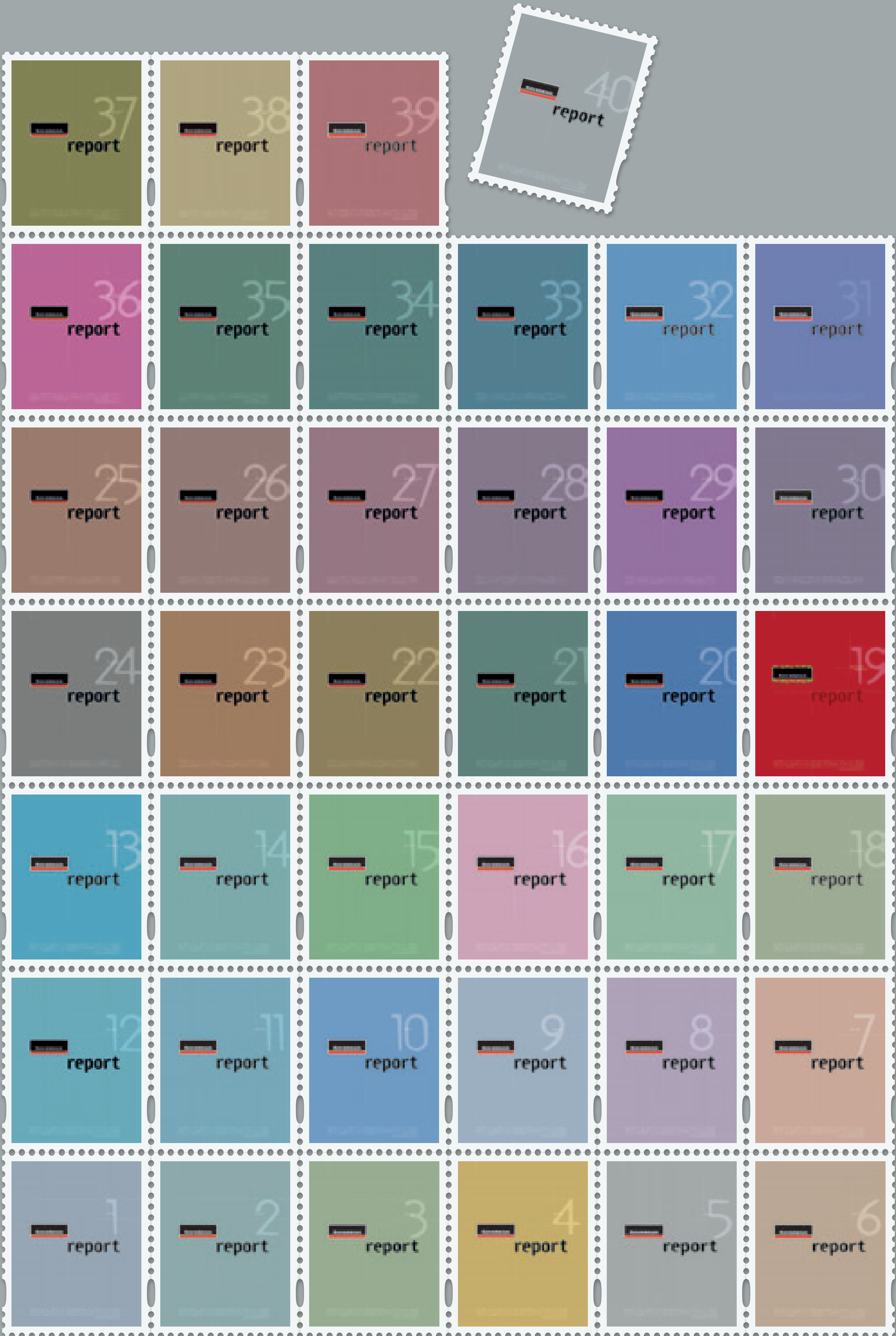

SPECIAL 25TH ANNIVERSARY EDITION
1987 – 2012

contents

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25 Years and still going strong!

This year marks the 25th anniversary of The Sovereign Group and hence this special anniversary edition, which also happens to be the 40th issue of The Sovereign Report and the 10th anniversary of when the Sovereign Art Foundation was first conceived (see enclosed Supplement).

Bilton arriving in Gibraltar 1987 (an artist's impression)

I well recall leaving the Isle of Man and arriving in Gibraltar in May 1987 to establish an office there. Spain had recently reopened the frontier and "Gib" had become the jurisdiction of choice through which to route investment into Spain, particularly for property purchase. Gib had the substantial advantage of bilingual lawyers who could assist with everything needed for Spanish investment and the financial services sector took off as a result.

It was not easy working in Gibraltar. It took around four months to incorporate a company, it was almost impossible to find office space and the telephone lines were so congested that it was rarely possible to make an international call except between 12pm and 2pm – when the entire business community went home for lunch – or after 6pm when they promptly stopped work.

While we waited for an office to become available in town, our office was initially established in a business service centre on the outskirts of Gibraltar, which we agreed to share with a local lawyer who had a similar problem. Gibraltar was our first – and remains our largest – office, where we currently employ around 75 people.

chairman

We now have over 25 offices worldwide and continue to expand. We are in the final throes of establishing an office in Sao Paolo, Brazil, and have just received approval for a new pensions unit in Malta to add to our existing corporate service provider's licence there.

Bilton still hard at work in 2012

Over the last 25 years the business climate has changed immeasurably. Cross-border tax planning has become increasingly sophisticated and, since 2001, has come under sustained attack from onshore governments who have sought to turn "offshore" and "tax haven" into "red flag" terms.

In the past many offshore practitioners did little more than help clients hide assets. Most of these have now gone out of business. We have always stressed the need to be legal and compliant at all times. Offshore planning can still be highly effective in reducing taxes and protecting assets but should never rely on concealing the true facts and arrangements. We are now one of the few truly independent service providers left. Many of our competitors are now under institutional ownership.

It has been an interesting 25 years and I and everybody else at Sovereign would like to thank the many thousands of clients who have worked with us and enabled us to expand into many new business areas in terms of both locations and services. We thank you all for your custom and look forward to assisting you further in the years to come.

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

EU obliges UK and Germany to modify Swiss tax deals

The European Commission announced, on 5 March 2012, that it had persuaded Germany and the UK to renegotiate key parts of the bilateral tax deals they have signed – but not yet ratified – with Switzerland. Switzerland wants to separate income from wealth and hand over tax at source to third countries, while maintaining the anonymity of the account holder.

Under the arrangements, the Swiss authorities were due to levy withholding taxes on German and UK clients with Swiss bank accounts and transfer the proceeds to their home tax authorities. But EU Tax Commissioner Algirdas Semeta said matters already covered by the EU savings tax directive should not be negotiated individually by any of the bloc's member states.

When countries make bilateral tax agreements with other nations, EU policy calls for them to leave out any areas covered by a common European framework, Semeta said. In the case of savings income, the bloc has existing exchange of information rules and is working on additional measures related to interest payments, ownership stakes and the 27-nation EU's relationship with Switzerland.

"We very clearly explained to our German and British colleagues what has to be changed in order to make them comply with EU legislation," Semeta said. "Both those countries agreed to renegotiate these provisions."

Switzerland signed protocols of amendment with the UK and Germany, on 20 March and 5 April respectively, which exclude interest payments from the scope of their bilateral agreements. Inheritance is also now covered by the agreements in order to eliminate a loophole. In the case of inheritance, the heirs must consent to either collection of a tax or disclosure.

In a separate letter, sent to the Danish EU presidency and to all EU finance ministries, Semeta advised that the 27 EU member states "should refrain from negotiating, initialling or ratifying agreements with Switzerland" if any of the provisions interfered with EU legislation. But on 13 April Switzerland signed a similar bilateral tax deal with Austria and on 9 May Switzerland announced that it had resumed negotiations on a fiscal accord with Italy.

Sovereign Comment

Switzerland hopes that the guarantee of anonymity will encourage foreigners with assets being managed in Swiss banks not to move them elsewhere. However, the accords are subject to approval by the respective parliaments and there seems to be growing opposition. We shall continue to monitor developments in this area.

europe

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HMRC delists over 400 QROPS from new register

The UK Revenue (HMRC) published, on 12 April 2012, a new list of qualified recognised overseas pension schemes (QROPS) that removed 436 schemes from Guernsey, Jersey, the Isle of Man and New Zealand which had appeared on the previous register.

