holders, reported in Italian newspapers on 12 January 2011, who allegedly held secret offshore bank accounts and are now under investigation.

The named individuals, who had given their tax residency in the Lazio region around Rome, were accused of incomplete tax returns running into hundreds of millions of euros. They include several Italian fashion and film celebrities, such as the designers Valentino and Renato Balestra, jeweller Gianni Bulgari and the late filmmaker Sergio Leone, as well as business figures. The majority are wealthy, lesser-known individuals.

Italian tax police have been examining the so-called "Falciani List" to ascertain whether the Italians illegally held accounts with the Swiss branch of the HSBC bank and could therefore be guilty of tax evasion. The information, dating back to 2005 and 2006, was originally obtained by Herve Falciani, an IT specialist who no longer works at the bank.

The 6,936 accounts on the full list belonged to 5,728 Italian taxpayers of whom only 133 were registered companies or associations, the rest being private individuals. Italian investigators said that the sum held by Italians in the accounts totalled 5.3 billion euro and that 132 of the accounts held sums of more than 10 million euro. An amnesty law that ran out last year allowed Italians with foreign accounts to repatriate their money by paying a fine.

UK offshore drive now expected to raise £10 billion

UK Treasury officials said, on 12 November 2010, the government initiative on tax evasion in offshore financial centres was expected to raise £10 billion in this parliament, far more than previously forecast. The revised estimate follows negotiations between national governments and the British tax authorities.

The Treasury had only budgeted to raise £1 billion across the parliament, mainly from an agreement with Liechtenstein but was now expecting to raise £2 billion to £3 billion from bank accounts in the principality alone from taxing accounts and demanding back payments of unpaid tax. A further £3 billion was expected to be raised from Swiss bank accounts after an agreement was signed with Swiss tax authorities on 26 October.

The Treasury said three further tax havens had also asked to open negotiations on information disclosure. Officials declined to identify the three countries amid concerns money might be shifted out before any agreements can be signed. Each of the havens, one of which is in the Caribbean, was expected to raise a further £1 billion.

A Treasury official said: "These agreements, by allowing us to get information from tax havens, means British tax authorities are gaining complete access to details of bank accounts. We are discovering much more than we had assumed we would."

Sovereign Comment

No doubt there were political motives behind this announcement but it appears that the revenue to be raised from these agreements will turn out to be far higher than originally forecast. Good news for the Treasury no doubt but the pressure on the offshore centres is likely to remain intense as a result. Sovereign has always subscribed to the view that simply hiding money abroad and relying on non-declaration is not tax planning and is illegal. It is also unnecessary as there are other, compliant, ways to structure one's affairs to mitigate the tax burden. Contact your local Sovereign office to see how we might be able to help.

UK Budget accelerates corporation tax rate cut schedule

The UK coalition government, presenting its second Budget on 23 March 2011, announced plans to reduce the main rate of corporation tax from 28% to 26% from 1 April 2011 and to 25% from 1 April 2012. There will be further 1% reductions in the main corporation tax rate in each of the next two years to bring the rate down to 23% by 1 April 2014.

Effective dates for the interim improvements to the current controlled foreign companies (CFC) regime and the new foreign branch exemption, originally published in December 2010, were confirmed; the CFC changes will apply for accounting periods beginning on or after 1 January 2011 and the opt-in exemption for foreign branches will be available for accounting periods beginning on or after the Finance Bill 2011 receives Royal Assent.

It was also confirmed that the previously announced proposals for new CFC and patent box regimes are continuing to the expected timetable, with documents for consultation in May and draft legislation in autumn 2011.

A few small changes were announced to both the interim CFC improvements and the new CFC rules. These included an extension to the period of grace exemption to apply to groups that have previously been UK headed and a more generous partial finance company exemption from 2012, resulting in an effective UK tax rate of 5.75% on overseas financing profits, as opposed to the 8-9% previously proposed.

For personal taxation, Chancellor George Osborne confirmed that the 50% income tax rate band was only considered to be a temporary measure and has asked HMRC to quantify the amount of tax raised when the first tax returns are filed in January 2012.

For non-domiciled individuals the existing £30,000 annual remittance basis charge that applies to those who have been UK resident for at least seven years is to be increased to £50,000 after 12 or more years.

The government also announced that it intends to remove the tax charge when non-domiciled individuals remit foreign income or capital gains to the UK for the purpose of commercial investment in UK businesses. A consultation document will be published in June with the changes to take effect from April 2012. The government also said it would consult on the introduction of a statutory definition of residence.

The government confirmed that it intends to consult on further measures to tackle tax avoidance. These include:

- regulations listing specific avoidance schemes and ensuring users do not benefit from a cash flow advantage from retaining the tax due through an additional charge for late payment of tax;
- reviewing the legislation on reliefs for income tax losses that can be set against other income in the same or previous years to ensure it is effectively targeted at those intended to benefit and reduce its use for tax avoidance;
- introducing an anti-avoidance measure to prevent the benefit of double tax treaties being given where arrangements have been made in relation to the claim to avoid UK tax.

UK Crown Dependencies sign TIEAs with China

The UK Crown Dependencies – the Isle of Man, Guernsey and Jersey – signed, on 26-29 October 2010, tax information exchange agreements (TIEAs) with China during visits by Xiao Jie, the Commissioner of the State Administration of Taxation of the People's Republic of China, to each jurisdiction.

