SovereignGroup.com

SOVEREIGN REPORT 42

Abu Dhabi, **Bahamas**, Bahrain, **British Virgin Islands**, Cayman, **China**, Curaçao, **Cyprus**, Dubai, **Gibraltar**, Guernsey, **Hong Kong**, Isle of Man, **Malta**, Mauritius, **Portugal**, Seychelles, **Singapore**, South Africa, **Switzerland**, The Netherlands, **Turks & Caicos Islands**, United Kingdom.

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Automatic exchange of tax information – coming soon

This is moving inexorably closer and at quite a fast pace. The OECD is asking that all states automatically exchange tax information in respect of any bank account opened in their jurisdiction by a resident of another state. More than 65 countries and territories, including all OECD member states, have now publicly committed to introduce automatic exchange, while more than 40 of these have committed to implement as early as 2017. In other words, it is highly likely that all countries will soon adopt rules and regulations similar to the US FATCA Act, which finally came into force as of 1 July. The exchange of information will focus on beneficial ownership of accounts whether they are in the name of an individual, trust, company or other entity.

We can only repeat our usual advice – clients need to ensure that their entities and structures are fully compliant in all respects. Tax planning is not dead. It is alive and well, but the emphasis must be on legitimate and compliant structures. Any arrangements that rely on less than full and frank disclosure are bound to fail and may cause huge financial and practical problems for the client.

The Global Competitiveness Index

The World Economic Forum has published its annual ranking of countries according to their efficiency and competitiveness. The top ten in order are: Switzerland, Singapore, Finland, Germany, the US, Sweden, Hong Kong, the Netherlands, Japan and the UK. The bottom three – out of 148 economies – are Burundi, Guinea and Chad. Most offshore financial centres are not included but I suspect that they would generally be ranked as highly efficient and competitive.

It is no surprise to see Singapore and Hong Kong so high in the rankings. They are both excellent places to do business and Hong Kong is consistently voted as the place with the least constraints on entrepreneurs wishing to start a business. These two jurisdictions are also the gateway to China. Anybody wishing to set up a business would be well advised to look at what they have to offer.

Her Excellency Shaikha Mai bint Mohammed Al Khalifa (front, third from left), Bahrain's Minister of Culture, opens the Sovereign Art Foundation IKNS Prize 2014.

Sovereign Art Foundation (SAF)

In April, in partnership with the Ibn Khuldoon National School (IKNS), SAF launched The Sovereign Art Foundation IKNS Prize 2014. Artwork by 800 IKNS students was displayed at the Arts Centre of the National Museum of Bahrain for an exhibition (top) opened by Her Excellency Shaikha Mai bint Mohammed Al Khalifa, Minister of Culture. The artworks were then sold in aid of The Royal Charity Organisation to support 5,000 orphaned children in Bahrain. This is an exciting new venture for SAF and our first major event in the Middle East. We thank everyone who supported us.

Hong Kong artist Adrian Wong won the 10th edition of the Sovereign Asian Art Prize on 10 May, which was sponsored for the fourth consecutive year by Swiss private bank, Bank Julius Baer. The winner received a trophy and US$30,000. The winner of the Schoeni Prize, the award for the public's favourite artwork, was Anton Del Castillo from the Philippines who previously won the same award in 2010.

Both winners were announced at the Charity Gala Auction and Dinner at the Four Seasons Hotel in Hong Kong where the finalists' artworks – except for the winning piece, which was acquired by SAF – were auctioned by Christie's, raising a total of US$285,400, which is divided equally between the artists and SAF's charitable projects. We also raised over US$440,000 during the evening to continue SAF's work in assisting, rehabilitating and educating disadvantaged children from around the region.

It costs only US$500 to send a child through one of our programmes for a year and the results are remarkable. Please contact joey@SovereignArtFoundation.com for more information or to donate.

Sovereign news

Sovereign continues to expand in several of its offices worldwide. I am pleased to announce the recent appointments of Andrew Galway and Stephen Griffiths as managing directors of our offices in Singapore and Malta respectively. Neil Entwistle has also been appointed as a director of Sovereign Insurance Services in Gibraltar. Finally, we have appointed Julie Balcombe to develop Sovereign's brand in Nairobi, Kenya.

Howard Bilton
Chairman of The Sovereign Group

Malta amends Maltese Citizenship Act at behest of EU

Malta agreed to amend the Maltese Citizenship Act (L.N.450 of 2013) by introducing, on 29 January 2014, a requirement for applicants to demonstrate an effective residence status in Malta prior to the grant of Maltese naturalisation. The move followed discussions with the European Commission.

Last November, Malta's parliament approved an Individual Investor Programme (IIP) introduced under the Maltese Citizenship Act to enable qualifying "high value" applicants to be naturalised and receive a Maltese passport. Malta is a member of the European Union, a member of the Schengen borderless travel area and has a visa waiver agreement with the US.

Applicants are required to contribute €650,000 to an independently-managed National Development Fund. Spouses and children of applicants for Malta citizenship are each required to contribute €25,000 and unmarried children between the ages of 18 and 25 and dependant parents €50,000 each.

The programme was criticised by the European Parliament, which passed a resolution in January to condemn the measure, which stated that EU citizenship should not have a "price tag" and that the rights conferred by EU citizenship, such as the right to move and reside freely within the EU, should not be treated as a "tradable commodity".

The parliament called on Malta to bring its current citizenship scheme into line with EU values and asked the European Commission to issue recommendations to prevent such schemes from undermining the EU's founding values, as well as guidelines on granting access to EU citizenship via national schemes

Following a meeting with the Commission, Malta announced amendments to the regulations issued under the Maltese Citizenship Act to clarify that the programme would confer full rights, responsibilities and a full citizenship status.

The amendments include genuine links to Malta through the introduction of a new requirement to secure an effective residence status in Malta prior to the possibility of achieving Maltese naturalisation. No certificate of naturalisation will be issued unless the applicant provides proof that he/she has resided in Malta for a period of at least 12 months immediately preceding the day of issuing of the certificate of naturalisation.

Channel Islands Aircraft Register takes off

The Channel Islands Aircraft Register (CIAR) was officially launched in Guernsey on 9 December 2013. Negotiations for a joint registry with Jersey had failed in September because a single registry could not "meet the separate operational and commercial interests of the two islands".

The CIAR is to be run as a public-private partnership between the Guernsey government and Dutch company SGI Aviation. Commerce and Employment Minister Deputy Kevin Stewart welcomed the project and its potential benefits to fiduciary, finance and legal sectors of the economy.

Just three days before the launch of the CIAR, Jersey's Economic Development Department announced that Jersey was to press ahead with plans for its own aircraft registry. The Jersey register is scheduled to launch by the end of summer 2014.

Sovereign Comment

This is positive news for the Channel Islands although it remains to be seen whether Jersey's late entry into the market will simply serve to split the business that otherwise might have been attracted to Guernsey. The CIAR will compete with Isle of Man and other offshore registries. Sovereign's aviation division, RegisterAnAircraft.com, together with senior personnel from our Guernsey office, has developed a close working relationship with CIAR. General enquiries are most welcome and can be directed to either of them now that the Registry has opened for business.

Austria and Luxembourg accede to revised EU Savings Tax Directive

Austria and Luxembourg finally, on 21 March 2014, gave "the green light" to the long-delayed revision of the European Union's Savings Tax Directive after many years of dual opposition. The move allowed EU ministers to sign off on the proposed changes to the 2005 Savings Tax Directive – ending bank secrecy for non-citizens in EU countries in January 2017. The EU Commission has been pushing governments to revise the rules since 2008.

