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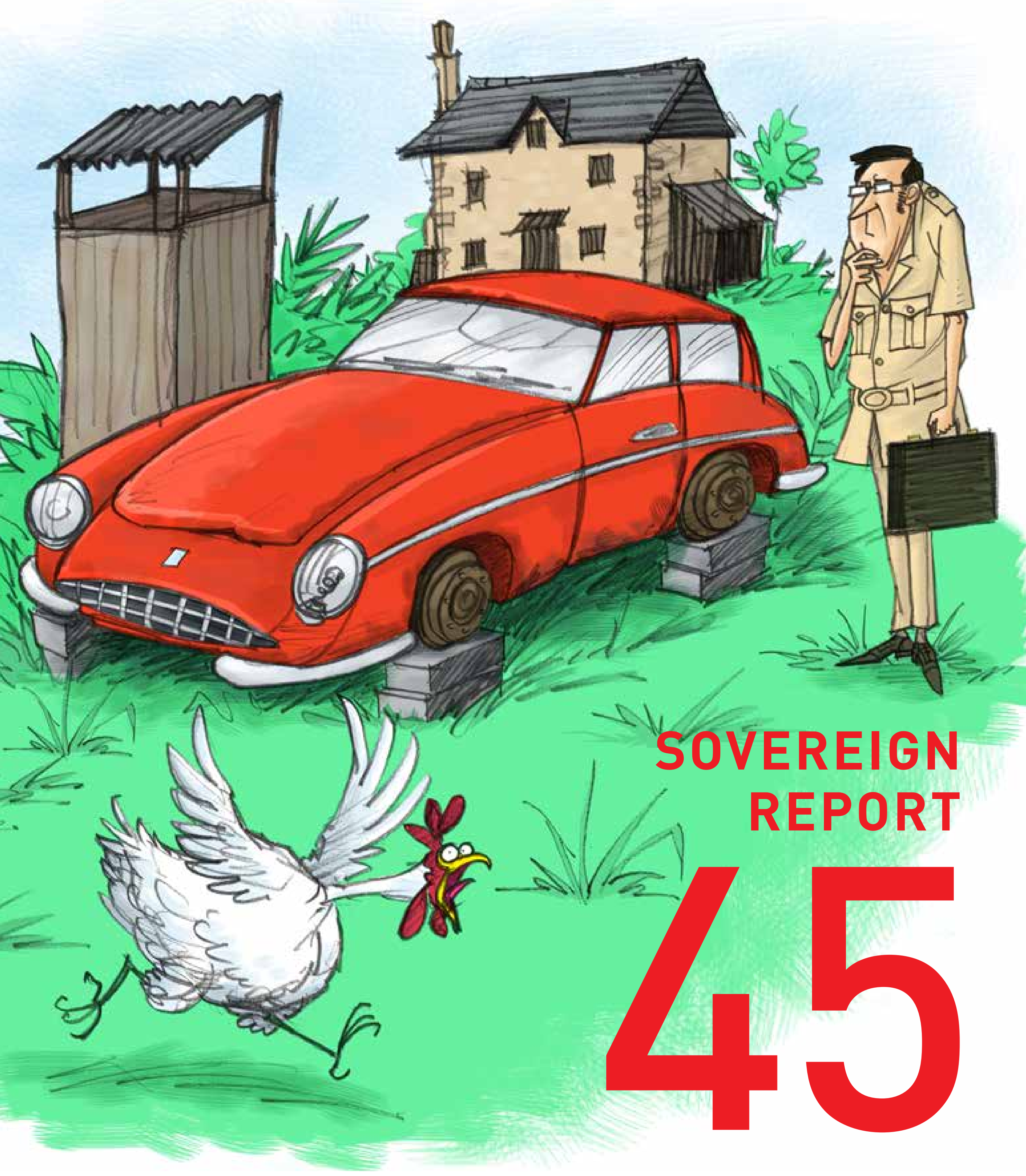

SOVEREIGN REPORT 45

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.

CONTENTS

AT A GLANCE

Editor Christopher Owen
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INTRODUCTION

On 27 June, children from all three of the Sovereign Art Foundation and Make it Better's programmes celebrated in a graduation ceremony held at The HUB in Sham Shui Po.

Implications for expatriates – UK summer budget

British expatriates are well advised to pay close attention to UK budgets because, despite living abroad, they are often affected. George Osborne's Summer Budget is no exception. It contains a raft of new measur es that could have a major impact on non-dom tax and estate planning.

Many simple corporate structures were unwound following the introduction of the Annual Tax on Enveloped Dwellings (ATED) and changes in Capital Gains Tax rules in 2012, but significant numbers of owners decided to keep the structure in place because it still protected against UK Inheritance Tax. It no longer does. Any clients that still have such structures in place should now review them as a matter of urgency.

For more details, please read my article, first published in *The Daily Telegraph*, which can be found at the *In The Press* section on page 16.

Just as we were going to press, UK prime minister David Cameron called for the Land Registry to publish data on foreign companies owning land and property titles in England and Wales. Speaking in Singapore, the PM vowed to expose the use of "anonymous shell companies" to buy luxury UK properties as part a global effort to defeat corruption.

The prime minister's statement fits into a wider transparency agenda, unveiled at the G8 summit at Loch Erne in 2013. The UK is committed to creating the world's first nationwide public register of company owners. Cameron has also stressed the need for co-ordinated global action and is pushing Britain's offshore dependencies in the Caribbean and Channel Islands to adopt public registers of their own.

Sovereign has always held that any planning that relies on secrecy is not planning at all. There are a variety of fully compliant structures that still offer genuine advantages without infringing international standards. This is a fast moving area. If you need to review your situation, please contact us.

Sovereign Trust Cyprus gains ASP licence

We are delighted to announce that Sovereign Trust Cyprus has received its Administrative Service Provider (ASP) licence from the Cyprus Security and Exchange Commission (CySEC). In all jurisdictions that require us to be licensed we have applied for, and been granted, the appropriate authorisation.

Cyprus is a highly attractive jurisdiction in which to establish structures and conduct international business because of its wide network of double tax treaties and low corporate tax rate. We look forward to operating under the new regime, which implements EU regulatory standards.

Gibraltar Maritime Week

RegisterAYacht.com (RAY), our marine division, participated in the inaugural Gibraltar Maritime Week conference from 8 to 10 July. Hosted by the Gibraltar Maritime Administration, the event was an extension of the successful Superyacht Forum events held in 2012 and 2013, which were instigated by RAY director Gabriel González and hosted with the support of other private sector firms.

Held aboard the floating hotel Sunborn in Gibraltar's Marina Bay, the conference was a resounding success – attracting industry experts from all over the world to participate in three sessions dedicated to ships, seafarers and crew, and superyachts. We are delighted that our initiative has been taken on and developed by the government in this way.

Sovereign Art Foundation helps to make it better

SAF and the Make it Better team welcomed 43 children and their parents to the very first graduation of students that completed the 10-week Make It Better (MIB) programme. MIB is an arts project working with children from the Sham Shui Po area, one of the poorest areas in Hong Kong.

Joining us at The Hub HK centre were many of our loyal volunteers and supporters, who came to view the wonderful artwork created by the children and our short film, "Paper Plane", which stars many of the children from the course. After seeing the film, guests were invited to join us for sandwiches and cupcakes. The evening continued with a screening of an animated film, courtesy of FilmAid Asia.

Our sincere thanks go out to everyone who has helped to make the programme such a success this year, and we are all looking forward to September, when we will have six programmes running simultaneously.

Sovereign people

I am delighted to announce the appointment of Adam Griffiths as a director of Sovereign Trust (Hong Kong) Limited. A commercial chancery barrister and Cassel Scholar of Lincoln's Inn, Adam joined Sovereign as in-house legal counsel in 2014. He will be a welcome addition to the board in Hong Kong, providing insight and strategy along with a definition of long-term objectives.

Howard Bilton
Chairman of The Sovereign Group

EUROPE

UK Pension Schemes Act 2015 receives Royal Assent

The Pension Schemes Act 2015 received Royal Assent on 3 March 2015. The Act introduces a number of changes including the concept of shared-risk schemes; a legislative framework for the operation of collective benefit schemes, and provisions associated with the new pension flexibilities that are being introduced on 6 April 2015.

The Act introduces the concept of "shared risk" – defined ambition (DA) – pension schemes, which will give legal recognition to a middle ground between defined benefit (DB) and defined contribution (DC) schemes. Each type of scheme will be defined by reference to the level of "pensions promise" offered to members.

The Act will allow for the provision of DC or shared-risk benefits on a collective basis, to enable pooling of the risks borne by members. Regulations will govern activities such as the setting of benefit targets, valuation and reporting requirements and the treatment of any surpluses or deficits.

From 6 April 2015 the pensions tax regime is being amended to allow members with money purchase benefits more flexibility in how these benefits are taken. The Act contains several provisions related to the new flexibilities, including the framework for a guidance guarantee and the requirement for independent advice before transferring or converting "safeguarded benefits" so as to produce "flexible benefits".