Anne Craine, Isle of Man Treasury Minister, said: "The announcement last week that the Isle of Man is now an approved jurisdiction for the purposes of listing companies on the Hong Kong Stock Exchange, the fact that Chinese businesses regularly use Manx companies for raising capital on the London AIM and research showing that the Isle of Man could increase the profitability of Chinese exporters to the UK and Europe, all indicate that economic ties between our countries will grow."

Guernsey Chief Minister Lyndon Trott said: "Guernsey and China see the signing of the TIEA as another, but very significant, step on a journey strengthening the economic links between China and Guernsey."

Jersey Chief Minister Terry Le Sueur said: "Through the financial services that we offer, Jersey can be a valuable facilitator for China's growing engagement in international investment."

The new TIEAs are the seventeenth signed by Jersey and the Isle of Man, and the nineteenth by Guernsey. They will come into force once the governments have completed their respective domestic procedures for ratification.

Sovereign Comment

Readers will be aware how critical China is to the world community as Europe and the US continue their long haul back from the economic crisis. It is good to see that the Channel Islands and Isle of Man have entered into these agreements as the Crown Dependencies deepen their ties with China. Sovereign's Guernsey MD, Rob Shipman, commented that he was keen to exploit the potential. By working with colleagues in Sovereign's Hong Kong and Shanghai offices, the Group is able to advise European clients who are looking to build their business links in China, and of course vice-versa.

Jersey raises 1(1)(k) residents' minimum contribution

The Jersey government announced, on 7 December 2010, that it was to increase the minimum contribution under the 1(1)(k) housing licence, which enables wealthy people to move to the island, from £100,000 to £125,000, with immediate effect.

In his opening Budget statement to the States of Jersey, Treasury Minister Philip Ozouf said: "We need a simple and competitive tax regime that encourages high net worth individuals to bring their investment and businesses to Jersey."

The minister said that he was aiming to propose changing the amount high value residents are taxed in addition to the £125,000. Senator Ozouf said: "I plan to propose that all future high value residents will be taxed on their worldwide income at 20% on the first £625,000 and 1% thereafter."

Currently 1(1)k residents pay 20% on the first £1 million of worldwide income, 10% on the next £500,000 and 1% on all other income. The standard rate of income tax in Jersey is 20%. There are presently around 130 such residents living in Jersey under the 1(1)(k) regime who contribute around £13.5 million per year to the States' finances.

Sovereign Comment

As higher taxes raised by austerity budgets particularly in Europe begin to take effect, it is interesting to see Jersey making these changes. There are a number of alternatives in Europe whereby residency may be taken up primarily for tax reasons. Particularly attractive options exist currently in Gibraltar and Malta. Contact your local Sovereign office for more information.

Uruguay approves changes to bank secrecy regime

The Uruguayan parliament approved, on 15 December 2010, a bill to add new grounds for lifting bank secrecy and to amend the source rules for the individual income tax (IRPF) regime. The new law came into force on 1 January 2011.

As of 2007, bank secrecy could be lifted for tax purposes only if the tax authorities applied to the courts to attach the taxpayer's bank accounts without the need to identify them specifically, or in the context of criminal proceedings for tax fraud.

The new law incorporates two new grounds for lifting bank secrecy at the tax authority's request – if necessary to verify the veracity and completeness of a taxpayer's tax declarations, or if within the framework of tax information exchange agreements (TIEAs).

Bank secrecy can therefore be lifted at the request of foreign tax authorities, but only for countries with which Uruguay has signed a TIEA. The new grounds for lifting bank secrecy will apply only to transactions performed on or after 1 January 2011.

In 2009 Uruguay was included by the OECD on its blacklist of jurisdictions that had not "committed to the internationally agreed tax standards". Then-Finance Minister Alvaro Garcia sent a letter to OECD Secretary General Angel Gurria pledging to adopt OECD standards on transparency and exchange of tax information.

Last August the OECD upgraded Uruguay to its so-called "grey list" of countries that "have committed to implement the internationally agreed tax standards, but have not yet substantially implemented" them. Uruguayan banks had $18 billion in deposits in September, about 17% of which is held by foreigners, according to a report by the central bank on 15 October.

The individual income tax (IRPF) regime is also amended. Individuals residing in Uruguay will pay IRPF at a rate of 12% on income from deposits, loans and placements of capital or credit with entities abroad. Residents are persons who remain in national territory for more than 183 days during the calendar year or whose principal base of activities or interests is in Uruguay. Uruguayan companies will continue to pay taxes in Uruguay solely on Uruguayan-source income.

Sovereign Comment

Following similar moves in other jurisdictions in recent years, it is interesting to note that Uruguay is coming to terms with reality and working with the OECD to remove itself from the so-called "black list". Further progress in this direction is anticipated. Our Uruguay office has been established for many years and is well placed to assist clients with bank accounts located in the country or other issues relating to their Uruguayan companies. Contact details may be found on page 14 of this edition.

37 usa + caribbean

IRS announces new amnesty

Internal Revenue Service Commissioner Doug Shulman announced, on 8 February 2011, a new programme of reduced penalties for overseas tax evaders who make voluntary disclosures of undeclared assets.

Under the new programme, participants face a 25% penalty for the year with the highest balance, compared with the usual penalty of 50% for each year. Taxpayers whose accounts or assets total less than $75,000 in a calendar year may pay a lower penalty of 12.5%. The closing date is 31 August.