The proposed changes to the Directive require EU member states to exchange automatically information on interest payments on savings of citizens of other member states, allowing them to be taxed in accordance with laws where they are tax resident. It also extends existing regulations to profits earned by trusts, foundations and insurance policies.

While other EU member states now exchange information automatically, Luxembourg and Austria had continued to exercise their right to maintain transitional measures and instead impose an anonymous 35% withholding tax. The two countries had insisted that they would only change when key third-party countries – Switzerland, Liechtenstein, Monaco, Andorra and San Marino – had agreed to implement the same rules.

At a two-day summit of EU leaders in Brussels, Luxembourg's Prime Minister Xavier Bettel said he had received "guarantees" from other EU governments that negotiations with the five third-party countries would either be completed by the end of the year or that a clear path to a deal would be laid out. That commitment "allowed us, with Austria, to give the green light," he said. "Luxembourg will become a transparent banking location."

Algirdas Šemeta, EU commissioner responsible for taxation, said Switzerland and the four other countries now accepted that automatic exchange of information must be at the core of their relations with the EU in taxation. "I have assured member states that our negotiations with these countries will continue with speed and ambition, with the aim of presenting results before the end of the year," he said.

Austria's Finance Minister Michael Spindelegger said: "It's clear that we cannot wait until a deal with third parties is concluded."

Sovereign Comment

These are important developments and further updates will continue to be published in future editions. Regular readers will know that Sovereign has always conducted its business on the basis that any corporate or trust structuring should always be fully compliant. It is also important to note that rules change and may expose an existing structure to unwelcome scrutiny. Any readers worried that they may fall into this category are encouraged to contact their local Sovereign office as soon as possible.

MEPs back public registers for companies, trusts and foundations

The European Parliament backed, with a stong 643 to 30 majority on 11 March 2014, a draft anti-money laundering bill that requires companies, trusts and foundations to list the names of people who own them in inter-connected public registers set up in each member state. The language refers not only to trusts and foundations, but also to any "similar structures".

If adopted by member states in its current form, the Directive would require names, dates of birth and nationalities of beneficial owners – defined as anyone with ownership or control of 25% or more of the entity – to be made available, not only to tax or law enforcement authorities but to anyone who completes a basic online registration. In order to stop countries blocking public access by making it prohibitively expensive, a provision was added stipulating that user fees should not exceed the register's administration costs.

The parliament's version of the bill currently limits public disclosure to the identity of the trustee, the settlor and "the class of persons in whose main interest the legal arrangement or entity is set up or operates", but would not extend to documents, which, for instance, detail the nature or the size of the assets. An early draft of the Directive included a requirement that the settlor's letter of wishes and the trust deed also be made public, but this was dropped via an amendment introduced by a UK MEP at the committee level.

Trust practitioners have complained that the parliament chose to reject an earlier proposal to follow a recommendation for capturing information on trusts drawn up by the Financial Action Task Force (FATF). The FATF's Recommendation 25 does not include public disclosure.

Gibraltar amends tax regime in line with EU code of conduct

The Gibraltar government abolished, as of 1 January 2014, the exemption applicable to royalties' income under Gibraltar's income tax legislation to bring it in line with standards as assessed by the European Union's Code of Conduct Group of Business Taxation.

Under the Income Tax (Amendment) Act 2013, which was passed on 24 December 2013, royalties that are deemed to accrue in, or be derived from, Gibraltar will be subject to corporate taxation at a rate of 10% (20% in the case of utilities or companies in a dominant position). Royalty income will be deemed to accrue in, or be derived from, Gibraltar where the company receiving the income is registered in Gibraltar.

The move came after the European Commission – following a challenge from Spain in June 2012, which alleged that an element of the Gibraltar tax code enabled Gibraltar to "continue to grant a selective advantage to offshore companies" – decided on 17 October 2013 to open an "in-depth investigation" into whether a corporate tax regime Gibraltar implemented in 2011 "selectively favours certain categories of companies, in breach of EU state aid rules".

It said it would examine two aspects of the Income Tax Act: the exemptions for inter-company loan interest – for the period when it was still in force – and royalty income. "At this stage, the Commission considers that the tax exemption for passive interest and royalty income may involve state aid, because it departs from the general corporation tax system," it said in a statement.

The Gibraltar government had already abolished the exemption for inter-company loan interest exceeding £100,000 per annum accrued to or received by a Gibraltar entity by an amendment to Gibraltar's Income Tax Act 2010, which entered into force on 1 July 2013. Despite this the Commission said it still needed to examine "whether the passive interest exemption was in breach of the state aid rules during the period when it was in force".

Sovereign Comment

Gibraltar is the home of Sovereign's largest office and it is reassuring to note the EU's positive stance together with the willingness of the Gibraltar government to amend its legislation. Gibraltar combines a robust regulatory framework with a highly favourable corporate tax regime, absence of withholding taxes and VAT. Our local office reports an elevated level of enquiries from all over the world.

Credit Suisse pleads guilty in US as more than one-third of Swiss banks accept US amnesty offer

Swiss bank Credit Suisse pleaded guilty on 20 May 2014 to assisting US clients to evade paying taxes to the US government and agreed to pay a US$2.6 billion fine, the highest ever in a US criminal tax investigation to date.

The US Department of Justice said Credit Suisse "operated an illegal cross-border banking business" that helped thousands of US customers conceal offshore assets and income from US tax authorities. US attorney general Eric Holder said the bank had: "subverted disclosure requirements, destroyed bank records, and concealed transactions involving undeclared accounts."

Credit Suisse said it deeply regretted the past misconduct. As part of the agreement with US regulators, the bank will not lose its banking licence in the US. It does not expect its UK and Swiss banking licences to be affected.

A total of 106 Swiss banks had signed letters of intent to seek non-prosecution agreements with the Department of Justice under a US "amnesty" programme before the deadline expired on 31 December 2013. US prosecutors had invited more than 300 Swiss banks to apply if they had "reason to believe" they had violated US tax laws.

Participating institutions must disclose how they helped US taxpayers hide assets, hand over data on undeclared accounts and pay penalties. However the programme did not cover the 14 Swiss banks already under US criminal investigation, which included Credit Suisse.

Kathryn Keneally, assistant attorney general in the Justice Department's tax division, disclosed the number when speaking at a conference in Arizona on 25 January 2014. She did not name any banks seeking entry into the programme and cautioned that the final figure could change.

Last November, the Swiss Federal Council authorised certain unspecified banks to cooperate with the US authorities within the framework of the US programme to resolve their long standing tax dispute. It encouraged the Swiss banks to give serious consideration to their participation in the programme and to make their decisions in a timely manner.

The framework, which was agreed by way of a joint statement on 29 August 2013, provided for a unilateral US programme in which any Swiss banks that were not already the target of a criminal investigation by the US and which believed that they have violated US law, had until 31 December to notify the US authorities that they wished to participate.

Banks seeking non-prosecution agreements must disclose the total number of US accounts since 2008, their highest dollar value, and the employees who managed them. The banks must also use independent examiners to certify findings. Participating banks face penalties of up to 50% of the value of the assets they managed on behalf of US taxpayers.

Switzerland agreed to enable affected banks to participate in the programme voluntarily provided that they first sought authorisation from the Swiss Federal Council.

Sovereign Comment

Over the past 25 years, Sovereign has developed close links with most of the major Swiss banks together with an impressive number of the smaller private institutions. The wide ranging issues raised by increased US pressure on the Swiss banking industry in recent years have been reported in several previous editions. It is reassuring therefore to note that the Swiss government and the Swiss banking industry are working with the US authorities to resolve this long-protracted matter.