The number of schemes available in Guernsey fell from 312 to 3, Jersey from 138 to 64, the Isle of Man from 185 to 173 and New Zealand from 64 to 23. The total number of pensions schemes recognised by HMRC as QROPS fell from 2,980 to 2,651, a fall of 329 – the difference in the two figures due to new schemes being added to the list.

HMRC's final QROPS rules, published in March, require providers to treat non-residents and residents of a jurisdiction in the same way for tax purposes from 6 April. New information and reporting requirements were also introduced. It further placed strict new rules on schemes in New Zealand, which were allowing people to cash out their entire pensions while QROPS rules insist schemes should retain 70% to transferred funds for retirement income.

HMRC said: "The government made clear at Budget 2012 that, where the country or territory in which a QROPS is established makes legislation or otherwise creates or uses a pension scheme to provide tax advantages that are not intended or available under the QROPS rules, the government will act so that the relevant types of pension schemes in those countries or territories will be excluded from being QROPS."

Cyprus amends International Trusts Law

The Cyprus House of Representatives passed, on 9 March 2012, a law to amend the Cyprus International Trusts Law 1992 (CIT) to address a number of perceived deficiencies. The new law has now been put before the European Commission to ascertain alignment with the acquis communautaire. It will apply to all CITs irrespective of their time of incorporation.

The new provisions clarify the rules on settlor residence. Under the 1992 law, a CIT could only be established by a non-Cyprus resident settlor for the benefit of non-Cyprus resident beneficiaries, but it was uncertain whether a settlor or beneficiary could subsequently relocate to Cyprus. The amending law, clarifies that a settlor or beneficiary must not be residents of Cyprus during the calendar year preceding the year of creation of the trust, but may take up residency in Cyprus at any time following its creation. It is noted that the term 'beneficiaries' now also includes unborn beneficiaries.

The law also removes the prohibition on ownership of immovable property in Cyprus – including shares in companies formed in Cyprus and in real estate located in Cyprus or abroad – and excludes the laws of any other jurisdiction. Furthermore, the laws of Cyprus or the law of any other jurisdiction in relation to inheritance or succession will not affect the validity of the trust or any transfers or dispositions. This exclusive jurisdiction of Cyprus laws over CITs successfully addresses asset protection concerns.

Settlors will also be able to create reserved-powers and settlor-interested trusts and trustees will be allowed to invest as freely as if they were beneficial owners. Other provisions in the new law abolish the ban on perpetuities, redefine charitable purposes to match the public benefit test now used in England and Wales and set out rules for determining choice of jurisdiction.

Sovereign Comment

Trusts laws have changed considerably since the Cyprus International Trusts Law was enacted in 1992, and a number of restrictions and limitations contained in the original law were no longer necessary. New opportunities and investment practices have emerged, which the original law did not take into account. As a result, while the basic structure provided by the Law remained sound, it required updating to adapt it to the needs of investors today and in future.

Cyprus lowers VAT for EU yacht registration

New guidelines issued by the Cyprus VAT Service make Cyprus the most competitive jurisdiction in the European Union for yacht registration. The Cyprus Yacht Leasing Scheme can now reduce the effective VAT rate to a low of 3.4% of the initial value of the yacht – less than the equivalent in other favoured jurisdictions, including Malta.

Under the Scheme, a Cypriot company that is VAT-registered in Cyprus can purchase a pleasure yacht and enter into a lease-sale agreement for the yacht with a third-party lessee – an individual or company irrespective of their location. Since this is a service deemed to be supplied in Cyprus, VAT is due on the lease at the normal rates of VAT in Cyprus – currently 17% – but payable only on that portion of the lease which the yacht spends in EU waters.

Due to the difficulty of establishing the exact length of stays in EU waters, the VAT Service has issued its own percentage scales based upon "presumed" lengths of stay for different types and lengths of yacht. Motor and sailing boats over 24-metres in length are deemed to spend only 20% of their time in EU waters to give an effective VAT rate of 3.4%, while motor boats below 8-metres and sailing boats below 10-metres are deemed to spend 60%, giving an effective VAT rate of 10.2%.

A yacht must arrive in Cyprus within one month of the date of inception of the lease agreement and the initial lease payment must amount to at least 40% of the value of the yacht. Further lease payments are payable on a monthly basis, and the lease period must under no circumstances exceed the period of 48 months.

The lessee may purchase the yacht at the end of the lease period, for a final consideration of not less than 5% of the initial value of the yacht. The VAT authorities will then issue a certificate to the lessee confirming full payment of the total VAT liability. The lessor is expected to make a total profit from the leasing agreement of at least 10% on the initial value of the yacht. Prior approval of the VAT Commissioner is required for every application of the Yacht Leasing Guidelines.

Sovereign Comment

These new guidelines present potential yacht owners with a further option to mitigate VAT in a well-regulated EU jurisdiction. Malta continues to remain an attractive option. Sovereign's marine division, RegisterAYacht.com is well-placed to advise on the options available and Sovereign's own Cyprus and Malta offices can provide a full range of services to yacht owning clients.

Gibraltar abolishes import duty for superyachts

Gibraltar Chief Minister Fabian Picardo, delivering his first Budget on 9 July 2012, announced the immediate abolition of import duty for vessels over 18 metres in length and a reduction from 12% to 6% for vessels under 18 metres. The move is intended to stimulate growth in the superyacht sector and encourage longer-term berthing in Gibraltar.

Previously vessels with a gross tonnage of less than 80 tons were subject to import duty at 12% while there was no import duty on vessels with a gross tonnage above 80 tons. The change in vessel classification from tonnage to metres will bring Gibraltar into line with many of its European competitors.

Due to its strategic location between the Mediterranean and Atlantic, Gibraltar has always attracted superyachts, but they have tended to spend only a limited time. More-over the previous importation laws, which levied import duty only upon the actual importation of the vessel into Gibraltar, dissuaded vessels owners resident in Gibraltar, including high net worth individuals, from importing and berthing their vessels in Gibraltar.

By reducing the duty and exempting it above 18 metres, there is no longer an incentive for resident vessel owners to keep their yachts outside Gibraltar while the ancillary economic benefits to Gibraltar from every extra night's stay by visiting superyachts would be substantial, not just in terms of provisioning and refueling requirements but in terms of their maintenance and leisure spend.

Sovereign Comment

Given the advantages of Gibraltar's EU membership, Category 1 Red Ensign Group status and strategically reduced fuel tax rates, it is perhaps surprising that it has not attracted more long-term berthing from the superyacht sector. It is hoped that the abolition of import duty for superyachts will provide a significant stimulus. Further information on the options available can be obtained from our marine division at RegisterAYacht.com.

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Isle of Man registers 500th aircraft

The Isle of Man Aircraft Registry announced, on 1 July 2012, the registration of its 500th aircraft since its inception on 1 May 2007. The 500th aircraft registered was a Bombardier Global 5000, registration M-SEAS, which was delivered new from the factory in Montreal, Canada.

The Isle of Man, which specialises in the registration of private and corporate-owned business jets, is currently the fastest growing offshore aircraft register in the world and the seventh largest business jet register worldwide.

Alex Downie, Political Member with responsibility for the Aircraft Registry, said: "I never thought the Aircraft Registry would develop as fast as it has so I would like to pass on my warmest congratulations to all the Aircraft Registry staff on reaching this magnificent milestone."

The States of Guernsey agreed a public-private partnership for the development and running of a new aircraft registry on 10 May following the signing an agreement by the Commerce and Employment Department with Amsterdam-based SGI Aviation. The day-to-day operation of the registry would be managed by SGI Guernsey, a subsidiary of SGI Aviation, which provides services for national aviation authorities. The registration prefix for Guernsey aircraft is expected to be the number two followed by four letters – for example 2-ABCD.

The registry is due to be set up in 2013 and the aim is to have 150 aircraft registered within two years. Previously proposals that included setting up a joint registry with Jersey have now been abandoned.

US strikes FATCA deals with Switzerland, Japan and five EU States

The US Treasury Department announced, on 21 June 2012, it had reached agreements with both Switzerland and Japan to cooperate on a framework for sharing financial information on bank accounts under the Foreign Account Tax Compliance Act (FATCA) when it comes into effect in January 2013. They followed a previous agreement with the five largest EU member states – Germany, France, Spain, Italy and the UK – that was announced on 8 February.

