SOVEREIGN REPORT 50

CELEBRATING

OUR

30th

1987 - 2017

ANNIVERSARY

Private Client Services
Trusts and Companies
Wealth Management
and Protection
Insurance

Corporate Services
Business Start-up
Market Entry
Business Expansion
Accounting
Payroll

Retirement Planning
Global Personal and
Occupational Pensions

CONTENTS

AT A GLANCE

Editor Christopher Owen
Design Joanne Bae
Printer Asia One Printing

Sovereign's 30th Anniversary

It's our 30th birthday. I am told that the average life of a company is a little over 11 years. This applies to both listed and private companies. How many of the big names that made up the FTSE 100 of 30 years ago are still around? Not many. So we have to be a bit pleased with ourselves– not just for staying the course but also for continuing to grow slowly and steadily since 1987.

Sovereign started in Gibraltar. I went there soon after the border with Spain was fully reopened in 1985 some 16 years after its closure by Generalissimo Franco. Gibraltar was seen as the natural gateway for the large amounts of investment pouring into Spain from all over the world, particularly from the UK. It enjoyed a natural geographical advantage and also a bilingual professional community that could serve as a bridge between the English-speaking world and Spain.

Although Gibraltar promoted itself as an international finance centre (IFC) in those days, it still lacked much of the necessary infrastructure. It took up to six months to incorporate a Gibraltar company and there were only six international telephone lines so it was virtually impossible to make a call during the normal working day. You might get a line during lunchtime or after 6pm. There was also virtually no office space to accommodate the rush of firms setting up. Life was far from simple.

In the beginning it was just myself and a secretary working out of a business service centre. Now we employ over 400 people across a network of 25 offices around the world and offer a broad suite of professional services. This includes not only our core services of trust and company formation and management, but also insurance, wealth management, yacht and aircraft registration, retirement planning and most of the other things that our private or corporate clients need to set up, maintain or expand their interests around the world. We now manage over 15,000 structures for clients from all over the globe.

Gibraltar was one of the first IFCs to regulate the corporate services business. Now all IFCs are heavily regulated. Obtaining and maintaining the licences involves exhaustive investigation into the background and credentials of the owners and managers, as well as regular inspections. For the same reasons, as you will no doubt remember, we have to conduct extensive due diligence on all our clients. This has become a major business cost but we recognise it is also an essential element in building trust and confidence in the financial services sector.

The biggest change we have seen over the past three decades is the erosion of privacy (see page 21). It started with the publication by the OECD of the report on 'harmful tax competition' in 1998, which called for the jurisdictions with "low or no income taxes" to be blacklisted. Mercifully the US Treasury withdrew US support due to its concerns over the presumption that low tax rates were inherently suspicious or that any country or group of countries should interfere with another country's tax system.

As a result the OECD dropped moves to force increased tax rates and instead focused its attentions on increasing transparency and facilitating exchange of information so that law enforcement and tax officials could prevent offshore companies and trusts being used to hide criminal assets or illegally evade or avoid taxes. And so it has remained. With the introduction of the US Foreign Account Tax Compliance Act (FATCA) and the OECD Common Reporting Standard (CRS), financial privacy has been consigned to history.

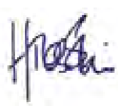
Despite this, IFCs have continued to thrive. There are still many legitimate ways to save tax and use offshore structures to facilitate cross-border business or to preserve and protect wealth. Pensions and insurance play an increasingly important part in tax mitigation and it is difficult to see any onshore countries removing the tax advantage that these products offer.

Trusts are also increasingly important despite the erosion of many of their tax advantages. That is because they can help protect and preserve wealth and also because they are highly effective for succession planning. This is often an essential requirement for those with family companies or large and complex estates.

Sovereign is particularly proud of all that we have achieved through the Sovereign Art Foundation. Through its successful art prizes, the Foundation has helped to raise the profile of hundreds of mid-career artists by giving them an international platform. But more importantly, with your assistance, we have raised over US$6 million to help improve the lives of disadvantaged children who would otherwise have little chance in life by using art as therapy and rehabilitation. My thanks to everyone who has contributed and my apologies to anyone whose arm I have twisted into doing so.

It gives me great pleasure to realise how much we have accomplished over the last 30 years and even greater pleasure that we can look forward to the future with confidence. We are, of course, extremely grateful for the longstanding commitment and support of our clients. Most of our business comes from referrals. Thanks to you all and to all our loyal and excellent staff.

Throughout this thirtieth year we have had or will be holding some parties and events. We hope that as many of you as possible have been able to attend or will be attending to help us celebrate this milestone. We would love you to enjoy our hospitality. ■



Howard Bilton
Chairman and Founder of the Sovereign Group

30th Anniversary Interview with Howard Bilton and Gill Graham

If you trace the history of the Sovereign Group all the way back to its origins in 1987, when founder and chairman Howard Bilton set up the first office in Gibraltar, you might be forgiven for assuming that he must be the longest-serving member of the business. You would be wrong.

As a recently qualified barrister, Howard had answered an advertisement in the Times for in-house legal counsel in the Isle of Man. He was interviewed by, amongst others, Gill Graham, and got the job. A year later he was dispatched to Gibraltar to open an office. That was in 1987. In 1998, Howard took over the company and renamed it Sovereign. Gill stayed with the new venture. So if every thing must have a beginning and that beginning must be linked to something that went before, Gill is that link.

Gill and Howard worked together briefly in the Isle of Man before she headed off to the Portuguese Algarve, where she stayed until returning to the Isle of Man office as a director about a decade ago. Alongside her duties at Sovereign Trust (Isle of Man), Gill is better known around the group as the organiser of the annual Sovereign conference, an event she has ruled with a rod of iron since inception.

Gill and Howard spoke to Ian Le Breton, Corporate Services Director at Sovereign (UK), about three decades of Sovereign.

Gill: "When Sovereign began, it was a very different proposition. Apart from the new office in Gibraltar we had perhaps a dozen staff in the Isle of Man and a couple more in London. We had a very basic menu of products and services, and we all knew each other very well. Today there are more than 400 staff spread across a worldwide office network. The scale is entirely different but the Sovereign dynamic has survived. There is a lack of formality, which makes it feel more like an extended family than a business. That's probably why Sovereign people tend to stay a long time and those that do leave generally stay in close touch."

Howard: "In retrospect it seems difficult to understand how we could have operated without email and the Internet in the early days because they are now so fundamental to everything we do – word processing, document filing, communications, reporting, HR and marketing. Then we had just a few 'golf ball' electric typewriters, the telex machine and a wonderful new gadget called the fax. I remember burning the midnight oil in the Gib office typing up share certificates and other documents.

"When email began to arrive during my stint in Gibraltar, I had heated debates because I wanted to set up an email system with our own domain name rather than using a generic system like Hotmail. Other people just couldn't understand how you could justify the additional expense. Now most companies can expect to devote around 10% of total costs to their IT and we have seen our IT department expand from one man and a server to a large team that works around the clock to ensure that our systems can be maintained worldwide."

Gill: "And it is not just IT that has expanded but our products and services. In the early days we pretty much just sold companies and most of our clients were UK law firms. They would ring up and order and we'd do the incorporation and send off a pack of documents. Now we have a wide range covering not just corporate services, but trusts, legal, tax, pensions, insurance and asset management. It is much more complicated but fortunately we also have a huge amount of technical expertise across the group."

Howard: "There was no regulation or requirement for due diligence. This is now a very large part of what we do – much to the annoyance of our clients. Gibraltar was one of the first international financial centres to introduce licensing of corporate service providers prompted by the Barlow Clowes scandal in 1988. The Financial Services Commission was set up the following year to regulate not just financial services business but also company management, trustees and insurance. It was not fun at the time but it stood us in good stead when regulation was introduced elsewhere because we understood both the process and the rationale."

Gill: "Our first Sovereign Conference was in 1999 at the Hotel Los Monteros, just down the road from Gibraltar in Marbella. By then we had opened more offices around the world and needed a way to bring everyone together for a short time so that they could get to know each other and to spread knowledge around the group. Howard just asked me to sort it out and it has grown from there. The first one was somewhat derailed by the arrival of some bottles of green absinthe from a colleague in Prague. We quickly realised we would have to introduce a fining system to make sure that everyone was seated by 9am because there is a serious amount of work to get through along with the social side.

"At €5 per minute late, the fines added up quickly until delegates got used to the idea and took it a bit more seriously. All money raised was donated to a charity of choice of the finee. Now it all goes to the Sovereign Art Foundation. I may handle the fines but I also dole out the aspirins to anyone who needs them, so 'Auntie Gill' does have a pastoral role as well. The conference is peripatetic so we have been in Estepona, Porto, Lisbon, Granada, Seville, Malta, Vilamoura, Tangier, Istanbul, Budapest, Tallinn, Krakow and this year in Salamanca. We have had some wonderful experiences and our sponsors have been very generous in keeping the troops fed and watered."

Howard: "The thing I have always enjoyed most about this industry is that I get to meet a lot of interesting people either as clients or collaborators. Most people in cross-border business are entrepreneurial and Sovereign has been able to keep growing because we have an entrepreneurial, independent mindset.

"I would never have believed back in Gibraltar in 1987 that we would be doing the range of work that we are doing today. A company is a group of people coming together who all contribute to the whole. I'm very proud that Sovereign now has over 400 people in good, well-paid jobs but we have also assisted, and continue to assist, in the creation and expansion of real businesses and countless other jobs around the world. This is often overlooked, particularly in the press, when it comes to talking about 'offshore business' but it's what gets me out of bed in the mornings."

Gill: "It was a lot of fun at the start. We were all young and we were independent so we got to set our own rules. I think my main feeling is that it is a 'Sovereign family'. Our conference sponsors always say it is a unique set up because the atmosphere is so good and everyone seems to be such good friends. I'm not sure I'll manage another 30 years but I hope to stick around for another 10." ■

UK opens beneficial ownership review for CDOTs

UK Secretary of State for Foreign and Commonwealth Affairs Alan Duncan announced, on 18 July 2017, that the creation of new central registers of beneficial ownership or similarly effective systems had been completed in all the Crown dependencies (CDs) and in the following Overseas Territories (OTs) with financial centres: Bermuda, the BVI, the Cayman Islands and Gibraltar.

In April last year the UK government announced that treaties had been signed with the CDOTs to exchange information relating to the beneficial ownership of legal entities incorporated in those jurisdictions with UK law enforcement authorities. The arrangements were to come into effect on 1 July 2017.

Each CDOT agreed to hold adequate, accurate and current beneficial ownership information for corporate and legal entities incorporated in their jurisdictions. This information was to be held in a secure central electronic database or similarly effective arrangement. The information would be available to UK law enforcement upon request within 24 hours or within one hour in urgent cases.

THE CDOTs successfully negotiated for their platforms to operate on a non-publicly available basis. The definition of 'beneficial owner' is derived from the EU's Fourth Money Laundering Directive and covers any natural person(s) who ultimately own or control a corporate or legal entity through direct or indirect ownership of more than 25% of the shares or voting rights or ownership interest in that entity or through control via other means.

"Guernsey and Alderney's legislation to enable their registers to be operational will be considered by the Privy Council this month," said Duncan. "The Turks & Caicos Islands have passed legislation, and their register is expected to be operational by the end of this month. Anguilla has not yet established its register. We continue to engage with the Anguillan authorities to take this forward."

On 1 July, the UK government launched an 18-month review of the arrangements between the UK and each of its CDOTs for the sharing of beneficial ownership information. The review was ordered under the Criminal Finances Act 2017 and requires the relevant minister to present a report to Parliament by 1 July 2019. ■

SOVEREIGN COMMENT

The UK Criminal Finances Act also introduced two new corporate criminal offences of failure to prevent tax evasion, as of 30 September 2017. This date corresponds with the date for the first automatic exchanges of information under the OECD's new global Common Reporting Standard (CRS).

The new offences can make a company criminally liable if it fails to prevent the facilitation of tax evasion by an employee, agent or anyone else acting for or on behalf of the company. The new law does not change what constitutes tax evasion or the facilitation of tax evasion; it is designed to make it more straightforward to prosecute firms that fail to prevent an 'associated person' from facilitating tax evasion.

Cyprus provides alternative option for tax residency

The Cypriot parliament approved, on 14 July 2017, a bill to amend the existing rules for Cyprus tax residency in order to provide a second option for applicants who are unable to meet the existing '183-day' requirement. When gazetted, the new rule will apply retrospectively to 1 January 2017.

Previously, Cyprus tax law defined the term "resident in Cyprus" when applied to an individual, as meaning an individual who stays in Cyprus for a period or periods exceeding in aggregate 183 days in the tax year of assessment – the tax year in Cyprus being the calendar year.