The Act prevents members of unfunded public sector schemes from transferring their defined benefits to obtain flexible benefits and enables the government to force "designated" funded public sector DB schemes to reduce their cash equivalent transfer values.

SOVEREIGN COMMENT

Where a member (of a private sector or funded public sector scheme) wishes to transfer or convert their defined benefits into flexible benefits, the Act requires trustees to check that a member has received "appropriate independent advice" before proceeding. This "appropriate independent advice" must come from a professional financial adviser who is both independent of the Defined Benefit scheme and authorised by the UK Financial Conduct Authority (FCA). Renowned pension technical specialist PenTech has recently launched a solution that is exclusive to Sovereign pension introducers.

Members of Malta QROPS will also be allowed to enjoy the new pension freedoms following the introduction of Malta's Retirement Pensions Act on 1 January 2015. This allows Malta QROPS benefits to mirror the UK rules. Malta-based pension providers are currently licensed under Malta's Special Funds Act and have until 31 December 2015 to re-license under the new Retirement Pensions Act. Sovereign plans to offer the new flexibilities to its Malta QROPS members as soon as this re-licensing process is complete. It is likely that the Malta Financial Services Authority (MFSA) will finish the process towards the end of the year.

Cyprus citizenship-by-investment scheme nets €2 billion

Interior Minister Socrates Hasikos told parliament, on 26 May 2015, Cyprus had received over €2 billion from property sales and investments over the past two years from its Scheme for Naturalization of non-Cypriot Investors by Exception, which allow third-country nationals to obtain citizenship in Cyprus by making specified investments.

To qualify for citizenship, the primary applicant must make a €5 million investment in one or more of the following classes: government bonds; financial assets of Cypriot entities; real estate or other developments; companies residing and operating within Cyprus; deposits in a local bank. Under every criteria the applicant must purchase a private residence in Cyprus for at least €500,000.

In April 2014, the government introduced changes that included the introduction of the Major Collective Investment (MCI) route, which reduced the minimum investment amount from €5 million to €2.5 million where several applicants jointly apply for citizenship. The total minimum investment is €12.5 million.

Sovereign Trust Cyprus gains Administrative Services Provider licence

Limassol-based Sovereign Trust Cyprus has received its Administrative Service Provider (ASP) licence from the Cyprus Security and Exchange Commission (CySEC). Sovereign Trust Cyprus is now registered in the CySEC register under the licence number 142/196.

The Law Regulating Companies Providing Administrative Services and Related Matters was enacted by the Cyprus Parliament in December 2012 to transpose the provisions of the European Union's Third Money Laundering Directive (2005/60/EC) into Cypriot national law. It regulates the provision of fiduciary services in Cyprus and introduced licensing procedures.

The law applies to persons and companies providing relevant fiduciary and other corporate services relating to the administration or management of trusts and companies in or from Cyprus, including:

- Directorship and secretarial services provided by a legal person, including acting as an alternate director or secretary;
- Services such as holding of shares of legal persons in a nominee or trustee capacity;
- Provision of a registered office;
- Services related to the opening and operating bank accounts; and
- Services for the ownership of financial assets on behalf of third parties.

The new law provides that relevant services may be offered only by persons or legal entities that hold a licence from CySEC or who are specifically exempted from the licensing requirement. Nearly 200 corporate service providers applied for the licence. Sovereign Trust Cyprus submitted its application on 20 June 2013.

In order to obtain a licence, a service provider must comply with certain criteria regarding their professional and academic qualifications, experience and their internal procedures, including:

- Head office must be located in Cyprus;
- Must be represented and administered by at least two persons, who must have the appropriate academic and professional qualifications, expertise and integrity to manage it competently and prudently;
- Must employ an in-house lawyer or maintain a regular professional relationship with an external lawyer;
- Must employ a compliance officer or externally engage these services;
- Must put in place appropriate internal control procedures to ensure that it has accurate, up to date information at all times, in compliance with the law.

SOVEREIGN COMMENT

Sovereign is committed to ensuring that its compliance and legal obligations – and those of its clients – are met. In all jurisdictions that require us to be licensed we have applied for, and been granted, the appropriate authorisation. The granting of the ASP licence by CySEC confirms that Sovereign has demonstrated its financial stability and probity, as well as its professional competence and integrity and the robustness of its systems.

European Parliament adopts Fourth Anti-Money Laundering Directive

The European Parliament voted, on 20 May 2015, to adopt the Fourth Anti-Money Laundering Directive and Regulation (AML IV), which implements the recommendations by the Financial Action Task Force (FATF) and, in some areas, expands on the FATF's requirements and provides for additional safeguards.

AML IV will for the first time oblige EU member states to keep central registers of information on the ultimate "beneficial" owners of corporate and other legal entities, as well as trusts. These central registers were not envisaged in the European Commission's initial proposal, but were included by MEPs during negotiations. The text also sets out specific reporting obligations for banks, auditors, lawyers, real estate agents and casinos, among others, on suspicious transactions made by their clients.

The central registers will be accessible to the authorities and their financial intelligence units (without any restriction), to "obliged entities" (such as banks doing their "customer due diligence" duties) and also to the public (although public access may be subject to online registration of the person requesting it and to a fee to cover administrative costs).

To access a register, a person or organisation – for example investigative journalists or NGOs – will have to demonstrate a "legitimate interest" in suspected money laundering, terrorist financing or in "predicate" offences that may help to finance them, such as corruption, tax crimes and fraud.

These persons could access information such as the beneficial owner's name, month and year of birth, nationality, country of residence and details of ownership. Any exemption to the access provided by member states will be possible only "on a case-by-case basis, in exceptional circumstances".

The central register information on trusts will be accessible only to the authorities and "obliged entities".

AML IV clarifies the rules on "politically-exposed" persons" - those people at a higher than usual risk of corruption due to their political position, such as heads of state, members of government, supreme court judges and members of parliament, as well as their family members. Where there are high-risk business relationships involving such persons, additional measures should be taken to establish the source of wealth and source of funds involved.

SOVEREIGN COMMENT

Having been formally endorsed by the European Council in February, this was the last stage of the Directive's progress through EU institutions. It has now beeen published in the Official Journal of the European Union and will come into force on 26 June 2015; and must be transposed into the national laws of the Member States by 26 June 2017. All relevant firms will be required to comply with these national laws from 26 June 2017.

Isle of Man progresses regulation for digital currencies

The Isle of Man parliament approved, on 17 March 2015, amendments to the Proceeds of Crime Act in order to bring digital currency under the control of the Act such that digital currency businesses will have the same anti-money laundering (AML) responsibilities as lawyers, accountants and real estate agents.

From 1 April 2015, anyone on the Isle of Man engaged in the "business of issuing, transmitting, transferring, providing safe custody or storage of, administering, managing, lending, buying, selling, exchanging or otherwise trading or intermediating convertible virtual currencies" must comply with the island's AML framework.

In addition, digital currency businesses will soon be subject to registration and oversight by the Isle of Man Financial Services Commission (FSC) when the Designated Businesses (Registration and Oversight) Bill, which completed its passage through parliament on 24 March, receives Royal Assent.

SOVEREIGN COMMENT

This innovative legislation is designed to attract more digital financial technology (known as "FinTech") business, entrepreneurs and developers to the Isle of Man. This sector offers great potential and it is important that the Isle of Man creates friendly, but firm, controls in order to nurture growth and maintain its reputation as a leading area for digital currency start-ups.

Gibraltar consults on Personal Pension Schemes regulation

The Gibraltar Financial Services Commission (GFSC) published, on 4 June 2015, a new consultation paper on the regulation of Personal Pension Schemes.

According to the GFSC's press release: "The paper has been developed at the request of HM Government of Gibraltar and is designed to support the further development of the market for personal pensions and ensure that personal pensions continue to be subject to appropriate regulation and investor protection".

The proposals have been drawn up by a pensions working group that comprises of representatives from the GFSC, the Gibraltar government, Income Tax Office and the industry. The working group recognises the importance of continuing to strengthen Gibraltar's pensions regime, particularly given the recent fundamental changes to the UK's personal pensions' regime. The consultation period closed on 14 July.

SOVEREIGN COMMENT

Although trustees operating in Gibraltar are already subject to regulation, Sovereign views the regulation of personal pensions as a very positive step and one that will reinforce Gibraltar's position as a leading QROPS jurisdiction.

Swiss Federal Council adopts dispatch on automatic information exchange

The Swiss Federal Council submitted to parliament, on 5 June 2015, a dispatch on the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters and on the required legal basis for implementing the standard for the automatic exchange of information in tax matters (AEOI). The vast majority of the cantons, political parties and interested parties approved the proposals during the consultation procedure.

The first proposal concerns the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters. Signed by Switzerland on 15 October 2013, this Convention governs international administrative assistance in tax matters and makes provision for three forms of information exchange: upon request, spontaneous and automatic.