FATCA requires foreign financial institutions (FFIs) to report all their US clients' dealings to the US Internal Revenue Service (IRS). They must also block payments to US clients and to other FFIs if ordered to do so by the IRS, and must close accounts belonging to individuals regarded by the US as delinquent. For FFIs that fail to comply, the US will levy a 30% withholding tax on their earnings from US investments.

FATCA has been much criticised, partly due to compliance costs and partly because it would require FFIs in some jurisdictions to break domestic laws. In particular, banks in EU member countries are bound by the 1998 EU Data Protection Directive, which includes a general ban on the transmission of personal data to the US.

But in a joint statement "regarding an intergovernmental approach to improving international tax compliance and implementing FATCA", the five EU member states have undertaken to collect client account information from FFIs within their borders and pass it on to the US tax authorities on their behalf. In return the US has committed to collect information on US bank accounts operated by European residents and automatically pass it to the relevant national tax authority. This so-called "reciprocity" arrangement would be based on the countries' existing bilateral tax treaties.

The European Commission noted that FATCA compliance could have cost European multinational FFIs as much as US$100 million if they had had to achieve it individually. Such coordination, noted the Commission, "could, at a later stage, form the foundation for wider cooperation on information exchange between the EU and the US."

The agreement with Switzerland represents a second model for implementing FATCA by establishing a framework of direct reporting by FFIs to the IRS, supplemented by information exchanged between the Swiss and US governments upon request (rather than automatically). The agreement with Japan, meanwhile, expands FATCA to Asia.

FATCA was enacted in 2010 by Congress as part of the Hiring Incentives to Restore Employment Act. The US Treasury and the IRS said they would continue to work closely with businesses and foreign governments to implement FATCA effectively.

Sovereign Comment

The eventual implementation of the incoming FATCA regime is likely to have very significant consequences for both US clients and their advisers alike. A number of international banks have decided simply to refrain from doing business with US clients. Sovereign has not taken this step but we will be reviewing any clients with US connections in order to ensure compliance.

americas+ caribbean

Canada and Quebec suspend Immigrant Investor Programmes

Canada's Citizenship, Immigration and Multiculturalism Minister Jason Kenney announced that, effective 1 July 2012, Citizenship and Immigration Canada (CIC) would place a temporary pause on new applications under the Federal Skilled Worker Programme (FSWP) and federal Immigrant Investor Programme (IIP).

CIC will be consulting with provinces, territories and stakeholders on ways to reform the current IIP in order to maximise the economic benefit to Canada. The Department is also consulting on whether to create a new investor programme on a short-term basis, to promote growth in the Canadian economy.

"We will take the next six months to do a lot of the heavy lifting to get us closer to a fast and flexible immigration system," said Kenney.

In April, the Quebec Ministré de l'Immigration et des Communautés Culturelles (MICC) confirmed that its 2012 quota of 2,700 had been reached. MICC stated that applications received after the announced quota was reached would be returned.

Sovereign Comment

Given the current situation of no new investor applications being accepted by either Quebec or Federal authorities, the future of Canada's Immigrant Investor Programme is unclear. However alternative IIPs are currently available in Bulgaria, St Kitts & Nevis and the UK, while several other programmes are in the development stages.

US reopens limited amnesty for offshore accounts

The US Internal Revenue Service announced, on 9 January 2012, that it had reopened its limited amnesty programme for US taxpayers with undeclared foreign accounts. It also presented further results from the first two programmes in 2009 and 2011.

IRS Commissioner Doug Shulman said the reopened Offshore Voluntary Disclosure Programme would run for an indefinite period, but warned that the terms were not fixed and it could end at any time. The agency "may increase penalties for all or some taxpayers or defined classes of taxpayers, or decide to end the programme entirely at any point," he said.

Taxpayers must apply for entry. If accepted, they will face penalties but are unlikely to be criminally prosecuted. Shulman said the new programme was similar to that in 2011, which ended last September, except that the largest penalty had risen to 27.5% of the highest aggregate balance in undeclared foreign accounts or entities during the eight full tax years before the taxpayer came forward.

Under the 2009 and 2011 programmes, it was 20% and 25% respectively.

As in 2011, some taxpayers will be eligible for a lower penalty of 12.5% or 5%. The 12.5% rate generally applies for accounts that never exceeded $75,000 during the eight-year period. The 5% penalty generally applies to taxpayers who live outside the US and who are tax-compliant in their place of residence, owe no US tax and have almost no assets in the US.

Shulman also said that more than 33,000 taxpayers had come forward in the first two programmes and the IRS had so far collected more than $4.4 billion. He expected the revenue to grow as more cases were closed. The 2009 programme was "95% complete" having collected about $3.4 billion from about 15,000 taxpayers.

Bahamas introduces new Executive Entity structure

The Executive Entity Act, which creates a new type of structure – the Bahamas Executive Entity (BEE) – for use in offshore wealth preservation structures, was brought into force on 1 February 2012. It introduces a perpetual entity designed specifically and solely to carry out executive functions, such as acting as shareholder of a private trustee company (PTC) or as a protector, enforcer, advisory board or corporate director.

The officers of a BEE, like the directors of a PTC, can be the founder's chosen family members or advisers who benefit from limited liability as if they were directors of an IBC. Officers' details are not publically available in the Bahamas and there is no requirement for a Bahamian resident officer to sit on the board.

A BEE does not have any shareholders, beneficiaries or enforcers. It cannot hold any value, other than such sums as are necessary to carry out its executive functions and meet any capital adequacy requirements, nor can it own shares in another entity unless such entity also carries out executive functions. It is required to have a Bahamian licensed financial and corporate services provider to act as its agent.

The Bahamas government also gazetted, on 30 December 2011, amendments to the Trustee Act, Purpose Trust Act and the Rule against Perpetuities Act. The Rule Against Perpetuities (Abolition) Act statutorily abolishes the rule against perpetuities while the Purpose Trust (Amendment) Act expressly mandates that any rule of law prohibiting trusts of excessive duration or restricting the period during which income may be accumulated does not apply to authorised purpose trusts. It also expands the definition of authorised purpose trusts to include trusts that have undefined termination dates.

The Trustee (Amendment) Act further includes provisions that govern the resolution of trust disputes by arbitration and statutorily approves the inclusion of a "no contest clause" in a trust instrument, which permits a beneficiary's interest to be terminated upon his or her challenge to the validity of the whole, or part, of the trust. It also provides for the codification of settlor-directed powers over investments.

Bills have further been passed amending a wide range of legislation to ensure that they meet the requirement of keeping accounting records for a minimum of five years and to bring them into line with the OECD international standards. The government has indicated that a reasonable period of time will be given before these pieces of legislation are brought into force to enable regulators to advise financial services providers and their clients as to the procedures for compliance.

Sovereign Comment

Strictly speaking The Bahamas are not located in the Caribbean, but the jurisdiction must compete with a number of countries in the region where legislation and product ranges are broadly similar. The introduction of the Bahamas Executive Entity is a good example of the country's ability to react to developments elsewhere and implement new, robust legislation aimed at satisfying an increasingly sophisticated client demand. Our Bahamas office reports considerable interest in the BEE structure.

Brazil seizes jets over alleged tax evasion

Brazilian tax, police and aviation authorities jointly seized, on 22 June 2012, nine business jets which they allege were owned and used by Brazilians but were registered overseas to avoid Brazil's state and federal import taxes of nearly 35%. A further 13 planes are also being targeted.

Foreign-registered airplanes can only remain in Brazil for up to 60 days without paying import duties. To build its case, Brazil's civil aviation agency (ANAC) matched its overflight authorisations with Brazilian customs temporary admission permits and Air Force ATC flight plans, while tax authorities monitored in-country flights. The federal police said passenger lists were also tracked.

Once they had established usage patterns consistent with Brazilian ownership and use, or even domestic charter operations, officials suspended takeoff authorisations for the targeted jets for 15 days while courts issued seizure orders. Police also took records from a consulting firm that arranged US registrations.

Aircraft were seized at Galeão Airport in Rio and at Viracopos, Guarulhos, Congonhas and Jundaí airports in São Paulo. The registries of the seized jets were not released but official photos showed a Cayman Islands-registered Cessna Citation that was impounded the day after it arrived in Brazil.