It follows a 2009 amnesty programme, carrying a 20% penalty, which attracted 15,000 taxpayers with hidden accounts with an additional 3,000 coming forward subsequently. Fewer than 100 people make voluntary disclosure in a typical year, in part because the penalties can far exceed the value of the hidden account.

Last year's offer was made as the IRS stepped up efforts to go after US taxpayers hiding money overseas, particularly through Swiss bank UBS. The new programme could help the US government gather more information into other international banks that have been suspected of helping US Taxpayers evade the IRS.

"It gives people a chance to come in before we find them," Shulman said. He admitted that a "number of other banks" were under investigation, with some cases at "quite advanced" stages, but declined to name the banks.

Netherlands Antilles completes constitutional reform

The Netherlands Antilles and the Netherlands signed, on 10 September 2010, a final declaration completing the process of constitutional reform in the Antilles. The signing took place at a concluding round table conference held in the Ridderzaal in The Hague.

These agreements entered into force on 10 October when Curacao and St Maarten, previously part of the Netherlands Antilles, became autonomous countries within the Kingdom of the Netherlands with statuses comparable to that of Aruba and, previously, the Netherlands Antilles.

They will have their own governments and parliaments and are responsible for most of their internal affairs, including taxes, with some exceptions such as foreign affairs and defence. For the time being, both St. Maarten and Curacao have effectively adopted the previous legal systems, including tax, of the Netherlands Antilles.

Bonaire, St Eustatius and Saba (BES) became special municipalities of the Netherlands. They will also remain part of the Kingdom of the Netherlands but will become integrated in the Netherlands as a public body, comparable with – but not identical to – a Dutch municipality.

The BES islands are not part of the European Union and will have a legal system, including a tax system, of their own. The Dutch government has devised a new tax system to replace the previous Netherlands Antilles tax system on 1 January 2011.

"The conclusion of this last round table conference marks a historic moment in the constitutional history of the Kingdom of the Netherlands," said Jan Peter Balkenende, the Dutch Prime Minister.

Sovereign Comment

It is not often that countries change their name but the "Netherlands Antilles" has been consigned to history. The day when these new countries and municipalities were born was celebrated as "10.10.10". Local Sovereign representative Rudsel Lucas said "it is a very exciting time and there is much optimism for the future. Now it is important for Curacao to exploit the opportunities for the benefit of the local population and the regional economy".

Indian Supreme Court rebukes government

Former Union Law Minister Ram Jethmalani petitioned India's Supreme Court, on 19 January 2011, to recover so-called "black money" – untaxed funds concealed by wealthy individuals – from European banks. Jethmalani is demanding that the government hand over relevant correspondence with the German authorities, with the Swiss bank UBS and the Liechtenstein bank LGT.

37 middle east, africa + asia

But the Indian federal government has refused to cooperate and has withheld the suspects' names on grounds of privilege. It filed a court affidavit declining to divulge details of funds alleged by Jethmalani to have been deposited at LGT by 26 Indian individuals.

Jethmalani's counsel accused the government of "indulging in a cover-up operation". The Supreme Court bench also admonished the government for its refusal to reveal the names. It described the unlawful movement of funds offshore as "looting of national money".

India's prime minister, Manmohan Singh, replied that there was no instant solution to the problem and that his government was bound to secrecy by its treaty obligations with the German government. The Solicitor-General told the court that the Indian tax authority was already taking recovery action under the Double Taxation Avoidance Act.

A Swiss parliamentary committee has approved the tax information exchange agreement negotiated between India and Switzerland. The treaty now goes to the full Swiss parliament for approval.

India's Income Tax Department will soon open overseas units in eight countries to permit it to liaise more closely with local tax authorities and better coordinate the exchange of tax information under India's income tax treaties. The units will be established in Cyprus, France, Germany, Japan, the Netherlands, the United Arab Emirates, the UK and the US. The department opened overseas units in Mauritius and Singapore in May last year.

Mukherjee also said, on 25 January, that the government has set up a panel to examine if an amnesty scheme should be unveiled to tackle black money. He detailed a five-pronged strategy that consisted of joining the global crusade against black money, creating a legislative framework, setting up institutions dealing with illicit funds, developing systems to implement and impart skills to manpower for effective action.

When asked if the government was considering an amnesty scheme, Mukherjee said, "Amnesty schemes have a double side. Sometimes when it is announced, it is highly criticized that it is at the cost of honest tax-payers, and sometimes, it helps to bring in some money. That's why I have appointed a group to look into it and to make suggestions and recommendations to me."

QFC Authority tax regime comes into effect

The Qatar Financial Centre Authority announced, on 6 October 2010, that the new tax regime and regulations for the Qatar Financial Centre (QFC) had been enacted. The tax regime was originally announced in 2006 and replaces the temporary tax holiday that expired on 31 December 2009.

Under the new regime, with effect from 1 January 2010, all QFC registered companies are subject to 10% corporation tax to be charged on locally sourced profits. Companies outside the QFC pay a 2.5% social contribution in addition to corporate tax, which is applied to social, cultural and sports promotion. Companies outside the QFC are also limited to 49% foreign ownership, while there is no such limitation for QFC companies.

Ian Anderson, QFC Authority Director of Finance and Tax, said: “We believe the 10% rate is competitive with other onshore financial centres and this makes Qatar and the QFC specifically a very attractive location for local, regional and global organisations. The new regulations will ensure QFC inclusion within any tax treaties the government of Qatar might negotiate with other countries, which is a critical factor for the success of an international financial centre.”

