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SOVEREIGN REPORT

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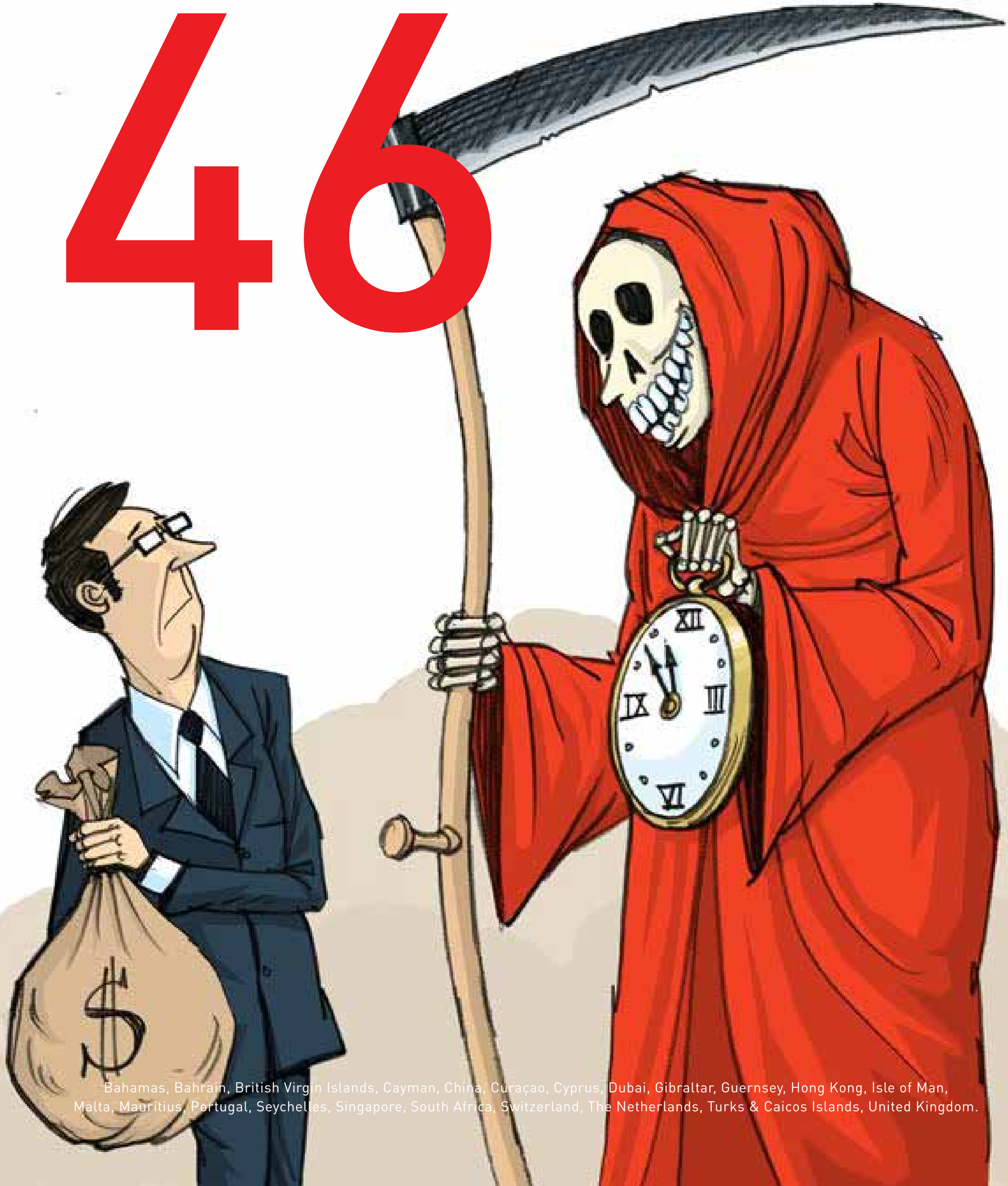

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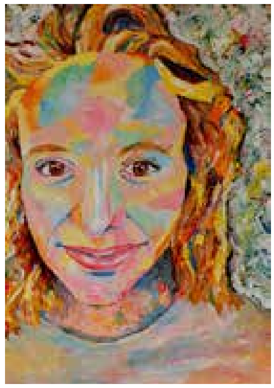
Editor Christopher Owen
Design Alison Tan
Printer Asia One Printing
Artwork Harry Harrison

INTRODUCTION

The first Sovereign Art Foundation Guersney Schools Prize launched this this year with 65 strong entries. Pictured from left to right: *Mirrored Misery* by Clarice Greening of The Ladies' College, age 17; *Self Portrait* by Sophie Galienne of Les Beaucamps High, age 15.