Sovereign Comment

An interesting story that echoes developments in India where the authorities have levied large fines on a corporation for using a foreign-registered aircraft and for alleged non-payment of customs duties and re-registering it in India. Many governments are taking a close look at ownership, importation and operation of aircraft. For aircraft registration advice, or to subscribe to our monthly e-newsletter Airborne, contact Sovereign's aviation division directly at info@RegisterAnAircraft.com or via Sovereign's new office in São Paulo.

americas+ caribbean

Netherlands seeks to extend Latin America treaty network

Dutch State Secretary for Finance Frans Weekers undertook a working visit to South America in March 2012 with the intention of fostering better relations between the Netherlands and South American countries, and to initiate negotiation for new tax treaties with Chile and Columbia.

During the course of his visit to Brazil, Weekers met with Brazilian banks and firms as well as with Dutch companies and banks established in Brazil. He held meetings with the Brazilian Finance Ministry, the revenue authorities and the Central Bank.

The Netherlands is regarded as a useful holding company jurisdiction because of its extensive treaty network, its generous participation exemption, its efficient tax ruling practice and the fact that the Netherlands does not levy withholding tax on royalties or interest.

The Netherlands currently has more than 90 bilateral tax treaties – including treaties with Argentina, Brazil, Mexico, Panama, Suriname and Venezuela – but it does not yet have a tax treaty with Chile or Colombia, which are major targets for direct foreign investment.

Signing treaties with Colombia and Chile will put the Netherlands in a strong competitive advantage as an investment hub into the region in respect of other jurisdictions – Spain and Switzerland, for example – which currently have a strong treaty presence in Latin America.

Mauritius and India to resume talks on treaty revision

India and Mauritius confirmed, on 5 July 2012, that they would resume renegotiating their bilateral double tax treaty in August. The move came after India issued draft guidelines for a general anti-avoidance rule (GAAR), which was announced in India's Budget on 16 March along with proposals to tighten requirements to obtain benefits under India's tax treaties and to apply withholding tax to non-residents regardless of their presence in India.

The proposed GAAR, to be introduced as from 1 April 2013, is intended to tackle aggressive tax planning and the use of low-tax jurisdictions for residence and the sourcing of capital. It would codify the substance-over-form doctrine in which the real intention of the parties, the purpose of the arrangement and the effect of the transactions concerned would be taken into account to determine the tax consequences of those transactions, regardless of the legal structure used by the taxpayer. The GAAR would give the tax authorities broad discretion to characterise a transaction as aimed at avoiding taxation and to ignore an arrangement carried out exclusively for the purpose of avoiding tax.

Mauritius said it was not against a re-negotiation of the treaty that benefits both sides. Mauritius foreign affairs and international trade minister Arvin Boolell said: "Mauritius favours substance over form. We will never shortchange each other. We are a team. If ever there is room for improvement, we will constantly make room... in compliance with best international practices."

India has been looking to negotiate the tax treaty with Mauritius for several years in order to prevent so-called round tripping and other potential abuses. Mauritius has been reluctant to make any changes that might damage its status as a preferred route for foreign investors. Under the existing treaty, capital gains from sale of securities can be taxed only in Mauritius. Capital gains tax is close to zero in Mauritius and almost 40% of investments into India come through the island.

The India-Mauritius joint working group will also discuss the inclusion of a so-called limitation of benefit clause, similar to the Singapore tax treaty with India, to ensure that only genuine Mauritius-based companies can benefit. India's tax agreement with Singapore says that only those companies that spend a minimum of $200,000 in Singapore can avail the benefits of the treaty.

A further issue is the sanctity of tax residency certificates, which are issued by a country to companies operating in its jurisdiction to enable the firms to claim tax benefits under various treaties. The Indian Budget sets out that the certificates are a necessary but not sufficient condition. Mauritius wants assurance that its ITS certificates will be honoured.

Sovereign Comment
The treaty is crucial to Mauritius because 38% of FDI that came into India from the year 2000 to April 2012 was channelled via Mauritius and there is concern that India's GAAR could be used to target transactions routed through jurisdictions such as Mauritius. The sharp criticism forced the Indian government to defer GAAR's implementation by a year to 1 April 2013.

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South African replaces Secondary Tax regime

South Africa's Secondary Tax on Companies (STC) regime came to an end on 1 April 2012 when it was replaced with a new dividend withholding tax, which will the taxation of dividends in South Africa into line with international practice. The new dividend tax is levied at a rate of 15% – compared to the STC rate of 10% – but this rate can be reduced under a tax treaty.

Whereas the STC was levied on the company declaring the dividends, under the new regime it is the recipient of the dividends that is liable for the tax, which will be collected via a withholding obligation by the dividend-paying company. Any STC credits a company had as of the day before the effective date of the dividends tax may be used within a five-year period from the effective date (although this period is proposed to be reduced to three years).

Effective capital gains tax (CGT) rates have been increased. The inclusion rate for companies and trusts (other than special trusts) increased to 66.6%, raising the effective rate for companies to 18.6% and for trusts (other than special trusts) to 26.7%. These changes came into effect in respect of the disposal of assets from 1 March 2012.

It is proposed that, as from 1 April 2012, the income tax rate applicable to resident and non-resident companies should be harmonised. Non-resident companies are taxed at a rate of 33% on income earned in South Africa, while domestic companies were taxed at a rate of 28% plus the 10% STC. With the removal of STC it is proposed to reduce the rate applicable to non-resident companies to 28%.

Hong Kong launches consultation on trust law reform

The Hong Kong government announced the launch, on 22 March 2012, of a two-month public consultation on draft legislation on trust law reform based upon the policy proposals derived from an earlier consultation held in 2009. It plans to finalise an amendment bill for introduction into the Legislative Council in the 2012-13 legislative year.

The consultation document sets out draft provisions to amend the Trustee Ordinance (Cap. 29) and the Perpetuities & Accumulations Ordinance (Cap. 257) in three principal areas: to clarify trustees' duties and power to provide clearer guidelines on the role of trustees; to enhance the protection of beneficiaries' interests; and to clarify that a trust will not be invalidated only by reason of a settlor reserving to himself some limited power. The rules that set time limits on the duration of trusts and the accumulations of income would also be abolished.

Secretary for Financial Services and the Treasury Professor K C Chan, said: "The reform seeks to modernise Hong Kong's trust law to better cater for the needs of modern-day trusts and enhance the interests of parties to a trust. It is a major initiative to strengthen the competitiveness of our trust services industry and further consolidate our status as an international asset management centre."

Sovereign Comment
Prof. Chan sums up the current position very well. Regular readers will know that we have always considered Hong Kong to be the pre-eminent finance centre in the region. It is true that local trust legislation is in need of the reform addressed by these proposals. Of course, Sovereign includes trust companies licensed in several of the world's top jurisdictions for trustee work so it will be interesting to see the extent to which Hong Kong meets these challenges.

South Africa, Seychelles treaty protocol comes into force

The protocol to the existing double taxation treaty between South Africa and the Seychelles, which was signed on 4 April 2011, has been ratified and went into effect on 15 May 2012. In protocol updates the treaty to reflect the introduction of South Africa's new dividends tax – which replaced the secondary tax on companies from 1 April this year – and is being levied at a rate of 15% on shareholders.

middle east, africa + asia

For residents of the Seychelles receiving dividends from South African companies that rate will be reduced to 5% of the gross amount of the dividends if the beneficial owner is a Seychelles company which holds at least 10% of the capital of the company paying the dividends; or 10% of the gross amount of the dividends in all other cases.

The protocol also incorporates the OECD standard for the exchange of information for tax purposes into the existing treaty. It provides that neither tax authority can refuse to provide information solely because it is not required for its own domestic purposes or because it is held by a bank or similar institution.

The International Business Companies (Amendment) Act was also brought into force on 27 December 2011. It will oblige companies to produce and maintain financial information on an annual basis and for companies incorporated in the Seychelles to ensure that all corporate records, including shareholder registers, are kept and maintained in the Seychelles. Further, controls are being brought in to restrict the use and issue of bearer shares.

The changes do not make ownership and accounting information available to the public but increase the information that is required to be kept in the Seychelles and which will now become more easily accessible to scrutiny by the Seychelles regulatory and fiscal authorities through the courts and other regulatory investigation systems.