The second proposal submitted to Parliament concerns the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information (MCAA), which was signed by Switzerland on 19 November 2014. A new Federal Act on the International Automatic Exchange of Information in Tax Matters (AEOI Act) is required to ensure that the provisions of this agreement and of the global standard for the automatic exchange of information can be applied.

Parliament will begin deliberations on the proposals in autumn 2015. Even if a referendum is held, the legal basis could come into force at the start of 2017, and the exchange of information with partner states could commence in 2018, in line with what Switzerland indicated to the Global Forum in October 2014.

SOVEREIGN COMMENT

Switzerland signed a bilateral agreement on the automatic exchange of financial information with the EU on 27 May 2015. This commits both parties to collect information on banking accounts starting in 2017 and to exchange this data from 2018.

Under the agreement, EU Member States will receive, on an annual basis, the names, addresses, tax identification numbers and dates of birth of their residents with accounts in Switzerland, as well as other financial and account balance information. This information can currently only be accessed upon request.

The new agreement will replace the current agreement on the taxation of savings that entered into force in 2005. The exemption for intercompany payments of dividends, interest and royalties from any withholding tax in the source state has been adopted in the new agreement without any changes. The existing withholding tax agreements that Switzerland signed with Austria and the UK and which entered into force on 1 January 2013 will also be terminated.

AMERICAS & THE CARIBBEAN

St Kitts & Nevis to tighten up Citizenship-By-Investment programme

St Kitts & Nevis Prime Minister Timothy Harris announced, on 28 April 2015, that his government would restructure, reform and reposition its Citizenship-By-Investment (CBI) programme to ensure its long-term economic stability. The move came after the US issued a financial advisory against holders of CBI passports in May 2014 and Canada revoked SKN citizens' visa-free travel status last November.

"We shall make provisions to revoke the citizenship of any economic citizen who within five years of the issuance of the certificate of registration, commits a serious crime like an act of terrorism, or appears on an international sanctions list, or on a wanted list of any country or international body, or is named in any scandal that might bring our country into disrepute," said Harris.

He further pledged to partner with other governments – especially the US, Canada, UK and European Union – to ensure that no "undesirables" would be allowed to use the CBI programme.

In 2014 the former administration contracted the services of IPSA International, a risk management and due diligence firm, to conduct an independent evaluation of the CBI and the CBI Unit. The new government, said Harris, had reviewed the report and after consultation with stakeholders had agreed to implement the 20 recommendations proposed by IPSA.

Among the recommendations are the implementation of a case management tool to streamline the application management process within the CBI Unit, changes to the Unit's organisational structure to enhance processing capabilities and mitigate risk, an improved risk assessment process and a review of previously approved applicants.

SOVEREIGN COMMENT

Citizenship and residency programmes are playing an increasingly important role in wealth management and it is good to see that the SKN government is moving to address international concerns. Sovereign, either directly or with carefully selected partners, is well placed to advise on or assist with most of the significant programmes available today. Contact your closest local Sovereign office for details.

BVI introduces new criminal offence of failing to keep trust records

A new requirement for trustees of BVI trusts to maintain records and underlying documentation for each trust for at least five years was brought into force under the Trustee (Amendment) Act on 30 March 2015.

The records do not have to be kept in the BVI but need to be "sufficient to show and explain the trust's transactions" and "enable the financial position of the trust to be determined with reasonable accuracy". Failure to comply without reasonable excuse is a criminal offence punishable by a fine up to US$100,000 or a prison sentence up to five years.

SOVEREIGN COMMENT

While the requirements of the Amendment Act do not add to the existing duties of trustees to keep clear trust accounts and be ready with them at all times, the potential criminal sanctions for non-compliance do serve to extend a trustee's exposure under the law. Record keeping will therefore be a key issue for all BVI trustees and trustees of BVI trusts. A similar duty was placed on BVI companies and limited partnerships in late 2012 by amendment to local company law demanded by the OECD Global Forum.

UK requests timetable for central registers from Overseas Territories

The UK Treasury sent out letters, on 27 March 2015, to the governments of the British Virgin Islands and the Cayman Islands requesting them to set out specific timetables for implementing central registers or similar systems of companies revealing corporate ownership by November. It has also written to Bermuda, which already has a central register, asking it to make the information more accessible to law enforcement agencies.

Prime Minister David Cameron proposed plans for public registers of company ownership in 2013 during the G8 summit in Northern Ireland. This was met with opposition by the Overseas Territories, who claimed it would damage the UK's interests.

Last November, leaders of the G20 nations said that creating central registries of beneficial ownership was just one way of implementing the principle that such information should be "adequate, accurate and current" and held onshore.

The BVI held a consultation, which found that four out of five respondents were opposed to a central register because of compliance costs, the impact on its competitiveness and the risk of fraud. But it said it was working on initiatives aimed at achieving the same result, adding that the UK government "has been extremely engaging and supportive".

In January, the Cayman Islands also announced it would not introduce a central register. But its government said it would pass legislation requiring corporate service providers to produce beneficial ownership information to tax, regulatory and law enforcement within a target time of 24 hours.

The new letters, signed by Financial Secretary to the Treasury David Gauke and Foreign Officer Minister James Duddridge, were sent a day after the UK's own legislation to improve transparency around corporate ownership – contained in the Small Business, Enterprise and Employment Act – gained Royal Assent. UK companies will be required to keep a register of individuals with significant financial control from January next year. This will be publicly accessible by April 2016.

SOVEREIGN COMMENT

The UK's register is expected to affect about 2.5 million companies and partnerships. In all but a minority of cases — estimated to be about 400,000 — the beneficial owner would be the same as the legal owner, whose name already appears on a public share register. The proposal is not expected to cover companies listed on the stock exchange, which are already subject to strict disclosure requirements.

The EU's fourth money laundering directive (*see page 5*) will introduce corporate registers that will be publicly available to those with a "legitimate interest". Advocates of public registries say the ability of the public to scrutinise filings will make it more effective.

First Swiss banks settle under US Tax Programme

Lugano-based private bank BSI became the first Swiss bank to reach a settlement under the US Tax programme on 30 March 2015. It entered a non-prosecution agreement with the US Department of Justice (DoJ) and agreed to pay a $211 million penalty for suspected tax-related offences.

The DoJ programme, which was announced in August 2013, provides a path for Swiss banks to resolve potential criminal liabilities in the US. About 100 banks signed up and were required to advise the DoJ, by 31 December 2013, that they had reason to believe that they had committed tax-related criminal offences in connection with undeclared US-related accounts.

To be eligible under the programme, banks are required to make a complete disclosure of their cross-border activities and provide detailed information on an account-by-account basis for accounts in which US taxpayers have a direct or indirect interest. They must also agree to:

- Co-operate in treaty requests for account information;
- Provide detailed information in respect of other banks that transferred funds into secret accounts or that accepted funds when secret accounts were closed;
- Close accounts of account holders who fail to come into compliance with US reporting obligations; and
- Pay appropriate penalties.

At the time of going to press, more than 20 other Swiss banks had reached settlements with the DoJ, with penalties ranging in size from $74 million down to just $9,090, depending on the number and size of the compromised accounts and the extent to which the banks had flouted US legal requirements.

Banks already under criminal investigation related to their Swiss-banking activities and all individuals were expressly excluded from the programme. Fourteen banks are currently facing DoJ criminal cases.

Credit Suisse paid a $2.6 billion fine in 2014 to resolve claims it helped clients evade US taxes, while UBS paid a $780 million penalty in 2009.

BVI looks to pursue new direction

British Virgin Islands Premier Orlando Smith announced, on 23 April 2015, the setting up of a Financial Services Implementation Unit to drive the BVI financial services sector in response to the challenges facing the industry, including international regulatory pressures and growing competition.

The unit's remit is to implement the recommendations contained in a report entitled titled "Building on a Thriving and Sustainable Financial Services Sector in the British Virgin Islands", which was commissioned last year from consulting firm McKinsey and Co.

The ten most urgent recommendations of the 40 contained in the report are:

- To revamp the International Finance Centre (IFC) and make it a focused, highly skilled unit that operates in line with international best practice;
- To build on the strengths of the Financial Services Commission by strengthening the service culture and organisation to improve process transparency, response time, and help provided to customers;
- To offer value-added services to products by identifying and encouraging top priority companies to attract those services to the jurisdiction in collaboration with the private sector;
- To bring immigration and labour policies and processes in line with international best practices to attract and retain the necessary skilled labour that will be needed to broaden into and sustain a substantive offering;
- To build local capability and talent by strengthening education at secondary and tertiary levels, developing the Financial Services Institute (FSI), and overhauling internships and scholarship programmes to bolster local talent to sustain the industry in the long term, and create opportunities for BVI residents;
- To establish a dedicated business development capability to generate new product and customer ideas and strengthen the mandate of the Financial Services Business Development Committee;
- To focus on infrastructure and to help accelerate critical projects such as telecommunications and transportation needed to support the development of the economy;
- To engage the population to identify current perceptions of financial services and educate and build awareness and the understanding of the importance of financial services to BVI, its impact on daily lives, and its critical role in transforming the prosperity of the territory;
- To roll out Foreign Account Tax Compliance Act (FATCA) requirements and lobby the Organisation for Economic Co-operation and Development (OECD) to improve compliance ratings and the jurisdiction's reputation; and
- To establish a dedicated unit, staffed by world-class talent, to co-ordinate and drive implementation of the report's recommendations across the financial services sector.