That was the year that was

So 2015 is drawing to a close and the festive season is almost upon us. As I write, my mind's eye drifts off to scenes of Christmas – a cold, dark English winter, bare trees, hard frosty ground, log fires, carol singing – and I'm immediately reassured to remember that I'll actually be spending it in the heat of Hong Kong!

And what a bittersweet year it has been. Wonderful memories of rugby's greatest six weeks, the tournament of a lifetime. Stadia full to bursting and glorious, unforgettable rugby on the pitch. Some of the intensity almost defied description. Just a shame England left the table before the hors d'oeuvre had been finished. But full marks to our Antipodean "friends" for sticking around until the port and cheese were served.

Elsewhere it's been a tense and often worrying year on both the political and economic fronts. So I'm delighted that Sovereign's clients, old and new, seem to be displaying their usual resilience. They are certainly keeping us busier than ever. On behalf of Sovereign staff worldwide, I wish all readers and their families season's greetings and for a happy and prosperous New Year 2016.

The Common Reporting Standard is on the way

In August this year the OECD published a booklet titled *The Standard for Automatic Exchange of Financial Information in Tax Matters*, which is known as "The Common Reporting Standard" (CRS) for short. The booklet is designed to assist governments with drafting legislation to implement automatic exchange of information regarding all accounts that are not beneficially owned by residents of their own country.

Financial institutions, including ourselves, will need to report details of accounts owned by individuals, companies, trusts, foundations and other structures to the local tax authority, which will then exchange that information with the tax authority of the beneficial owners' residence on an annual basis.

CRS reporting begins in 2017 or 2018 depending on the country in question, but every economically significant jurisdiction has now signed up. This means that revenue authorities worldwide will soon be awash with tax data. It signals the complete erosion of "confidentiality" and any tax planning that relies on it will be doomed to failure. If you have any doubt about your own arrangements, please consult us.

I would also draw your attention to my article in the *In The Press* section of this issue, where I examine how the CRS initiative may have a substantial negative impact on the ability of expatriates to enjoy continued access to perfectly legitimate offshore banking.

SAF launches Schools' Prize in Guernsey

The Sovereign Art Foundation has recently launched a school's prize in Guernsey. This is its first in Europe and follows the success of SAF's schools prizes in Hong Kong and Bahrain.

Seven local secondary schools have participated and 65 entries are, as I write, being judged by myself, Guernsey artists Marlene Knights and Frances Lemmon, Andrew Carney of the Creative Arts Group and Stephen Hare, Managing Director of Sovereign Trust (CI).

Once 12 finalists have been selected, their work will be exhibited in the arrivals hall at Guernsey Airport from 23 to 27 November and we will then host a prize giving ceremony at St James Concert and Assembly Hall in St Peter Port on 30 November.

Sovereign News

I am delighted to announce the appointment of Nicholas Cully as Managing Director of Sovereign Corporate Services JLT in Dubai. He has been Head of Business Development in Dubai since 2011 and a director since 2013. Nick succeeds John Hanafin, who has taken on a broader Group role with responsibility for our global sales and marketing.

I am also delighted to announce the appointment of Claire Du Feu as Product Development Manager for our pensions business. Claire has a strong background in developing international retirement and pension products, for both corporate and individual clients, in established and emerging markets. We wish them all the best in their new roles.

Howard Bilton
Chairman of The Sovereign Group

EUROPE

Cyprus passes tax reforms designed to attract foreign investment

The Cyprus Parliament passed, on 9 July 2015, a tax reform package that is intended to attract non-domiciled individuals, foreign direct investments and highly paid foreign staff, as well as simplifying levies on real estate.

The reforms introduce a new concept of domicile. Foreign individuals classed as tax-resident under the day-counting basis will be able to qualify as non-domiciled unless they have been Cyprus tax resident for 17 years out of the last 20 or, if born in Cyprus, have not been Cyprus tax resident for at least 20 years before returning to Cyprus.

Individuals considered to be non-dom Cyprus tax residents will be exempted from the 17% Special Contribution for Defence (SCD) on dividends, the 30% SCD on bank deposits and the 3% SCD on rental income.

To encourage business expansion, an "allowance for new equity/notional interest deduction" is to be introduced with retrospective effect to 1 January 2015. New equity capital introduced into Cyprus will attract a deemed interest tax deduction as if the capital were a loan. The accelerated capital allowances available on equipment and buildings are also to be extended to the end of 2016.

The period for the 50% income tax exemption offered to highly-paid foreign staff (salary above €100,000 per annum) who take up employment in Cyprus is to be increased from five to 10 years.

Local levies on real estate are to be abolished and replaced by a single annual tax of 0.1% of the property's last available valuation. There will be no capital gains tax for land purchases until the end of 2016, and land transfer fees during the same period will be halved.