The Seychelles government has committed to introduce a single corporate law regime to be brought about under a new Companies Act. A draft of the proposed new Companies Act has been circulated to stakeholders for consultation and review and a corporate law consultative committee has been established.

Sovereign Comment

Readers will have noticed a common theme in several stories in this edition where jurisdictions are either strengthening existing legislation or developing new products and rules in response to tougher regulatory scrutiny. The amendments introduced by the Seychelles are particularly welcome and we applaud the intention to enact a single corporate law. Several jurisdictions are adopting tougher rules on financial reporting. Sovereign Accounting Services has reported a huge increase in demand in this area, even from clients whose companies are not yet legally required to produce accounts.

Dubai legislates to promote investor protection

The Markets Law 2012 and the Regulatory Law Amendment Law 2012 were both enacted on 7 June 2012 and came into force on 5 July. The new Laws are designed to promote investor protection to align the Dubai International Financial Centre (DIFC) to international standards, particularly EU and OECD requirements.

The new Markets Law 2012, which replaces the Markets Law 2004, brings about a number of significant changes including changes to prospectus disclosure, what activities constitute an offer, market misconduct provisions and corporate governance. The prospectus disclosure changes include the requirement for a prospectus to be formally approved by the Dubai Financial Services Authority (DFSA) before it can be used to make an offer of securities to the public or admit them to the Official List of Securities maintained by the DFSA.

The amendments to the Regulatory Law 2004 support the changes brought about by the new Markets Law regime. It now provides for the DFSA to undertake regulatory oversight of auditors of DIFC incorporated companies listed on an Authorised Market Institution (AMI) or any other exchange.

The amendments also make changes to the recognition powers of the DFSA with respect to cross-border trading including recognition of alternative trading systems. The changes permit non-DIFC exchanges and clearing houses to provide access to their facilities to persons located in the DIFC and permit non-DIFC firms to be remote members of an AMI in order to trade investments on a DIFC exchange from a place of business outside the DIFC.

DFSA chief executive Ian Johnston said: "These changes bring our markets regime into closer alignment with the EU requirements while retaining features necessary to accommodate regional needs and circumstances. The DFSA's supervisory oversight has also been expanded to include auditors for companies incorporated in the DIFC which seek listing on an exchange in the DIFC or in another jurisdiction. Such regulatory oversight of auditors would allow for the passporting of auditors registered by the DFSA into the EU."

Mauritius introduces Limited Partnerships

The Mauritius Limited Partnerships Act 2011 introducing a new legal entity into Mauritius, was brought into force on 15 December 2011. The Act broadly follows the principles of English law. LPs must have at least one general partner and the limited partners will normally have limited liability for the partnership's debt and obligations provided they take no part in the management of the partnership. The Act allows the limited partnership agreement to regulate the terms of the partnership.

A Mauritius partnership may elect to have a legal personality under section 11 of the Act. A partnership having a legal personality is a legal person separate from its partners and has the power to own and deal with its separate property in accordance with the agreement of its partners. This facilitates continuing contractual relationships with third parties and tying in new partners to existing contractual relationships.

Sovereign Comment

Mauritius has long been a vitally important finance centre for the conduct of cross-border business in the region. Benefitting from its extensive network of double tax agreements, the jurisdiction is particularly popular in East Africa and the Indian sub-continent. There have been several changes over recent years as some countries, especially India, have sought to clamp down on misuse so it is good to see the country introduce new LP legislation that should help to ensure that Mauritius maintains its leading role in this area.

UK Budget lowers income tax, targets capital

UK Chancellor George Osborne announced, in the Budget speech on 21 March 2012, reductions in corporation tax and the top rate of personal income tax but raised stamp duty land tax (SDLT) on properties exceeding £2 million. He also launched consultation on a General Anti-Avoidance Rule (GAAR).

Corporation tax was cut from 26% to 24% from April and will be further cut to 22% by 2014-15. Osborne said this would give the UK the lowest main corporation tax rate in the G7 group of leading economies and the fourth lowest in the G20. A corresponding rise in the banking levy would mean that banks do not benefit.

The top rate of personal income tax, for those earning more than £150,000 a year, is also to be lowered from 50% to 45% from April 2013, but accompanied by a new cap on income tax reliefs above £50,000. Official analysis of tax returns for 2010-11, the first year that the 50p rate was in force, concluded it was "a distortive and economically inefficient way of raising revenue, and that the behavioural response has been larger than expected".

The SDLT applied to residential properties over £2m is to be raised to 7% from 22 March 2012 while properties acquired through a corporate structure will attract a punitive 15% charge. Since April 2011, stamp duty on £1m-plus homes has been charged at 5%. Osborne accompanied his announcement with a warning that he would act "swiftly, without notice and retrospectively" if wealthy individuals or their advisors sought to avoid the rules.

The Treasury said the 15% rate would apply to properties in excess of £2m bought by "non-natural persons". This is designed to combat the practice of "enveloping" high-value properties into companies to avoid paying most of the tax.

Osborne said he would consult on the introduction of a "large" annual charge on those £2m-plus properties that have already been put into corporate envelopes. And, to ensure wealthy non-residents are also caught by these changes, the government would be introducing capital gains tax (CGT) on residential property held in overseas companies.

The government announced that it is to consult on a General Anti-Avoidance Rule (GAAR) and would look to bring forward legislation in the Finance Bill in 2013. "We asked whether a GAAR could work in the UK tax system and it has been recommended that a rule could improve our ability to clamp down on tax avoidance," said Osborne.

Sovereign Comment

As Sovereign's London-based Group Tax Counsel points out the main issue is that other proposals in the Budget have created uncertainty and for many people long term planning in the UK has effectively been suspended until the new rules, particularly those relating to CGT, are more fully explained. The possible introduction of a GAAR simply adds to that uncertainty. We will be monitoring these developments closely. In the meantime, any investors with UK-based residential properties should turn to Page 12 for a more detailed explanation of the options available and should contact Sovereign urgently.

Liechtenstein extends Disclosure Facility

The UK and Liechtenstein governments agreed, on 7 February 2012, to extend the Liechtenstein Disclosure Facility (LDF) – which was signed in August 2009 and was to run from 1 September 2009 to 31 March 2015 – for a further year. They also initialled a new double tax treaty. Liechtenstein was the only European Economic Area (EEA) member without a tax treaty with the UK. The treaty, which will now go through formal procedures of signing and ratification, is expected to come into force from 1 January 2013.

The LDF was designed to enable UK residents to legitimise their tax affairs for the past and ensure they are tax-compliant for the future. Dave Hartnett, Permanent Secretary for Tax at HMRC, said: "As the number of disclosures already exceeds the total we originally expected for the whole period of the LDF, we have agreed with the Liechtenstein Government that it makes sense to extend the facility by one year to 5 April 2016."

Sovereign Comment

As the pressure grows on Switzerland, it is interesting to see the Liechtenstein government extending co-operation with the UK further. Readers may be interested to know that anyone with undeclared assets in third countries may also be able to use the LDF by establishing a qualifying account in Liechtenstein and then making the relevant disclosure to HMRC. Sovereign has established good links in the Principality and has always encouraged clients to be fully compliant. Contact your closest Sovereign office for further information.

Guernsey States approve zero-10 tax change

The States parliament unanimously agreed, on 27 June 2012, to follow the governments of Jersey and the Isle of Man by removing an area of the "Zero-10" corporate tax regime known as deemed distribution, which was needed to make it compliant with EU rules. The change will come into effect from 1 January next year.

On 17 April the EU's Code of Conduct Group on Business Taxation deemed Guernsey's zero-10 corporate tax regime, introduced in January 2008, as "harmful". Under the regime, companies are subject to tax at the standard rate of 0%. A 10% tax rate applies to income derived from specified banking activities and a 20% tax rate to income from the ownership of land and buildings and regulated utilities. However, companies are required to deduct tax at the 20% individual standard rate on the distribution or deemed distribution of profits to resident individuals.

Last December the European Council of Finance Ministers (ECOFIN) approved the amended "zero-10" tax regimes of Jersey and the Isle of Man after the Code of Conduct Group had declared in September that it no longer considered these regimes to be harmful because the deemed distribution provisions in Jersey and attribution regime for individuals in the Isle of Man had both been removed.