SOVEREIGN COMMENT

It is now over 30 years since the BVI passed the International Business Companies Act (1984), which led to the BVI IBC becoming arguably the most recognised corporate structure in the offshore world. It is encouraging that the BVI government has pledged to implement all the recommendations of the McKinsey report and has reaffirmed its commitment to the financial services industry, which accounts for 60% of government revenue. We also welcome the fact that Premier Smith stressed the importance of the territory complying with evolving international standards to safeguard its reputation.

MIDDLE EAST & ASIA

New "reportable arrangement" rules for South African tax purposes

The Commissioner for the South African Revenue Service (SARS) issued, on 16 March 2015, public notice 212 setting out a number of new transactions that will be regarded as reportable arrangements under the 2011 South African Tax Administration Act (TAA).

With effect from 16 March 2015, South African residents who make a contribution to an offshore trust and who are currently entitled to, or will in the future become entitled to, a benefit from that trust, where the value is likely to exceed R10 million, are obliged to report that arrangement to SARS.

Prior to 16 March it was not necessary to report where the obtaining of a tax benefit was not the main or one of the main purposes of the arrangement. This exclusion now appears to have been removed, significantly widening the scope of the legislation.

The primary purpose is to give SARS early warning of transactions that have the objective of obtaining a tax or financial benefit, even if these arrangements are entered into quite legitimately. Reportable arrangements must be reported to SARS within 45 business days of either the date on which the arrangement qualifies as a reportable arrangement or of a taxpayer becoming party to a reportable arrangement. If not, significant financial penalties and/or criminal sanctions may be imposed.

SOVEREIGN COMMENT

There is some uncertainty as to what constitutes a "beneficial interest" but our understanding is that beneficial interests in Sovereign pension schemes (including the Conservo International Personal Pension Plan, Qualifying Non-UK Pension Schemes (QNUPS) and Qualifying Recognised Overseas Pension Schemes (QROPS)) may be reportable by its "participants" – both members as the individuals obtaining the tax or financial benefit, as well as the "promoter" of the scheme. Contributions to and beneficial interests in collective investment schemes and foreign investment entities are excluded.

All promoters, their clients and members of relevant schemes need to be made aware of these reporting obligations. It is possible that Sovereign Trust Limited, as promoter of the arrangement, will have an obligation to make reports to SARS. However data protection laws governing Guernsey will nullify this obligation, shifting the reporting duty to the person who derives the financial or tax benefit. If any questions arise please contact your local tax consultant or lawyer.

Dubai opens Wills and Probate Registry

The Dubai International Financial Centre (DIFC) Wills and Probate Registry, established by Resolution No. 4 of 2014, was launched on 4 May 2015. The new service, the first in the MENA region, aims to provide non-Muslim expatriates with the ability to register English language wills that will allow their assets to be transferred upon death according to their wishes.

The new rules have been drafted on the basis of Common Law principles from the Estates Act and Probate Rules of the UK, as well as legislation from other leading common law jurisdictions such as Singapore and Malaysia.

The Registry has been established under the jurisdiction of the DIFC Courts, allowing it to operate as a distinct entity. DIFC Courts will handle all probate claims related to the registered wills. The service will only cover estates located in the Emirate of Dubai for both residents and non-residents.

SOVEREIGN COMMENT

The objective of the Registry is to give expatriates a legal solution to secure their family's future after their death. It creates legal certainty that the testator's Dubai-based assets will be distributed according to their registered wills. It reflects the respect for the diversity of the UAE community and further enhances Dubai's attractiveness as a destination for investment, supporting greater economic growth and stability.

Revised Mauritius-South Africa tax treaty finally comes into force

The revised South Africa-Mauritius double tax treaty was ratified by Mauritius and entered into force on 28 May 2015. It replaces the previous 1996 treaty and will apply to taxable income as of 1 January 2016.

The new treaty reflects changes in the tax policies of the two countries and international best practice. The principal changes include a revised test for dual residence for persons other than individuals; withholding taxes on interest and royalties; capital gains tax; and assistance in tax collection.

Under the previous treaty, a company with dual residency was deemed to be resident in the country in which its place of effective management was situated. Under the new tiebreaker test, the exclusive state of residence of the company is to be decided by mutual agreement between South African Revenue Service (SARS) and the Mauritius Revenue Authority (MRA) on a case-by-case basis.

In order to provide greater certainty to companies that may be affected by the change, South Africa and Mauritius signed a memorandum of understanding (MoU) on 22 May to set out the factors that the two competent authorities will take into account in deciding the country of residence. These include:

- The place where the meetings of the entity's board of directors or equivalent body are usually held;
- The place where the entity's chief executive officer and other senior executives usually carry on their activities;
- The place where the senior day-to-day management of the entity is carried on;
- The place where the entity's headquarters are located;
- The national laws governing the legal status of the entity;
- The place where the entity's accounting records are kept.

The previous treaty stated that interest and royalties were taxable only in the country of residence. Under the new treaty, interest will be subject to a withholding tax of 10% and royalties 5%, both at source.

Tax on dividends has been reduced from 15% to 10% where the beneficial owner is a company that holds less than 10% of the capital of the company paying the dividends. Capital gains tax will be applicable on shares deriving more than 50% of their value from management was situated.

SOVEREIGN COMMENT

Renegotiations were started in 2009, primarily to curb perceived abuse under the existing treaty, and the two countries signed the new tax treaty in May 2013. It was ratified by the South African parliament that September but the Mauritian government sought further clarification as to how the new treaty would be applied, particularly in respect of the corporate dual residency test.

With an extensive network of tax treaties with African countries, low tax rates and no exchange controls, Mauritius has been a popular intermediary holding company jurisdiction. The new "mutual agreement procedure" as a tiebreaker test has therefore created some uncertainty for multi-nationals that have Mauritian companies in their group structures.

Hong Kong Budget sets out proposals to boost financial centre

The Inland Revenue (Amendment) (No. 2) Ordinance 2015 was brought into force on 17 July 2015 to extend the profits tax exemption under the Revenue (Profits Tax Exemption for Offshore Funds) Ordinance 2006 to non-resident private equity funds. It applies retroactively to transactions carried out from 1 April 2015.

The amendment, designed to boost Hong Kong's asset management sector, was a part of the Budget presented by Hong Kong Financial Secretary John Tsang on 25 February. The government also plans to formulate legislative proposals on the legal framework for open-ended fund companies.

Incentives aimed at attracting multinational and Mainland China enterprises to manage their global or regional treasury activities from Hong Kong included a relaxation of the tax deduction criteria for interest expense for corporate treasury centres and a 50% reduction in the profits tax for specified treasury activities.

The tax deduction currently allowed for capital expenditure on the purchase of patents, know-how, copyrights, designs and trademarks is expanded to include other types of intellectual property rights.

A Bill will also be introduced in 2016 to establish an automatic exchange of information regime that would require financial institutions to report specified financial account information to the Inland Revenue Department, which will exchange the information with other tax jurisdictions beginning in 2018.

Mauritius and Seychelles both sign Multilateral Convention

Mauritius and the Seychelles signed, on 24 June and 24 February 2015 respectively, the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. Developed jointly by the OECD and Council of Europe, the Convention provides a comprehensive multilateral framework for exchange of information and assistance in tax collection.

The Convention provides a legal basis for Mauritius and the Seychelles to undertake tax information exchange and administrative assistance between tax authorities, including automatic exchange, simultaneous tax examination and assistance in tax debt collection.

Developed jointly by the OECD and the Council of Europe in 1988, the Convention was amended in 2010 after the G20 called for it to be aligned to the international standard on exchange of information and opened to all countries.

UAE signs FATCA agreement with US

The UAE Ministry of Finance announced the signing of an intergovernmental agreement (IGA) with the US to facilitate implementation of the US Foreign Account Tax Compliance Act (FATCA) on 18 June 2015.

Undersecretary of the Ministry of Finance Younis Haji Al Khoori said: "The country was keen to sign this agreement to protect UAE financial institutions. In the case of non-compliance with the requirements of FATCA, any non-US financial organisation could face a 30% penalty on certain financial returns of its operations in the US market.

"The Ministry will continue to meet all necessary requirements for linking UAE government financial institution systems to the FATCA e-system. The ministry will also determine the required processes for monitoring reporting by financial institutions."