SOVEREIGN COMMENT

It is good to see the Cyprus government taking such positive steps to encourage inward foreign investment. Baiba Saldovere, MD of Sovereign Cyprus, said the amendments will serve both to boost economic activity and make the tax regime more attractive, fair, and effective. Our office can advise potential investors on all aspects of Cypriot market entry, and we look forward to reporting in future editions on the success of these new rules.

ESMA assesses six non-EU nations for AIFMD passport

The European Securities and Markets Authority (ESMA) published, on 30 July 2015, its advice to the European Parliament, the European Council and the European Commission on the countries to be assessed for access to a Europe-wide passport under the Alternative Investment Fund Managers Directive (AIFMD).

Based on data gathered from EU national competent authorities, ESMA identified 22 countries for which extension of the passport should be assessed – Australia, Bahamas, Bermuda, Brazil, British Virgin Islands, Canada, Cayman Islands, Curacao, Guernsey, Hong Kong, Isle of Man, Japan, Jersey, Mexico, Mauritius, Singapore, South Africa, South Korea, Switzerland, Thailand, the US and US Virgin Islands.

In the Advice, ESMA assessed only the situation of six non-EU countries – Guernsey, Hong Kong, Jersey, Singapore, Switzerland and the US – on grounds that included the amount of activity already being carried out by entities from these jurisdictions under the current national private placement regimes and their willingness to engage with ESMA's process. It deferred the assessment of the rest to the coming months.

ESMA concluded that no obstacles existed to the extension of the passport to Guernsey and Jersey, while Switzerland would remove any remaining obstacles with the enactment of pending legislation. It reached no definitive view on the other three jurisdictions due to concerns over competition, regulatory issues and a lack of sufficient evidence to assess the relevant criteria.

The European Commission, Parliament and Council will now consider ESMA's Advice and Opinion. However ESMA also advised that the EU institutions might wish to consider waiting to introduce the passport until ESMA has delivered positive advice on a sufficient number of non-EU countries. This would avoid any adverse market impact due to a decision to extend the passport to only a few non-EU countries.

On 10 September, Guernsey extended market access to EU alternative investment fund managers (AIFMs) and alternative investment funds (AIFs) doing business in Guernsey. The Guernsey government has now amended its investor protection regulations for AIFMs and AIFs based in EU member states that have fully implemented AIFMD in order to enable easier movement between Guernsey and EU markets.

UK delays register of "people with significant control"

The UK Department for Business, Innovation and Skills (BIS) announced, on 25 August 2015, that the new requirement for companies to create a register of "people with significant control" (PSC) has been postponed from January to April 2016. The requirement to file this information at Companies House has also been postponed from 6 April until 30 June 2016.

The PSC register – originally billed as the "beneficial ownership register" – was proposed in 2013 and legislation was introduced in the Small Business, Enterprise and Employment Act, which received Royal Assent in March 2015. The Act's aim is to increase transparency around who owns and controls UK companies and to help to deter and sanction those who hide their interest in UK companies to facilitate illegal activities.

A prohibition on appointing corporate directors has also been postponed for 12 months to October 2016. Any company with an existing corporate director will need to take action, to either explain how they meet the conditions for an exception or give notice to the registrar that the person has ceased to be a director.

Liechtenstein Disclosure Facility to be closed at year-end

The UK and Liechtenstein governments published, on 9 July 2015, a Fifth Joint Declaration agreeing on the early closure of the Liechtenstein Disclosure Facility. The UK brought forward the final date for registration to participate in the LDF from April 2016 to 31 December 2015 to coincide with the introduction of automatic exchange of tax information from 2016.

After that date, Liechtenstein financial institutions will continue to follow the review and termination of service procedures set out in the bilateral Memorandum of Understanding (MoU) on cooperation in tax matters until 31 December 2017.

The UK and Liechtenstein agreed that no request can be made under their Tax Information Exchange Agreement (TIEA) during the period after an individual applies to register to participate in the LDF and before they have been notified by HMRC that either their application has been refused or accepted.

Since 2009, more than 6,400 people and companies have registered to participate in the LDF. More than 5,900 disclosures have been received and the LDF has raised more than £1.15 billion from settled cases and payments on account. This compares with just £13.9 million collected in tax through the voluntary disclosure facilities in the Crown Dependencies of the Isle of Man and Channel Islands, which first opened in April 2013.

According to figures released by HM Revenue and Customs, 37 disclosures by Guernsey account holders have raised £2.6 million, 181 disclosures by Jersey account holders have raised £5.7m and 186 disclosures by Isle of Man account holders have raised £5.6m. The UK Treasury had originally estimated that the Crown Dependency disclosure facilities would bring in £1 billion in tax over five years, but they provided less favourable terms to taxpayers than the LDF. Originally scheduled to run to September 2016, the dates for the Crown Dependency disclosure facilities to close have also been brought forward to 31 December 2015.