Sovereign Comment

Businesses in the Crown Dependencies have been keen to see the zero-10 matter concluded, as uncertainty about corporate tax has made long-term planning difficult. The vote by ECOFIN formally ended a process for the Jersey and Isle of Man regimes that began more than two years ago, when an EU review of zero-10 corporate tax arrangements was first announced. It is hoped that a similar vote on Guernsey will follow soon.

EC urges strengthening of the Savings Tax Directive

The European Commission adopted, on 2 March 2012, a report on the performance of the European Savings Taxation Directive (STD), a triennial requirement, which reaffirmed that the STD must be amended to prevent the use of intermediary jurisdictions and "loophole" financial products to avoid tax liabilities.

The report, which covered the period 2005-2010, showed that the quality and usability of data that member states transmitted to each other had improved, thanks to common EU rules on automatic exchange of information. It also provided practical suggestions to member states' tax administrations on how to make the current system even more transparent in the future, including how paying agents could complete data in a better way for the purpose of international reporting.

The relevance of offshore centres as a location for deposits and as place of establishment or management of non-bank deposit holder structures indicated that the implementation of look-through and paying agent upon receipt provisions for certain legal structures located in offshore jurisdictions was justified and necessary for both the Directive and the Savings Agreements.

The report also noted that loopholes in the current STD continue to be exploited, for example, by increased use of new structures and financial products. In particular, it noted, the increased use of financial derivatives, structured products, non-UCITS funds and unit-linked life insurance products would support an extension of the scope of the Directive to include these products.

"The economic analysis has shown that the updating of the Directive and the relevant Savings Agreements, in terms of product scope as well as transactions and economic operators covered, is urgently needed in order to address the existing possibilities for circumvention, including those arising from triangular situations which involve jurisdictions both within and outside the scope of the Savings Agreements,' said the report. "A consensus on the proposal and the adoption of a negotiating mandate for equivalent improvements in these agreements are necessary in order to promote transparency and good governance in tax matters both within and outside the EU."

40 fiscal

Portugal makes welcome change in IMI tax rate

The law imposing a higher percentage Municipal Tax (IMI) on Portuguese property held by a company or an individual resident in a "tax haven" has been amended as a result of protests, particularly from Portuguese nationals working abroad in Andorra and other territories that appear on the Portuguese Finance Ministry's "blacklist" of preferential tax regimes.

It is now only blacklisted resident corporate entities that will suffer the aggravated charge and individual property owners have been exempted, retrospectively, to include the tax year 2011. Thus any individual who was charged 5% IMI tax in 2012 in respect of tax year 2011, and has paid their April contribution, should receive a rebate on the extra tax paid.

Portugal's 2012 State Budget contained a proposal to eliminate the withholding tax exemption on dividends and interest payments to shareholders of entities licensed within the Madeira International Business Centre. The change took effect on 1 January 2012.

For dividends paid to companies within the EU, the EU Parent-Subsidiary Directive will apply. Provided that the one-year and 10% shareholding requirements are met, no withholding tax will apply. Where a country has a double tax treaty with Portugal, the withholding tax applicable will be that specified in the relevant treaty. The withholding tax on interest and royalties may also be reduced under the EU Directive on Interest and Royalties.

Where a country does not have a double tax treaty with Portugal, the standard Portuguese withholding tax rate for interest and dividend payments is 21.5%. The rate increases to 30% for payments to shareholders of companies located in jurisdictions included on Portugal's blacklist.

Sovereign Comment

Reference to Portugal's "blacklist" above is a timely reminder that any blacklisted corporate-held property will pay 7.5% of the tax department value in 2013 in respect of tax year 2012 unless they take measures to avoid it. IMI tax rebates to individuals should be automatic but you should check with your Fiscal Representative to ensure you have been credited. Sovereign Portugal provides a Fiscal Representation service and readers are encouraged to contact the office for advice on these issues.

French tax targets rich

The French National Assembly voted, on 19 July 2012, an emergency increase in wealth tax (ISF), provided for within the framework of the government's supplementary finance bill, designed to generate an extra €2.3 billion for the cash-strapped government pending fuller legislation next year to repeal tax reductions that former President Sarkozy introduced in 2011.

The increase – known as the contribution exceptionnelle sur la fortune – is a stop-gap measure introduced by Francois Hollande, the new Socialist president, which affects people with assets estimated at more than €1.3 million. There will be no cap on the amount of wealth tax paid in 2012 under the ISF, the exceptional contribution, or a combination of the two.

Canton dumps lump-sum tax

Appenzell Outer Rhodes became the third Swiss canton to abolish lump-sum taxation for wealthy foreign residents in a referendum on 11 March 2012. It follows similar decisions in cantons Zurich and Schaffhausen over the past two years.

In a further ballot in canton Lucerne, voters rejected abolition but followed cantons St Gallen and Thurgau in opting to increase the tax rate from five to seven times the annual rental value of the residence. Further cantonal votes are scheduled later this year.

On 6 March, the Swiss Federal Senate confirmed that wealthy foreigners with no Swiss income would be able to continue to benefit from lump-sum tax agreements, although the rate would be raised. The House of Representatives still has to approve the change in current legislation.

Offshore companies owning UK property – urgent action required

Until April this year UK resident and non-domiciled individuals investing in UK property would have been advised to use an offshore company to hold the title. This not only allowed the owner to avoid 40% UK Inheritance Tax (IHT) but also offered the potential for future buyers to avoid stamp duty (SDLT) by acquiring the company shares rather than title to the UK property. Perhaps not surprisingly the UK government decided to legislate in this year's Budget to prevent this loss of revenue from residential properties (commercial property is unaffected).

There is now a new punitive 15% rate of SDLT where an offshore company acquires a UK residential property for more than £2m. From April 2013, offshore companies owning properties valued in excess of £2m will also be subject to an annual charge. If the value is between £2 million and £5 million the charge will be £15,000 p.a. If the property's value exceeds £5m the company will suffer an annual charge of £35,000; if the value exceeds £20m the charge is £140,000 each year.

Finally the government plans to extend the Capital Gains Tax (CGT) regime and charge tax (the rate is currently unknown but is likely to be 28%) where residential properties are sold by non-resident companies for more than £2m. At present only UK persons are subject to the UK CGT regime.

All investors that have UK residential property with a market value in excess of £2m held directly by an offshore company therefore have a problem, wherever they are in the world. When the CGT charge is introduced next April the UK government has said it will not be possible to rebase the property's base cost for CGT purposes to the April 2013 market value. That means that when the company sells the property it will be taxed on the whole of the gain made since the original acquisition despite the fact that most of the gain was made during the period when the company was not subject to UK CGT.

It may be that an investor will want to keep this structure in place for IHT reasons, despite the annual charge and future CGT. If that is the case then we are able to advise and implement planning which would rebase the property to the current market value in order to mitigate future CGT. This planning will not trigger any tax charge. However it is more likely that the investor will want to transfer the property to a new structure that will not be subject to the new annual charge.

Ownership by an offshore company is inadvisable. The property would be subject to capital gains tax, the annual charge and there can be major tax disadvantages for the occupant under the benefit in kind or the shadow director legislation. However Sovereign can provide a number of structures involving pension schemes and trusts that will generally provide both a shelter from IHT and the new annual charge. A non-UK resident company can normally gift the property to any of these structures without paying SDLT and without CGT applying.

A Qualifying Non UK Pension Scheme (QNUPS) structure offers the greatest advantages but will also lock the asset up until retirement age because it is a pension. The asset can be sold and the proceeds reinvested but there are difficulties with the proceeds being paid out other than in accordance with the normal pension provisions. For those who want more flexibility, a trust structure may be preferable. Ownership by any trust (which would Include a QNUPS) can also allow the trustees to claim main residence relief and therefore avoid capital gains tax on any subsequent re-sale.

Sovereign has the capability and knowledge to set up and administer these structures. Any investors with UK-based residential properties should contact their nearest Sovereign office as soon as possible.


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Indian Supreme Court overturns Vodafone tax case

India's Supreme Court ruled, on 20 January 2012, that UK telecoms group Vodafone was not liable to pay a US$2.2 billion tax charge on its US$11.2 billion acquisition of a controlling stake in an Indian cellphone company from Hong Kong's Hutchison Whampoa in 2007.