Panama's tax system to remain territorial

A law (No. 120 of 2013) that included an amendment to article 694 of the Fiscal Code to move from a territorial to a worldwide income tax system was published in the Official Gazette without prior notice on 30 December 2013. As a result individuals and companies domiciled in Panama would have been taxed on their worldwide income rather than just local-source income.

The amendment, which had not been voted on in the National Assembly, was immediately attacked by business leaders and professional associations. Government representatives, including the Ministry of Economy and Finance and the Administrator of the National Authority of Public Revenue (ANIP), stated that a new bill repealing the Law would be submitted to the Legislative Branch in order to readopt the territorial income tax system.

On 2 January 2014, the Panamanian government passed a resolution that sections 2 and 3 of Law 120 be repealed.

The OECD Global Forum published, on 24 April 2014, a supplementary report that recognised that Panama had taken a number of significant steps to respond to the recommendations in its 2010 Phase 1 report. It said Panama had introduced legal amendments lifting restrictions connected to domestic tax interest and attorney-client privilege and had entered into a number of exchange of information agreements, the majority of which were in line with the international standard. However, ownership and identity information was still not available in all cases, in particular, information about the holders of bearer shares. In addition, accounting information in respect of a number of relevant entities was still not available. Panama has not responded diligently to requests for entering into exchange of information arrangements in all cases. The supplementary report concluded that the legal and regulatory framework was still not sufficiently in place for Panama to advance to its Phase 2 review. The review asked Panama to report steps taken to address the recommendations made within six months.

IRS issues first list of participating financial institutions under FATCA

Over 77,000 banks and other Foreign Financial Institutions (FFIs) have registered under the US Foreign Account Tax Compliance Act (FATCA) and received a Global Intermediary Identification Number (GIIN), according to the first list published by the Internal Revenue Service (IRS) on 2 June 2014.

FATCA, enacted by the US Congress in 2010, is designed to ensure that the US obtains information on accounts held at FFIs by US persons. Failure by an FFI to disclose information on their US clients will result in a requirement to withhold 30% tax on payments of US-sourced income.

FATCA comes into operation on 1 July this year, but, with regard to its reporting, due diligence and withholding provisions, and so as to facilitate an orderly transition, the IRS will not demand full compliance with all FATCA requirements during 2014 and 2015, provided that FFIs demonstrate appropriate commitment.

A cumulative updated FFI list will now be posted monthly that will contain the names of all FFIs that have completed FATCA registration with the IRS and obtained a GIIN up to five business days before the end of the previous month. The first updated list will be posted by the IRS on 1 July.

The FFI List can be downloaded in its entirety or searched for specific information (FFI name, GIIN or country) and may be relied upon by withholding agents for verifying an FFI's claim of FATCA status.

The US Treasury and IRS released, on 20 February 2014, what they termed as "the last substantial package of regulations necessary to implement FATCA. It makes additions and clarifications to the previously-issued FATCA regulations, and also provides guidance to coordinate FATCA rules with pre-existing due diligence, reporting, and withholding requirements under other provisions of the US tax code.

Guidance and key amendments provide for: a framework to allow certain entities to provide information on US account holders directly to the IRS, rather than through a withholding agent; the treatment of certain special-purpose debt securitisation vehicles; the treatment of disregarded entities as branches of FFIs; the definition of an expanded affiliated group; and transitional rules for collateral arrangements prior to 2017.

Sovereign Comment

Sovereign took an early strategic decision to ensure that all its offices would be FATCA compliant. This means that we welcome fully compliant US business across the group, which sets us apart from many in our peer group. US citizens, whether or not currently resident in the US, should contact their closest Sovereign office for further information.

US to treat jurisdictions with FATCA IGAs in substance as IGAs in effect

The US Department of the Treasury and the Internal Revenue Service (IRS) announced, on 2 April 2014, that jurisdictions that have reached agreements in substance with the US on the terms of Intergovernmental Agreements (IGAs) under the Foreign Account Tax Compliance Act (FATCA) would be treated as having agreements in effect until the end of 2014.

This treatment is available to jurisdictions that reach agreements in substance prior to 1 July 2014, and that consent to having the status of their agreements disclosed. As an increasing number of jurisdictions reach agreements in substance, the announcement was to provide Foreign Financial Institutions (FFIs) located in these jurisdictions with the appropriate guidance prior to registration deadlines.

As of 2 April, the US had signed 26 IGAs. The announcement provided that 19 additional jurisdictions would be treated as having IGAs in effect, bringing the total number of jurisdictions treated as having IGAs in effect to 45. This list was expected to continue to grow as additional countries provided consent to having the status of their IGAs disclosed and additional agreements in substance were reached.

"With 45 countries now considered to have IGAs in effect, and more jurisdictions far along in the process, the robust international support behind FATCA is undeniable," said Deputy Assistant Secretary for International Tax Affairs Robert Stack. "Today's announcement both adds to our global effort against tax evasion and provides crucial clarity for financial institutions."

Foreign governments have two options for complying with FATCA: they can either themselves enter into IGAs with the US (Model 1 IGA) or they can permit their FFIs to enter into agreements with the IRS (Model 2 IGA).

Antigua launches "citizenship by investment" programme

Antigua Prime Minister Baldwin Spencer announced, on 13 October 2013, the launch of a new Citizenship by Investment Programme (CIP), which is designed to generate investments and jobs and "put Antigua and Barbuda on the road to sustainable growth and development."

To qualify for citizenship under the programme, foreign investors must make a minimum investment of USD250,000 in Antigua's National Development Fund. Alternatively, they can choose to invest USD400,000 in real estate or make a business investment of at least USD1.5 million.

Spencer said: "We have structured the CIP to meet the most incisive scrutiny and to deliver the most rigorous review of the applications received by the Citizenship by Investment Unit."

Antigua's basic rate of income tax is 10% on income up to USD48,000, 15% up to USD120,000, 20% up to USD180,000 and 25% above that. There is no capital gains or inheritance tax.

Sovereign Comment

Antigua is the latest Caribbean territory to announce such a programme and it will be interesting to see how it fares in relation to its neighbours, in particular the nearby island of St. Kitts, where similar programmes have been in place for some time. Sovereign works with carefully selected partners in countries that have developed residence or citizenship programmes; details may be obtained from your closest office.

Singapore initials IGA with US, Hong Kong signs TIEA

6 May 2014, Singapore and the US initialed the text of a Model 1 Intergovernmental Agreement (IGA) to implement the Foreign Account Tax Compliance Act (FATCA). The parties expect to sign the agreement in the second half of 2014.

Singapore-based financial institutions will now have until 31 December 2014 to register as Foreign Financial Institutions (FFIs) within an IGA jurisdiction and obtain a Global Intermediary Identification Number at the IRS's online FATCA registration portal. This will ensure that there is no FATCA-related withholding tax on payments made to them from the US.

Under the terms of the Model 1 IGA between Singapore and the US, Singapore-based financial institutions will report information on financial accounts held by US persons to the Inland Revenue Authority of Singapore (IRAS), which will then exchange the information with the IRS. This will help to ease the compliance burden for financial institutions as their reporting obligations will be deemed met once they have transmitted the information to IRAS.

Singapore-based financial institutions will need to develop system applications to collate the required data in accordance with the data format set out by the US IRS. Further guidance on how to comply with FATCA obligations will be provided in the second half of 2014 by IRAS, the Monetary Authority of Singapore and the Ministry of Finance.