SOVEREIGN COMMENT

We have reported on the progress of the LDF since the agreement came into force more than five years ago. Whilst falling well short of the UK Treasury's 2012 estimate that the programme could raise some £3bn, the total collected to date represents a substantial tax take. Automatic tax information exchange will be a reality from next year and Sovereign would encourage anyone concerned about their situation to take immediate steps by seeking professional advice.

Gibraltar consults on introducing Private Foundations

The government of Gibraltar issued for consultation, on 14 October 2015, proposed legislation to permit the creation of private foundations. A private foundation is a form of legal entity that acts like a trust and operates like a company. They are familiar to clients and intermediaries with a civil law background, such as continental Europe and the Middle East.

A foundation is an entity that is created when a person provides assets for a specific purpose. A foundation is a distinct legal entity and can therefore hold assets in its own name and contract, sue and be sued in its own name. However it is not a company and does not issue shares or other titles of legal ownership.

A foundation holds the assets for purposes set out in its constitutive documents and is administered according to contractual rather than fiduciary principles. It is run by a council (or board), which is responsible for fulfilling the purpose of the foundation.

In addition to the proposed Private Foundations Act 2015, the public consultation will also seek feedback on the Limited Liability Partnerships Act (Amendment) Regulations 2015. Responses were to be submitted by 30 November.

UK Treasury issues consultation on ending permanent non-dom status

The UK Treasury issued, on 30 September 2015, a consultation document setting out the detail of the proposals to restrict certain individuals from claiming non-dom status for tax purposes. A "deemed domicile rule" will be introduced such that long-term residents of the UK can no longer claim to be not domiciled for tax purposes. This abolishes the permanency of non-dom status.

The new rules, which were announced in the Summer Budget 2015 as part of a series of reforms to the tax rules for people who are not domiciled in the UK, will also ensure that individuals who are born in the UK and who are UK domiciled at birth will not be able to claim that they are not domiciled for tax purposes while they are living in the UK.

"The long-standing tax rules for individuals who are not domiciled in the UK are an important feature of our internationally competitive tax system, and the government remains committed to that aim," said David Gauke, Financial Secretary to the Treasury. "However, it is only right that those people who choose to live in the UK for a very long time pay a fair share of tax, and those who are born in the UK with a UK domicile of origin cannot move abroad and return as a non-dom."

This consultation seeks views on how legislation should be introduced in Finance Bill 2016 to achieve these aims in the most effective way without any unfair or unintended outcomes. Responses are invited from any interested parties, including individuals, advisers and representative and professional bodies.

The UK government has also announced that it will legislate so that inheritance tax is charged on all UK residential property, including property held indirectly by non-doms through a structure such as an offshore company or a trust. This change is intended for the 2017 Finance Bill and a separate consultation will be published to seek views on the detail of this proposal.

SOVEREIGN COMMENT

UK income tax paid by resident non-doms increased by 7% last year to reach £6.6 billion, whilst the total number of UK taxpayers claiming the status on their tax returns increased by 3% to 114,300. According to the published figures, the remittance basis charge raised an additional £223 million from around 5,000 non-dom taxpayers in both of the last two tax years. These proposals are therefore hugely important and we will continue to update readers on developments in future editions.

New EU Regulation on Successions brought into force

The new European Union Regulation on Successions, designed to simplify cross-border inheritance, was brought into effect on 17 August 2015 for the estates of persons who die on or after that date. It will apply to anyone with ties to the EU by reasons of nationality or habitual residence, or who owns assets in an EU member state.

Adopted on 4 July 2012, the Regulation will ensure that a given succession is treated coherently, under a single law and by one single authority. In principle, the courts of the Member State in which citizens had their last habitual residence will have jurisdiction to deal with the succession and the law of this Member State will apply. However, citizens can choose that the law that should apply to their succession should be the law of their country of nationality.

The application of a single law by a single authority to a cross-border succession avoids parallel proceedings with possibly conflicting judicial decisions. It also ensures that decisions given in a Member State are recognised throughout the EU without the need for any special procedure.

The Regulation also introduces a European Certificate of Succession (ECS). This is a document issued by the authority dealing with the succession for use by heirs, legatees, executors of wills and administrators of the estate to prove their status and exercise their rights or powers in other Member States. An ECS will be recognised in all Member States without any special procedure being required.

The regulation contains an exception from the habitual residence rule if the deceased, at the time of death, was manifestly more closely connected with a state other than the state of the last habitual residence. In such cases, the law of that other state applies. This exception was introduced to prevent EU nationals moving to another jurisdiction immediately prior to their death specifically to defeat forced heirship rules in their native country.