The new amendment adds a second test – the so-called '60-day rule' – for the purposes of determining Cyprus tax residency for individuals. This applies to individuals who in the relevant tax year:

- Do not reside in any other single state for a period exceeding 183 days in aggregate, and
- Are not tax resident in any other state, and
- Reside in Cyprus for at least 60 days, and
- Fulfil the following conditions –
  - Carry out any business in Cyprus or are employed in Cyprus or are a director of a company tax resident in Cyprus at any time in the tax year, provided that such is not terminated during the tax year.
  - Maintain in the tax year a permanent residential property in Cyprus that is either owned or rented. ■

SOVEREIGN COMMENT

The current '183-day rule' remains unchanged by the above amendment, such that, as from tax year 2017, an individual will be considered as a tax resident of Cyprus if the individual satisfies either the '183-day rule' or the '60-day rule' for the tax year. George Ayiomamitis, Managing Director of the Cyprus office, is hugely experienced in this area and interested readers or their advisers should contact him.

Monaco enacts new legal framework for foreign residents

The National Council of Monaco enacted significant amendments to the Droit International Privé on 28 June 2017, to provide foreign residents with clarity over what laws will apply in respect of families and their assets for estate and succession planning purposes.

Law No.1488 applies the EU Succession Regulation, known as Brussels IV, which establishes that a single succession law should apply to an entire succession regardless of the type and location of the assets. In particular, it introduces the *professio juris* principle such that the law of the state in which the deceased was domiciled at the time of death, unless he or she elects to apply the law of their nationality, will govern succession.

The law also provides for the matrimonial law to be applied in an international divorce. Where spouses disagree, the relevant matrimonial regime is that of the state where their household is located. Other 'tie-break' rules come into play if that criterion does not apply. ■

WEF confirms Malta amongst top financial jurisdictions

The Global Competitiveness Report 2017-2018, published annually by the World Economic Forum, has once again placed Malta amongst the top jurisdictions in terms of provision of financial services. Once again, Malta achieved top 20 classifications in key areas such as soundness of banks, the strength of auditing and reporting standards.

Overall, in terms of competitiveness Malta now ranks 37th out of 137 countries, an improvement on the 40th place attained in 2016. This Report assesses each country in respect of 12 main pillars. Malta also performed well in the areas of higher education and training (30th), labour market efficiency (29th), business sophistication (31st), and innovation (38th).

The Report provides a detailed overview of the competitiveness of performance of 138 economies, and provides a highly detailed analysis of their economic, financial and social performance. It contains a detailed summary for each of the economies included in the study, as well as an extensive section of data tables with global rankings covering over 100 indicators.

Switzerland retained first place as the most competitive economy, followed by the US and Singapore. The other nations making up the top 10 were the Netherlands, Germany, Hong Kong, Sweden, the UK, Japan and Finland. ■

Cyprus changes tax treatment for intra-group financing

The Commissioner of Taxation issued on 1 July 2017 a Circular for the tax treatment of intra-group financing arrangements that provides for the application of the arm's length principle. The changes are in line with the provisions of the OECD transfer pricing guidelines and follow discussions with the Directorate General for Competition of the European Commission.

The Circular applies to any company carrying out group financing transactions that is a Cyprus tax resident, as well as to any company that is not a Cyprus tax resident and has a permanent establishment in Cyprus, as per Section 2 of the Income Tax Law 118(I)/2002.

Intra-group financing transaction is defined as any activity consisting of financing through loans or cash advances remunerated by interest to related companies, or other financial means and instruments, such as debentures, private loans, cash advances and bank loans.

The Circular clarifies the conditions under which the agreed remuneration complies with the arm's length principle, which is the remuneration that would have been agreed under comparable conditions in the open market.

In the case of companies performing functions similar to those performed by regulated financing and treasury companies, a return on equity of 10% after-tax can be taken as reference in calculating the arm's length remuneration. This percentage will be regularly reviewed by the Tax Department based on relevant market analysis. The minimum equity level of these companies must be in line with the equity requirements set for credit institutions by the relevant EU regulations.

The Circular also clarifies situations in which a group financing company pursues a purely intermediary function. Such transactions will be deemed to comply with the arm's length principle if the analysed entity receives in relation to its controlled transactions under analysis, a minimum return of 2% after-tax on assets. A deviation from the minimum return will not be allowed unless justified by an appropriate transfer pricing analysis. ■

SOVEREIGN COMMENT

These guidelines came into effect as from 1 July 2017, for all existing and future transactions, irrespective of the date of entering into the relevant transactions. Any previously issued tax rulings on transactions within the scope of this circular will no longer be valid for tax periods from this date. If intra-group financing transactions effected prior to 1 July 2017 and supported by the Transfer Pricing study are still ongoing after the reference date, then the Transfer Pricing study will need to be verified by the Commissioner of Taxation for compliance.

HMRC invokes GAAR for first time for gold bullion scheme

HMRC published, on 3 August 2017, the first GAAR Advisory Panel opinion, which found that a scheme to pay employee rewards using gold bullion was "not a reasonable course of action in relation to the relevant tax provisions". It was HMRC's first use of the general anti-abuse rule (GAAR) since its introduction in 2013.

The scheme was used by a company with two directors. Each received payments of about £150,000 through a series of complicated steps involving an offshore trust and the purchase and immediate sale of gold assets. HMRC's position was that the company and the employees were seeking to avoid a charge to income tax and the associated NICs charge on the funds made available to them.

The GAAR advisory panel stated that the use of gold as payments for employees was "abnormal and contrived". The scheme seen as a "clear case of associated taxpayers seeking to frustrate the intent of parliament by identifying potential loopholes in complex interlinking anti-avoidance legislation".

An HMRC spokesperson said: "We're delighted with the opinion of the GAAR Advisory Panel. HMRC has already made clear that gold bullion avoidance schemes don't work and that we will challenge these schemes. This result has wide-reaching impacts and reinforces the power of the GAAR in tackling abusive tax avoidance." ■

SOVEREIGN COMMENT

Former Chancellor George Osborne introduced the GAAR in 2013 to target tax avoidance. Where there are loopholes that allow companies and individuals to avoid tax, the GAAR acts as a blanket rule to identify abusive tax avoidance arrangements that are deemed 'unreasonable'. The advisory panel of experts was set up to issue opinions, which are then taken into account if cases go to court, on whether particular schemes should be caught by the rule.

Hong Kong's chief executive announces new tax incentives

Hong Kong's new Chief Executive Carrie Lam kept an election promise in her maiden Policy Address on 11 October 2017 by announcing the introduction of a two-tier profits tax system to lower the tax burden on Hong Kong enterprises, as well as a super tax deduction for qualifying research and development (R&D) expenditure. A Bill to implement these initiatives is to be submitted to the Legislative Council as soon as possible.

The two-tier profits tax system will provide for the first HK$2 million of profits of all enterprises to be taxed at a reduced rate of 8.25%. Profits tax is currently levied at the rate of 16.5% for companies carrying on business in Hong Kong on relevant income earned in or derived from Hong Kong. To address potential abuse, anti-avoidance measures will prevent groups from setting up numerous enterprises and splitting their businesses to enjoy multiple entitlements at the reduced rate.

A 300% tax deduction will also be offered for the first HK$2 million of qualifying R&D expenditure incurred by enterprises; a 200% tax deduction will be available for the remaining expenditure. The details of the super R&D deduction regime, including the qualifying criteria, the application procedures and the eligibility assessment, have yet to be announced.
Lam further said that Hong Kong would seek to sign more comprehensive tax treaties with other economies. She also noted non-tax measures for supporting Innovation and Technology (I&T) development in Hong Kong, such as providing investment funding for I&T start-ups and nurturing young talent in the I&T field.

Hong Kong's Innovation and Technology Commission launched a HK$2 billion (US$256 million) Innovation and Technology Venture Fund (ITVF) in September to attract venture capital firms to invest in local start-ups. The aim is to increase the added value, productivity and competitiveness of economic activities in Hong Kong. It will be open for applications until 15 January 2018.

Eligible investors are required to have a remaining fund life of at least five years, and a minimum remaining committed capital of HK$120 million as at the date of application. The government and each VC fund will invest in eligible start-ups concurrently at an overall ratio of around 1:2.

The pipeline for exit will see the co-investment partner either locate third party buyers for both the ITVF and the VC partner stakes in the related investee companies, or it will acquire the ITVF's holdings by the time their master agreement terminates. IPO will also be considered as an exit strategy.

"The ITVF will help fill the funding gap for local technology start-ups. We are confident that having this new fund will be conducive to developing a more vibrant Hong Kong innovation and technology ecosystem," said Secretary for Innovation and Technology Nicholas Yang. ■

SOVEREIGN COMMENT

These developments suggest that the Hong Kong government is adopting a proactive approach to promoting policy goals through tax and non-tax measures. The ITVF initiative was approved in 2016 as a scheme to encourage more investment from VC firms into Hong Kong start-ups, especially at the series A and B stage. There is currently sufficient funding support for I&T start-ups at the pre-seed to seed stages, but most of these only provide seed to pre-Series A funding and many do not provide full-range support in terms of networking, business operation and marketing to the start-ups. Series B funding rounds in Hong Kong are typically in the range of HK$40 to 80 million.

China's new business licence deadline approaches

The deadline for companies to update to the 'five-in-one' business licence is 31 December 2017. From that date the five underlying documents – business licence, tax registration certificate, organisation code certificate, social security registration certificate and statistical registration certificate – that are required to be held by companies will be deemed invalid, which could severely limit a company's ability to operate.

As part of a broader effort to speed up the rate of business registration, China has been working to simplify administrative procedures by combining these documents into a single licence. As of 1 October 2015, newly incorporated companies and companies amending their registration details could apply for a new 'three-in-one' licence, combining the first three documents, to a single registration authority.

Last year, the State Council issued a circular to fully implement the 'five-in-one' business licence, which incorporates all five documents, across China as of 1 October 2016. The circular also endorsed the extensive use of the new business licence, such that all governmental departments should recognise and accept it as official documentation. ■

SOVEREIGN COMMENT

Companies that have previously registered under the 'three-in-one' licence are not required to submit a new application for the new licence. Their information will be automatically sent to relevant departments and a new licence issued. However, it is still prudent to seek confirmation in case of any variation at local levels.

Companies that have been operating under the five separate documents should confirm that the application process has been completed or is at least underway. Sovereign China can assist from its offices in Shanghai and Beijing, so please get in contact if you require any help with processing these changes.

China moves to promote foreign investment

China's State Council announced, on 28 July 2017, a plan to further attract foreign investment into China, including a new withholding tax deferral for reinvested dividends, an extension of the technological service enterprises tax incentive and a new tax incentive for overseas income remitted back to China.

The guidance and roadmap, outlined in a State Council notice, promotes foreign investment from several perspectives besides taxation, including market access, work permits for expatriates, economic development zones and business environment.

The State Council has proposed granting a withholding tax deferral for dividends received by foreign investors from their investments in China if such dividends are directly invested in "encouraged categories of industries" and certain requirements can be met. 'Encouraged' industry categories were outlined in an updated version of the foreign investment catalogue, which became effective in July 2017.

Under the current Corporate Income Tax (CIT) Law, a dividend declared to a foreign investor is subject to a 10% withholding tax, unless otherwise reduced by a tax treaty. The State Council has instructed the Ministry of Finance and the State Administration of Taxation to promulgate detailed implementation rules for this new tax incentive.

The State Council also proposed to roll out the enterprise income tax (EIT) incentive applicable to technologically advanced service enterprises (TASEs) engaged in offshore outsourcing services on a nationwide basis. The EIT incentives reduce the CIT rate from 25% to 15% and increase the employee education expense deduction limitation of total salaries and wages from 2.5% to 8%. It is currently only available to TASEs operating in certain cities on a pilot basis.

In addition, it proposes to provide a tax incentive to Chinese enterprises, including regional headquarters in China of multinational enterprises, when overseas income is remitted back to China.

To further encourage foreign investment, the Ministry of Commerce (MOFCOM) announced the abolition of a regulation for the review and management of the representative office (RO) of foreign enterprises in China. The decision was made on 21 August and came into force from 14 September 2017.

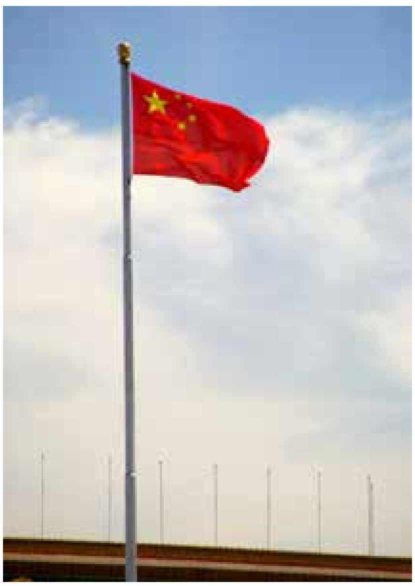
Under the 'Detailed Rules of the Ministry of Foreign Trade and Economic Cooperation on the Approval and Control of Resident Representative Offices of Foreign Enterprises' of 1995, a foreign enterprise was required to present a written application to the approving department. If the chief representative of the RO failed to collect the letter of approval and register it within 30 days, the approval would be invalidated.