He said the regime has been designed as part of the QFC’s plan to provide an attractive environment for financial services firms to invest in Qatar, providing clarity of law and transparency of administration, while ensuring that firms contribute to the tax income of the State of Qatar. He also said that the new regime would support QFC’s three-hub strategy announced in February by providing additional incentives for asset management, reinsurance and insurance captive companies.

Sovereign Comment

This story is yet another illustration of how important Qatar is to the Middle East and indeed the wider region. It will be interesting to follow the development of the QFC particularly as it competes with other regional jurisdictions such as the UAE. Our UAE based staff are regular visitors to Qatar; contact them for up to date information on this ever more influential middle eastern emirate – although we cannot promise to secure tickets for the World Cup 2022!

Hong Kong to reform trust and bank laws

Hong Kong Financial Services Minister Professor K C Chan set out, in a speech to STEP's Asia Conference on 9 November 2010, the Special Administrative Region's policy on taxation and trust law reform. He said the need for change was urgent as the world's financial centre of gravity shifted to the East.

A new trust law replacing the "many outdated provisions" of the 1934 Trust Law was central to the reform. Professional trustees are to be given powers to delegate, to employ agents, nominees and custodians; and to take out insurance. They will also have a statutory duty of care, while a statutory charging clause will be introduced so that trustees will be entitled to remuneration. The rules against perpetuities and excessive accumulation of income will be abolished.

The proposals will be enacted through an Amendment Bill to be introduced into the Legislative Council in 2011.

Chan also defended Hong Kong's reform of banking secrecy law through the Inland Revenue (Amendment) Ordinance 2010. This, he said, had enabled the SAR to sign tax information exchange treaties with other countries. Since the legislation was enacted, several tax agreements had also been negotiated which include provisions to reduce withholding taxes. "Hong Kong's position as an international financial centre has been significantly enhanced," said Chan.

OECD addresses progress on fighting tax evasion at G-20

OECD Deputy Secretary-General and Chief Economist Pier Carlo Padoan presented, on 12 November 2010, a report on the progress made by the OECD against international tax evasion to the G-20 Summit meeting in Seoul.

Padoan said that more than 500 tax information exchange agreements had been signed and more than 40 peer reviews had been initiated of which eight had been completed. He commended India which had volunteered to be one of the first jurisdictions to be reviewed and was considered as meeting all the requirements to achieve effective exchange of information.

The reviews of Bermuda, Cayman, Jamaica, Monaco and Qatar identified a number of deficiencies that require action. Deficiencies identified in Botswana and Panama were considered sufficiently serious to stop them from moving onto the next phase of the review. The OECD was working with these jurisdictions to address these problems. It also aimed to have 70 further reviews ready by the 2011 Summit.

Membership of the Global Forum on Transparency and Exchange of Information for Tax Purposes had grown to 95 jurisdictions and much of its work had been undertaken in the broader context of the OECD's work to improve tax compliance. This had included: adoption by the OECD's Forum on Tax Administration of a framework for a voluntary code of conduct for banks to improve compliance; updating the multilateral convention on administrative assistance in tax matters; and issuing guidance on the design of voluntary compliance initiatives.

By increasing tax transparency, these initiatives, said Padoan, had already helped countries to increase their revenues through one-off gains. By OECD estimates Germany had already collected 4 billion euro from offshore evaders, while the UK had collected an extra £600 million and expected this figure to increase to at least £7 billion. France had collected an extra 1 billion euro; Italy 5 billion euro and Greece estimated it could collect an extra 30 billion euro in revenues. Argentina, Brazil, China, India, Russia and South Africa were also using these initiatives and would see significant increases in revenues from tax evaders that have decided to "come clean".

Equally important, said Padoan, were the long-term impacts on revenue. Once wealth held in tax havens or bank secrecy jurisdictions was declared, it remained in the tax net and yielded an ongoing revenue flow.

"Let me conclude by saying that our work is not limited to improving tax compliance. We are also focusing on how to redesign tax systems to "enhance productivity" by removing distortions and improving incentives to work, save, invest and innovate," said Padoan.

37 fiscal

Malaysia introduces Islamic finance tax incentives

Malaysian Finance Minister and Prime Minister Mohamed Najib bin Abdul Razak introduced, on 15 October 2010, new tax incentives as part of the 2011 Budget that are designed to establish Malaysia as a leading Islamic financial centre.

Malaysia launched the world's first sharia-compliant commodity trading platform, known as Bursa Suq al-Sila, in August 2009. The platform facilitates commodity or asset-based Islamic financing and investment transactions that follow sharia principles. To promote Bursa transactions, expenses incurred in the issuance of Islamic securities under certain principles will be eligible for an income tax deduction. The issuance of sukuk bonds must be approved by either the Securities Commission or the Labuan Financial Services Authority. The effective period for this incentive is from year of assessment 2011 until year of assessment 2015.

Malaysia has also introduced a double deduction for takaful-based export credit insurance premiums. The term takaful refers to a form of life and general Islamic insurance. In Malaysia, takaful operations are licensed by the Takaful Act 1984. The incentive for the takaful-based export credit insurance premium is not restricted to a specific tax period and is granted with effect from year of assessment 2011 to encourage the export of Malaysian goods overseas.