Věra Jourová, the EU Commissioner for Justice, said: "Citizens preparing a will can now choose to have the law of the country of their nationality applied to their estate, even if they live in a different Member State and have assets located in different countries. This will give peace of mind and legal certainty to roughly 450,000 European families each year, who are involved in cross-border cases. The result will be faster and cheaper procedures, saving EU citizens time and money in legal fees."

Denmark, Ireland and the UK have opted not to participate in the Regulation on Successions. As a result, succession procedures handled by the authorities of these three Member States continue to be governed by national rules. Matters of inheritance tax law are specifically excluded from the scope of the Regulation.

SOVEREIGN COMMENT

This positive EU agreement has arrived after many years of debate. Concern over succession issues, particularly in relation to international estates, remains one of the primary reasons for clients approaching Sovereign in the first instance. Any EU residents who might benefit from this Regulation should therefore contact their closest Sovereign office. It is important to note the three exceptions to these new rules where more specific advice will continue to be required. Again we can help.

Portugal resumes "Golden Visa" immigration programme

The Portuguese government passed a decree, on 16 July 2015, to amend the Residence Permits for Investment Activity (ARI) programme, commonly known as the "golden visa" programme, which issues residence permits to foreign investors. The scheme was suspended following the passage of a new immigration law on 1 July, which repealed but did not replace, some of the visa's provisions. Permits are now being issued again.

Golden visas are valid for five years and provide access to the 26-country Schengen zone. Holders can also apply for family reunification visas and, after five years, can apply for a permanent residence permit. After a further 12 months, holders can apply for Portuguese citizenship.

Foreign applicants are required to: make an investment of at least €500,000 in Portuguese real estate; make a cash deposit of at least €1 million in a Portuguese bank account; make a financial investment of at least €1 million through bonds/stocks; or create a new company with at least 10 jobs based in Portugal.

Under the new decree, the initial minimum real estate investment of €500,000 has been reduced to €350,000 for properties located in designated urban renewal areas or which are older than 30 years. New investment categories have also been introduced, including: scientific or technological research activities (minimum €350,000 investment); artistic production or natural heritage (minimum €250,000); or small or medium-sized businesses (minimum €500,000).

Children over 18-years-old are no longer required to be studying in Portugal in order to qualify for family reunification. The eligibility criteria have also been modified. Applicants are now requested to submit proof that they are in full compliance with taxation in their home country.

SOVEREIGN COMMENT

There were 1,526 successful golden visa applicants in 2014, but only 398 successful applicants in the first six months of 2015. Of the 2,420 visas granted since 2012, 95% were guaranteed by property and 5% by capital. Only three visas were granted in exchange for job creation.

Sovereign Portugal's MD Nigel Anteney-Hoare said the new amendments would serve to channel investment better into target areas. He also stressed that Chinese nationals have received 1,947 (80%) of all visas issued to date and that Sovereign's substantial presence in China means the group is very well positioned to advise potential applicants.

Guernsey amends Companies Law

The Companies (Guernsey) Law 2008 (Amendment) Ordinance 2015 was brought into force on 3 September 2015. It introduced the ability for companies to register an alternative name, alongside their principal company name, in non-Roman alphabet, characters or script. A company that has not yet been incorporated can request an alternative name at the time of incorporation. An existing company can apply to the Registrar to register an alternative name. The amendments will also speed up the migration and amalgamation process by allowing the Registrar to publish a "notice of intent to apply". The publication period can therefore run alongside other administrative processes.

AMERICAS & THE CARIBBEAN

More banks strike deals under US Swiss Bank Programme

At the time of going to press, 43 Swiss banks had agreed deals with the US Department of Justice (DoJ) under the Swiss Bank Programme, which was announced in August 2013 to provide a path for Swiss banks to resolve potential criminal liabilities in the US. These banks have so far paid a combined total of $380.3 million in penalties.

Swiss banks eligible to enter the programme were required to advise the DoJ by 31 December 2013, that they had reason to believe they had committed tax-related criminal offences in connection with undeclared US-related accounts. Banks already under criminal investigation related to their Swiss-banking activities and all individuals were expressly excluded from the programme.

The US aims to reach settlements with all 100 eligible Swiss banks by the year-end. To be eligible for a non-prosecution agreement under the programme, banks are required to:

- Make a complete disclosure of their cross-border activities;
- Provide detailed information on an account-by-account basis for accounts in which US taxpayers have a direct or indirect interest;
- Co-operate in treaty requests for account information;
- Provide detailed information as to other banks that transferred funds into secret accounts or that accepted funds when secret accounts were closed;
- Agree to close accounts of accountholders who fail to come into compliance with US reporting obligations; and
- Pay the appropriate penalties.