An action plan to protect intellectual property (IP) held by foreign businesses was jointly announced on 18 September 2017 by 12 national departments. According to the plan, the authorities will conduct a special operation from September to December 2017 to target the theft of trade secrets, trademark infringement, patent violations, and online property rights violations. ■

SOVEREIGN COMMENT

The State Council released a circular (Guo Fa [2017] No. 39) on 16 August 2017, which set out measures to promote foreign direct investment (FDI) growth as part of China's opening-up strategy. FDI fell by about 6% in the first seven months from a year earlier in US dollar terms, raising concerns about China's appeal as an investment destination and the state of the economy.

The circular entailed 22 measures that could be divided into five categories, including reducing market entry restrictions for foreign investment, making supportive fiscal and taxation policies, improving the investment environment for national development zones, attracting foreign talent, and optimising the business environment.



China halts Initial Coin Offerings

The People's Bank of China issued a statement on 4 September 2017 declaring initial coin offerings (ICOs) illegal and that all related fundraising activity should "cease immediately". As part of the ban, Chinese authorities have also called on individuals and organisations to refund investors for any amount raised through ICOs.

The move is aimed at protecting investors and "dealing with the risks properly", said a joint statement from the People's Bank of China, securities and banking regulators and other government departments.

ICOs involve the sale of virtual coins mostly based on the Ethereum blockchain, which is similar to the technology that underpins bitcoin. Instead of the shares issued in a traditional IPO, investors in an ICO receive virtual tokens that are unique to the issuing company or its network. That means they grow in value only if the start-up's business or network proves viable.

In China, close to $395 million was raised from investors this year, according to data from state news agency Xinhua. And it is part of a growing global trend. The research site CoinDesk suggests more than $1.5 billion in capital has been raised through ICOs since the start of the year. ■

SOVEREIGN COMMENT

Distributed Ledger Technology (DLT) – also referred to as 'blockchain' – is one of the hottest topics in the financial sector. The US Securities and Exchange Commission ruled in July 2017 that some of the 'coins' for sale are actually securities and therefore subject to its regulation. Other countries are seeking to develop frameworks to accommodate the new technology. In Singapore and Switzerland, for example, tokens are treated as an asset and not as a security.

If you are considering launching a venture in this area, Sovereign is well placed to assist you by providing a range of corporate services and arranging introductions to other professionals where necessary. To help you navigate your way through this complex new area, please contact your nearest Sovereign office.

UAE publishes VAT law ahead of January 2018 tax roll-out

The United Arab Emirates (UAE) Federal Government issued, on 27 August 2017, Federal Decree Law No. (8) of 2017 on Value Added Tax, which outlines the scope, rates and responsibilities for the new tax. The Law will come into force on 1 January 2018.

Article 2 of the Law provides that all taxable supplies (including deemed supplies) as well as imported concerned goods will be subject to VAT. The term 'concerned goods' is defined as imported goods that would not be exempted if they had been supplied in the UAE. The VAT treatment of concerned goods will be regulated by the Executive Regulations.

Article 3 provides that a standard rate of 5% will be imposed on the supply of goods and services as well as importation. There are however certain exceptions where a zero-rate will apply, as well as exemptions.

Article 13 provides that UAE residents are required to register for VAT if the value of goods and services supplied exceeds or is expected to exceed the registration threshold to be specified in the Executive Regulations.

Designated Free Zones are deemed to be outside the UAE. Goods may be transferred between designated zones without VAT. Applicable procedures and conditions will be specified in the Executive Regulations.

Persons without residency in a GCC Member State where VAT will be implemented will be required to register for VAT if they supply goods or services in the UAE and no other person is required to account for VAT in respect of those supplies. A person may apply to the tax authority to be exempted from the VAT registration requirement if the person only makes zero-rated supplies. ■

SOVEREIGN COMMENT

The Unified Agreement for VAT across the Gulf Cooperation Council (GCC) region was published in the official gazette of Saudi Arabia in May 2017. It provides the framework for the operation of VAT across the GCC – the UAE, Bahrain, Saudi Arabia, Oman, Qatar and Kuwait – but each member state can interpret the framework according to its local law.

Singapore the 'Top Expat Destination' for third year in a row

Expats rated Singapore as the best country in the world to live and work for the third year in succession, according to the new Expat Explorer survey released by HSBC in October. Norway, New Zealand, Germany and the Netherlands completed the top five.

A strong economy, impressive track record for families and confidence in their financial affairs were among the many reasons expat life in Singapore was deemed outstanding. The city-state ranked first overall once again this year, coming fourth in the Economics league table, fourth in the Experience league table and third in the Family league table.

Three-quarters of expats (73%) said Singapore offered better earnings potential than their home country. Indeed they reported a 42% increase in their annual income since the move to an average of almost US$118,000, which is US$18,000 higher than the global average expat income and US$3,000 higher regionally.

More than two-thirds (65%) of expats in Singapore said they had more disposable income than at home. This money was spent on taking more holidays (50%) and living in a better property (40%). And those setting money aside were saving for retirement (57%), property (44%) or other long-term investments (40%).

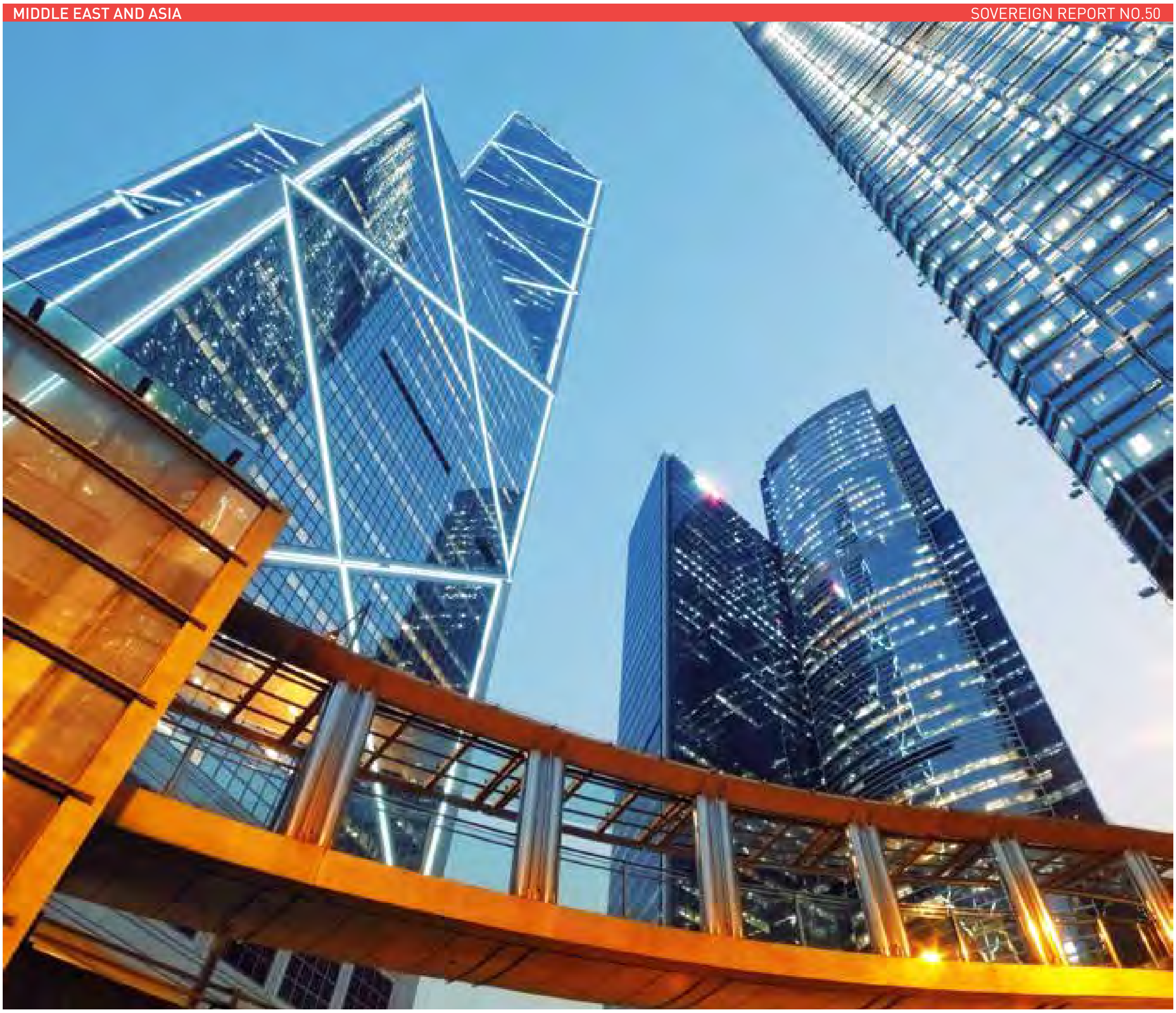
Singapore was considered one of the safest, most secure destinations in the world with 82% of expats feeling safer in Singapore than at home, to rank the country second globally. They were also very confident in the strength of the local economy (73%) and Singapore's political climate (83%).

Singapore came in third in the rankings for families, although 85% of expat parents said childcare was more expensive than at home. But with Singapore ranking third globally for the quality of childcare and second for the quality of children's education, the investment may seem justified. ■

SOVEREIGN COMMENT

The HSBC Expat Explorer survey is the world's largest and longest running study of expat life, asking more than 27,500 expats about their experience abroad. As well as unveiling the best places in the world to live as an expat, the survey also found that life abroad typically increases expats' income by 25%, with the average expat earning just under US$100,000 a year.

Sovereign is well placed to assist individuals (or their advisers) who may be contemplating becoming an expat for the first time – or those planning to move from one expat location to another. These services include residency and work permit applications and pensions and insurance. Advice should be sought early in the process. Contact your closest Sovereign office to find out how we can help.



Hong Kong the world's most competitive economy – again

Hong Kong consolidated its dominance of the annual rankings compiled by the IMD World Competitiveness Centre, taking the top spot out of 63 economies worldwide for the second year running. Switzerland and Singapore came in second and third, with the US ranking fourth, its lowest position in five years and down from third last year. The Netherlands completed the top five, jumping from eighth last year.

The rankings are based on four indicators: economic performance, government efficiency, business efficiency, and infrastructure. Hong Kong topped the rankings on two indicators – government efficiency and business efficiency.

However, the city's economic performance rankings – based on trade, investment and employment – fell from five to 11, while its infrastructure ranking, which includes an assessment of infrastructure in technology, science, education, health and the environment, improved slightly, moving up from 21 to 20.

The IMD has consistently ranked Hong Kong among the three most competitive economies since 2013, except in 2014, when the city was placed fourth. Hong Kong Financial Secretary Paul Chan Mo-po said the report was a "clear recognition" of Hong Kong's "favourable business environment and robust financial system".

"In light of the fierce competition in the global economic arena, we must strive to uphold our prevailing competitive edge, including the open and free market principle, the fine tradition of the rule of law, an efficient public sector and a robust institutional framework," he said.

In the Asian region, the Chinese mainland saw the biggest improvement, climbing seven places to rank 18, on its "dedication to international trade" and "improvement in its government and business efficiency". It also topped the list of countries with per-capita gross domestic product of less than $20,000 *per capita*, followed by Asian peers Malaysia and Thailand.

For the first time this year, the IMD published a Digital Competitiveness Ranking, which aims to measure countries' abilities to adopt and explore digital technologies leading to transformation in government practices, business models and society in general. Singapore topped the ranking, followed by Sweden, the USA, Finland and Denmark. ■

SOVEREIGN COMMENT

The Swiss-based IMD has published the rankings every year since 1989. It compiles them using 260 indicators, about two thirds of which come from 'hard' data such as national employment and trade statistics; and a third from more than 6,250 responses to an opinion survey that measures the business perception of issues such as corruption, environmental concerns and quality of life. This year 63 countries were ranked.

Trump Administration issues 'unified framework' for tax reform

US President Donald Trump, the House Committee on Ways and Means and the Senate Committee on Finance published, on 28 September 2017, a nine-page "unified framework for fixing our broken tax code", which was much modified in the light of the Trump Administration's inability to pass legislation reducing federal government spending.

According to the White House, the new framework proposes to reduce the corporate tax rate from 35% to 20%, limit the maximum tax rate for small and family-owned businesses to 25% and allow, for at least five years, businesses to immediately write off the cost of new investments.

The foreign profits of US multinational corporations will be taxed at a fixed minimum global rate, with full exemption for dividends received from foreign subsidiaries where the US parent owns at least 10%. It also proposes a one-time reduced tax rate on assets accumulated overseas, so that there is no tax incentive to keeping the money offshore. The rate is not yet specified, and the assets would be deemed repatriated, with payment of the tax liability spread out over several years.

In respect of personal taxation, the new framework proposes to shrink the current seven tax brackets into three – 12%, 25% and 35% – with the potential for an additional top rate for the highest-income taxpayers to ensure that the wealthy do not contribute a lower share of taxes paid than at present. It will double the existing income tax deduction to around USD12,000.