FATCA requires FFIs to submit reports either directly to the US government (Model 1 IGA) or indirectly via their national reporting authority for onward transmission to the US government (Model 2 IGA). The UAE Cabinet opted, on 14 April 2013, to implement the Model 1 IGA. Under the agreement, the first report, concerning 2014, must be submitted to the US by 30 September 2015.

SOVEREIGN COMMENT

The US Congress enacted FATCA in 2010 to target non-compliance by US taxpayers using foreign accounts. The US law requires foreign financial institutions (FFIs) to provide annual reports in respect of accounts held by US persons or companies that have one or more US shareholders that own more than 10% of the company. Regular readers will recall that Sovereign is fully FATCA-compliant across its entire global network.

DWTC converted into Free Zone

His Highness Sheikh Mohammed bin Rashid al Maktoum, the ruler of Dubai, issued Law No (9) of 2015 on 18 May to establish the Dubai World Trade Centre (DWTC) as a free zone to act as a hub for regional and international exhibitions while also attracting local and international investments.

A new Dubai World Trade Centre Authority (DWTCA) will establish and manage infrastructures within DWTC, as well as licensing and regulating companies within the free zone. It is also authorised to establish companies independently or jointly and to invest in them.

FISCAL NEWS

G7 leaders reiterate commitment to automatic exchange

World heads of state meeting at the G7 Summit in Germany on 8 June 2015 committed to promoting automatic exchange of tax information and tax rulings to discourage multinational companies from shifting profits from country to country to avoid taxes.

In a joint declaration, the G7 leaders reaffirmed their commitment to finalise, by the end of this year, recommendations from the larger group of G20 finance ministers and the Organisation of Economic Cooperation and Development (OECD) on their Base Erosion and Profit Shifting (BEPS) Action Plan, which was announced last September. They also plan to implement a new global standard for automatic exchange of tax information and cross-border tax rulings to curb tax avoidance.

"Going forward, it will be crucial to ensure its effective implementation, and we encourage the G20 and the OECD to establish a targeted monitoring process to that end," said a joint statement from the G7 leaders.

"We commit to strongly promoting automatic exchange of information on cross-border tax rulings. Moreover, we look forward to the rapid implementation of the new single global standard for automatic exchange of information by the end of 2017 or 2018, including by all financial centres subject to completing necessary legislative procedures. We also urge jurisdictions that have not yet, or not adequately, implemented the international standard for the exchange of information on request to do so expeditiously."

The G7 leaders also confirmed their commitment to promote greater transparency about the beneficial owners of business entities. "We recognise the importance of beneficial ownership transparency for combating tax evasion, corruption and other activities generating illicit flows of finance and commit to providing updates on the implementation of our national action plans," said the joint statement. "We reiterate our commitment to work with developing countries on the international tax agenda and will continue to assist them in building their tax administration capacities."

At the same time, the G7 leaders recognised the need to avoid double taxation on the profits of multinationals and said they would work to establish binding mandatory arbitration mechanisms to safeguard trade and investment.

"Moreover, we will strive to improve existing international information networks and cross-border cooperation on tax matters, including through a commitment to establish binding mandatory arbitration in order to ensure that the risk of double taxation does not act as a barrier to cross-border trade and investment," said the statement. "We support work done on binding arbitration as part of the BEPS project and we encourage others to join us in this important endeavour."

UK Summer Budget 2015: the key announcements

Chancellor George Osborne presented his Summer Budget to Parliament on 8 July 2015. The second Budget this year, it followed the Conservative Party's victory in the general election in May. It included important new announcements on inheritance tax (IHT), dividends tax, pensions, corporation tax and non-domiciled individuals (non-doms).

The dividend tax credit (which reduces the amount of tax paid on income from shares) will be replaced by a new £5,000 tax-free dividend allowance for all taxpayers from April 2016. Tax rates on dividend income will be increased. This system will mean that only those with significant dividend income will pay more tax. Investors with modest income from shares will see either a tax cut or no change in the amount of tax they owe.

IHT is charged at 40% on estates over the tax-free allowance of £325,000 per person. Married couples and civil partners can pass any unused allowance on to one another. From April 2017, each individual will be offered a family home allowance so they can pass their home on to their children or grandchildren tax-free after their death. This will be phased in from 2017-18. The family home allowance will be added to the existing £325,000 Inheritance Tax threshold, meaning the total tax-free allowance for a surviving spouse or civil partner will be up to £1 million in 2020-21. The allowance will be gradually withdrawn for estates worth more than £2 million.

The amount people with an income of more than £150,000 can pay tax-free into a pension will be reduced – most people can contribute up to £40,000 a year to their pension tax-free. From April 2016, this amount will be reduced for individuals with incomes of over £150,000, including pension contributions.

Corporation Tax will be cut to 19% in 2017 and 18% in 2020 – the main rate of Corporation Tax has already been cut from 28% in 2010 to 20% in order to boost UK competitiveness. It will now fall further, from 20% to 19% in 2017, and then to 18% in 2020.

Non-doms live in the UK but consider their permanent home to be elsewhere. The UK rules allow non-doms to pay UK tax on their offshore income only when they bring it into the UK. Permanent non-dom status will be abolished from April 2017. From that date, anyone who's been resident in the UK for 15 of the past 20 years will be considered UK-domiciled for tax purposes.

UK-born taxpayers with UK-domiciled parents will no longer be able to create a domicile of choice elsewhere in the world if they take up UK residency again later on.

Previously, if a non-domiciled individual owned an offshore company, which in turn owned UK property, the UK property did not form part of their UK estate for inheritance tax purposes. Under new plans, it will be not be possible to avoid UK tax through this mechanism, and the asset would be liable for UK inheritance tax irrespective from April 2017.

SOVEREIGN COMMENT

These changes, particularly in respect of the UK's non-dom regime, are extremely significant. For further details, see *In The Press* on page 16. Sovereign UK's team is hugely experienced in this field and is well placed to provide advice either directly or in conjunction with tax barristers and other professionals both in London and elsewhere across the UK. Contact the team, headed by Simon Denton, at uk@SovereignGroup.com

Seven new countries sign up to OECD Standard for automatic exchange

Seven new countries joined, on 4 June 2015, the agreement to exchange information automatically under the OECD/G20 standard. Australia, Canada, Chile, Costa Rica, India, Indonesia and New Zealand became the latest countries to sign the Multilateral Competent Authority Agreement (MCAA), bringing the total number of jurisdictions to 61.

The MCAA implements the Standard for Automatic Exchange of Financial Information in Tax Matters, developed by the OECD and G20 countries and presented in 2014. To date, 94 jurisdictions have committed to implement the Standard, agreeing to launch the first automatic information exchanges in 2017 or 2018.

The Standard provides for annual automatic exchange between governments of financial account information, including balances, interest, dividends and sales proceeds from financial assets. It covers accounts held by individuals and entities, including trusts and foundations.

The MCAA is a framework administrative agreement used in conjunction with the Convention on Mutual Administrative Assistance in Tax Matters, which is the most comprehensive multilateral instrument available to countries for all forms of tax co-operation to tackle tax evasion and avoidance.

OECD Secretary-General Angel Gurría said: "We expect a truly significant amount of additional financial information to circulate among authorities in the coming years, resulting in less tax evasion, greater tax revenues and a fairer tax system for honest taxpayers".

SOVEREIGN COMMENT

Any concerns that the OECD/G20 initiative would prove ineffective due to lack of support from certain key countries have largely evaporated. They have now been replaced by a more pressing need to ensure that adequate systems are in place to allow for the orderly implementation of the new exchange of information requirements. Future editions of the *Sovereign Report* will continue to update readers on new developments. In the meantime, anyone concerned that their personal arrangements may be compromised by automatic exchange should consult their nearest Sovereign office as soon as possible.

EU releases corporate tax reform plan and pan-EU "blacklist"

The European Commission issued an Action Plan to reform corporate taxation in the EU on 17 June 2015. Key actions include a plan to re-launch the Common Consolidated Corporate Tax Base (CCCTB) and a framework to ensure effective taxation where profits are generated.

The Commission also published a first pan-EU list of third-country non-cooperative tax jurisdictions and launched a public consultation to assess whether companies should have to publicly disclose certain tax information.

Pierre Moscovici, Commissioner for Economic and Financial Affairs, Taxation and Customs, said: "Corporate taxation in the EU needs radical reform. In the interests of growth, competitiveness and fairness, Member States need to pull together and everyone must pay their fair share. The Commission has today laid the foundation for a new approach to corporate taxation in the EU. Member States must now build on it."

Negotiations on the Commission's 2011 proposal for a CCCTB had stalled. Work is now to begin on the new proposal for a mandatory CCCTB using a step-by-step approach. Consolidation, the most difficult element in negotiations, is to be introduced as a second step. The Commission will present this new proposal as early as possible in 2016.