The acquisition deal was structured as a transaction between Vodafone's Dutch subsidiary and a Cayman Islands-based company that held Hutchison Whampoa's India assets. India's tax office claimed Vodafone was liable to withhold capital gains tax because most of the assets from the deal were based in India.

Vodafone contested the tax charge on the grounds that the deal was between two overseas companies, the tax was applied retrospectively and capital gains tax is usually applied to the vendor rather than the purchaser. It appealed to the Supreme Court after losing the case in the Bombay High Court in 2010.

The three-judge Supreme Court panel held that the Indian revenue authorities did not have jurisdiction to tax the deal because it was structured as a transaction between two foreign entities. It agreed with Vodafone that the deal was not subject to capital gains tax – and Vodafone therefore had no obligation to withhold tax – even though the main asset changing hands was a controlling interest in an Indian cellphone company.

The offshore transaction was a "bona fide" structure, said Chief Justice S.H. Kapadia. The fact that Hutchison's Cayman Islands unit was in place for several years before the deal suggested that the deal structure was not created with the purpose of avoiding taxes. The court said taxing Vodafone "would amount to imposing capital punishment for capital investment". It directed the tax office to refund the 25 billion rupees (US$500 million) that Vodafone had deposited, along with 4% interest.

Sovereign Comment

This is clearly an important decision and will be of interest to potential investors considering opportunities on the sub-continent. The amounts involved are huge and the companies involved are multi-nationals but there are several points that are of interest. Professional advice should always be sought when contemplating a cross border acquisition. It is also interesting to note that the decision referred to the fact that the structure was not created for the purpose of avoiding tax; in several countries this is explicitly dealt with in anti-avoidance rules. Such arrangements are likely to face even closer scrutiny in the future.

40 legal

Disclosure of trust documents

The Court of Appeal found, on 18 January 2012, that trust documents that were deemed to be within a party's control, even though that party had no right to those documents, should be disclosed.

In *North Shore Ventures Ltd v. Anstead Holdings Inc.* ([2012] EWCA Civ 11) judgment had been given against Anstead Holdings for a sum in excess of $20m for which the appellants, Mr Fomichev and Mr Peganov were guarantors. After Anstead Holdings went into liquidation, North Shore pursued the guarantors for the balance owed and gained an order under Civil Procedure Rules (CPR) Part 71 for them to provide information to the court about their assets. The guarantors said that they had no assets, their collected wealth having been transferred shortly before proceedings were commenced to a discretionary family trust over which they alleged they had no control.

North Shore sought disclosure of the details of the trust arrangement and documentation. At first instance, the High Court ordered disclosure on the basis that the documents were within the guarantors' control for the purposes of CPR Part 31.8, which covers disclosure obligations. The guarantors appealed.

The Court of Appeal found that the guarantors' actions were suspicious and there was some evidence of collusion between them and the trustees to put assets and information beyond the reaches of North Shore. The order for disclosure under CPR Parts 71 and 31.8 should therefore stand.

Isle of Man rules on cy-pres doctrine

The Isle of Man High Court of Justice dismissed, on 13 January 2012, a trustee's application to apply the doctrine of cy-pres in the construction of a will – that when literal compliance with the terms of a will or trust is impossible, the intention of a donor or testator should be carried out as nearly as possible – holding that there was no general charitable purpose behind the gifts that could be amended cy-pres.

In *Philip Bradshaw Games (as administrator (trustee) of the Estate of the late Donald Collister) v Manx National Heritage (Manx Museum & National Trust)* CHP 2001/61, Collister had left provision in his will for a heritage centre and museum to be erected on a piece of land which he owned with the building and on-going maintenance to be funded by his residuary estate. He also provided that if there were insufficient funds for this purpose, the trustee was to pay his residuary estate to the Manx Museum and National Trust.

When he died, the trustee of the estate was advised that planning permission would not be granted on the piece of land and therefore sought Court assistance as to whether the gifts had failed and, if so, could the cy-pres doctrine be applied to save either gift.

The Court drew the distinction between a general charitable intention and a specific charitable intention. The question was whether it was possible to impute to the testator a mere general charitable intention behind the gift that would enable the gift to be given effect in an alternative way. It held that the testator had determined to give to charity in his own way such that there was no general charitable purpose behind the gifts that could be amended cy-pres.

Sovereign Comment

This is an interesting case and we include the story in this edition as it highlights not only the importance of executing a will but also the need for the terms to be clear and not open to alternative interpretation. The case here centred on charitable donations but the same principles apply regardless of the beneficiaries' relationship to the testator. Good succession planning should at the very least include a review of any existing will arrangements.

Tribunal finds individual in UK on holiday to be resident

The UK First Tier Tribunal ruled, on 27 February 2012, that a taxpayer who disposed of a large shareholding, making sizeable capital gains, had become resident while in the UK on holiday.

In *Kimber v HMRC* [2012] UKFTT 107 (TC), Rupert Kimber had been a partner of the asset management firm Cazenove & Co and was the head of the Japanese office. He was not resident in the UK between September 1997 and at least July 2005. In that month Kimber left Japan, handing in his Japanese residency permit, and came to the UK on holiday. During his visit, he signed an employment contract with a UK company before going on holiday to Italy with his family. On 12 August 2005, while he was outside the UK, Kimber disposed of the shares. He returned to the UK in September 2005 to start working for a UK company.

Kimber contended that this disposal was not taxable because he was not resident in the UK at this time. He further argued that he was only in the UK for a temporary purpose and, at the time, had intended to accept a job in Hong Kong. HMRC disagreed saying that Kimber was resident in the UK as from 17 July.

The First Tier Tribunal agreed that Kimber had returned to the UK on a permanent basis on 17 July 2005 because he hadsigned a UK employment contract and negotiated a lease on a UK property whilst in the UK, arranged for furniture and belongings to be shipped from Japan to the UK and enrolled his daughters in a UK school for the autumn term. It confirmed, in line with HMRC's guidance in HMRC6, that a person can come to the UK for a temporary purpose, but if his intentions change then he can become resident immediately.

Sovereign Comment

This decision is important for any British expatriate considering a return home and follows other high profile cases, including *Gaines-Cooper*, dealing with residency and domicile. Readers may recall that recent changes have tightened up the rules concerning number of days in UK that individuals are allowed whilst still claiming to be non-resident. British expatriates who travel to the UK for any reason – even to visit elderly relatives – would be well advised to monitor their travel to ensure they do not fall into the residency trap, however unwittingly. In June, the UK government said it remains committed to introducing a statutory definition of tax residence and reforms to the concept of ordinary residence in Finance Bill 2013.

Singapore rejects Indian request for bank information

The High Court of Singapore rejected, on 23 May 2012, an application made by the Singapore Comptroller of Income Tax, following a request for information by the Indian tax authority, for the production of information held by a bank in Singapore on the basis that the information requested was not foreseeably relevant for carrying out the provisions of the tax treaty between Singapore and India.

In *Comptroller of Income Tax v AZP* [2012] SGHC 112, the Comptroller made an application under section 105J of the Income Tax Act for an order requiring AZP, a bank in Singapore, to produce records and information relating to two bank accounts, from 1 January 2008 to date, held with AZP. Account 1 was held in the name of Company X and Account 2 was held in the name of Company Y. The Indian tax authorities had seized documents from an Indian national which it believed indicated the existence of undeclared income and bank accounts overseas. It therefore requested the Comptroller to facilitate the release of certain information under the Singapore-India tax treaty.

The application was dismissed. The High Court was not satisfied that the information requested was "foreseeably relevant" for carrying out the provisions of the Singapore-India tax treaty because of inadequate supporting documentation provided by the Indian tax authorities. Companies X and Y were not Indian-incorporated entities and were not under any investigation by the Indian tax authorities. The Indian tax authorities were not able to provide evidence of any transaction between the Indian national and either of the companies on or after 1 January 2008 – the effective date of the exchange of information clause. All that was provided was certain unsigned transfer instructions issued before 2008.

The High Court stressed that given that the exchange of information could impinge on interests such as taxpayer privacy and confidentiality of banking information, it was important that the right balance was struck and that procedural safeguards were put in place to ensure that only specific and relevant requests are entertained.

40 legal

EU introduces cross-border succession rules

The EU Council of Justice Ministers approved, on 7 June 2012, the Commission's proposal to simplify the settlement of international successions so as to ease the legal burden when a family member with property in another EU country passes away. When published in the EU's Official Journal, EU member states will have three years to align their national laws so that the new EU rules on succession become effective.