It also proposes to repeal the Death Tax and substantially simplify the tax code by repealing the existing individual Alternative Minimum Tax (AMT). Many of the itemised deductions that are primarily used by the wealthy will be eliminated, but tax incentives for home mortgage interest and charitable contributions, as well as tax incentives for work, higher education, and retirement security are to be retained. ■

SOVEREIGN COMMENT

The Committee for a Responsible Federal Budget estimated that the framework would equate to a US$2.2 trillion tax cut, with US$5.8 trillion lost to lower rates and other changes, and another US$3.6 trillion recouped by eliminating deductions.

The next step for congressional Republicans is to pass a budget resolution that would allow a tax bill to pass the Senate with a 51-vote majority. If it passes both chambers, the tax-writing committees — Senate Finance and House Ways and Means — would begin drafting and amending tax legislation. Lawmakers will have to identify offsets of about US$3 trillion over 10 years to align the plan with the budget resolution.

US appeals court dismisses FATCA legal challenge

The US Court of Appeals for the Sixth Circuit upheld, on 18 August 2017, a district court decision to dismiss a lawsuit brought by several individuals, including US Senator Rand Paul, to enjoin the enforcement of the Foreign Account Tax Compliance Act (FATCA) and the foreign bank account reporting (FBAR) requirement imposed by the Bank Secrecy Act.

In Mark Crawford *et al* v Department of Treasury *et al* (Case Number 16-3539), the plaintiffs claimed that the intergovernmental agreements, the reporting requirements and the penalties violated various constitutional provisions such as equal protection, the Fourth Amendment and others. They also claimed general inconveniences such as difficulty opening bank accounts or general marital stress.

In 2015, US District Judge Thomas Rose ruled that all of the plaintiffs lacked standing to bring their claims because none had been adversely affected by FATCA. On appeal, the plaintiffs argued that even though FATCA has not been enforced against them, the US Supreme Court's ruling in Susan B. Anthony List v Driehaus allowed for a pre-enforcement challenge.

The Sixth Circuit panel affirmed the dismissal of their lawsuit for lack of standing because no plaintiff had credibly alleged injuries traceable to the laws.

"First, no plaintiff has alleged any actual enforcement of FATCA such as a demand for compliance with the individual-reporting requirement, the imposition of a penalty for non-compliance, or a foreign financial institution's deduction of the Pass thru Penalty from a payment to or from a foreign account," said Judge Danny Boggs for the three-judge panel.

"Second, no plaintiff can satisfy the Driehaus test for standing to bring a pre-enforcement challenge to FATCA because no plaintiff claims to hold enough foreign assets to be subject to the individual-reporting requirement." ■

BVI Registry fully functional following hurricanes

The BVI Financial Services Commission announced, on 12 September 2017, that full functionality on its online company registration portal VIRRGIN has been restored after being down following the effects of the hurricanes the previous week. All Company Registry data remained secure.

To facilitate name reservations that may have expired during the passage of hurricanes Irma and Maria, the Registry of Corporate Affairs announced a temporary extension to the name reservations process. All company names reserved during the period 4 September 2017 to 31 October 2017 would remain reserved until 15 November 2017.

The BVI's international business and finance centre was severely damaged, but key elements including the BVI Financial Services Commission, survived intact. However the Commercial Division of the High Court was temporarily relocated to Saint Lucia due to damage to the High Court buildings and the disruption of essential services.

The judges of the Commercial Division began hearing matters in Saint Lucia on 25 September 2017 at a building in Castries, which is being deemed a Court by order of the Chief Justice for the sitting of the Commercial Division of the Court of the Virgin Islands. ■

SOVEREIGN COMMENT

The 2017 hurricane season has caused unprecedented levels of destruction across the Caribbean. It has devastated the lives of millions of people, and left hundreds of thousands of people homeless and displaced. The determination of the governments and people to recover as quickly as possible, as evidenced by the BVI, is extraordinary. Sovereign maintained contact with its offices and agents throughout the crisis. Anyone with any questions about their structures should contact their Sovereign representative for assistance.

Swiss government publishes new draft for corporate tax reform

The Swiss Federal Council published, on 6 September 2017, a new detailed draft for a corporate tax reform, known as 'Tax Proposal 17', which is intended to secure Switzerland's overall attractiveness as a business location while remaining in compliance with international rules. A previous proposal, Corporate Tax Reform III (CTR III), was rejected in a nationwide referendum in February.

The new proposal includes many of the elements of the CTR III, but also respective counter-financing and other measures in order to achieve a politically feasible solution. As expected, the proposed measures include the abolition of the existing preferential cantonal tax regimes (holding, domiciliary, and mixed company status), as well as the Federal tax regimes (Swiss finance branch and principal company). Transitional rules will enable companies that have benefited from cantonal tax regimes companies to release existing hidden reserves (including goodwill) in a tax-privileged way.

A mandatory cantonal patent box regime that complies with the OECD's modified nexus approach is also proposed. This will be available in case of patents or comparable rights and the maximum tax relief available for respective IP income will be limited to 90%. Copyrighted software is not covered by the definition.

A 150% super deduction for research and development (R&D) costs incurred in Switzerland is to be introduced at a cantonal level (based on R&D salary costs, plus a mark-up). The maximum tax relief on profits arising from the patent box and a potential R&D super-deduction would be 70% of the net profit. No losses must arise from the tax relief provisions.

Permanent establishments of foreign companies that are subject to ordinary income and capital taxation in Switzerland may benefit from a tax credit on foreign-source taxes that is currently only available to Swiss legal entities.

As a counter-financing measure, the so-called partial taxation of dividends from qualified shareholdings (applicable in the case of a minimum stake of 10%), the Federal Council proposes to increase the taxation of qualifying dividends at a Federal level from currently 60% (in the case private assets) to 70% on both. Cantons will need to tax at least 70% of such dividends as well.

In order to compensate the cantons for the losses in tax revenues expected to arise from the proposed changes in legislation, the Federal Council proposes to increase the cantonal share of Federal income tax revenues from 17% to 20.5%.

The consultation procedure is open until 6 December 2017. The Federal Council is due to submit Tax Proposal 17 to parliament in the first half of 2018. Entry into force will not be before the year 2020 and may be subject to an additional popular referendum. ■

France demands €600 million in tax from Microsoft

The French revenue is seeking €600 million in taxes from the local subsidiary of US multinational technology company Microsoft in respect of Internet advertising and keywords for Internet searches, according to an unconfirmed report in L'Express newspaper on 30 August 2017.

Despite a considerable presence in France, Microsoft paid only €32.2 million in corporate tax last year because French customers are billed from Ireland. Microsoft's European headquarters is based in Dublin.

Microsoft told L'Express only that it "acts in accordance with the laws and regulations in all the countries in which it operates, working in close cooperation with local tax authorities to ensure complete compliance with local laws." ■

SOVEREIGN COMMENT

In July, the Paris administrative court ruled that Google Ireland Limited was not liable to pay €1.12 billion in back taxes demanded by the French tax authorities for the period 2005-2010. It followed a court adviser's recommendation that Google did not have a permanent establishment or sufficient taxable presence to justify the assessment.

The court found that the conditions to tax Google Ireland as if it had a permanent establishment in France were not met because Google France did not have the sufficient autonomy from the Irish headquarters. This was evidenced by the fact that Google France's employees were unable to accept online advertising orders from French clients without requiring approval from the headquarters in Ireland.

European Commission launches agenda for fair taxation of digital economy

The European Commission launched, on 21 September 2017, a new EU agenda to ensure that the digital economy is taxed in a fair and growth-friendly way. It paves the way for a legislative proposal on EU rules for the taxation of profits in the digital economy, which could be set out as early as spring 2018.

According to the Communication adopted by the Commission, the current tax framework cannot capture activities that are increasingly based on intangible assets and data. As a result, the effective tax rate of digital companies in the EU is estimated to be half that of traditional companies – and often much less. At the same time, unilateral measures taken by Member States threaten to create new obstacles and loopholes in the Single Market.

The first focus will be on pushing for a fundamental reform of international tax rules, which would ensure a better link between how value is created and where it is taxed. Member States, it said, should converge on a strong and ambitious EU position in order to push for meaningful outcomes in the OECD report to the G20 on this issue next spring.

In the absence of adequate global progress, the EU should implement its own solutions to taxing the profits of digital economy companies. The Common Consolidated Corporate Tax Base (CCCTB) in particular offers a good basis to address the key challenges and provide a sustainable, robust and fair framework for taxing all large businesses in the future. This proposal is currently being discussed by Member States, it said, and digital taxation could easily be included in the scope of the final agreed rules. Short term 'quick fixes' such as a targeted turnover tax and an EU-wide advertising tax will also be assessed.

Pierre Moscovici, Commissioner for Economic and Financial Affairs, Taxation and Customs said: "The goal of this Commission has always been to ensure that companies pay their fair share of tax where they generate profits. Digital firms make vast profits from their millions of users, even if they do not have a physical presence in the EU. We now want to create a level playing field so that all companies active in the EU can compete fairly, irrespective of whether they are operating via the cloud or from bricks and mortar premises." ■

G20 leaders reaffirm commitment to CRS and BEPS

G20 leaders affirmed their commitment to "work for a globally fair and modern international tax system" in a communiqué released on 8 July 2017 after their summit in Hamburg, Germany.

They reiterated their commitment to the implementation of the Base Erosion and Profit Shifting (BEPS) package and encouraged all relevant jurisdictions to join the Inclusive Framework. They also looked forward to the first automatic exchange of financial account information under the Common Reporting Standard (CRS) in September 2017 and called on all relevant jurisdictions to begin exchanges by September 2018 at the latest.

"We commend the recent progress made by jurisdictions to meet a satisfactory level of implementation of the agreed international standards on tax transparency and look forward to an updated list by the OECD by our next Summit reflecting further progress made towards implementation. Defensive measures will be considered against listed jurisdictions," said the communiqué.

G20 leaders pledged to continue to support assistance to developing countries in building their tax capacity and also to work on enhancing tax certainty and with the OECD on the tax challenges raised by digitalisation of the economy.

"As an important tool in our fight against corruption, tax evasion, terrorist financing and money laundering, we will advance the effective implementation of the international standards on transparency and beneficial ownership of legal persons and legal arrangements, including the availability of information in the domestic and cross- border context," said the communiqué. ■

Mauritius rated 'Compliant' under Global Forum's 'enhanced' process

The OECD Global Forum on Transparency and Exchange of Information for Tax Purposes published, on 21 August 2017, the first ten outcomes of a new and enhanced peer review process aimed at assessing compliance with international standards for the exchange of information on request between tax authorities.

Three countries – Mauritius, Ireland and Norway – received an overall rating of 'Compliant', while six others – Australia, Bermuda, Canada, Cayman Islands, Germany and Qatar – were rated 'Largely Compliant'. In addition, Jamaica was rated 'Partially Compliant' and the Forum has requested a supplementary report on follow-up measures to ensure a higher level of compliance.

The new round of peer reviews follows a six-year process during which the Global Forum assessed the legal and regulatory framework for information exchange (Phase 1), as well as the actual practices and procedures (Phase 2) in 119 jurisdictions worldwide.

The Global Forum's new peer review process combines the Phase 1 and Phase 2 elements into a single undertaking, with new focus on an assessment of the availability of and access by tax authorities to beneficial ownership information of all legal entities and arrangements, in line with the Financial Action Task Force (FATF) international standard. ■

SOVEREIGN COMMENT

Global Forum members are working together to monitor and review implementation of the international standard for the automatic exchange of financial account information, under the Common Reporting Standard (CRS), which commenced in September 2017. The process is intended to ensure the effective and timely delivery of commitments made, the confidentiality of information exchanged and to identify areas where support is needed.

OECD confirms first automatic Common Reporting Standard exchanges

The OECD confirmed, on 14 September 2017, that all 49 jurisdictions that had committed to start exchanges under the Common Reporting Standard (CRS) in September 2017 had now activated their exchange relationships under the CRS Multilateral Competent Authority Agreement (CRS MCAA) and their network of bilateral exchange relationships. This was sufficient to cover over 99% of the total number of potential exchange relationships.

The successful implementation of the CRS requires both domestic legislation to ensure that financial institutions correctly identify and report accounts held by non-residents, and an international legal framework for the automatic exchange of CRS information.

The CRS MCAA defines the scope, timing, format and conditions for the exchange of CRS information and is based on the multilateral Convention on Mutual Administrative Assistance in Tax Matters, the prime instrument for cooperation in tax matters. At present, 95 jurisdictions have signed the CRS MCAA.