Non-compliant US accountholders at Swiss banks that have settled must pay a 50% penalty to the IRS if they wish to enter the IRS Offshore Voluntary Disclosure Programme.

SOVEREIGN COMMENT

The problems of the Swiss banking sector have featured extensively in the *Sovereign Report* over recent years. It is reassuring therefore to see that the recent efforts of the Swiss authorities to resolve the longstanding issues that developed during decades of banking secrecy, particularly in the US market, are now coming to fruition.

Switzerland is a politically stable country with economic and financial stability and a very strong currency. Sovereign enjoys close business relationships with a number of Swiss banks and looks forward to Switzerland's reputation as a centre of excellence for wealth management being fully restored.

US court dimisses legal challenge to block FATCA data exchange

The US District Court for the Southern District of Ohio dismissed, on 29 September 2015, a lawsuit seeking an injunction against the Internal Revenue Service (IRS) and the US Treasury Department to prevent them enforcing certain aspects of the Foreign Account Tax Compliance Act (FATCA).

US presidential candidate Senator Rand Paul was one of seven plaintiffs to file the lawsuit in July. It contended that the intergovernmental agreements (IGAs) entered into between the Treasury Department and foreign countries should be classified as treaties and, as such, should require ratification by a two-thirds majority of US senators.

It also argued that the burdens placed on US citizens living abroad were excessive and had a deleterious impact on their expectations of privacy. Finally, the suit claimed that the penalties imposed by FATCA and the Report of Foreign Bank and Financial Accounts (FBAR) requirements, respectively, were unconstitutionally excessive.

Judge Thomas Rose ruled that the plaintiffs weren't likely to succeed on the merits in the case. He also rejected a request for preliminary injunctive relief, saying the harms claimed by the plaintiffs were "remote and speculative harms, most of which would be caused by third parties, illusory, or self-inflicted".

Rose said FATCA would help the government catch taxpayers hiding money overseas. He also said the requirement that US taxpayers reveal their offshore bank accounts on the FBAR and the associated penalties have a "rational basis," contrary to the plaintiffs' contention.

Cayman Companies (Amendment) Law 2015 comes into force

The Companies (Amendment) Law 2015, which was gazetted on 23 September, was brought into force on 2 November. Its purpose is to extend the deadline for filing entries or changes to the register of directors and officers of a company and to establish maximum penalties for breaches. It therefore has potential application for all Cayman companies.

Previously, under sections 55 and 56 of the Companies Law (2013 Revision), first appointments of directors and officers to a Cayman Islands company had to be notified to the Registrar of Companies within 90 days of the incorporation. Any subsequent changes to directors and officers then had to be notified to the Registrar within 30 days.

The new legislation amends these time periods such that a company must now notify the Registrar within 60 days of incorporation of the first appointment of any director or officer. Any change in the information contained in the Register must be notified within 60 days of the date of the change.

The new Law also reduces the penalty payable for late filings to a CI$500 (US$610) maximum penalty per company. An aggregate penalty of CI$2,500 will apply where the same breach occurs in respect of five or more companies, to be equally apportioned between, and paid by the companies.

If the Registrar determines that a breach of section 55 is intentional, and has been knowingly and wilfully authorised or permitted, then an additional penalty of CI$1,000 will apply to every director or officer to which the breach relates, with a further CI$100 per day imposed for every day that the breach continues.

The amnesty on penalties before the Amendment Law came into force, which covered any prior changes to a company's register irrespective of when the changes occurred or how many, expired on 30 October 2015.

US extends FATCA IGA information exchange deadline

The US Treasury announced, on 18 September 2015, a one-year extension – to 30 September 2016 – for those foreign governments that have signed, or committed to sign, Model 1 Intergovernmental Agreements (IGAs) with the US to implement the Foreign Account Tax Compliance Act (FATCA) to exchange information on US reportable accounts.

Under a Model 1 IGA, Foreign Financial Institutions (FFIs) are required to make annual reports of their US clients' financial affairs to their domestic tax authority. This information is then transmitted in bulk by the domestic tax authority to the IRS.

The US Treasury said many of the 112 jurisdictions that have either signed a Model 1 IGA, or have been accepted by the US as having done so in principle, were not ready to begin reporting because the automatic exchange systems or necessary enacting legislation were not be in place to meet the information exchange deadline of 30 September 2015 for US reportable accounts with respect to 2014.

In such cases, FFIs covered by an IGA will be treated as complying with FATCA, and not subject to withholding, provided that the partner jurisdiction notified the Internal Revenue Service (IRS) before 30 September 2015 of the delay and provided assurances that the jurisdiction was making good faith efforts to exchange the information as soon as possible.

The Treasury notice said this would not affect the timing of when FFIs should report information to domestic tax authority, which was governed by local law, but FFIs would remain in FATCA compliance provided that any information that would have been reportable under the IGA on 30 September 2015 was exchanged by 30 September 2016, together with any information that is reportable under the IGA on 30 September 2016.