Hong Kong's Chief Executive in Council gazetted, on 25 April 2014, an order under the Inland Revenue Ordinance to implement the tax information exchange agreement (TIEA) with the US that was signed in March. It is the first standalone TIEA signed by Hong Kong and forms part of its preparations for FATCA.

The legal framework for entering into TIEAs with other jurisdictions was put in place in July last year. It allows the Inland Revenue Department (IRD) to exchange information upon request made by another jurisdiction in relation to the assessment or enforcement of tax. Previously, such provisions were included solely in comprehensive double taxation agreements.

The order was tabled at the Legislative Council on 30 April for negative vetting, and will only take effect after Hong Kong has completed all the necessary legislative procedures to bring the TIEA into force.

It is also expected that the TIEA will provide the necessary basis for Hong Kong to enter into an IGA with the US in order to achieve compliance under FATCA.

Hong Kong trust reforms finally come into force

The much anticipated Trust Law (Amendment) Ordinance 2013, which was passed by the Legislative Council on 17 July 2013, was finally brought into force on 1 December 2013 with the exception of the statutory controls on trustees' exemption clauses will take effect, in relation to pre-existing trusts, on 1 December 2014.

The purpose of the amendments is to modernise Hong Kong trust law, which is considered to be outdated and out of step with more modern trust laws in comparable jurisdictions like Singapore and the UK, and are intended to enhance Hong Kong's status as an international asset management centre.

The key amendments include the following new provisions:

- Enhancing trustees' default powers with a view to facilitating the effective administration of trusts, including: power to appoint agents, nominees and custodians to perform their "delegable" functions; power to insure trust property against the risk of loss or damage; entitlement to receive remuneration out of the trust fund even if the services are capable of being provided by a lay trustee.
- Enhancing beneficiaries' protection, including: trustees will owe a clearly defined statutory duty of care to exercise such care and skill as is reasonable; professional trustees will not be able to exclude liability arising from fraud, wilful misconduct and gross negligence through exculpation clauses in trust instruments; beneficiaries will be able to appoint and retire trustees without the involvement of the court and without the requirement of terminating the trust.
- Reserved powers by settlors: a trust will not be invalidated only because a settlor has retained any or all powers of investment or asset management functions.
- Abolition of the rules against perpetuities and excessive accumulations of income: settlors will be able to set up perpetual trusts in Hong Kong and there will be no limits on periods for which income may be accumulated in relation to non-charitable trusts.
- Trusts governed by Hong Kong law will be protected from foreign heirship rules.
- Investment restrictions on trustees in default situations will be relaxed in respect of market capitalisation and dividend requirements of shares.

In another separate development, the Stamp Duty (Amendment) Ordinance 2014, which imposes Buyer's Stamp Duty (BSD) on residential property transactions with effect from 27 October 2012, was gazetted on 28 February 2014. BSD is charged at 15% on the stated consideration or the market value of the property (whichever is the higher), on top of the existing ad valorem stamp duty and the special stamp duty, if applicable. The new provisions were designed to deter overseas buyers making speculative investments in Hong Kong property and do not apply to permanent residents with a genuine need for housing.

Sovereign Comment

This is the first major amendment to Hong Kong's Trustee Ordinance since its enactment in 1934, and the Perpetuities and Accumulations Ordinance's enactment in 1970. This places Hong Kong in a competitive position, vis-à-vis Singapore, as an attractive trust jurisdiction for the rapidly growing global wealth management industry. Sovereign is represented in both countries.

Australia launches "Project DO IT" offshore amnesty

Australia's Commissioner of Taxation announced, on 27 March 2014, the launch of a new "Project DO IT" initiative to enable eligible taxpayers to disclose unreported foreign income and assets. Taxpayers who voluntarily disclose their offshore assets before 19 December this year can avoid criminal investigation, provided they are not already under Australian Taxation Office (ATO) audit and have not promoted tax evasion schemes.

The initiative covers amounts not reported or incorrectly reported in tax returns, including: foreign income or a transaction with an offshore structure; deductions relating to foreign income that have been claimed incorrectly; capital gains in respect of foreign assets or Australian assets transferred offshore; and income from an offshore entity that is taxable in a taxpayer's hands.

The terms of the amnesty are more generous than under the ATO's standard voluntary disclosure mechanism. Taxpayers will "generally" be assessed for the last four years only – which is the usual time limit for amending an assessment. The standard rules allow for unlimited years of review for fraud or evasion.

Shortfall penalties will be capped at 10%, rather than the maximum 75% under the standard rules. Taxpayers whose undeclared income never reached AUD20,000 in any tax year will not be charged any penalties, although they will have to pay full interest. There are also concessions for amounts repatriated to Australia when offshore structures are wound up.

Abu Dhabi financial free zone signs first agreement

The Abu Dhabi Global Market (ADGM), the new financial free zone being set up in the UAE capital, signed a memorandum with the UAE Central Bank on 27 April 2014 covering "areas of co-operation between the two institutions, including regulatory and supervisory matters". The agreement is an important first move in the process of gaining recognition from global financial regulators as an independent, self-regulating financial and banking hub.

The ADGM was established as a financial free zone by Federal Decree No. 15 of 2013, which was signed by and issued in February 2013 together with Cabinet Resolution No. (4) of 2013, and will be located in Abu Dhabi's central business district on Al Maryah Island.

The ADGM has been granted the authority to self-legislate and self-regulate. It will be exempt from the application of UAE Federal and Abu Dhabi civil and commercial laws and will have its own independent set of regulations and rules and courts.

The ADGM will permit 100% foreign ownership and will offer a zero rate of taxation on income generated within the zone and on the repatriation of profits as well as exemption from custom duties on goods imported to, or exported from, the zone. All entities operating on Al Maryah Island will be required to register in, and be licensed by, the Global Market, with the exception of those entities currently operating on Al Maryah Island that have an onshore Abu Dhabi licence.

Sovereign Comment

Many countries now offer special advantages to companies operating in selected "zones" and it may be that these zones go a long way to replacing the traditional IBC route for international business. Sovereign has been closely involved with – and acts as a registered agent – for many of the existing UAE free zones and has developed an unrivalled expertise in this area. Please contact our offices in Dubai or Abu Dhabi for further information.

China launches Shanghai free trade zone

China's first pilot free trade zone was launched in Shanghai on 29 September 2013. Eighteen sectors, ranging from finance to shipping, will have regulations loosened in the pilot zone. Commerce Minister Gao Hucheng said the zone, which covers 29 sq km, was "a significant move for China to conform to new trends in the global economy and trade".

At the opening ceremony, 36 companies were given licences to operate in the zone. Banking regulators also gave the green light to 11 financial institutions including Industrial and Commercial Bank of China, Bank of China, Citi (China) and DBS (China) to set up branches in the zone.

"Under the precondition that risks can be controlled, China will create conditions to test yuan convertibility under the capital account, market-set interest rates and cross-border use of the Chinese currency in the zone," said a blueprint for the FTZ.

According to the Shanghai FTZ Branch of the Administration of Industry and Commerce (FTZA), corporate interest in the zone has been high. The FTZA received around 16,000 corporate enquires in the first month and, as of December 2013, 1,528 companies had already successfully incorporated in the FTZ. Companies that have established their presences in the FTZ include financial, logistics, service and trading businesses, of which 4.6% are Foreign Invested Enterprises (FIEs).

Ai Baojun, head of the free trade zone's administrative committee, said the FTZ was being used as a vehicle to experiment with administrative innovations that could be rolled out on a nationwide basis if successful. A "negative list" currently specifies 190 sectors in which investment is prohibited. Ai said next year's version would be shorter.

Foreign companies are now able to obtain business licences in four days, down from an average of 29 days outside the zone. Chinese companies investing in projects have also gained approval within five days.