To ensure that companies pay a fair share of tax in the country where they make their profits, the Commission proposals include measures to close legislative loopholes, improve the transfer pricing system and implement stricter rules for preferential tax regimes.

To ensure greater tax transparency – within the EU and vis-à-vis third countries – the Commission also published a pan-EU list of third countries and territories blacklisted by member states. This is to be used to screen non-cooperative tax jurisdictions and develop a common EU strategy to combat them.

The list consolidates the national tax "blacklists" of EU member states and includes any jurisdiction that appears on 10 or more. It does not include the Netherlands, Ireland or Luxembourg, which are all currently under investigation by the Commission, because it only assesses non-EU members.

The full EU blacklist comprises: Andorra, Liechtenstein, Guernsey, Monaco, Mauritius, Liberia, the Seychelles, Brunei, Hong Kong, Maldives, Cook Islands, Nauru, Niue, the Marshall Islands, Vanuatu, Anguilla, Antigua and Barbuda, the Bahamas, Barbados, Belize, Bermuda, the British Virgin Islands, the Cayman Islands, Grenada, Montserrat, Panama, St Vincent and the Grenadines, St Kitts and Nevis, the Turks and Caicos Islands and the US Virgin Islands.

SOVEREIGN COMMENT

The Action Plan represents a second, more comprehensive step towards reforming corporate taxation in the EU. As a first step, the Commission proposed a Tax Transparency Package in March to enhance co-operation between member states on corporate tax issues. A key element in the package was a proposal for the automatic exchange of information on tax rulings. National tax authorities will have to send a short report to all other member states on all cross-border tax rulings that they have issued every three months. Member states will then be able to ask for more detailed information on a particular ruling and, if necessary, take action in response.

Publication of the blacklist of "non-cooperative tax jurisdictions" was condemned by many of the listed jurisdictions. Guernsey's Chief Minister Jonathan Le Tocq said: "It is this type of arbitrary and inconsistent use of 'blacklists' that international standards are supposed to be replacing, so this seems to me to run counter to what the Commission itself is trying to do on tax transparency."

Swiss reject inheritance tax proposal

Swiss voters rejected, on 14 June 2015, an initiative to introduce a uniform federal inheritance and gift tax that would have replaced all of the currently applicable cantonal-level regimes.

Tax rates vary depending on the canton and the relationship between the transferor and the transferee. Most cantons provide exemptions for transfers to direct descendants. The proposed federal regime would have taxed transfers to direct descendants at a fixed rate of 20%.

LEGAL NEWS

UK Supreme Court allows taxpayer appeal in LLC case

The Supreme Court, on 1 July 2015, found that an individual member of a US Delaware limited liability company (LLC) was entitled to double taxation relief for US tax paid on the profits of the LLC on the grounds that, for US tax purposes, the LLC was a transparent entity. HMRC's long-standing view is that LLCs should be regarded as a corporate entity for UK tax purposes.

In *Anson (formerly Swift) v HMRC*, Anson was an individual member of a Delaware LLC that made a distribution. He had paid US tax on his share of the LLC profits as they arose and claimed relief for the US tax paid against his UK income tax liability. Under the US tax code, Anson was liable to tax on his share of profits arising to the LLC. Under UK tax law, however, he was liable to tax only on receipt of funds once distributed to him personally as dividend income.

HMRC argued that Anson was not eligible to claim relief for US taxes paid on his share of LLC profits because the US tax had been charged in respect of profits arising to the LLC, and not in respect of profits arising to him personally.

The First-tier Tribunal (FTT) initially heard the case in 2010. It concluded that because the members of that particular LLC had an interest in the profits of the LLC as they arose, double tax relief was due. This ruling was then overturned in the Upper Tribunal and unchanged in the Court of Appeal.

The Supreme Court reversed the decision, instead holding that the findings of fact made by the FTT were decisive: "Questions about whether the members had a right to the profits, and if so, what is the nature of that right, were questions of non-tax law, governed by Delaware law. The FTT's conclusion was a finding of fact. Domestic tax law then fell to be applied to the facts as so found."

SOVEREIGN COMMENT

Although the *Anson* decision is based on the specific findings of fact, the ruling should make it easier for those investing in the US market to find a tax-efficient and workable commercial structure. It will also be welcome news for UK residents with US business interests who have filed returns based on no double tax relief being available. HMRC has not yet commented on the potential application of the decision. Sovereign would be delighted to assist in such cases and, as reported elsewhere in this issue, the group is fully FATCA compliant across its global network. US clients or those with interests in the US are therefore welcomed.

UK High Court allows widow to seek husband's "secret assets"

The High Court in London adjourned, on 1 April 2015, summary judgment and strike out applications against a claim made by Ruanne Dellal, the second wife and sole beneficiary of the late property developer Jack Dellal, under the Inheritance (Provision for Family and Dependants) Act 1975.

Dellal married twice. The first marriage, in 1952, produced five children of which four survive. The second, to Ruanne in 1997, produced two more. He also had two further children by an extramarital relationship.

In a will made in 2006, Dellal effectively left his entire estate to his second wife. The disclosed assets of his estate on his death in October 2012 were £15.4 million although *The Sunday Times* Rich List estimated his wealth at £445 million. Mrs Dellal contended that he had made dispositions to his children from previous relationships with the intention of defeating an application for provision under the Act. She therefore made the claim against Dellal's deemed "net estate" under sections 2, 10 and 13 of the Act.

The defendants applied for strike out and summary judgment on the basis that no relevant dispositions had been identified within the six-year period provided for in the Act and there was no plausible evidence of bad motive by Dellal. Mrs Dellal, they claimed, had been sufficiently provided for through her own £41.5m of assets and, in relation to those defendants out of the jurisdiction, the leave to serve had been improperly obtained and any order against them would be ineffective.

Mostyn J declined to strike out her claim. He ruled that, ahead of disclosure, a claimant could plead a case in a "laconic or protean" way in anticipation of further evidence, and this did not render a claim legally unrecognisable. Despite limited evidence provided by the claimant, he found that the case was not "a merely speculative punt".

He further held that determinations on summary judgment should be made on an informed basis. "In my judgment the claimant has put up a strong prima facie case that at his death Jack had access to very considerable resources ... It is a reasonable inference that most were held in trusts," he said. The summary judgment application was therefore adjourned with liberty to restore, and specific disclosure was ordered under the Civil Procedure Rules.

SOVEREIGN COMMENT

An interesting case that is rendered more significant for several reasons – not least the claimant's structure and location of any assets over and above the declared amount of £15.4m. Both parties will now have to await the result of the disclosure procedures ordered by the Court. Sovereign will continue to monitor the case and report on developments in future editions.

Court of Appeal awards disinherited woman one-third of mother's estate

The Court of Appeal found, on 27 July 2015, that a woman who was explicitly cut out of her mother's will should be awarded a £164,000 inheritance. If followed, the ruling could significantly impact upon people's right to leave money to those they choose.

In *Ilott v Mitson* [2015] EWCA Civ 797, the appellant Heather Ilott, now aged 54, was an only child who was born two months after her father died in an accident. In 1978, at the age of 17 she eloped with her boyfriend. They subsequently married and had five children but she and her mother, Melita Jackson, were never reconciled.

When Jackson made her last will in 2002 she included a letter explaining why she had disinherited her only daughter and explicitly instructed the executors of her will to fight any claim Ilott might make after her death. Her £486,000 estate was left to animal charities when she died in 2004.

Ilott challenged the will in 2007 under a right to "reasonable provision" that is contained in the 1975 Inheritance Act. It is normally used for young children who are left out of wills but, in 2011, Ilott won £50,000 from Jackson's estate. Ilott subsequently appealed to have the amount increased, but the High Court in London found in March 2014 that the previous decision was appropriate and could not "be said to be wrong".

In the Court of Appeal, Ilott's barrister argued that Jackson had little connection to the animal welfare charities and that most of the wealth in the estate was derived from compensation monies awarded after the untimely death of Ilott's father in an industrial accident, two months before her birth and from assets previously purchased from his wages.

The Court of Appeal found that the terms of the will had failed to make "reasonable provision" for the adult daughter and she would otherwise face a life of poverty. Lady Justice Arden said Ilott's mother had been "unreasonable, capricious and harsh". The fact that Jackson had little connection to the charities to which she left her money played a part in the ruling, the judges said.

The Court said it had to balance the claims on the estate fairly. In doing so, the Court of Appeal awarded Ilott with the sum of £143,000, which was the cost of acquiring her housing association property together with the reasonable expenses of acquiring it. Further, Ilott had an option to receive a capital sum not exceeding £20,000 out of the estate to provide for a very small additional income to supplement her state benefits.

The charities involved said they would give "very careful consideration" to the case before deciding whether or not to appeal to the Supreme Court.