MIDDLE EAST & ASIA

India's offshore tax amnesty recovers just US$575 million

The Indian government reported, on 1 October 2015, that it had recovered only US$575 million of unreported funds under a tax amnesty that offered a chance to citizens to disclose overseas assets by paying tax and a penalty. Only 638 people declared assets under the scheme.

In July, the Indian Revenue Department issued Circular No.13 setting out further details about the offshore disclosure opportunity – known as the Compliance Scheme. It was introduced under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act in May. The Act was subject to significant amendments, which included bringing forward the scheduled start date from April 2016 to 1 July 2015.

Indian residents with undisclosed foreign assets and income, and non-residents who have invested Indian-sourced income in offshore assets, had until 30 September to declare them. They then have to pay combined taxes and penalties up to 60% of the total offshore asset values by 31 December.

The Circular defined "undisclosed foreign assets" as "any asset (including a financial interest in any entity) located outside India, held by the assessee in his name or in respect of which he is a beneficial owner, and he has no explanation about the source of investment in such asset, or the explanation given by him in the opinion of the Assessing Officer is unsatisfactory."

Under the Act, assets not declared by the deadline became liable to tax and penalties of 120% of their value, together with the risk of a criminal prosecution.

SOVEREIGN COMMENT

During his election campaign in early 2014, Prime Minister Narendra Modi promised to recover billions of dollars from undisclosed assets overseas. While there is no official estimate of the amount of money illegally deposited abroad, the Washington-based think-tank Global Financial Integrity has estimated India suffered $344 billion in illicit fund outflows between 2002 and 2011.

China moves to simplify access to double tax treaties

The State Administration of Taxation (SAT) issued new procedural guidance (Announcement 60) on 27 August 2015 for claiming tax benefits under China's double tax treaties. The State Council abolished the previous pre-approval and pre-registration requirements contained in Circular 124 in May. The new guidance aims to simplify the process through a self-assessment system, which will apply as from 1 November 2015.

Under the new system no tax authority pre-approval is required. If a non-resident receives income from dividends, interest, royalties and capital gains for which it is not required to file a Chinese tax return, a withholding agent may apply treaty relief, provided, the non-resident taxpayer substantiates its treaty eligibility by providing the required forms and documents. The same applies to taxpayers seeking to secure other treaty protections, such as permanent establishment (PE) protection.

If a non-resident taxpayer is required to file a Chinese tax return, it must provide similar substantiation with its Chinese tax return and file both with a tax bureau. A withholding agent can proceed with the payment after submitting the tax return and required documents prior to tax authority confirmation of the treatment.

SOVEREIGN COMMENT

Tim Lamb, Managing Director of Sovereign (China), writes: "The new rules related to tax benefits under China's double tax treaties should ease the process of making such payments for foreign invested enterprises within China and expedite collection of these payments for non-resident enterprises moving forward. Expect to see further reforms to over burdensome reporting requirements as China moves to normalise its treatment of foreign investment and cross-border transactions."

South Africa proposes amendment for tax information exchange

The South African National Treasury published, on 22 July 2015, the 2015 draft Tax Administration Laws Amendment Bill for public comment. Section 32 of the draft bill proposes the insertion of a definition of "international tax standard" in Section 1 of the Tax Administration Act (28/2011), to mean "an international standard as specified by the Commissioner by public notice for the exchange of tax-related information between countries".

The National Treasury said this definition was inserted to implement a scheme under which the South African Revenue Service (SARS) may require South African financial institutions to collect information under an international tax standard, such as the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters.

Under the proposed amendment, all reporting financial institutions will be obliged to obtain the information and provide it to SARS. In addition, financial institutions will have to comply with the relevant data protection laws. Public comments on the proposed amendments closed on 24 August 2015.

Hong Kong proceeds toward automatic exchange of tax information

The Hong Kong government issued, on 12 October 2015, a "consolidated response" to the public consultation on its legislative proposals to implement the international standard on "automatic exchange of financial account information" (AEOI) in tax matters.

Hong Kong committed to implement the new standard on AEOI in September 2014, with a view to commencing the first information exchanges with appropriate partners by the end of 2018, provided it could put in place the necessary domestic legislation by 2017.