While the CRS MCAA is a multilateral agreement, exchange relationships for CRS information are bilateral in nature and are activated when both jurisdictions have the domestic framework for CRS exchange in place and have listed each other as intended exchange partners. ■

SOVEREIGN COMMENT

At present, 102 jurisdictions have publicly committed to implement the CRS, with 49 taking up exchanges in September 2017 and a further 53 taking up exchanges in September 2018. The OECD announced that a further series of bilateral exchange relationships was established under the CRS MCAA, such that there were now over 2,000 bilateral relationships for the automatic exchange of CRS information in place across the globe.

In addition, 20 of the 53 jurisdictions committed to first exchanges in 2018 have already put the international legal requirements in place to commence exchanges under the CRS MCAA next year. A further activation round for jurisdictions committed to a 2018 timeline was scheduled to take place in November 2017, which allowed the remaining jurisdictions to nominate the partners with which they will undertake automatic exchanges of CRS information.

Sovereign has highlighted the arrival of CRS in a number of recent editions; anyone with any concerns about their arrangements should obtain professional advice without delay.

High Court finds Russian 'domiciled' in UK for jurisdictional purposes

The English High Court found, on 28 July 2017, that a Russian businessman whose wife and children lived in London and who had a temporary right of residence in England under his wife's UK 'Investor Visa', was domiciled in England for purposes of the jurisdiction of the Court, despite living and working in Russia for most of the time.

In Ruslan Urusbievich Bestolov v. Siman Viktorovich Povarenkin [2017] EWHC 1968 (Comm), the claimant Bestolov brought proceedings in the English High Court seeking repayment of a debt relating to a joint venture arrangement in respect of mines in Russia. He argued that the defendant was domiciled in England and therefore the English Court must accept jurisdiction to determine the claim.

The defendant Povarenkin was served personally in England but applied for an order that the Court decline to exercise its jurisdiction on the basis that Russia was the more appropriate place for the claim to be heard on the grounds that: both parties were Russian citizens and lived in Russia, both parties' business interests were primarily in Russia, neither had business interests in England, the contract was concluded in Russia, the mines were in Russia, all the evidence and witnesses were in Russia and all the documentation was originally in Russian. In sum, the claim had no connection at all to England and every relevant connection to Russia.

It was common ground between the parties that were the defendant to be found to be domiciled in England, the Court had no power to stay the proceedings and the defendant's jurisdiction challenge would be dismissed.

The Court held that the defendant was resident in England because he and his wife had made a "life style choice" that she and their children would live in England during the school year whilst the children were educated in England. They had resided in a substantial property in London, which should be characterised as a family home, for the majority of the year since 2013.

The defendant spent substantial, regular and increasing, periods of time in England in order to spend time with his wife and children. He and his wife had also committed very substantial amounts of money to satisfy UK 'Investor Visa' requirements, leading to temporary residence in England with the potential to apply for permanent residency.

Given that the nature and circumstances of the defendant's residence indicated "overwhelmingly" that he had a substantial connection with England, the Court had therefore to accept jurisdiction. The defendant's application was dismissed and he was refused permission to appeal. ■

Guernsey court sets aside 'disastrous' transfer into trust

The Guernsey Royal Court set aside, on 23 March 2017, a transaction in which a UK business owner had, based on incorrect professional advice, transferred shares into a 'fundamentally flawed' tax-planning structure that would have had disastrous financial impact upon her.

In Whittaker v Concept Fiduciaries Ltd (15/2017), Mrs Margaret Whittaker was the owner of the Slimming World business. In 2008, acting on professional advice, she transferred her shares in the companies, which were incorporated in England, into five Guernsey remuneration trusts. She understood that the effect would be to mitigate her exposure to income tax and capital gains tax during her lifetime, and that the incidence of inheritance tax on her probate estate would be reduced and that her children would be able to receive capital and income tax-free after her death.

After instructing new advisors in January 2016, Mrs Whittaker discovered that the earlier advice was incorrect. Not only would she and her family not benefit from the supposed UK tax advantages, it would in fact have disastrous tax and estate planning implications. On 23 November 2016, she applied to the Royal Court in Guernsey under the Trusts (Guernsey) Law 2007 to set aside the transfer by her of a total of 70,000 shares to Concept Fiduciaries Limited (CFL) on the grounds of mistake.

The case was complicated by the fact that the companies were incorporated in England, so the applicable law of mistake was that of England and Wales, notably the UK Supreme Court's judgment in Pitt v Holt (2013 UKSC 26), which has recently been followed in the Guernsey courts. HMRC was notified of the application and, by a letter dated 16 December 2016, stated that, if the transaction was set aside by the court on the grounds of mistake, then it agreed to be bound by that decision and treat the transfer as void.

The Royal Court found that the advice Mrs Whittaker received as to the tax consequences of transferring her shares into the remuneration trusts was seriously flawed and misleading and, as a result, she had made a distinct and "causative" mistake as to the whole foundation of the transaction.

"This was, on any footing, a grave mistake by Mrs Whittaker," the Court said. "These shares represented Mrs Whittaker's life's work, and her primary source of wealth ... She did so in order to obtain 'illusory' or non-existent tax advantages and therefore no benefit at all. Further, having done so, it is unlikely that Mrs Whittaker's children or grandchildren would have been able to benefit from the capital distributions from the remuneration trusts, and they would therefore have been unable to benefit from the wealth she had created."

The Court concluded: "There is no principle of public policy in Guernsey which could have deprived Mrs Whittaker of the relief sought by her Application. In this context, I also note that HMRC were given the opportunity to make representations, but they declined to do so. Further, there is no other equitable reason to refuse the remedy of setting aside the transfers of shares. In these circumstances, it was clear to me that it would have been unjust to leave the mistake uncorrected."

The Royal Court further distinguished the Slimming World arrangement from "artificial tax avoidance transactions", which it said might justify refusal to grant the relief. "Mrs Whittaker," it said, "made genuine transfers of her shares in the companies to CFL as trustee of the remuneration trusts, and the evidence shows that CFL was a genuine trustee. Further, prior to the transfers ... Mr and Mrs Whittaker (had been advised) that many successful business, like Slimming World, had entered into tax planning schemes that involved the establishment of remuneration trusts and sub-trusts, and that Slimming World was just the sort of business for which this planning would be appropriate." ■

Tribunal finds Jersey companies to be resident in the UK

The First-tier Tribunal (FTT) rejected a taxpayer's appeal, finding on 14 July 2017 that three Jersey subsidiaries specifically set up to take a single uncommercial decision as part of a tax saving scheme were UK resident because the Jersey directors were acting on the instructions of the UK parent company.

In Development Securities (No 9) Ltd and ors v HMRC [2017] UKFTT 565 (TC), the Development Securities Group (DSG) developed and implemented a plan designed by PricewaterhouseCoopers by which companies incorporated in Jersey were to enter into call option arrangements with UK group companies to crystallise latent capital losses on the disposal of certain assets without losing the benefit of indexation allowance. The amount of money DSG stood to save from the planning was around £8 million. The total price paid for the acquisition of the assets, as funded by Development Securities Plc (DS Plc), was £24,495,000.

It was essential to the success of the arrangement that the Jersey companies were resident in Jersey and not the UK in the period from incorporation until 20 July 2004. As planned, the companies were incorporated on 10 June 2004, the call options were entered into on 25 June 2004, they were exercised on 12 July 2004 and steps were taken to ensure the companies were UK tax resident from 20 July 2004.

In October 2014, HMRC contended that the companies were instead resident in the UK during this period and denied the claims to indexation allowance. The taxpayer appealed.

As Jersey incorporated companies, the Jersey companies could only be UK tax-resident if they were 'centrally managed and controlled' in the UK. The Tribunal disagreed with HMRC's view, based on HMRC v Smallwood and Another [2010] STC 2045, that the 'central management and control' test could be approached as a question of whether there was a 'scheme of management' in the UK.

However it found on the facts that the companies' only business was to acquire the assets under the call option arrangements and that the real decisions, affecting the real business, had been taken by the UK resident parent company; the board had been usurped.

In reaching that conclusion, the Tribunal identified three unusual features:

- The only transaction to be undertaken by the Jersey companies – to acquire assets for a substantial amount in excess of their market value – was inherently uncommercial.
- This inherent lack of commerciality meant that the only basis on which it was valid as a matter of corporate law for the Jersey companies to enter into the transaction was (a) that their parent, DS Plc, specifically approved the transaction and (b) that they were adequately funded to overpay for the assets, as they were by DS Plc subscribing for shares and making a capital contribution, such that there was no prejudice to creditors.
- The Jersey companies were to become UK tax resident very shortly after the acquisition of the assets under the relevant option.

The Tribunal concluded that "from the outset, in the very act of agreeing to take on the engagement, the Jersey directors were in reality agreeing to implement what the parent had already at that point in effect decided to do". ■

SOVEREIGN COMMENT

We have commented on the importance of these issues on many occasions. The comments made by Judge Harriet Morgan are interesting in that she acknowledged Chadwick LJ's remark in Wood v Holden [2006] STC 443 that "Ill-informed or ill-advised decisions taken in the management of a company remain management decisions". However she stated: "Unlike Wood v Holden, therefore, this was not a case where the board considered a proposal and, having taken appropriate advice, decided that it was in the best interests of the companies to enter into it. Given that the transaction was clearly not in the interests of the companies and indeed could only take place with parental approval, the inescapable conclusion is that the board was simply doing what the parent, DS Plc, wanted it to do and in effect instructed it to do. In the circumstances, the line was crossed from the parent influencing and giving strategic or policy direction to the parent giving an instruction."

First-tier Tribunal finds for HMRC in question of domicile

The First-tier Tribunal (FTT) found, on 18 July 2017, that the grandfather of the appellant taxpayers had not acquired a domicile of choice in Brazil, thereby relinquishing his UK domicile, such that they were also UK domiciled.

In F Henderson and others v HMRC [2017] UKFTT 556 (18 July 2017), the appellants were four siblings – Frederick, George, Cordelia and Arabella Henderson – who were appealing, under s42 of the Income Tax (Earnings and Pensions Act) 2003 and s207 of the Income and Corporation Taxes Act 1988, against HMRC's determination that they had been domiciled in the UK since their birth.

The parties were agreed that the appeals could be determined by reference to the following questions. Issue One: had their grandfather, Ian Henderson, acquired a domicile of choice in Brazil by the time their father, Nicholas Henderson, was born? Issue Two: if he had, did he abandon that domicile of choice (so that his UK domicile of origin revived) before their father turned 16? Issue Three: if so, did their father subsequently acquire a domicile of choice in the UK?

The Tribunal accepted that Ian Henderson had been residing in Brazil at the time of the birth of his son and that, having lived there for two years, "he was happy living there, having recently married a Brazilian woman"'. However, it found that two years' residence in Brazil was "too short a time for a young man (…) to form a settled intention to reside permanently there" and that this would depend on his ability to make a living. Indeed, when his employer had asked him to move back to London, he had done so.

Tribunal Judge Jonathan Richards said: "We recognise that Ian Henderson has sworn a statutory declaration to the effect that he intended to reside in Brazil permanently by the time Nicholas Henderson was born. However, we have concluded that his actions were not consistent with that stated intention."

The Tribunal also found on Issue Two that any Brazilian domicile acquired by Ian Henderson would have been abandoned by the time his son had turned 16, because he had acquired a property in London, left his employer and started a UK business. "It is unlikely that facts in existence at the date of the hearing shed much light on the nature of Ian Henderson's intentions prior to 1979. However, it is of some note that he still has not returned to live permanently in Brazil. Nicholas Henderson strongly maintained in cross-examination that his father still intends to return to live in Brazil. However, we cannot accept that an 87-year old man, who has lived in London for 51 years and whose children largely live close to him in London will return to Brazil now when he has chosen not to do so previously." ▸

In respect of Issue Three, the Tribunal said that although Nicholas Henderson has spoken of his strong attachment to Brazil, it had concluded that since 1993, this was little more than an emotional fondness falling short of an intention to reside there permanently. He has visited Brazil only once, for two weeks, since his gap year in 1981 despite making a large number of trips to other overseas countries in that period.

The contradictory nature of Nicholas Henderson's evidence, it said, suggested that the true intention since 1993 has been for he and his wife Sophie to reside permanently or indefinitely in the UK although they were keeping that situation under review particularly in the light of proposed tax changes to the status of 'non-doms'.

"There is much less evidence of actions consistent with an intention to reside permanently outside the UK than there is of actions consistent with an intention to reside permanently in the UK," said the Tribunal. "Since 1993, the Trust (his wife's family trust) has purchased and refurbished property in the UK for the Hendersons, the Hendersons sent their children to schools in the UK and Nicholas Henderson has established businesses in the UK. Nothing like the same actions have been taken in relation to any country outside the UK.

"Rather, the evidence supporting the proposition that Nicholas Henderson intends to live outside the UK comes largely in the form of statements as to both his, and his wife's intentions. We have had regard to those statements of intention, but have given them less weight than evidence of actions since Nicholas Henderson has an obvious self-interest in making them. Moreover, Sophie Henderson has chosen not to give evidence in this appeal. Nicholas Henderson has an obvious self-interest in giving evidence as to Sophie Henderson's intentions since there is a real prospect that her own stated domicile in New Zealand may be the subject of a dispute with HMRC, so his reports as to her intentions carry little weight.