SOVEREIGN COMMENT

The Courts are placed in a difficult position when close family members with specific needs do not inherit, even though the deceased may have made it clear that this was their intention. This Court of Appeal ruling will have implications for how people should draw up their wills. By making it easier for adult "disinherited" children to challenge wills and claim greater sums by way of reasonable provision, testators will have to explain their reasons for why they are leaving money to certain parties and demonstrate tangible connections to them.

Given that the Inheritance Act 1975 allows a court to "override" the general principle of testamentary freedom in certain situations where it is considered "just and equitable", a more secure way to control the distribution of wealth after death would be the use of a trust. Using trusts for succession planning provides a way for a person to be confident that the right people benefit, by the right amount, at the right time, because the Inheritance Act 1975 does not apply. Furthermore trusts, unlike wills, are confidential. Interested readers should contact their most convenient Sovereign office for a complimentary consultation without obligation.

Cayman Appeal Court sets aside *Weavering* decision

The Cayman Islands Court of Appeal reversed, on 12 February 2015, an earlier court ruling that the directors of a Cayman Islands-registered fund were personally liable to pay $111 million to the liquidators of a fund due to their wilful neglect.

In *Weavering Macro Fixed Income Fund Limited (in Liquidation) v Stefan Peterson and Hans Ekstrom*, the Cayman Grand Court had found in August 2011 that the two directors had caused the loss through their "wilful neglect or default" and, as a result, the directors were not covered by the contractual limitation and indemnity clauses in their contracts.

The case against the directors was that they had breached their duty of supervision by failing to identify, following the collapse of Lehman Brothers in 2008, that a substantial proportion of the fund's investments were interest rate swaps whose counterparty was a related fund and, therefore, that the fund was in fact insolvent and should have been wound up.

The fund had been structured in the usual way, with responsibility for investment strategy and trading delegated to an investment manager and accounting functions delegated to a professional administrator. Unusually, however, the sole directors of the fund were the brother and elderly father of the principal of the investment manager.

The directors disputed that they had breached their duty and contended that, even if they had, they were entitled to rely on the exculpation clause in the fund's articles of association, which excluded them from liability for their conduct except where they were guilty of "wilful neglect or default". The Grand Court found that the directors had breached their duty and were guilty of wilful neglect or default.

The Court of Appeal took a different view. It agreed with the judge that the directors had breached their duty to supervise the fund's business but held that, in order to show wilful neglect or default, it was necessary either: for the fund to prove that the directors had made a deliberate and conscious decision to act or to fail to act in knowing breach of duty; or for the court to be satisfied that the directors had at least recognised that their conduct might be a breach of duty and had made a conscious decision to act, or not to act, without regard to the consequences.

Carrying out duties in a negligent way was not sufficient to make the neglect or default "wilful", no matter how badly the duties were carried out. The Court of Appeal therefore concluded that, on the facts, there was insufficient evidence to show "wilful" neglect or default. It allowed the directors' appeal.

SOVEREIGN COMMENT

The judgment at first instance in *Weavering* led to a public consultation concerning fund governance issues and the passing of new legislation in the Cayman Islands regulating certain providers of professional directorships. It is unlikely that these changes will be reversed. This case has already set important precedents for industry professionals when considering the duties and responsibilities of directors and anyone acting as a company director would do well to consider the implications. Sovereign is of course able to assist and, in cases where clients insist on acting in this capacity, our insurance arm can arrange Directors and Officers (D&O) liability cover although this will not, of course, protect against "wilful" neglect or default.

South Africa's Constitutional Court upholds entrepreneur's exit charge

South Africa's Constitutional Court overturned, on 18 June 2015, a Supreme Court of Appeal (SCA) judgment and upheld the constitutionality of the 10% exit charge imposed on all citizens that transfer more than ZAR750,000 ($60,000 approx.) out of the country.

Software entrepreneur Mark Shuttleworth left South Africa and emigrated to the Isle of Man in 2001. The bulk of his wealth remained in a block loan account in South Africa. In 2003, the Minister of Finance introduced a 10% exit charge on capital exceeding ZAR750,000 as a condition to the export of that capital.

Shuttleworth applied to the South African Reserve Bank for permission to transfer capital of about R2.5 billion out of South Africa in 2009. His request was granted on the condition that he paid a 10% exit charge – about ZAR250 million (US$204 million) – on the transfer. Shuttleworth challenged the imposition of this charge in the North Gauteng High Court in Pretoria.

Shuttleworth claimed that the exit charge, as well as various legislative and regulatory provisions underpinning the exchange control system, was constitutionally invalid. He argued that the National Assembly had not followed certain procedures specified in South Africa's constitution for enacting a money Bill. Instead, the exchange control regime had merely been announced by way of a ministerial statement.

In October 2014, the South African Supreme Court (SARC) found in his favour and rescinded the charge. It held that the exit charge was unlawful because it was brought into force via a 2003 circular that was announced in a budget vote in Parliament. The law had not been passed in line with the Constitution's requirements for passing a "money Bill".

The SARC also held that the exit levy was a tax because it was paid into the National Revenue Fund. The Court noted: "The manner and extent to which national taxes are raised and appropriated must yield to the democratic will as expressed in law." It ordered the Reserve Bank to repay Shuttleworth the ZAR250 million, plus interest.

The Ministry of Finance then appealed to South Africa's Constitutional Court. It claimed that the levy imposed on Shuttleworth was a regulatory mechanism imposed to deter capital flight rather than a tax. The appeal was heard in March.

The Constitutional Court overruled the SARC and reinstated the exit tax. In a majority judgment, Deputy Chief Justice of South Africa Dikgang Moseneke said the "decisive question" was whether or not the exit charge was a tax or a regulatory charge.

The Court said that exchange control legislation had its roots in the Great Depression of 1929, and later, in the wake of the economic crisis following the Sharpeville shootings in 1960, and was designed to stave off capital flight. It therefore agreed with the "uncontested" evidence of the National Treasury that the exit charge was a regulatory, and not a revenue raising, mechanism.

"The exit charge was not inconsistent with the Constitution. The dominant purpose of the exit charge was not to raise revenue but rather to regulate conduct by discouraging the export of capital to protect the domestic economy," Moseneke found.

Shuttleworth had not demonstrated that the regulations infringed on his constitutional right and had not shown that he was acting in the public interest. But Moseneke said it could be that some of the regulations were "truly archaic" and at odds with the tenets of the Constitution. "The state parties are nudged to take appropriate steps to review the provisions in issue," he said.

IN THE PRESS

HOW WILL THE PROPOSED CHANGES IN UK DOMICILE RULES AFFECT EXPATRIATES?

In this year's Summer Budget, UK Chancellor George Osborne announced a number of dramatic reforms to the taxation of foreign domiciled persons ("non-doms"). These changes were detailed in two separate notes published on 8 July; a more detailed consultation will be published later on this year. Most of the changes will affect non-doms who have been living in the UK – but UK expatriates will also be affected and some urgent planning may be necessary.

A version of this article by Sovereign chairman Howard Bilton first appeared in *The Daily Telegraph* on 20 July 2015.

One of the main changes that will benefit many expatriates is the increase in Inheritance Tax (IHT) relief for their main UK home. Such houses already benefit from Principle Private Residence (PPR) relief, which allows a UK main residence to be sold free of capital gains tax (CGT). Expatriates qualify for this relief provided they spend at least 90 days per annum living in that residence.

Following the Budget, the same home will also now benefit from an additional £175,000 of IHT relief on top of the existing zero rate band of £325,000 per person. A couple will receive double this total, so the first £1 million of value on the family home will in effect be exempt from IHT. The full relief will not be introduced until April 2020 and estates worth more than £2,350,000 are specifically excluded.

Mitigating IHT for residential investment properties, however, becomes more difficult. Previously it was sufficient to purchase investment property through an overseas company. The investment was therefore held in the form of the shares of the company rather than as the property itself. Those shares were not subject to UK IHT for non-doms.

The Chancellor has now signalled his intention to introduce new "look-through" provisions, which mean that any change of ownership of such shares through the death of the owner will become subject to IHT. This will affect any expatriates who have secured non-dom status and who hold UK property through a simple corporate structure.

Previous changes had potentially made such properties subject to the Annual Enveloped Tax on Dwellings (AETD) and CGT on resale (CGT would not normally apply to sales of UK property by non-residents) but some exemptions applied and corporate ownership ensured that IHT was inapplicable.

Not anymore. Property that is owned by a trust should still mitigate the IHT charge so anybody holding residential property in a corporate structure should restructure immediately. The new "look-through" rule also extends to residential property that is held by a company and let out to a third party.

Many UK expatriates that have lived abroad for a long time and established such close connections with their new country will have created a new domicile of choice abroad. This removes their liability to IHT on their worldwide estates leaving only liability to their UK estates – apart from the exception on property noted above.

Having achieving a new domicile abroad, the standard planning was to transfer as much of the estate as possible into trust so that it remained outside the scope of UK IHT forever – irrespective of future changes in domicile and a possible revival of the UK domicile of origin should an expatriate decide to move from their new place of domicile to a third country or even return to the UK.