Such an incentive has been in place since 1986 but was previously restricted to payment of insurance premiums based on conventional concepts. The new incentive therefore provides equal tax treatment for Islamic insurance concepts.

UK and Germany opens tax deal talks with Switzerland

The UK and Switzerland signed, on 26 October 2010, a declaration to begin negotiations on tax issues as a step towards making UK taxpayers with Swiss bank accounts pay tax on the interest they earn. The goal will be to achieve regularisation of previously undeclared assets as well as a final withholding tax for future income.

Treasury sources said negotiations were in the early stages and no details of tax rates had been agreed. Formal negotiations, which were expected to start this year, will cover the possibility of implementing a withholding tax, which would see Swiss authorities levying a tax on interest earned in their accounts on behalf of HM Revenue & Customs.

It is understood that the UK will push for this to be a retrospective tax. It will also seek that the Swiss authorities provide more information on accounts held by UK taxpayers. "This is a sensible and pragmatic approach by the chancellor to ensure we get money in that would otherwise not be collected," said a Treasury spokesman.

The Swiss government, however, said in a statement that any agreement on information sharing would apply only from the date of the agreement and could not be enforced retroactively. At present, Switzerland will only provide details of interest earned by UK nationals on Swiss bank accounts if the UK tax authorities first send the Swiss complete details of the relevant accounts.

Two days after signing the declaration with the UK, Switzerland signed a similar agreement with Germany to open negotiations concerning tax issues. "Switzerland and Germany are confident that the negotiations will lead to a fair and lasting solution in the interests of both states," the Swiss and German finance ministries said in a statement.

The agreement was struck as the two countries formally signed a revised tax treaty, paving the way for the broader talks. The new tax treaty is one of a series of bilateral deals that Switzerland has been signing to comply with tougher international standards on exchange of information in tax cases. The Swiss Federal Council has appointed Michael Ambühl, head of the State Secretariat for International Financial Matters (SIF), as lead negotiator. It is understood that France and Italy are also likely to seek to negotiate similar tax deals with Switzerland.

Protocol to Russia-Cyprus tax treaty signed

Cyprus and Russia signed, on 7 October 2010, a protocol to the existing 1998 tax treaty between the two countries. Most of the changes were agreed in April 2009, but it was not until 27 September that the protocol was finalised and approved, after minor changes were made during a visit of the Cypriot Minister of Finance to Moscow. The protocol was not ratified before the end of 2010 so the earliest it can now enter into force is 1 January 2011.

The main changes include updating the provisions of the Exchange of Information and Assistance in Collection of Taxes articles in line with the latest versions in the OECD Model Tax Treaty. As a result Cyprus expects to be removed from Russia's tax haven "black list", enabling Russian companies to benefit from Russia's participation exemption on dividends received from Cypriot companies.

The black list was introduced in 2007 in conjunction with Russia's participation exemption. Under the participation exemption, dividends received by a Russian company from a foreign subsidiary are exempt from tax provided the Russian recipient holds at least 50% of the charter capital of the payer company for at least 365 calendar days and the subsidiary is not resident in a country included on the black list.

The protocol does not make any changes to the rates of withholding tax on dividends but the application of the 5% rate will require a direct investment of at least 100,000 euro in the capital of the company paying the dividends, instead of US$100,000 under the existing treaty. The 0% rates on interest and royalties provided for in the treaty have not been changed.

Dividends have been given a broader definition to include payments on shares of mutual investment funds or other similar collective investment vehicles and depository receipts for shares. A new Limitation on Benefits article has also been introduced to disallow benefits accruing to any company that is not registered in either the Russian Federation or Cyprus and that is deemed to have been created for the specific purpose of obtaining such benefits.

Sovereign Comment

The protocol was signed during Russian President Medvedev's state visit to Cyprus, once again highlighting the importance attached to bilateral ties between the two countries. "The agreements entered into should lead to an increased interest by Russians in the use of Cyprus companies benefitting from our status as a full member of the European Union." says local Sovereign MD, Richard Melton, who is a regular visitor to Moscow.

The inclusion of Cyprus on Russia's black list resulted in a temporary falloff in interest in Cyprus but historically the links between the financial communities have been very strong.

Hong Kong-UK tax treaty enters into force

The agreement for the avoidance of double taxation and the prevention of fiscal evasion between the Hong Kong Special Administrative Region (SAR) and the UK, which was signed on 21 June, entered into force upon ratification on 20 December 2010. It will have effect for any year of assessment beginning on or after 1 April 2011.

The treaty, which applies to taxes on income and capital gains, stipulates that dividends are generally exempt from withholding tax, except in the case of real estate investment trusts, for which dividends are taxable at a maximum rate of 15%. Interest payments are generally exempt if the conditions of article 11(3) of the treaty are met. Royalties are taxable at a rate not to exceed 3%.

The amending protocol to the 2006 Hong Kong-China tax treaty also entered into force on 20 December and applies from that date. The protocol, signed in Beijing in May, updates the exchange of information article to bring the arrangement into compliance with the OECD standard.

The Hong Kong government signed a double tax treaty with Switzerland in Hong Kong on 6 December 2010 that contains provisions on the exchange of information in accordance with the OECD standard and was negotiated in line with the parameters set by the Swiss Federal Council.