There are around 4.5 million successions a year in the EU, of which about 10% – valued at about €123 billion – have an international dimension. Legislation governing jurisdiction and the law applicable vary considerably from one member state to another, which leads to great legal uncertainty.

Under the new EU rules, there would be a single criterion for determining both the jurisdiction and the law applicable to a cross-border succession: the deceased's habitual place of residence. People living abroad will, however, be able to opt to have the law of their country of nationality apply to the entire succession. The regulation will also introduce a European Certificate of Succession, which will allow people to prove that they are heirs or administrators of a succession without further formalities.

Sovereign Comment

The proposed Regulations will be of particular interest to our clients with assets – holiday homes, bank accounts or other investments – within the EU. The single criterion for determining the jurisdiction should ensure a much-simplified process for heirs or administrators. We will be keeping the proposals under review.

40 in the press:

Alternative Citizenship and Residency

A version of this article by Sovereign Chairman Howard Bilton first appeared in Hong Kong Golfer magazine.

Countries who sell their passports are often frowned upon but the reality is that all countries try to encourage immigration by High Net Worth Individuals (HNWIs) by granting residency which leads to nationality, or nationality itself, in return for investment – it is just the price and timescale that differs.

Many of you will recall the rush by Hong Kong citizens to obtain the "insurance" of a right to abode elsewhere in the lead up to the handover to China 1997. Canada and Australia were the favoured jurisdictions because they had relatively clear rules and required only a relatively modest level of investment in order to grant foreign nationals a residency. And those new residents had to wait only a relatively short time before becoming eligible for, and normally being granted, citizenship. Many of those taking out these residencies did not necessarily actually intend to emigrate – but they did want to know that they could do so if things did not work out for them in Hong Kong after 1997.

In the end many of those who moved abroad came back or shelved plans to move away. There are still many countries where the future is uncertain either politically or economically and this encourages their citizens either to emigrate or take out an alternative residency or citizenship as an insurance policy in case things get worse. There are many from the more troubled areas of the world who fear for the future and many more who have money to invest and choose to do so in countries which will give them some kind of formal status in return.

If you are considering applying for a second residency or passport under any Immigrant Investor Programme (IIP) then there are a number of factors to take into account:

- The size of the investment required of an applicant to gain residency;
- The length of time it will take for an applicant to become eligible for citizenship;
- The number of days, if any, that an applicant is required to physically reside in a country;
- Whether eligibility for citizenship is also extended to an applicant's spouse or other dependents;
- Whether either the proposed or current country prohibits dual citizenship;
- Whether the proposed country's passport provides visa free entry to a significant number of other countries;
- Whether the proposed country has any requirements related to education, or management and work experience;
- Whether the proposed country has any requirements for military or other service;
- The costs of living in the proposed country – including tax rates and tax incidence;
- Whether the applicant's existing country applies an exit tax or other penalties.

Imagine being offered immediate citizenship by the fictional country of Rumbabwe only to find that: it does not allow you to keep your old passport; you will need to apply for visas to travel anywhere else in the world because Rumbabwe's citizens are not generally welcome – and visas are not necessarily given; you are immediately required to sign up for the Rumbabwean army (which is currently engaged in a war with neighbouring Rangola); and Rumbabwe levies tax on worldwide income and capital gains at a rate of 95% with no planning opportunities to avoid those taxes.

St Kitts & Nevis

One of the more interesting possibilities for immediate – well the process takes about three months – citizenship is currently available from St. Kitts & Nevis in the Caribbean. It has run a successful "nationality by investment" programme since 1984, which allows citizens of other countries to become passport holders in St. Kitts & Nevis in return for a one-off investment of US$350,000 in a qualifying property. Applicants must continue to own the property for five years or risk losing citizenship. At the end of this period they are free to sell the property if they wish. And there is no difficulty in financing the purchase so applicants need only put up about US$200,000 in cash with the rest of the purchase price being borrowed from a bank. There are conditions attached but they are not unattractive. One property developer even offers a scheme whereby applicants can buy a share in a company that owns property for US$400,000 and the developer guarantees to buy back those shares for the same price after five years. This scheme qualifies the purchaser for citizenship. In all cases expect government and other fees of about US$100,000.

St. Kitts & Nevis allows dual nationality and is a UK Commonwealth country, which enhances its international credibility. The St. Kitts & Nevis passport gives visa-free access to around 190 countries and allows visa-free travel within Europe because it has signed agreements with the Schengen countries (which is all of Europe apart from the UK). The UK allows visa-free access for all Commonwealth citizens. This seems pretty attractive.

The only equivalent programme that we can find is the Economic Citizenship programme

> Sometimes described as the 'new alternative investment', IIPs should be treated like an insurance policy

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run by the Commonwealth of Dominica in the Caribbean (do not confuse this with the neighboring Republic of Dominica) where they will offer immediate citizenship in return for an investment in government bonds of US$75,000. Unfortunately the visa-free access is much more limited. This programme has been running quite successfully for quite some time but has recently fallen out of favour because St. Kitts appears to offer a better alternative.

No other countries seem to offer the same immediate citizenship programme legitimately. From time to time. I have been approached by agents purporting to represent countries that are now offering economic citizenships. The first question I ask them is to show me the clause in the nationality law that allows citizenship by registration in return for investment. Frequently the laws do not expressly permit it so the scheme seems to rely upon something rather more sinister and should be avoided at all costs.

Canada

Other countries offer a swift route to residency – usually five years – in return for a relatively modest investment (and provided the applicant can prove a minimum net worth acquired through lawful economic activities) which in time will lead to citizenship. Canada continues to attract new immigrants under its investment programme which requires a CND$800,000 in investment. This can be financed so the cash contribution is only CND$200,000.Citizenship should follow within five years. However, as the item on Page 6 shows, this programme (as well as the separate IIP operated by the provincial government of Quebec) is currently closed to new applications.

Bulgaria

Bulgaria has recently launched an interesting IIP programme. Bulgaria is a full member of the European Union and will grant residency in return for an investment on BGN 1 million (about US$500,000). Once residency has been granted, it is relatively easy to travel freely within Europe. Citizenship should follow two years after residency and, once granted, the EU principle of free movement of labour and right of establishment should allow the new immigrant to live and work anywhere within the European Union without further authorisation. This could be very attractive and has attracted many non-EU immigrants.

United Kingdom

A more expensive option might be the UK which, as of April 2011, introduced a three level tier investment option – £1 million, £5 million and £10 million – designed to allow those applicants with higher financial resources to gain settlement in the UK faster. You must make the UK your main home. You do not need to spend all your time in the UK but you should spend at least 50% in order to maintain your visa status. Persons who have lived in the UK for five years or more can be eligible to apply for citizenship, if they have met the strict residency requirements as follows: the total number of days absent from the UK for the entire five-year qualifying period does not exceed 450 days; they have demonstrated good character and knowledge of life in UK.

United States

The United States, of course, still has many different ways to enter. Each year, 50,000 immigrant visas are made available through a lottery to people who come from countries with low rates of immigration to the US. None of these visas are available for people who come from countries that have sent more than 50,000 immigrants to the US in the past five years. Anyone who is selected under this lottery will be given the opportunity to apply for permanent residence (a Green Card). If permanent residence is granted, then the individual will be authorised to live and work permanently in the US.

Successful applicants are allowed to bring their spouse and any unmarried children under the age of 21 with them. The number of places awarded vary according to quotas for each country – the US treats immigration as a form of foreign aid so different countries are awarded different quotas depending on their close connection with the US and the perceived needs of their citizens. One of the biggest recipients is The Philippines so if you are a citizen of The Philppines you will have the biggest chance of winning a green card through the lottery. It is free to enter although many agents offer to assist with the entry process in return for substantial fees.

Sovereign and its specialist external partners can guide clients through the best available IIPs in order to determine which one will suit them best. We keep up to date details on these schemes around the world, with their financial conditions, required investments, financing options, government application fees and requirements for the programmes, time frame to obtain permanent residence and to maintain it, as well as requirements for obtaining citizenship.

Sometimes described as the "new alternative investment", IIPs should be treated like an insurance policy – consider acquiring it well in advance before you need it in an emergency.

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