"Our overall conclusion on Issue Three is therefore that, even if Nicholas Henderson had a Brazilian domicile of origin, he lost that in 1993 at the time the Trust acquired the property in Chelsea Harbour. HMRC therefore succeed on Issue Three." The appeal was dismissed. ■

Statutory right to transfer to QROPS set to remain

The UK government confirmed, in a consultation response issued on 21 August 2017, that while it does intend to proceed with its plans to limit the statutory right to transfer pensions, the statutory right to transfer to a QROPS is likely to remain in place. It is understood that some of the measures will be attached to the second Finance Bill of 2017.

In December 2016, the government published a 'Pension Scams consultation' paper proposing a package of measures aimed at tackling three different areas of pensions scams: a ban on cold calling in relation to pensions to help stop fraudsters contacting individuals; making it harder for fraudsters to open small pension schemes; and limiting the statutory right to transfer to some occupational pension schemes.

In respect of the final measure, an individual's statutory right to a pension transfer was to be limited to certain arrangements only, including:

- An FCA regulated personal pension arrangement (including SIPPs)
- Transfers to an occupational pension scheme where there is a genuine employment link
- Transfers to authorised Master Trust schemes.

The proposed measure did not preserve the statutory right to transfer to a Qualifying Recognised Overseas Pension Scheme (QROPS).

Having considered the industry's response to the consultation, the government confirmed that it is now looking at how to maintain the statutory right to transfer to a QROPS. ■

SOVEREIGN COMMENT

The UK government said it would engage with industry and other stakeholders on this issue during the course of this year. More information will follow in future issues when the new framework takes shape.

Sovereign has recently joined the Pensions Liberation Industry Group (PLIG), which was set up to help combat pension scams by sharing good practice via a voluntary code of practice for pension transfers. PLIG includes trustees, administrators, legal advisers, insurers, regulators and consumer representatives.

The PLIG Code offers a robust common framework for evaluating risk, carrying out due diligence and ensuring the fair treatment of transfer requests. First introduced in March 2015, it applies to all requests by members for transfers from a UK registered pension scheme to another registered pension scheme or Recognised Overseas Pension Scheme (ROPS).

The Code is reviewed and updated on a regular basis to ensure that it reflects market changes, current risks and good practice, and to encourage stronger protection for members.

Malta and the Overseas Transfer Charge

It has now been over six months since the UK implemented the Overseas Transfer Charge (OTC) for pension transfers to Qualifying Recognised Overseas Pension Schemes (QROPS) on 9 March 2017. The move was part of a series of crackdowns aimed at reducing the use of overseas pension schemes.

Under the measure, with effect from 9 March 2017, an overseas pension transfer will be taxable unless, from the point of transfer, both the individual and the pension savings are in the same country, both are within the European Economic Area (EEA) or the QROPS is provided by an employer. If this is not the case, then there will be a 25% tax charge on the transfer and the tax charge will be deducted before the transfer proceeds.

Should the QROPS' member's circumstances subsequently change within five years of the pension transfer, it will also be necessary to reassess whether or not an overseas transfer charge applies. Many commentators predicted that the OTC would effectively spell the end of QROPS because, if an overseas pension scheme is situated in a country within the EEA, it is no longer viable for individuals residing in countries outside the EEA to request the transfer of their UK pension schemes. So where are we now?

For individuals residing within the EEA, Sovereign Pension Services administers schemes for those wishing to transfer their pensions.

Both schemes are licensed and regulated in Malta by the Malta Financial Services Authority (MFSA). Malta is a full member of the EU and pensions are regulated under the Retirement Pension Act 2011 (as amended). For overseas transfers for individuals who have chosen to retire within the EEA, Malta is still therefore a viable and popular jurisdiction.

It is also worth mentioning that individuals who had an existing QROPS set up prior to the implementation of the OTC are still able to transfer to another QROPS provider without incurring the OTC, subject to satisfaction of a number of transfer criteria.

For those individuals who can no longer contemplate transferring their pensions to an overseas pension scheme there are still beneficial solutions available for retirement planning. These include Qualifying Non-UK Pension Schemes (QNUPS), which Sovereign offers in Malta and Guernsey, as well as Sovereign's International Self-Invested Personal Pension (ISIPP) offered from the UK.

In August the UK government confirmed in its response to its 'Pension Scams Consultation', that while it does intend to proceed with its plans to limit the statutory right to transfer, the statutory right to transfer to a QROPS is likely to remain in place. It is understood that some of the measures will be attached to the second Finance Bill of 2017. ▶

HM Treasury said: "The government does not wish to prevent legitimate transfers to overseas pension schemes. It will, therefore, consider how best to extend the criteria under which there is a statutory right to transfer to include legitimate transfers to QROPS.

"In this context, the government notes the tightening of the rules around the tax treatment of transfers to QROPS announced in the recent Spring Budget, and will take that into consideration. In addition, it will also factor in legislation that took effect from April 2017 that means that if neither an overseas non-occupational pension scheme nor its provider is regulated it cannot be a qualifying overseas pension scheme or a QROPS."

We don't yet know whether the UK government will make good on this intention but one thing is certain, anyone contemplating a transfer of their UK pension to a QROPS should act sooner rather than later.

For further information on Sovereign's Malta retirement planning solutions please contact Stephen Griffiths. ■

Sovereign launches new Guernsey QNUPS

Sovereign's Guernsey office recently launched a new Qualifying Non-UK Pension Scheme (QNUPS). The plan is branded as the Brock Personal Pension Plan and was released in response to continued demand for a cost effective and flexible QNUPS solution from Guernsey.

There are a number of fee options from which to choose, depending on how the plan is to be invested and the value of the pension scheme assets.

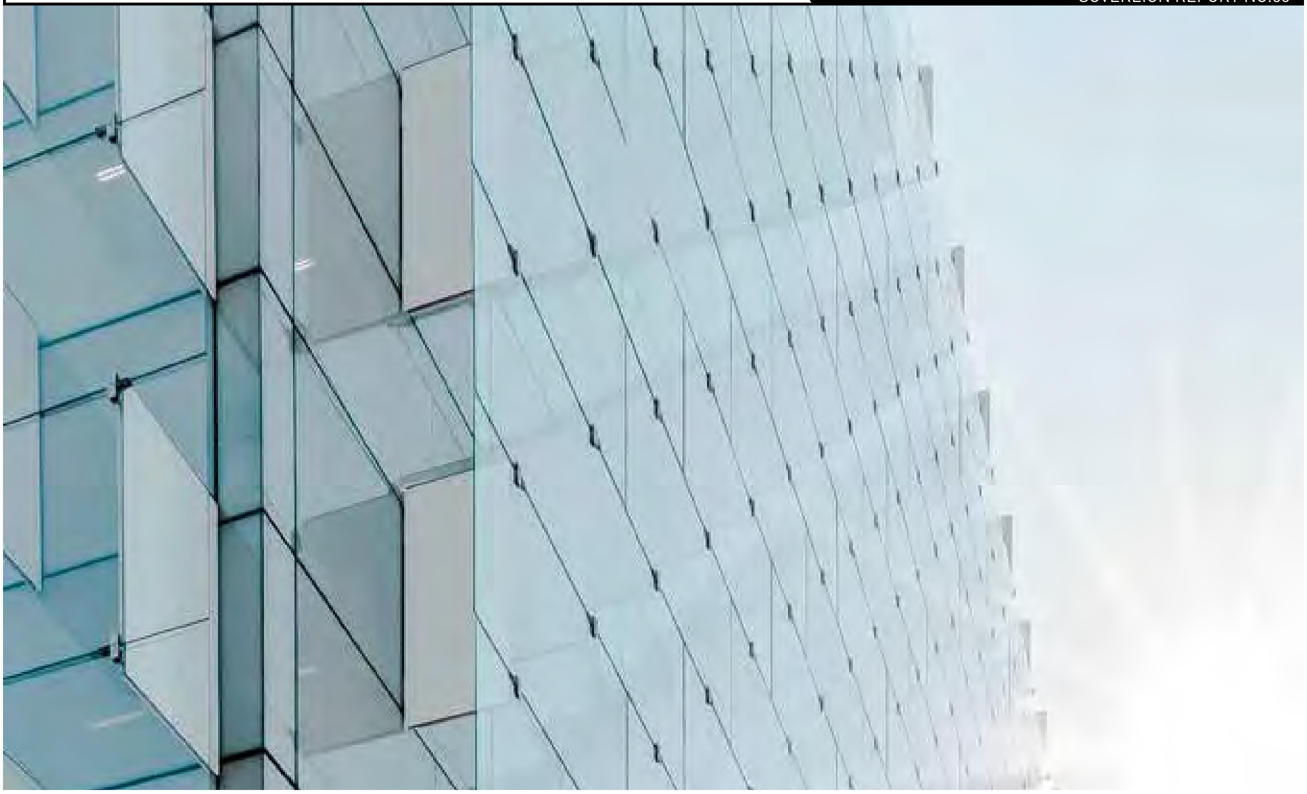
Guernsey's tax framework provides an excellent tax neutral destination for internationally mobile individuals because non-residents of Guernsey are not taxed on their pension income in Guernsey. As a result, a pension scheme member has only to consider their tax liability in their country of residence. ■

Guernsey introduces Pensions Regulation

Guernsey's position as a market-leading jurisdiction for international pensions has been further strengthened by its introduction of standalone pensions regulation. The new framework, effective since 30 June 2017, makes the formation and management of pension schemes or gratuity schemes a regulated activity.

It is notable and unusual that gratuity schemes are specifically catered for within the new regulations. This will make Guernsey especially attractive to international organisations seeking a robust and tax neutral home for their employee benefit arrangements. This may be of particular interest to businesses in the Middle East where this type of arrangement prevails over traditional pension plans.

The new framework is pragmatic and flexible in that it caters for those wishing to self-invest as well as externally managed pension arrangements. ■



The road from privacy to transparency – 1987 to 2017

The international consensus in respect of 'financial privacy' has changed radically in the three decades since Sovereign opened its first office in Gibraltar in 1987. Back then, the US was just beginning to focus on the financial dimensions of transnational crime during its so-called 'war on drugs', but other leading nations were more concerned about reconciling the interests of their domestic banking industries with the needs of foreign law enforcers.

Two key events acted as catalysts to accelerate change. The first was the terrorist attack in the US on 11 September 2001, which led many countries to strengthen their anti-terrorism legislation and expand the powers of law enforcement and intelligence agencies. Driven by the Financial Action Task Force (FATF), this initiative was focused on strengthening international standards for anti-money laundering (AML) and combatting the financing of terrorism (CFT).

The second was the global financial crisis of 2007/2008, which incentivised cash-strapped governments worldwide to target tax evasion and avoidance in an attempt to balance their budgets. Previously the OECD's campaign for information exchange 'on request' had made slow progress, while the European Union's Savings Tax Directive (STD) had been forced to compromise on transparency.

In the wake of the financial crisis, the focus shifted from exchange of information on request to automatic exchange. The US government made the decisive break with its unilateral Foreign Account Tax Compliance Act (FATCA). The OECD then gave it universal application through the multilateral Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum).

More recently, two new strands have been added. The first in response to public outrage at the way in which multinational firms – Google, Microsoft, Apple and Amazon are among the most visible – have been successfully minimising their profits in the countries where they are generated. The Base Erosion and Profit Shifting (BEPS) project, led by the OECD's Inclusive Framework, is focused on tackling corporate tax planning strategies that artificially shift profits, primarily by the introduction of Country-by-Country (CbC) reporting.

CbC reporting will require multinational enterprises to provide aggregate information annually, in each jurisdiction where they do business, relating to the global allocation of income and taxes paid, together with other indicators of the location of economic activity within the group.

The second strand is the identification of the ultimate beneficial owners of legal entities. The leak of the so-called 'Panama Papers' in 2016 served to focus public interest on how corporate structures have been used to conceal the real ownership of assets. As a result, the EU member states and other leading industrial nations are introducing central electronic registers for the disclosure of the beneficial owners of corporate, partnership and trust structures.

Events have accelerated very quickly over the last few years. The near-simultaneous implementation of major new processes for the automatic exchange of tax information, the collection of beneficial ownership information and CbC reporting is likely to have significant consequences. And it will affect all corners of the world – there will be no hiding place.

This loss of financial privacy affects anyone who lives in one country and has assets in another or any firm doing cross-border business. One thing, however, has not changed. Every individual and enterprise has the right to structure their affairs in a tax efficient manner. It is still possible to take advantage of legitimate opportunities to protect your assets but it is now vital to ensure that all arrangements are fully compliant in your country of residence. You will need to be well informed and take specialist advice. Anyone with concerns over their existing arrangements should contact their nearest Sovereign office for an expert review.