A withholding tax exemption was agreed for dividend payments to companies that hold a stake of at least 10% in the company making the payment, as well as for dividend payments to pension funds and the central bank. In the other cases, the withholding tax rate will be 10%. Interest will generally be exempt from withholding tax, and the limit for the tax the source state is entitled to levy on royalty payments will be 3%. The treaty was the eighteenth comprehensive double tax treaty signed by Hong Kong.

Sovereign Comment

This development shows the continued interest by both sides in maintaining the close relationship between Hong Kong and the UK, some 14 years after the handover to China. Hong Kong is not considered a "tax haven" and its growing list of tax treaties is indicative of the importance attached by the Chinese authorities to the continued financial development of the SAR. Contact our Hong Kong office for further details.

UK records decline in numbers of "non-doms"

HM Revenue & Customs reported, on 13 January 2011, that the number of UK "non-domiciled" residents had declined from 139,000 to 123,000 in the year following the launch of the £30,000 remittance basis charge in April 2008.

McGrigors, the law firm that secured the figures under a Freedom of Information request, said the 11.5% decline was the first for five years and was likely to have been repeated in 2010 as more long-term non-doms became liable to the change.

The UK coalition government has pledged a review to assess whether non-doms were making "a fair contribution to reducing the deficit" and a Treasury spokesman said last night that the review was "ongoing" and a further announcement would be made at the appropriate time.

About 5,400 people paid the £30,000 non-dom levy for the 2008/09 tax year, more than the 4,000 predicted by the Treasury prior to the tax's introduction. This collected around £162 million, with £350 million forecast for 2009/10. The Treasury has estimated that non-doms pay around £4 billion in income tax each year, on top of the tax they pay on capital gains on UK assets, stamp duty and value added tax on spending, which brings the estimated total to £7 billion.

Model wins landmark ruling in Isle of Man

The Isle of Man High Court found, on 6 December 2010, in favour of Australian model Elle Macpherson in a claim brought against her by the liquidators of Kaupthing Singer & Friedlander (KSF), the Isle of Man arm of the failed Icelandic bank's UK division.

Two years before Kaupthing's 2008 collapse, Macpherson had taken out a mortgage with KSF. In order to protect her privacy, she had set up an Isle of Man-registered "nominee" company in 2006 so she could buy the house in London while keeping her address confidential. She also put some of her personal cash into the bank.

In October 2008, the UK Treasury seized control of KSF in the UK after the Icelandic Financial Supervisory Authority took control of its Icelandic parent. When Macpherson decided to sell the house in September 2009, she sought to offset the amount she had personally deposited with KSF against the money her company still owed on the mortgage.

The bank's liquidators refused her request because the borrower was technically a company – albeit one owned by Macpherson – while the deposits were held in her personal capacity.

The Isle of Man High Court found in favour of Macpherson on the basis of English case law and a 300-year-old legal principle known as 'equitable set-off' that had not been used successfully in this way on behalf of a claimant since the 1870s.

Deemster Andrew Moran QC noted in his 53-page judgment: "In this case, for the first time anywhere in the world (I am told), where this form of Bankruptcy Set-Off provision exists, the facts have thrown up a novel situation and question."

The Deemster ruled that Macpherson and her company were "in-equity" one and the same. He held that "the parties who were throughout and in truth, notwithstanding the interposition of [the nominee company], the real and substantial parties to the transactions… were the Bank and Macpherson." PricewaterhouseCoopers, the administrators for KSF, said: "The liquidators are currently considering grounds for an appeal."

Sovereign Comment
This is a fascinating case and one that could be of importance in other jurisdictions. When establishing corporate structures for our clients, the importance of documenting accurately the relationship between the company and a "beneficial owner" cannot be overstated. Sovereign recommends that, whenever there are two or more owners, full documentation covering shareholdings, contracts and shareholders agreements should be prepared at the outset.

37 legal

Liechtenstein bank settles German tax evasion case

Liechtenstein's LGT Bank agreed, on 16 December 2010, to a 50 million euro settlement in a case brought by German authorities over the alleged role played by the bank in helping German taxpayers hide assets to avoid paying tax.

Bernd Bienoissek, prosecutor in the German city of Bochum, North Rhine-Westphalia, where the case was being heard, announced that with the settlement in place, the proceedings against LGT had been suspended and would be closed once payment was complete.

Payment of the settlement will be shared between the bank and its employees. LGT Bank, which is wholly owned by Liechtenstein's ruling royal family, is to pay 46 million euro and a group of 45 employees is to pay the remaining 3.6 million euro.

The case was triggered when German tax authorities bought stolen data from informants in Liechtenstein. The stolen data lead to a number of arrests in Germany, among them the high profile case of former Deutsche Post chief executive Klaus Zumwinkel.

German prosecutors are still investigating hundreds of taxpayers and the treasury has so far obtained 200 million euros in evaded taxes and penalty charges.

Last March, the German cabinet approved a tax agreement with Liechtenstein aimed at improving cooperation and information sharing.

Gibraltar confident of ECJ tax challenge

The Spanish government's challenge to Gibraltar's right to institute a more lenient tax regime than that in the UK was heard in the European Court of Justice's Grand Chamber in Luxembourg on 16 November 2010.

The "joined hearing" involved an appeal by the European Commission against a 2009 decision that found in favour of Gibraltar's tax system – specifically in respect of "State Aid principles of both regional selectivity and material selectivity". Gibraltar argued that the Commission's appeal, on the grounds of material selectivity, "no longer has any consequence" because "it relates to a tax scheme that Gibraltar has not pursued".