Although the Shanghai FTZ will not offer a 15% reduction on China's corporate tax rate (which was the subject of much pre-launch speculation), it may offer a number of preferential tax benefits to foreign investors for the purpose of promoting investment. Shanghai's fiscal and tax authorities are reviewing tax policies related to the pilot FTZ, such as foreign equity investment and offshore businesses.

Sovereign Comment

In order to accommodate demand, Sovereign expanded its presence in China last year through a merger of our existing operations with those of the JLJ Group to create Sovereign China. The JLJ Group was established in 2003 to accelerate international clients' ability to understand and operate in the China market. It has assisted more than 600 companies from over 50 countries with their China market entry. Please contact our offices in Shanghai and Beijing.

Mauritius agrees to include LoB clause in new India tax treaty

Mauritius agreed to include a "Limitation of Benefits" (LoB) clause in the proposed revision of its double tax treaty with India in December 2013. The current treaty, signed in 1983, only provides for the taxation of Capital Gains Tax (CGT) in an investor's country of residence.

There is no CGT in Mauritius, so when a gain is repatriated to Mauritius it will not be taxed. Mauritius also imposes no withholding taxes, so the gain can be repatriated tax-free.

The Indian government has for a number of years been pushing for changes to the treaty's terms due to its concerns about routing third country investment through Mauritius and the "round-tripping" of funds. Historically, almost 40% of foreign investments in India have flowed through Mauritius. A joint working group was set up to negotiate revisions in 2006 and has now held 10 sessions.

India has been insisting on the introduction of LoB provisions in recent treaties and protocols to restrict eligibility criteria for third country residents to obtain benefits under a tax treaty. In particular the 2005 Protocol to the India-Singapore treaty considers the substance of an entity and restricts eligibility for CGT exemption either to companies listed on the stock exchange or to those that expend a minimum of S$200,000 on operations in Singapore for a least two years prior to the date of a gain.

As announced in the Budget 2013, the Financial Services Act was amended last September with the aim of increasing substance in Mauritius. The amendment clarifies that the Financial Services Commission may give its approval in writing for a corporation holding a Category 1 Global Business Licence to conduct business in Mauritius.

Section 3 of Chapter 4 of the Guide to Global Business was also amended to require Category 1 Global Business Companies (GBC1s) to have presence that can be reasonably expected from a corporation managed and controlled in Mauritius. GBC1s have to comply with these new requirements by 1 January 2015.

The Seychelles creates new Financial Services Authority

A newly created Seychelles Financial Services Authority (FSA) took over the regulation of non-bank financial services in the Seychelles on 1 March 2014. It replaces the Seychelles International Business Authority (SIBA) with an expanded regulatory function and relinquishes all promotional activities.

Established under the Financial Services Authority Act, which was passed by the National Assembly on 17 December 2013 and gazetted on 6 January 2014, the FSA is responsible for the licensing, supervision and development of the non-bank financial services industry of the Seychelles. The FSA is also responsible for the registration of international business companies, foundations, limited partnerships and international trusts.

FSA chief executive Wendy Pierre confirmed that the FSA had the capacity and the commitment to provide a sound regulatory system in compliance with international laws and practices. The FSA has signed of memoranda of understanding with its most important stakeholders – the Central Bank of Seychelles, the Fair Trading Commission and the Seychelles Investment Board.

By relinquishing all its promotional activities related to the financial services sector that were undertaken by SIBA, the FSA will focus on making licensing and registration more efficient, more effective and more in-line with the needs of the industry. The promotion of financial services is now the responsibility of the Seychelles Investment Board.

G20 endorses new standard for automatic exchange of tax information

All 34 OECD member countries, including Switzerland, endorsed the Declaration on Automatic Exchange of Information in Tax Matters at the OECD's annual Ministerial Council Meeting in Paris on 6 May 2014. They were joined by Argentina, Brazil, China, Colombia, Costa Rica, India, Indonesia, Latvia, Lithuania, Malaysia, Saudi Arabia, Singapore and South Africa.

The Declaration commits countries to implement a new single global standard on automatic exchange of information. The standard, which was developed at the OECD and endorsed by G20 finance ministers last February, obliges countries and jurisdictions to obtain all financial information from their financial institutions on bank accounts and the beneficial ownership of companies and other legal structures such as trusts, and exchange that information automatically with other jurisdictions on an annual basis.

"Today's commitment by so many countries to implement the new global standard, and to do so quickly, is another major step towards ensuring that tax cheats have nowhere left to hide," said OECD Secretary-General Angel Gurría.

Swiss co-operation was pivotal to the initiative because of its long tradition of bank secrecy and its dominant wealth management sector, which has $2.2 trillion of offshore assets. The Swiss Bankers Association said: "The banks in Switzerland are willing to adopt the automatic exchange of information along with other financial centres, provided that the exchanged information is only applied for tax purposes. Reciprocity should apply and structures like trusts be part of information exchange. Furthermore the banks expect fair solutions for untaxed assets of the past in order to implement the standard with each country."

The Swiss government also highlighted the lack of transparency concerning the ownership of US companies, which are subject to limited disclosure rules. "Switzerland also expects the special provisions that apply in the United States regarding the transparency of beneficial owners to be of a temporary nature," it said.

The OECD will deliver a detailed commentary on the new standard, as well as technical solutions to implement the actual information exchanges, during a meeting of G20 finance ministers in September 2014. G20 governments have mandated the OECD-hosted Global Forum on Transparency and Exchange of Information for Tax Purposes to monitor and review implementation of the standard.

The new declaration does not stipulate a deadline for information exchange but, in March this year, the so-called Early Adopters Group of the OECD's new Common Reporting Standard (CRS), committed to a deadline of September 2017 for reporting investors' tax details to their home governments – these would be collected from 31 December 2015. More than 60 countries and jurisdictions have so far committed to early adoption of the standard, and additional Global Forum members are expected to join.

The CRS, which was developed by the OECD working with G20 countries and in close co-operation with the EU, was first published on 13 February 2014 and subsequently endorsed by G20 finance ministers and central bank governors meeting in Sydney on 23 February.

Under the standard, jurisdictions are obliged to obtain financial information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis. The standard consists of two components: a) the Common Reporting and Due Diligence Standard (CRS), which contains the reporting and due diligence rules and b) the Model Competent Authority Agreement (CAA), which contains the detailed rules on the exchange of information.

To prevent circumvention of the CRS, it is designed with a broad scope across three dimensions:

- The financial information to be reported with respect to reportable accounts includes all types of investment income (including interest, dividends, income from certain insurance contracts and other similar types of income) but also account balances and sales proceeds from financial assets.
- The financial institutions that are required to report under the CRS do not only include banks and custodians but also other financial institutions such as brokers, certain collective investment vehicles and certain insurance companies.
- Reportable accounts include accounts held by individuals and entities (which includes trusts and foundations), and the standard includes a requirement to look through passive entities to report on the individuals that ultimately control these entities.

The CRS also sets out the due diligence procedures that must be followed by financial institutions to identify reportable accounts. The CRS will need to be translated into domestic law, whereas the CAA can be executed within existing legal frameworks such as Article 6 of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters or the equivalent of Article 26 in a bilateral tax treaty.

Before entering into a reciprocal agreement to exchange information automatically with another country, it is essential that the receiving country has the legal framework and administrative capacity and processes in place to ensure the confidentiality of the information received and that such information is only used for the purposes specified in the instrument.

Pascal Saint-Amans, director of the OECD's centre for tax policy and administration, said a decision on the technology needed and detailed rules on how governments would swap tax data is likely to be made at a G20 meeting in Brisbane in September.