1989
The Financial Action Task Force (FATF) on Money Laundering was established. An inter-governmental body, its objectives were to set standards and promote effective implementation of legal, regulatory and operational measures for combatting money laundering and other related threats to the integrity of the international financial system.

1990
The FATF issued a series of 40 Recommendations to create an international standard for anti-money laundering (AML). To ensure they remain up to date and relevant, revised Recommendations were issued in 1996, 2001, 2003 and, most recently, 2012. They are intended to be of universal application.

As a result, customers of any financial institution or financial services provider (including Sovereign) must expect to supply proof of identity, proof of residential address and references before they will be taken on as customers, and to explain the source and business purpose for any substantial movement of funds.

1996
Leaders of the OECD nations granted the OECD Secretariat a mandate to report on harmful tax competition and "develop measures to counter the distorting effect of harmful tax competition".

1998
The OECD listed 41 jurisdictions as 'tax havens' and called on them to make commitments to end harmful tax practices. The identifying criteria for blacklisting were: low or no income taxes; 'ring fencing' between resident and non-resident tax regimes; lack of transparency; and a failure to exchange information.

2000
The first bilateral Tax Information Exchange Agreement (TIEA) was signed between the US and Antigua and Barbuda. TIEAs require the contracting states to exchange information, upon request, that is relevant to the assessment and collection of tax and enforcement of tax claims or the investigation or prosecution of tax crimes.

2001
US Treasury Secretary Paul O'Neil withdrew US support for the OECD's 'harmful tax competition' initiative. Of particular concern was the presumption that low tax rates were inherently suspicious and that any country or group of countries should interfere with another country's tax system, as well as the potential unfair treatment of non-OECD countries.

The OECD modified its campaign by removing the strand relating to low or no income taxes. Instead jurisdictions were asked to increase transparency and facilitate exchange of information. The OECD formed the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) to provide a multilateral framework for developing international standards and establishing a level playing field.

After 9/11, the FATF's mandate was enlarged to include combatting the financing of terrorism (CFT). It issued a further 8 Special Recommendations. A ninth Recommendation was added in 2004.

2004
An internationally agreed standard, issued by the OECD's Global Forum, required exchange of information on request where it was 'foreseeably relevant' to the administration and enforcement of the domestic laws of a treaty partner with no restrictions on exchange caused by bank secrecy or domestic tax interest requirements. The Forum also developed a Model Agreement on Information Exchange on Tax Matters that countries could use to guide bilateral negotiations for Tax Information Exchange Agreements (TIEAs).

2005
The EU Savings Tax Directive (STD), the world's first multinational automatic exchange of information programme, was brought into effect. It introduced a system of automatic exchange of information for interest payments from financial institutions in one EU state to a resident of another EU state. It applied to all 27 EU member states, together with their associated and dependent territories, and was also extended by agreement to key 'third' countries – Andorra, Liechtenstein, Monaco, San Marino and Switzerland. However countries opposed to automatic exchange were permitted to impose a withholding tax on interest income instead.

2009
In the wake of the global financial crisis, G20 leaders declared the era of bank secrecy over at their London Summit in April 2009. They called on the Global Forum to ensure rapid implementation of the international standard of transparency and exchange of information.

The Global Forum was significantly restructured to expand both its membership and its work programme. The main objective was the establishment of a comprehensive network of bilateral TIEAs, reinforced by a peer review process to examine both the availability of the necessary information for tax information exchange and the effectiveness of the processing of requests for information exchange. More than 1,600 TIEAs have now been put in place and over 100 jurisdictions have been subject to peer review.

2010
The US passed the Foreign Account Tax Compliance Act (FATCA), obliging US taxpayers with specified foreign financial assets that exceeded certain thresholds to report them to the IRS. It also required foreign financial institutions (FFIs) to report to the IRS information about financial accounts held by US taxpayers or foreign entities in which US taxpayers held a substantial ownership interest. Required information included the account holder's name, address and taxpayer's identification number (TIN) together with the account number and balance.

The Convention on Mutual Administrative Assistance in Tax Matters was amended by Protocol to align it to the international standard on exchange of information and to open it to all countries. The most comprehensive multilateral instrument available for all forms of tax co-operation to tackle tax evasion and avoidance, it has now been signed by 114 jurisdictions.

2011
The G20 leaders agreed to consider exchanging information automatically for tax purposes on a voluntary basis at their Cannes Summit.

2012
The G20 leaders endorsed an OECD report on automatic exchange of tax information and encouraged all countries to join this practice at their Los Cabos Summit.

Germany, France, Spain, Italy and the UK signed an agreement with the US "regarding an intergovernmental approach to improving international tax compliance and implementing FATCA". They undertook to collect client account information from banks within their borders and pass it on to the US tax authorities on the banks' behalf. In return the US committed itself to collect information on US bank accounts operated by European residents and automatically pass it to the relevant national tax authority.

The FATF published revised recommendations for minimum national AML standards, which included new requirements to improve the transparency of beneficial ownership. The FATF required that countries should ensure that companies either obtain and make available information on their beneficial ownership or ensure that there are alternative mechanisms, such as registries, in place so that beneficial ownership of a company can be determined in a timely manner by competent authorities.

2013
The G20 leaders endorsed plans to exchange tax information automatically between themselves by the end of 2015 and called "on all other jurisdictions to join us by the earliest possible date" at their St Petersburg summit. In the official declaration they formally abandoned the 'on request' standard for exchanging information in favour of automatic exchange of information in accordance with the OECD Convention on Mutual Administrative Assistance in Tax Matters.

The G20 leaders also agreed to adopt an OECD Action Plan for the prevention of base erosion and profit shifting (BEPS), which was designed to close the gaps between national tax systems by re-examining existing international tax rules on tax treaties, permanent establishment and transfer pricing.

France, Germany, Italy, Spain and the UK announced their intention to develop and pilot a multilateral agreement for information exchange to be based on their agreement for the implementation of FATCA. The UK further announced that its Overseas Territories and Crown Dependencies had agreed to share financial information on UK and EU taxpayers automatically with the UK.

The G8 leaders committed at their Lough Erne summit to develop new measures to ensure that information about the beneficial ownership of companies and trusts would be made accessible to the relevant authorities.

2014
1 January was the opening date for FFIs worldwide to register and obtain a Global Intermediary Identification Number (GIIN) under the US FATCA.

The OECD published proposals for automatic exchange of information, known as the Common Reporting Standard (CRS), which were based on the FATCA agreements many jurisdictions had concluded with the US. All 34 members of the OECD have endorsed the CRS model and over 100 jurisdictions worldwide have committed to adoption of the new standard within a clear timetable. This includes the whole of the EU, the BRICs nations and most of the major global economies such as Japan, Australia, Canada and Switzerland. The only major outlier is the US, which remains committed to FATCA.

The CRS Multilateral Competent Authority Agreement (CRS MCAA) was signed to implement the automatic exchange of information under the CRS on the basis of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

2015
Reporting under the US FATCA began for FFIs worldwide.

The EU Fourth Anti-Money Laundering Directive was enacted with a two-year window for implementation. Member states will be required to obtain and hold adequate, accurate and current information on corporate and other legal entities, including trusts and similar legal arrangements, incorporated or administered within their respective member state. The registers will be accessible to the authorities with no restrictions. Those within the regulated sector undertaking customer due diligence will have access to the registers as 'responsible parties', as will others who are able to demonstrate that they have a 'legitimate interest'.

2016
In the wake of the 'Panama Papers' leaks, G20 leaders mandated the Global Forum and FATF to work on improving the availability of beneficial ownership to ensure effective implementation of the standard that will enable tax authorities to identify the true owners behind companies and other legal arrangements.

The UK, Germany, France, Italy and Spain announced a pilot scheme to exchange beneficial ownership information relating to "companies, trusts, foundations, shell companies and other relevant entities and arrangements". It will be exchanged "in a fully searchable format" and will include "information on entities and arrangements closed during the relevant year". The aim of the pilot scheme is to identify a common standard that can be developed into a global network of "interlinked registries containing full beneficial ownership information".

OECD member states and G20 countries established the Inclusive Framework on BEPS which brought together over 100 countries and jurisdictions to work on developing standards on BEPS-related issues and reviewing and monitoring the implementation of the whole BEPS Package.

2017
The first 53 countries under the CRS, the 'early adopters', began exchanging information with other participating countries in the first half of 2017. The 'late adopters' will start exchanging information from the 2017 calendar year in 2018. Over 100 jurisdictions have signed CRS agreements for the automated exchange of information and the list is growing – no matter where you are, CRS is likely to affect you this year or next year.

Over 70 countries signed the new Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, which is designed to assist governments to transpose results from the BEPS Project into their existing bilateral tax treaties worldwide. ■

SOVEREIGN REPORT NO.50
INFOGRAPHIC

SOVEREIGN™

30 YEARS OF SOVEREIGN IN NUMBERS

NUMBER OF STAFF WHO HAVE BEEN WITH US FOR

30 years | 25-29 years | 20-24 years | 15-19 years

GIBRALTAR
OFFICE INCORPORATED IN **1987**

HONG KONG
OFFICE INCORPORATED IN **1989**

PORTUGAL
OFFICE INCORPORATED IN **1990***

CAPE TOWN
OFFICE INCORPORATED IN **1994**

LONDON
OFFICE INCORPORATED IN **1996**

ISLE OF MAN
OFFICE INCORPORATED IN **1998**

SOVEREIGN ASSET MANAGEMENT
OFFICE INCORPORATED IN **2000**

*Portugal office started in 1990 as International Company Services (Portugal) Limitada and in 1999 it was incorporated the Sovereign – Consultoria Limitada

25
INTERNATIONAL SOVEREIGN OFFICES

448
SOVEREIGN EMPLOYEES

TIMELINE OF INCORPORATION OF SOVEREIGN OFFICES AND REGISTRATIONS OF THE SOVEREIGN ART FOUNDATION WORLDWIDE

- **1987** – **GIBRALTAR** OFFICE
- **1989** – **HONG KONG** OFFICE
- **1990** – **PORTUGAL** OFFICE
- **1994** – **CAPE TOWN** OFFICE
- **1996** – **LONDON** OFFICE
- **1998** – **DUBAI** OFFICE
- **1998** – **ISLE OF MAN** OFFICE
- **1999** – **CYPRUS** OFFICE
- **2000** – **MALTA** OFFICE
- **2000** – **MAURITIUS** OFFICE
- **2000** – **SOVEREIGN ASSET MANAGEMENT** OFFICE
- **2002** – **REGISTERAYACHT.COM** OFFICE
- **2003** – The Sovereign Art Foundation registered as a charity in Hong Kong
- **2004** – **SINGAPORE** OFFICE
- **2007** – **SOVEREIGN INSURANCE SERVICES** OFFICE
- **2008** – The Sovereign Art Foundation registered as a charity in the UK
- **2010** – **GUERNSEY** OFFICE
- **2010** – **REGISTERANAIRCRAFT.COM** OFFICE
- **2011** – **BAHRAIN** OFFICE
- **2013** – **CHINA** OFFICE (JV operating since 2007)
- **2014** – Sovereign Art Foundation Charitable Trust registered as a charity in South Africa
- **2015** – The Sovereign Art Charity registered as a charity in Singapore
- **2016** – Sovereign Art Foundation registered as a charity in Guernsey
- **2016** – **CHESHIRE** OFFICE
- **2017** – **ABU DHABI** OFFICE

Children creating a 'mind jar' at a Make It Better workshop

The Sovereign Art Foundation – doing well by doing good

The Sovereign Art Foundation (SAF) was established in 2003 with a twin focus: to recognise the growing wealth of contemporary art talent in Asia and to raise funds to bring the proven benefits of expressive arts to disadvantaged children.

We organise the annual Sovereign Asian Art Prize, which is now in its fourteenth year and is recognised as the highest-profile art prize in the Asia-Pacific region. It also has a uniquely sustainable model. Funds are raised by auctioning off the artworks that reach the final stage of the competition after they have been exhibited. The proceeds are then shared equally between the artists and the Foundation. Since its inception, SAF has raised over US$6 million for charities and artists worldwide.

The Foundation was set up by Sovereign chairman Howard Bilton to bring more exposure to the arts in Hong Kong. In the early 2000s there was one government-run arts museum in Hong Kong, a very limited supply of galleries and a perceived lack of interest in the arts in general. Howard's vision was to change that by bringing public art exhibitions to Hong Kong and making them easily accessible to all members of the community.

In practical terms this meant exhibiting in the most popular of Hong Kong's public arenas – the shopping centre. At the time, it was difficult to persuade our artists and partners of the merits of showing their works in a shopping mall but we were convinced that, if we were to attract real public interest, we would have to bring the art to the people rather than the other way around. We stuck to our guns and the public proved us right.

Independent curators from all over the Asia-Pacific region are invited to nominate artists and submit their art works for the prize. These artworks are then reviewed by a panel of internationally renowned art professionals, which produces a shortlist of 30 finalists. The works are transported to Hong Kong for the public exhibition at which they select the winning entry.