Spain's separate argument was that the 2009 decision concerning Gibraltar's tax structure was flawed because, since Gibraltar was "ceded by the King of Spain to the British Crown" in 1713, it had never ceased to be a part of Britain. But last year's judgment, was "tantamount to treating Gibraltar as a member state" on its own. This had entitled it to certain financial advantages that would not ordinarily be accorded to a "tax haven".

"The judgment under appeal, in holding that no comparison can be made between business activity in Gibraltar and that in the UK, is in breach of the principles of the OECD," Spain said in ECJ court documents.

The Gibraltar government said in a statement that although the consequences of defeat in the ECJ case would be severe, it was confident of success. The Court has heard initial submissions from the parties and a decision is not expected until the summer.

Gibraltar also announced that, from 2011, it was cancelling the special 1% rate currently enjoyed by e-gaming companies. Firms will be required to pay the standard corporate levy of 10%, which is itself the new lower rate being introduced on 1 January 2011. Online firms will, however, remain exempt from VAT.

Sovereign Comment
The Gibraltar government is confident of its position and that the Spanish claims will be dismissed. In the meantime, the new corporate tax regime is in place and our Gibraltar office has been delighted with the significant increase recently in enquiries. Contact Ian Le Breton for more details about the other advantages to be found when setting up in Gibraltar. Contact details are on page 14 of this edition.

Photo: © John Alexander 2011

> The judges agreed that in the right case a prenuptial agreement could have decisive or compelling weight.

in the press:

UK ruling flags change in divorce deals

A version of this article by Sovereign Group chairman Howard Bilton was first published in the South China Morning Post on 24 October 2010

Would having a prenup have helped the two Hong Kong men who have gone to the highest court over rulings that a parting couple's assets should be split evenly? Previously not – but a recent ruling in the UK could change that.

This week the UK Supreme Court confirmed the judgment of the Court of Appeal reducing the divorce settlement granted to Nicholas Granatino because of a prenuptial agreement. This has far reaching implications for divorce settlements in the UK and is likely to be followed by other common law courts.

On 20 October 2010, the UK Supreme Court ruled that Katrin Radmacher's prenuptial agreement with her former husband was binding. The court found in favour of the German heiress who had sought to protect her £106 million fortune in the eventuality of a marriage breakdown.

Radmacher and her French ex-husband, former investment banker Nicolas Granatino, had signed a prenuptial agreement before their wedding in London in 1998. The agreement stipulated that neither party would benefit financially if the marriage ended.

Granatino had given up his banking job to become a university researcher in 2003, the year the marriage began to deteriorate. When the couple divorced in 2006, Granatino claimed that at the time they married he had no idea of his wife's wealth and had not received proper legal advice, nor had the German prenuptial agreement been translated for him before he signed.

In 2008, a High Court judge awarded Granatino £5.85 million but, on appeal a year later, this was cut to a lump sum of £1 million in lieu of maintenance, plus a £2.5 million fund for a house that was to be returned to Radmacher when the youngest of the couple's two daughters reached the age of 22. Radmacher had earlier agreed to pay off his debts of £700,000. Granatino appealed.

Dismissing his appeal by a majority of eight to one – Lady Hale, the only woman on the panel of nine, dissented – Lord Phillips, said prenuptial agreements could have decisive or compelling weight if they passed three key tests: the agreement should be entered into voluntarily by both parties; both parties should have the benefit of independent legal advice; and both sides should make full financial disclosure.

They upheld the Radmacher agreement, despite the fact that it failed on two out of the three criteria. The Supreme Court did not say that prenups should be binding irrespective, but "it will be natural to infer that parties entering into agreements will intend that effect be given to them". The judges agreed that in the right case a prenuptial agreement could have decisive or compelling weight.

Based upon this decision, it now seems highly likely that wealthy persons will want to settle a prenuptial agreement before getting married. Many pundits have also commented that the decision enhances the UK as a place to live and get married (and get divorced). Previously wealthy persons might have avoided the UK because the courts routinely awarded huge settlements to estranged spouses under the equality of division principle.

While UK court decisions are not binding on the courts of Hong Kong, they are still considered highly persuasive. So from now on, we can expect to see Hong Kong courts following this practice and declaring properly prepared prenuptial agreements as being highly persuasive when it comes to divorce settlements in Hong Kong. In two cases being heard together in Hong Kong's Court of Final Appeal, it is being argued that equal division principle should not apply and the lower courts that awarded large settlements to the wives in both cases were wrong to follow UK principles.

Even assets held in trust are not safe because the courts have been following the tendency of the UK courts to treat trust assets as belonging to the settlor of that trust. Hong Kong courts have power within s6(1)(c) Matrimonial Proceedings and Property Ordinance (Cap 192)1to carve out a sub-trust for the benefit of the spouse.

Trusts can protect assets if the settlor does not and cannot benefit. It may also help if the stated purpose of the trust is to hand down assets to later generations. Certainly, if a trust is going to protect assets against a matrimonial claim, it must be properly set up and administered, and the settlor will need to show that they do not and cannot treat the assets as though they still belonged to them. Many trusts will fail this test.