Additionally, such expatriates who returned to the UK for a period of time would normally have been taxed in the UK like any other non-dom. In other words they would be subject to UK tax only on income arising in the UK or foreign income that was remitted to the UK. However, from April 2017, any expatriate who had a UK domicile of origin will be taxed as though they were UK domiciled from the moment they return to the UK.

This is a very significant change that will affect quite a large number of non-domiciled UK expatriates who may have returned to the UK while, for example, their children are at school or university in the UK, to look after elderly parents (or, in the case of Stuart Gulliver, to become the chief executive of a huge international bank headquartered in London).

Such expatriates will now immediately face full UK tax on their worldwide income and capital gains. Moreover trusts will no longer afford them protection while they are here because trusts will be "looked through" for taxation purposes. The only good news is that, after leaving the UK and returning to their new country of domicile, they will again be treated as non-domiciled. This means that full exposure to UK IHT will not follow them.

All these changes are due to become law in April 2016 and effective as of April 2017, so there is time to plan. It does appear that those affected may be able to make effective use of life insurance wrappers (often known as "offshore bonds") and Qualifying Non-UK Pension Schemes (QNUPS). Both these structures could be extremely effective in reducing exposure to tax.

THE STANDARD FOR AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION IN TAX MATTERS

By Nigel Anteney-Hoare, Managing Director of Sovereign - Consultoria Lda, Portugal

If the European Union Savings Tax Directive was the thin end of the wedge driven into the confidentiality of offshore banking, then the OECD's Standard for Automatic Exchange of Financial Account Information in Tax Matters, which was endorsed by the G20 Finance Ministers at their meeting in Cairns in September 2014, can definitely be regarded as the thick end – or, perhaps in fact, the whole end!

On 29 October 2014, 51 jurisdictions signed the first multilateral competent authority agreement to automatically exchange information based on the amended Convention on Mutual Administrative Assistance in Tax Matters, which provides for all possible forms of administrative co-operation between states in the assessment and collection of taxes.

The significance of this event was demonstrated by the participation of 39 Finance Ministers in the signing ceremony, the largest gathering of ministers ever to take joint action to address tax evasion. The agreement specifies the details of what information will be exchanged and when.

The OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes, which brings together more than 120 countries and jurisdictions, has also collected commitments from its members to implement a new Standard for Automatic Exchange of Financial Account Information in Tax Matters.

Through this process, over 80 jurisdictions have expressed their commitment to implementing the Standard to specific timetables. Furthermore a group of more than countries and territories, now known collectively as the "Early Adopters Group" (see below) committed to full automatic exchange of information by September 2017.

This Standard provides for annual automatic exchange between governments of financial account information – including balances, interest, dividends, and sales proceeds from financial assets – reported to governments by financial institutions and covering accounts held by individuals and entities, including trusts and foundations. It sets out the financial account information to be exchanged, the financial institutions that need to report, the different types of accounts and taxpayers covered, as well as common due diligence procedures to be followed by financial institutions.

What does all this mean in practice? It means that, as from September 2017, clients' banking information will be automatically shared with their home tax authority by any banking institutions that are based in an Early Adopters Group country. This group includes all the EU countries and many other significant territories. Other countries will follow on in 2018. The only OECD territories that have not yet committed to a time line are Bahrain, the Cook Islands, Nauru, Panama and Vanuatu.

The information provided will include full details of the account holder's name, address and date of birth. If the account is held by a company, trust, foundation or other similar structure, the bank will identify the ultimate beneficial "owner" and report to his/her tax authority.

The financial institutions that are required to report includes not only include banks and custodians but other financial institutions such as brokers, certain collective investment vehicles and certain insurance companies.

The message? It is time to come clean and report all income, wherever earned, to your local tax authority.

AEOI: STATUS OF COMMITMENTS

The timelines for the intended implementation of the new standard as at 23 July 2015:

JURISDICTIONS UNDERTAKING FIRST EXCHANGES BY 2017 (Early Adopters)

Anguilla, Argentina, Barbados, Belgium, Bermuda, the British Virgin Islands, Bulgaria, the Cayman Islands, Colombia, Croatia, Curaçao, Cyprus, the Czech Republic, Denmark, Dominica, Estonia, the Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Greenland, Guernsey, Hungary, Iceland, India, Ireland, the Isle of Man, Italy, Jersey, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mauritius, Mexico, Montserrat, the Netherlands, Niue, Norway, Poland, Portugal, Romania, San Marino, the Seychelles, tha Slovak Republic, Slovenia, South Africa, Spain, Sweden, Trinidad and Tobago, the Turks and Caicos Islands, and the United Kingdom.

JURISDICTIONS UNDERTAKING FIRST EXCHANGES BY 2018

Albania, Andorra, Antigua and Barbuda, Aruba, Australia, Austria, The Bahamas, Belize, Brazil, Brunei Darussalam, Canada, Chile, China, Costa Rica, Ghana, Grenada, Hong Kong (China), Indonesia, Israel, Japan, the Marshall Islands, Macao (China), Malaysia, Monaco, New Zealand, Qatar, Russia, Saint Kitts and Nevis, Samoa, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Sint Maarten, Switzerland, Turkey, the United Arab Emirates, and Uruguay.

JURISDICTIONS THAT HAVE NOT YET EITHER GIVEN A TIMELINE OR COMMITTED

Bahrain, the Cook Islands, Nauru, Panama and Vanuatu.

SIMON GARVEEN IS...

SOVEREIGN MAN

Too good to be true ...

As you know, in search of good returns in terms of both investment and fun, I have been looking for quality vintage cars that should appreciate in value. The research has been interesting – a lot more interesting than stocks and shares – but there are also a few issues that have become apparent.

One is that prices can differ quite markedly for similar cars from country to country. This, of course, is an opportunity. I want to keep my cars in the UK. If I can source them in Europe, there are no duties or VAT to pay so I need only consider the cost of the car – and the inconvenience and expense of having "my man" fly out to inspect the goods.

After all, too many wild goose chases will eat up any theoretical profit before a purchase is even made, so I have to exercise great caution. Which leads me to the other big issue – scamsters!

A motor may be advertised for sale on either classic car website or an online marketplace like eBay at what seems to be an extremely good price. In the past few weeks, for instance, I've found an Alfa Romeo Giulia in France for £15k that I thought that one was worth nearer £50k, a Ferrari 365 for £75k in Greece that I thought was worth £150k, and a Ferrari 575 Maranello in Germany that was just about spot on the market price.

In each case the supposed owners suggested that I paid the full amount via a payment system, the funds would be held in an escrow account and they would ship the car to the UK. I would then have seven days to inspect the vehicle with the option to accept or reject it with a full refund.

Although the wording sounded plausible, the expense of shipping and the risk of return didn't seem to stack up. On each occasion I suggested that instead I would send someone over to appraise the car and settle by bankers draft or cash if I decided to buy. After all, how much simpler and quicker would that be for both of us?

In the case of the Greek Ferrari, the seller sent me a contract demanding a 10% deposit to secure an inspection visit. I can only presume he was sending the same contract to other buyers and collecting as many "deposits" as possible. I declined the "opportunity".

In the case of the Giulia in France, I said that as I was currently in London I would take the train over to inspect it. The seller replied that, although he was in France, the car was actually in Malaga. How convenient, I said, because I happen to have a friend in the Spanish motor trade who can inspect it and settle with cash if he likes it and the documentation is in order.

This time the vendor said the car had already been loaded into a container in Malaga pending shipping. I responded that, if he got it off the container, he could save the shipping costs and get the deal done quickly. I didn't hear back.

"In each case the supposed owners suggested that I paid the full amount via a payment system, the funds would be held in an escrow account and they would ship the car to the UK."

Finally, in the case of the German Ferrari, I felt I was beginning to get a "feel" for the market so I emailed the seller to send me a copy of his passport and proof of address as a matter of good faith.

"What for?" came the response. I responded that it was to be sure he wasn't using a false name and that the detailson the ownership documents actually matched those on his passport. I even signed off with "Vorsprung durch technik". Reply came there none.

All this goes to show that the classic car market is no different from any other. Buyer beware. But it also does seem to suggest that there are a lot of cars out there that either don't exist at all or are not owned by the people advertising them for sale.

I still haven't worked out what the catch is with this payment method. It seems legitimate but there certainly is a catch and I am sure a few people have been caught out by it. Isuppose it just serves to illustrate once again that if an offer seems too good to be true, it probably isn't true.

As I write I've just got a lead on a 1994 Aston Martin V8 coupé. These are lovely hand-built cars that are incredibly comfortable to drive but seem to have been overlooked so far in the classic market. Around £50k bags a good one. I'm going to bag mine but you can be sure I'll be doing it on terms and conditions of my own choosing.

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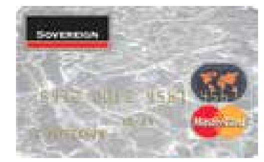

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