OECD issues first tranche of "transparency ratings"

The British Virgin Islands, Cyprus, Luxembourg and the Seychelles were all branded non-compliant with international standards on information exchange according to new compliance ratings issued for 50 countries and jurisdictions by the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes on 22 November 2013.

The four countries found to be non-compliant were all considered to have sufficiently robust legislation to meet international standards but were deemed to have done too little to put it into practice.

Only 18 of the 50 jurisdictions rated were deemed to be compliant – Australia, Belgium, Canada, China, Denmark, Finland, France, Iceland, India, Ireland, the Isle of Man, Japan, Korea, New Zealand, Norway, South Africa, Spain and Sweden.

A further 26 jurisdictions, including Germany, the US, the UK, Hong Kong and Singapore, were rated "largely compliant. The others were Argentina, the Bahamas, Bahrain, Bermuda, Brazil, Cayman Islands, Estonia, Greece, Guernsey, Italy, Jamaica, Jersey, Macao, Malta, Mauritius, Monaco, the Netherlands, Philippines, Qatar, San Marino and the Turks and Caicos Islands. Two jurisdictions – Austria and Turkey – were further rated only "partially compliant".

In addition, 14 jurisdictions – most notably Panama, Switzerland and the United Arab Emirates – were informed that they would not be reviewed until they had improved their legal and regulatory framework.

New anti-avoidance measures to the fore in UK Budget

In the UK Budget on 19 March 2014, the government confirmed that the UK revenue authority (HMRC) is to be given extended powers to issue payment notices to anyone who has used an avoidance scheme that is the subject of an inquiry. An earlier proposal limited HMRC's power to issue payment notices only to anyone using an avoidance scheme that a court had ruled against.

Chancellor George Osborne confirmed that HMRC will issue £7.1 billion in payment notices, based on the number of court cases HMRC expects to win. The amount (plus interest) would be repaid to the taxpayer should the taxpayer ultimately be successful in litigation or through settlement.

The government is also to "modernise and strengthen HMRC's debt collection powers" by giving it the power to recover tax directly from debtors' bank accounts, where they owe more than £1,000 and have previously been contacted about paying the tax. The Treasury said the new power would bring the UK tax authorities in line with the French and US tax authorities.

Osborne further announced three major changes to broaden the scope of taxes designed to discourage the use of corporate envelopes for holding residential properties, as well as to raise existing rates. For a full discussion of these changes, see "In the press" on page 21 .

Sovereign Comment

The UK, and London in particular, is becoming an ever more important part of Sovereign's global business, which must be a reflection of its importance to our clients. Our London office is hugely experienced in all aspects of UK wealth planning and is also where our Group Tax Counsel is based. Please contact them for any enquiries or to arrange a "no obligation" consultation.

UK unveils proposals for public register of beneficial ownership

The UK government announced, on 21 April 2014, that it is to proceed with implementing a publicly accessible register of the beneficial ownership of UK companies. The move, which was proposed by Prime Minister David Cameron at the Lough Erne G8 Summit last summer, follows a consultation on "Transparency & Trust: Enhancing the transparency of UK company ownership and increasing trust in UK business".

The new obligation to maintain a register of beneficial ownership will apply to UK bodies corporate generally, including not only private and public companies limited by shares but also private companies limited by guarantee and Limited Liability Partnerships (LLPs).

Under the plans, firms registered in the UK will be required to supply information on individuals with an interest in more than 25% of the shares or voting rights, or who otherwise control the way the company is run, to a central register maintained by Companies House.

At the same time, "bearer shares" – which belong to whoever owns the share warrant and which can be transferred untraceably without the need for the owner's identity to be listed in the company's register of members – are to be abolished.

The UK government is also looking at imposing restrictions on the use of companies acting as directors of other companies and at better educating company directors on their duties.

David Cameron said the government would introduce legislation in the UK Parliament as soon as possible and, in an open letter released on 25 April 2014, reiterated his call for the UK Crown Dependencies and Overseas Territories – which would include Jersey, Guernsey, the Isle of Man, the British Virgin Islands, the Cayman Islands, Bermuda and Gibraltar – to implement their own beneficial ownership registries.

"As you know, I believe that beneficial ownership and public access to a central register is key to improving the transparency of company ownership and vital to meeting the urgent challenges of illicit finance and tax evasion," Cameron wrote. "So I am proud that the establishment of a publicly accessible central registry of company beneficial ownership information will now form a key pillar of our G8 legacy."

"I am firmly of the view that making company beneficial ownership information open to the public is by far the best approach. It will give businesses and individuals a clearer picture of who ultimately owns and controls the companies they are dealing with and make it easier for banks, lawyers and others to conduct due diligence on their customers," he continued. "And it will help reduce the cost of investigations for tax and law enforcement authorities here and overseas, particularly in developing countries, by making information more easily available to them at the very start of an investigation."

"I am very keen that we should move forward together in raising standards of transparency globally. I therefore wholeheartedly welcome all those Overseas Territories who are joining us in leading this work, either by already having a central registry in place or by consulting on establishing one. I particularly welcome those that are already considering making their central registry publicly accessible," Cameron said.

Sovereign Comment

Many of these proposals will require primary legislation, so change will not be immediate. There will also need to be transitional periods for existing companies. There are many concerns for beneficial owners and we will be monitoring developments closely in the UK and elsewhere. The creation of a register of beneficial owners of companies will mean that measures may need to be taken to tackle other routes for illicit financing, such as establishing a register of ultimate beneficial owners of trusts.

Portugal's "Golden Visa" proves popular with Chinese

Figures released in February showed that Chinese nationals have received 433 out of 542 "golden visas" approved by Portugal so far, followed by 23 for Russians, and 28 for Brazilian and Angolan citizens combined. Only nine applications have been rejected.

The "ARI" programme ("Autorização de Residência para Actividades de Investimento"), better known as the "Golden Visa" scheme, was introduced by the Portuguese government in October 2012 as a way to attract investment by wealthy or entrepreneurial individuals from outside Europe to the country.

Under the scheme, foreigners qualify for a five-year visa to Portugal either by: purchasing property worth more than €500,000; making a capital investment exceeding €1 million in other assets, typically securities; or creating at least 10 new jobs in the country. The 471 golden visas issued in 2013 brought €306.7 million of investment into Portugal.

Portuguese residence permits grant visa-free access to the Schengen space and, after five years, holders can apply for permanent residency and EU citizenship one year later. An investor's family members may also apply and obtain a resident permit.

Sovereign Comment

Interest in the scheme has accelerated since the requirements for duration of stay in Portugal were cut from 30 to seven days a year last January. Other European countries are competing in this space, with Spain, Cyprus, Greece and Latvia also offering visas in return for investment. Contact your nearest Sovereign office for further information.

High Court rules in "most complicated financial remedy case"

The English High Court gave judgment, on 22 November 2013, in the final hearing of the long running case of *Young v Young*. Mr Justice Moor, who described the case as one of the "most complicated financial remedy cases ever seen in these courts", awarded Michelle Young a £20 million lump sum payment.

Mrs Young, a former fashion executive, brought a financial remedy application against her husband, property and technology entrepreneur Scot Young. The couple separated in November 2006 and the case has taken six and a half years and 65 separate hearings to come to trial. This included Mr Young being sentenced to six-months imprisonment in January 2013 for failure to comply with a court order for full and frank financial disclosure.