Both these cases are ongoing and the results will not be known for some time but, if the husbands succeed, Hong Kong settlements will return to the days when spouses could only recover what they reasonably needed and not half of everything. Whatever the outcome, it seems as though a prenup can definitely help protect assets so wealthy individuals would be foolish not to have one. Your intended may not like it but, if they don't agree, you may suspect their motives. Probably the best approach is to put everything of substance into trust before marriage and have a prenup.

OECD Forum issues evaluation reports on new standards

The Global Forum on Transparency and Exchange of Information for Tax purposes, hosted by the OECD, released ten reports on 28 January 2011, which evaluate jurisdictions' commitment to tax transparency and examine whether information is made available and accessible to foreign tax authorities. These reports follow eight others released in September 2010 (see page 8). More than 60 reports will be completed by year-end.

"These ten reports continue our work to monitor the compliance of jurisdictions with international standards", said OECD Secretary-General Angel Gurría. "They also underline the importance of the review process the Global Forum has undertaken with the support of the OECD to ensure the advancement of transparency and exchange of information for tax purposes."

The Global Forum has been mandated by the G-20 to: assist specific jurisdictions, as well as the international community, to assess the status of national tax legislation; examine whether the laws are enforced; and make recommendations for improvement.

In the Phase 1 Reviews, which assessed the legal and regulatory framework, Guernsey was deemed to have a satisfactory legal framework but was asked to address minor issues. The four other jurisdictions – Barbados, the Seychelles, San Marino and Trinidad & Tobago – all fell short of the international standard and were required to implement the recommendations made in their reports before moving to the next phase of their evaluations. It was noted in the case of San Marino that important legislation had recently been passed and would further be examined by the Global Forum.

In the combined Phase 1 and Phase 2 Reviews, which also assess practical implementation, Mauritius was found to have missing elements in its legal framework such as accounting information on some of the offshore companies. The assessment of the practice in Mauritius also showed that there was room for improvement, in particular as regards the access to bank information by the tax authorities. The four other "combined" reviews showed that the systems in place in Australia, Denmark, Ireland and Norway had achieved effective exchange of information in practice. But there were some minor issues related to information on bearer shares or nominees, which would have to be addressed.

Phase 1 Reviews: Legal and Regulatory Framework.

Barbados: Some deficiencies were identified in Barbados bilateral treaties and Barbados had not yet signed new agreements with all jurisdictions wishing to do so. The implementation of recommendations made in the report to address these and other matters will be reviewed in the next 12 months, and only then Barbados will be considered for moving onto the next phase of the evaluation.

Guernsey: The review of Guernsey showed that its legal and regulatory framework was largely in place to ensure effective exchange of information, notably sound access powers and an expanding network of bilateral agreements. Improvements to some accounting rules should nevertheless be made. The evaluation of the practical implementation of this framework will take place in 2012.

> "These ten reports continue our work to monitor the compliance of jurisdictions with international standards."

San Marino: The peer review identified some deficiencies in the domestic laws of San Marino, notably including limitations in the authorities' powers to obtain information mainly on civil tax matters for the purpose of international cooperation. As a result it is not yet ready to move to the next stage of the evaluation. San Marino has in the recent months passed a number of laws with a view to overcome these shortcomings. Its position will therefore be reviewed.

Seychelles: The review of the Seychelles showed deficiencies as regards the availability of ownership and accounting information in respect of offshore entities. In addition, powers to access information should be strengthened. Amendments to its legal and regulatory system are necessary in order for the Seychelles to qualify for the next phase of the evaluation.

Trinidad & Tobago is party to a number of bilateral treaties and a multilateral convention. However, it is unable to exchange information to the international standard since all but one of these agreements has restrictions on access to information by Trinidad & Tobago's tax authorities. The implementation of the recommendations made in the report will be reviewed in the next 12 months, before Trinidad & Tobago is considered for the next phase of the evaluation.

Combined Phase 1 and 2 Reviews: Legal and Regulatory Framework and also the Implementation of that framework in practice.

Australia is exchanging information to the standard with almost 80 countries. Australia's legal and institutional framework supports effective access to and provision of information requested by competent authorities of other jurisdictions.

Denmark is exchanging information to the standard with almost 100 countries. Denmark's legal and institutional framework supports effective access to and provision of information requested by competent authorities of other jurisdictions.

Ireland is exchanging information to the standard with over 50 countries. Ireland's legal and institutional framework supports effective access to and provision of information requested by competent authorities of other jurisdictions.

Mauritius has revised its legal and regulatory framework to give its competent authority broad access to most relevant information. However accounting information was not available in all cases and powers to obtain some information are untested. A further analysis will be undertaken in six months to assess whether Mauritius exchanges this information effectively and in a timely manner.

Norway is exchanging information to the standard with more than 100 countries. Norway's legal and institutional framework supports effective access to and provision of information requested by competent authorities of other jurisdictions.

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Contact

ABU DHABI
Vik Pangam
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

CURACAO
Rudsel Lucas
Tel: +59 99 465 2698
cu@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 4 448 6010
dubai@SovereignGroup.com

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

RegisterAnAircraft.com
Brian T. Richards
Tel: +350 200 44620
rana@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

Quest Sovereign Insurance Services
Geoff Trew
Tel: +350 200 52908
sis@SovereignGroup.com

GUERNSEY
Rob Shipman
Tel: +44 (0)1481 729965
ci@SovereignGroup.com

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

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

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

MALTA
Thomas Jackson
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

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
Coreen Hayman
Tel: +27 21 418 2170
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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37

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