The creation of a public vote prize proved to be a brilliant way to engage the public – as soon as you put a voting slip into someone's hand and ask them to select which artwork they think is best, they approach the exhibition in an entirely different way.

The 2005 Sovereign Asian Art Prize top 30 finalists exhibition at IFC Mall , Hong Kong.

As an accolade for the artists, it is also right up there with the main prize in terms of recognition.

While the art prize exhibitions and auctions act as a springboard, enabling many mid-career artists to achieve record prices and establish a wider audience for their work, the money that we raise by auctioning the artworks has helped thousands of disadvantaged children across the region by using art as a means of education, rehabilitation and therapy. Typically these children are the victims of poverty, human trafficking, child labour, drug use or physical abuse.

Expressive arts allow children to express themselves in their own way, at their own pace and under their own control. The personal fulfilment arising from the creative aspects of art can support development and growth of damaged children's self-esteem. It makes them feel valued, helps to build confidence and can give them a new sense of direction in life, often encouraging them to return to education.

In 2013, we launched our own initiative called 'Make It Better' (MIB), which provides empowering learning activities reinforced by expressive arts to children living in some of Hong Kong's most impoverished areas. MIB offers a 27-week programme of weekly workshops, delivered by SAF's experienced teachers and resident art therapist.

This year we secured a grant from the Hong Kong Jockey Club Charities Trust to launch the 'Jockey Club Expressive Arts Programme for Children'. This pioneering three-year programme, which began in August, aims to train teachers in Hong Kong to integrate the principles of expressive arts and creative play into their classes to better support children with diagnosed special educational needs (SEN) and their classmates. This programme is being run in partnership with the University of Hong Kong Centre on Behavioural Health.

This expansion has enabled us to open a dedicated office for the MIB team. It has also enabled us to expand the team with the addition of two new art teachers, including a full-time Course Planning Teacher and Art Therapist Yana Ng. She joined MIB from the UK, where she offered consultations and individual and group art therapy services to support children and young people.

The Foundation also launched the Sovereign Art Foundation Students Prize in Hong Kong in 2012, with the aim of celebrating the importance of art in the education system and recognising the quality of art that can be produced by young students. Such was the success of this prize that we have subsequently organised student prizes in Guernsey, Bahrain, Singapore, Mauritius, Portugal, the Isle of Man and Gibraltar. Further student prizes are planned worldwide.

None of this would have been possible without the help of all of our partners and sponsors over the years. It has been our privilege to develop this strand of the Sovereign Group's activities with so many of our clients who have supported us through their patronage and with those partner institutions who have sponsored us and assisted with their time and resources. Thank you to everyone for the support.

For more information about the Sovereign Art Foundation please link to SovereignArtFoundation.com or email us at art@SovereignArtFoundation.com ■

Children painting at a MIB Workshop

Live art auction by Christie's at The 2016 Sovereign Asian Art Prize Gala Dinner

The 2013-2014 Sovereign Art Foundation Gala Dinner

'Spiral Alley' from The Buddhist Bug series by Anida Yoeu Ali, Winner of The 2014-2015 Sovereign Asian Art Prize

far left image: The 2016 Sovereign Asian Art Prize Gala Dinner

left image: The 2017 Sovereign Asian Art Prize Finalists Exhibition

Opening a business bank account in Hong Kong – maximising your chances of success

The difficulty of opening business bank accounts in Hong Kong has been well documented in recent years. It is still very challenging. Despite media attention, pressure from the Hong Kong Monetary Authority, InvestHK, the Chambers of Commerce and industry groups in Hong Kong, start-ups and SMEs in particular are still having great difficulty in opening bank accounts.

Why is it difficult to open a bank account in Hong Kong?

- **Regulatory pressure** – Hong Kong banks have been having to update their internal processes to deal with regulatory changes on an almost continual basis. No sooner had they addressed the US Foreign Account Tax Compliance Act (FATCA), then along came the OECD's Common Reporting Standard (CRS), the G20 High-Level Principles on Beneficial Ownership Transparency and now they are also having to deal with the OECD's Base Erosion and Profit Shifting (BEPS) initiative.

- **Geopolitical uncertainty and evolving criminal methodologies** – financial institutions have found managing evolving sanctions policies to be a significant challenge, while evolving criminal methodologies are also seen as the biggest future threat. This has been making them understandably concerned about the need to manage and update risk policies, process and controls, and all while they're still dealing with the fallout from the 2008 global financial crisis.

- **Compliance** – to deal with the issues outlined above, banks have invested heavily in their compliance teams. These teams are now more influential than ever in the client 'onboarding' process. If you look like a potential risk, the banks won't do business with you unless the probable benefits outweigh the compliance costs. In this environment there is very little upside for a bank to do business with a start-up.

- **Mismanagement** – regardless of how difficult the business environment is, or has been, the banks have not helped themselves. Banks globally have paid $321 billion in fines since 2008 for an abundance of regulatory failings from money laundering to market manipulation and terrorist financing, according to data from Boston Consulting Group. All this means that banks have even less appetite for business risk.

What do Hong Kong banks like?

- **Hong Kong-based trading companies** – Hong Kong banks are more likely to open an account for you if you have, or are planning to have, an office in Hong Kong, employ staff in Hong Kong, have customers or suppliers or both in Hong Kong etc. In other words they are looking to see real substance in Hong Kong. This rule of thumb applies to new businesses being set up in Hong Kong, as well as to subsidiaries of international companies being established there.

What do Hong Kong banks dislike?

- **Offshore companies** – If your company has been incorporated in a jurisdiction outside of Hong Kong, and unless you have registered as a branch or representative office, it is almost impossible to open an account at a Hong Kong bank at present.

- **Complicated ownership structures** – the more shareholders you have, and the more layers of entities (trusts, holding companies etc.) that are involved, the more difficult it will be to pass compliance checks.

- **Holding companies** – companies that receive most of their income from passive sources (investments) trigger a higher level of scrutiny for the banks under CRS and FATCA, and are therefore viewed as higher risk than active trading companies.

- **Hong Kong companies whose officers and signatories reside outside of Hong Kong** – unless your business has a clear reason to have a bank account in Hong Kong, it will be more difficult to get an account opened.

- **Ecommerce** – getting a merchant account set up with a Hong Kong bank is far more difficult that it should be. Hong Kong banks don't like connecting to payment gateways because they cannot always identify the geographic source of the funds hitting your account.

- **Cash based businesses** – Hong Kong banks like to know where the funds being remitted to your account come from. Cash is a major problem for banks from a compliance point of view. The same is true for the new digital currencies.

- **Certain industries and jurisdictions** – I won't go into huge amounts of detail here, but be aware that Hong Kong banks, as elsewhere, have lists of industries, countries and passports that they don't like. Do your research to avoid wasting your time.

- **Regulated businesses** – Hong Kong banks don't like dealing with companies that are heavily regulated. If your business needs a licence to operate, then the bank will generally want to see authorisation in place before they will consider opening an account for you.

- **Start-ups** – Hong Kong banks are generally not going to sell many additional products to start-ups and will therefore not make much (or even any) money from them. Simply put, the risk-reward equation does not work for the banks. The one thing the banks need to justify taking on the risk is 'business proof'.

What is 'Business Proof' and how can I get some?

Business proof is what banks need to help them predict the future activity of an account so they can give you a risk score and monitor account activity on an ongoing basis. Existing businesses have a natural advantage here but the banks expect you to be able to provide some or all of the following information:

- **Business plan** – all business plans are different but the most important consideration is to adapt your plan to suit your audience. Banks won't necessarily read a 20-page document or go through a complicated PowerPoint presentation. They simply need to understand how you will make your money and why you need a bank account in Hong Kong. Provide sufficient information to enable a bank to understand your business and remember that you are not speaking to an expert in your area of business. So keep it simple. The bank will ask you to provide more information if it needs it.

- **Account activity** – be prepared to answer the following questions, which can also be incorporated into the business plan.
  - Expected annual turnover?
  - How many monthly inward remittances do you expect? What will the average amount be?
  - How many monthly outward remittances do you expect? What will the average amount be?
  - What currencies will you need?
  - How will you make/receive payments (cheque, cash, TT, etc.)?
  - In which countries are your customers/suppliers located?

- **Supporting documentation** – anything and everything helps here. Mobile phone contracts, consultancy agreements, employment agreements, introducer agreements, invoice templates, insurance policies, supplier invoices, rental agreements (see below) etc. If you don't have any contracts in place, try to get letters of intent with potential customers. Basically, the bank wants to see some documentary proof to support your business plan. The bank will also want to do due diligence on your counterparties, so provide it with websites and contact details where practical.

- **Rental agreement** – this is possibly the single most important supporting document. Some banks prefer a stamped lease, some will accept a virtual office agreement but you need to tick this box. Ideally, your commercial address should not be the same as that of your company secretary or accountant.

- **Marketing Collateral** – if you don't have any, get some. If you don't have a full website, at least put a landing page in place. If you don't have a logo, get one immediately; you can always change it later. Get some business cards and create some templates for the documents your business will need. Banks will need to be able to visualise your business. Help them to do so.

What is my best option for opening a bank account in Hong Kong?

- **Talk to a professional services provider** – You may only get one chance to open a bank account in Hong Kong. As a professional services provider in Hong Kong, Sovereign has long standing relationships with a broad range of Hong Kong banks. We know the policies and criteria of different banks and can help to determine which one will be the best fit for you. We can then guide and assist you with preparing your application and supporting documentation to maximise your chances of success, before effecting an introduction to your chosen bank.

- **Open an offshore account** – there are a number of international banks that will open accounts for Hong Kong and offshore companies. Such banks generally only work with qualified introducers, such as Sovereign. When you have generated at least six months of account activity with an offshore bank, a bank in Hong Kong is more likely to accept your application because they can more accurately assess risk by analysing your account history. You will also have more supporting documentation in place after six months of trading. ■

THE SOVEREIGN MASTERCARD©

The ultimate offshore credit card.
Instant access to your offshore funds any place, anywhere.
Contact your most convenient Sovereign office for further details.

SOVEREIGN RECRUITMENT

As a result of business expansion across the group, Sovereign is actively looking for qualified professionals to assist senior management teams in several of our worldwide offices. Applications from new, or recently qualified, lawyers or accountants are especially welcome, but we would also be interested to hear from more experienced professionals, particularly those with an established client following.

Anyone who is interested to learn more about the opportunities currently available within Sovereign can find more information, and application procedures, on our website at SovereignGroup.com

CHANGE OF ADDRESS?

Have your subscription details changed recently?
Do you wish to redirect your quarterly issue of The Sovereign Report to a different address?
Or do you wish to unsubscribe?

If so, please contact: gib@SovereignGroup.com or by fax on: +350 200 70158.

Please note that the Sovereign Group is committed to ensuring that your privacy is protected. All details submitted will be held in the strictest confidence.

WANT TO FIND OUT MORE?

For more information on any of the services provided by the Sovereign Group, please visit our website at SovereignGroup.com, or contact your most convenient Sovereign office from the list above.

ABU DHABI
Tel: +971 2 418 7640
ad@SovereignGroup.com

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

BAHRAIN
Tel: +973 17 1515 71
bahrain@SovereignGroup.com

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

CAYMAN ISLANDS
Tel: +1 949 7555
cay@SovereignGroup.com

CHINA, BEIJING
Tel: +86 10 6587 6947
china@SovereignGroup.com

CHINA, SHANGHAI
Tel: +86 21 5211 0068
china@SovereignGroup.com

CURAÇAO
Tel: +599 9 465 2698
cu@SovereignGroup.com

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

DUBAI
Tel: +971 4 270 3400
dubai@SovereignGroup.com

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

RegisterAnAircraft.com
Tel: +350 200 76173
rana@SovereignGroup.com

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

SOVEREIGN ACCOUNTING SERVICES (GIBRALTAR) LIMITED
Tel: +350 200 48669
sasgib@SovereignGroup.com

SOVEREIGN ASSET MANAGEMENT LIMITED
Tel: +350 200 41054
sam@SovereignGroup.com

SOVEREIGN INSURANCE SERVICES LIMITED
Tel: +350 200 52908
sis@SovereignGroup.com

GUERNSEY
Tel: +44 1481 729 965
ci@SovereignGroup.com

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

ISLE OF MAN
Tel: +44 1624 699 800
iom@SovereignGroup.com

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

MAURITIUS
Tel: +230 244 3210
mu@SovereignGroup.com

PORTUGAL
Tel: +351 282 340 480
port@SovereignGroup.com

SEYCHELLES
Tel: +248 4321 000
sc@SovereignGroup.com

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

SOUTH AFRICA
Tel: +27 21 418 2170
sact@SovereignGroup.com

SWITZERLAND
Tel: +41 21 971 1485
ch@SovereignGroup.com

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

UNITED KINGDOM, CHESHIRE
Tel: +44 151 328 1777
ukpensions@SovereignGroup.com

UNITED KINGDOM, LONDON
Tel: +44 20 7389 0555
uk@SovereignGroup.com