The main issue at stake was the determination of Mr Young's wealth. Mrs Young's contended that her estranged husband was worth at least hundreds of millions and she should be entitled to a lump sum equivalent to half of that wealth. She supported her argument by asserting that Mr Young made an open offer of £300 million to settle the case and argued that her former husband had removed and hidden assets from 2006 when he realised that his marriage was breaking down.

Mr Young, who was acting in person argued that 2006 saw the financial meltdown of this businesses, leaving him bankrupt and with debts equating to a minimum of £28 million to HMRC, Bank of Scotland, friends and colleagues.

Mr Justice Moor found Mrs Young's evidence to be unreliable, stating that she had become "utterly convinced that her husband is a liar". He was not of the opinion that the without prejudice offer of £300 million was a serious offer capable of acceptance. Along with finding numerous examples of Mr Young's dishonesty the court held that Mr Young had removed share certificates worth approximately £20 million from a solicitor's office and then denied they ever existed. "Doing the best I can," said the judge, "I find he still has £45 million hidden from this court."

Deducting £5 million for his debts, the net total was £40 million. The Court held that Mrs Young was entitled to half – a lump sum of £20 million – and ordered Mr Young to pay in 28 days. The judge further ordered Mr Young to pay the arrears of a maintenance pending suit order within 28 days, and rejected his application to remit the arrears.

The judge also described the costs involved as "eye watering" and that the case was "as bad an example of how not to litigate as any I have ever encountered" with Mrs Young spending an "unacceptable" £6.4 million in legal fees and disbursements. The issue of costs will be further addressed but the court's provisional view was that Mr Young's non-disclosure had been so great, that Mrs Young should be entitled to her costs on an indemnity basis, but only to the extent of what the case should have cost if it had been properly inducted.

Sovereign Comment

This highly acrimonious and high value case should serve as a lesson to anyone involved in a matrimonial or business dispute because it shows that often there are no winners. The burden of proof is on the party that seeks to assert a positive case as to disputed facts, although it is for the respondent to provide to the applicant and the court all the relevant information. Without disclosure the other party is left having to ask the court to draw inferences. Notwithstanding years of forensic accountant investigations, costing millions, the judge could still only try to guess Mr Young's worth and it seems doubtful that he will ever willingly pay.

US trial of former UBS wealth management head delayed extradition

The US trial of former UBS executive Raoul Weil, a Swiss citizen, which had been scheduled to begin on 18 February 2014, was pushed back to October, due to the volume of documentation produced by US prosecutors. At his 7 January arraignment, Weil pleaded not guilty to helping US taxpayers evade taxes on $20 billion in offshore assets.

Weil became the chairman and chief executive officer of UBS global wealth management and business banking in 2007. From 2002 to 2007, he had been head of the Swiss bank's wealth management international unit. A 2009 US indictment accused Weil and other bankers of aiding tax evasion by failing to implement regulations designed to prevent US clients from evading taxes after the bank agreed in 2001 to identify US account-holders and report their income.

Weil left UBS after being indicted and was declared a fugitive from justice by the US courts in 2009. He was working as chief executive of Swiss wealth manager Reuss Private Group when he was arrested last October while holidaying in Italy. The following month he agreed to be extradited to the US to face charges.

His case is the first of many, as dozens of Swiss bankers, lawyers and advisors have now been hit with similar indictments. UBS avoided US prosecution in 2009 by admitting it aided tax evasion, paying $780 million and handing over data on 250 accounts. It later disclosed information on about 4,450 more accounts.

Isle of Man court gives ruling on bank confidentiality

The Isle of Man High Court ruled, on 27 November 2013, that a bank would commit no breach of duty to its customers under Manx law by complying with an order of the Irish Supreme Court over the disclosure of account information to the Irish Revenue.

In *Danske Bank v Irish Revenue & Commissioners & Otrs*, the claimant bank, the successor of National Irish Bank (NIB), sought a declaration from the Isle of Man courts that it would not be breaching its duty of confidentiality by providing details in the context of proceedings in Ireland of customers who held accounts at the former Isle of Man Branch of NIB.

In granting the order, Deemster Corlett made clear that this determination did not constitute a change in the attitude of the Isle of Man Courts to a bank's duty of confidentiality to its customers. However none of the banking records, documents or information requested were situated in the Isle of Man because the Isle of Man Branch of NIB had been closed for a number of years and the records, documents and information were in fact situated in Northern Ireland.

"I make it clear that, had the relevant account information been located in the Isle of Man, I may well not have been prepared to make the declaration sought," said Deemster Corlett.

Sovereign Comment

Although this ruling might seem to erode a bank's duty of confidentiality to its customers, the judgment states that Manx law in relation to a bank with a place of business and banking records in the Isle of Man as being "entirely clear". Disclosure to foreign authorities outside of the recognised exceptions would constitute an actionable breach of customers' confidentiality.

BVI Court rules on ancillary relief proceedings and forum

The BVI Commercial Court dismissed, on 18 September 2013, an application by Russian bank VTB Capital to lift the stay of BVI proceedings, which followed the dismissal of the English proceedings in the VTB v Nutritek litigation by the UK Supreme Court earlier last year on forum non convenient grounds.

The BVI proceedings, which were originally issued for the purpose of obtaining worldwide injunctive relief in support of the English proceedings, were issued in the form of a substantive claim but were immediately stayed in favour of the English proceedings.

In his judgment Mr Justice Bannister refused to lift the stay, holding that the BVI proceedings were merely ancillary proceedings and were not intended for the determination of the issues between the parties. Bannister J held that such ancillary proceedings could not be converted, after they had ceased to serve their original ancillary purpose, into substantive proceedings.

Bannister J then ruled on a hypothetical jurisdictional challenge brought by the non-BVI defendants on forum non conveniens grounds. After considering the circumstances of the case, he found that Russia, and not the BVI, was clearly the most appropriate forum for the claim.

He held that the mere fact that two out of the five parties were incorporated in the BVI was not sufficient to make the BVI the most appropriate forum, unless proceedings related to the ownership or control, constitution or administration of those companies. The loss involved was suffered in Russia and involved allegations of a fraud orchestrated in Russia by Russians. He said that Russia remained an available forum, despite VTB's contention that it would be impossible to pursue a claim there.

Bayern Munich president jailed for tax evasion

Uli Hoeness, president of Bayern Munich football club, was sentenced by a Munich regional court to three and a half years in prison for tax evasion relating to a secret Swiss bank account on 14 March 2014.

Hoeness, a former World Cup-winning German international footballer, was initially charged by prosecutors with evading €3.5 million in taxes from trading profits but during the trial prosecutors put the amount at €27.2 million, which Hoeness' lawyers did not contest. Hoeness said he had used the money for large-scale gambling on the foreign currency markets.

The case rested on whether Hoeness had made a proper voluntarily disclosure in 2013, when he delivered a large pile of documents to a tax office in Bavaria after Stern magazine had made inquiries about his account at Swiss bank Vontobel.

Under German law, taxpayers can only benefit from an amnesty if they disclose fully and before the authorities have opened an investigation.

The judge ruled that Hoeness's voluntarily disclosure in January 2013 was incomplete and did not meet a requirement needed for amnesty. Hoeness said he would not appeal the ruling and stepped down immediately as club president and as the chairman of its supervisory board.

Some 55,000 German taxpayers have made voluntary disclosures over the last four years and have paid a total of about €3.5 billion in back tax. The number of voluntary disclosures rose four-fold in 2013 from the previous year.

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Trustee's refusal to disclose information "wholly without merit"

The Jersey Royal Court, on 5 July 2013, ordered a trustee to make information available to a UK-based beneficiary (B) who sought disclosure of information in relation to two trusts of which she believed she was a beneficiary.

In *the matter of the B Family Trust*, the respondents comprised Strachans SA, a Swiss firm of tax advisers, now in liquidation; Philip Egglishaw, a Strachans' director; and Roker Trustees (Switzerland), a corporate trustee based in Nevis. Egglishaw claimed he could not provide B with information without the risk of exposing himself to charges of money laundering or those in relation to other proceeds of crime. The respondents sought exculpation from everything that they had done in relation to the trusts before August 2011 as a precondition of allowing B's Swiss adviser to inspect the trust documents.

B therefore applied to the court to obtain the trust accounts for the trusts and for an underlying company of one of the trusts – not only as a beneficiary seeking to hold her trustee to account, but also in order to make her Australian tax returns and avoid being in breach of Australian law.

Due to the protracted procedures required for service in Switzerland, B only sought an order against Roker, which contested the application on the grounds of the "vague nature of some of the assertions" and that it had been brought into the proceedings only for the purpose of disclosure, which was an abuse of process. Strachans and Egglishaw, it said, were the de facto trustees.

The court held that the "obligations of a trustee are therefore clear. As a corollary of its obligation to hold and deal with the trust property for the benefit of the beneficiaries, it is liable to account to them by the provision of information and explanations … For a trustee to refuse a beneficiary sight of the core trust documents and then criticise that beneficiary for being vague about her position under that trust is to turn trust law on its head."

It further stated that: "[Roker] is a corporate vehicle used by Strachans to provide trusteeships … Whatever the actual arrangements in place, Roker is the trustee and it cannot avoid its obligations as trustee by seeking to hide behind those who may control it."

The court therefore ordered Roker to make available, or to ensure that Strachans and Egglishaw would make available, the trust documents sought by B.

Sovereign Comment

There are a number of important issues arising from the outcome of this case not least the lessons to be learnt by trustees no matter how their own business is structured through other corporate vehicles. The court's judgment is clear and demonstrates the importance of undertaking full diligence at the outset of a trust relationship including the trustees' future likely relationship with beneficiaries who could be located in another part of the world. Depending on individual circumstances, trusts remain a hugely important international tax planning tool but this case highlights, once again, how vital it is to get the process right from the outset.

UK Budget 2014 targets residential properties held in corporate "envelopes"

A version of this article by Howard Bilton, chairman of The Sovereign Group, first appeared in *Be Beyond* magazine.

George Osborne, the UK Chancellor, announced three major changes in the 2014 Budget on 19 March 2014 to broaden the scope of taxes designed to discourage the use of corporate envelopes for holding residential properties, as well as to raise existing rates. The new measures include lowering the threshold at which homes are charged 15% Stamp Duty Land Tax (SDLT) when first wrapped in a corporate envelope, from properties worth £2 million or above to those valued at £500,000 or above.

For those who currently hold property through a corporate structure, the Annual Tax on Enveloped Dwellings (ATED) will be extended to properties which fall under two new bands – residential properties valued between £1 million to £2 million will be taxed at £7,000 a year from April 2015, while those valued at £500,000 to £1 million be taxed at £3,500 from April 2016. ATED-related capital gains tax (CGT) charges, for properties sold within an envelope, will also be applied to homes worth more than £500,000.

The Treasury has further increased rates on current progressive ATED bands. Properties valued at £2 million to £5 million will be charged £15,400 for the 2014/15 tax year, rising to £143,750 for those valued at more than £20 million or above.

Additional taxes on those purchasing high-value properties through corporate structures were first proposed in the 2012 Budget, to deter individuals, often based overseas, from buying residential properties through company structures or "envelopes" to avoid paying SDLT. It imposed a 15% rate of SDLT on properties worth more than £2 million bought by a "non-natural person".

This however had little or not impact on existing properties held through companies and was therefore followed in 2013 by the imposition of ATED, which applied a 0.7% annual charge to UK residences worth more than £2 million as of April 2012 (or at acquisition on a later date) owned through a corporate structure.

Fewer people than expected have "de-enveloped" from a corporate structure to avoid paying the annual charge. As a result, the £93 million raised through ATED and the higher rate of SDLT is five times greater than was originally estimated by the Treasury.

The reluctance to de-envelope may be because wealthy homeowners may have motivations other than avoiding SDLT for holding property in a corporate vehicle, such as privacy because the owner's name does not appear on the Land Registry, a public database, or protection against UK Inheritance Tax (IHT).

Those who have "de-enveloped" may have found themselves wrong footed by the decision, announced in 2013's Autumn Statement, to levy CGT on disposals of UK property by non-resident owners from April 2015, even if the property is held directly.

> ***"Anyone, whether UK-domiciled or not, who owns a non-exempt UK residential property with a market value in excess of £2 million through an offshore company currently has a tax exposure."***

The imminent extension of the ATED regime means that many more companies and their beneficial owners will also be exposed. It is still possible to "de-envelope" the property post-April 2013 – the commencement date of the ATED regime. Where keeping the corporate structure in place is no longer prudent from a tax perspective, de-enveloping sooner rather than later means that any taxable gain will almost certainly be smaller.

There are three important exemptions from the SDLT and ATED regimes for company-held residential properties – third-party letting, property trading and development. These exemptions impose strict conditions that must be satisfied completely and continuously. If the property qualifies for an ATED exemption and the conditions can be permanently satisfied, then keeping the property in company ownership is likely to be the most tax efficient option.

Where no exemption is available or where the conditions will not be permanently met, de-enveloping is likely to be the better option – particularly where the company is exposed to a higher ATED charge or to multiple charges because it holds more than one property within the charge.

The main advantage of de-enveloping into individual ownership is that, provided the owner is non-UK resident when the property is sold, there would be no ATED or future CGT exposure – although this could change from April 2015. The main disadvantage is that the individual would be subject to IHT on death.

Where IHT is not a client's primary concern then transferring to individual ownership may be suitable. If transferring to individual ownership is the best option, it may be worth keeping the offshore company in place to hold the property as a nominee for the individual and thereby preserve confidentiality. In both cases, the transfer would trigger SDLT if there is an outstanding mortgage that cannot be cleared, as well as CGT if the beneficial owner is UK resident.

A second option is to sell the shares in the company to a newly established trust. The company could then be liquidated and the property transferred to the trust as part of the proceeds of liquidation. This option can create an SDLT exposure if the property is mortgaged and a CGT exposure if the shareholder is UK resident but, with careful implementation, should not create an IHT exposure.

The advantages of this option are: no CGT on a future sale as the law currently stands; no ATED; and no IHT on the death of the settlor or a beneficiary.

The disadvantages are that there may be a CGT charge if the beneficiary is UK resident and in occupation of the property, while the trust itself is subject to the ten-yearly charge. The latter can, however, be mitigated or avoided completely if the property is sold before the tenth anniversary. CGT only applies to UK assets held directly by the trust and not, for instance, cash held in an overseas bank account from the proceeds of a sale.

For new purchases, if the property qualifies for an ATED exemption and the conditions can be permanently satisfied, then acquiring the property through an offshore company is likely to be the most tax efficient option.

In cases where no exemption is available or where the conditions will not be permanently met, if a residential property is acquired directly by a trust, the individual rates of SDLT apply. The maximum rate of SDLT payable by an individual is 7% of the purchase price – compared to 15% if a company acquires the property. The ATED will not apply and the trust is not, as the law currently stands, subject to CGT on a future sale.

Sovereign has been monitoring the new legislation closely since it was first announced. We have considerable expertise in this area and have been running a series of seminars educating local lawyers and accountants about the new legislation. Many of our wealthier clients are now transferring their UK properties from corporate structures to trust structures.

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