It said stakeholders who participated in the consultation, which concluded in June, supported the fundamental direction to align Hong Kong with the global AEOI standard, but it announced major changes in three areas as a result of the process:

- The definitions of financial institutions (FIs), non-reporting FIs and exempted accounts will remain more or less intact, but certain trust companies beyond the coverage of the OECD's Common Reporting Standard (CRS) will not be unnecessarily caught in domestic legislation;
- A mandatory requirement for FIs to carry out the due diligence procedures set out in the Common Reporting Standard to identify and collect information on reportable accounts with account holder's tax residence corresponding to Hong Kong's AEOI partners ("targeted approach") will remain. However, it is now inclined to further provide a clear legal basis that will allow FIs to pursue a "wider approach" to cover account holders with other tax residences;
- It will put in place appropriate penalty provisions for FIs and employees to provide a sufficient deterrent to ensure effective implementation of the AEOI regime in Hong Kong. However it will also make it clear that the sanctions will apply to service providers engaged by FIs to fulfill their due diligence and reporting obligations and will refine the proposed sanctions for employees by confining them to those who have caused or permitted the FIs to provide incorrect return in a willful manner.

"We are working on the draft amendment bill, which will incorporate the latest features as set out in the consolidated response. We will press ahead to introduce the bill into the Legislative Council in early 2016, so as to meet the implementation plan. We are working under a very tight timetable," a spokesman said.

Dubai issues decree to create new Free Zone Council

His Highness Shaikh Mohammad Bin Rashid Al Maktoum, in his capacity as Ruler of Dubai, issued, on 25 August 2015, Decrees No 23 and 30 of 2015, which established a new Free Zone Council (FZC) and appointed its members respectively.

The purpose of the FZC is to promote the development of Dubai's free zones by attracting investment as well as to enhance co-ordination and knowledge exchange between them. The council is also authorised to prepare a comprehensive strategy for Dubai's free zones and to revise the legislation and regulations that govern them.

Shaikh Ahmad Bin Saeed Al Maktoum, president of Dubai Civil Aviation and chairman and chief executive of Emirates airline and Group, will chair the FZC. Council members include: the Secretary General of the Dubai Free Zone Council, the Governor of the Dubai International Financial Centre (DIFC), the Chairman of the Ports, Customs, and Free Zone Corporation (PCFC), the Director General of the Dubai Creative Clusters Authority, the Director General of the Dubai World Trade Centre Authority (DWTCA), the CEO of the Dubai Aviation City Corporation and the Chairman of Meydan City Corporation.

Dubai is home to a number of free zones, including the DIFC, the Dubai Multi Commodities Centre (DMCC) and the Dubai Airport Free Zone (DAFZA). Free zone incentives include exemptions from corporate tax and import and export duties.

SOVEREIGN COMMENT

Dubai's Free Zone network has been an integral part of the jurisdiction's stunning success as a financial centre in recent years. However, the ever-growing number of Free Zones and the differences between them can sometimes present a confusing picture to international investors. The establishment of this new over-arching Council is therefore welcome. Interested readers should contact our new Managing Director Nicholas Cully and his team in our Dubai office.

India and Mauritius reach consensus on new tax treaty

The Mauritius government announced on 1 July 2015 that discussions between the joint working groups of Mauritius and India had reached consensus on concluding a revised double tax treaty between the two countries.

The Mauritian Minister of Finance and Economic Development, Vishnu Lutchmeenaraidoo, thanked Indian Prime Minister Narendra Modi for his commitment to ensuring that India would not cause any prejudice to the interests of Mauritius in the negotiations. This, he said, had contributed enormously to advance discussions in finalising the treaty, he said.

Following the measures announced in the 2012 Indian budget, particularly the overriding effects of the General Anti-Avoidance Rule (GAAR) on tax treaties signed by India with other countries, it had been deemed necessary for Mauritius to clarify any uncertainties arising under the treaty.

SOVEREIGN COMMENT

The existing tax treaty between Mauritius and India has long made it attractive for investors to route their investment through Mauritius to take advantage of the preferential provisions, which include exemption from capital gains tax. The treaty has greatly assisted Mauritius in the development of its financial services sector and has also benefited India in terms of Foreign Direct Investment over the last 20 years. The clarification afforded by this recent consensus is therefore to be welcomed. Of particular note is Indian PM Modi's commitment to Mauritian interests as a result of any changes. Mauritius is an important financial centre for Sovereign and our office contact details may be found on the back page of this edition.

FISCAL NEWS

US signs IGA Competent Authority Arrangements with UK and Australia

The US government signed, on 24 September 2015, "competent authority arrangements" (CAAs) with the UK and Australia to advance their intergovernmental agreements (IGAs) to improve international tax compliance and to implement the Foreign Account Tax Compliance Act (FATCA).

FATCA targets tax non-compliance by US taxpayers with foreign accounts and focuses on reporting by US taxpayers about prescribed foreign financial accounts and offshore assets, and by foreign financial institutions about financial accounts held by US taxpayers or foreign entities in which US taxpayers hold a substantial ownership interest.

"The signing of these CAAs marks another significant milestone in the international effort to gain proper reporting of offshore accounts and income," said IRS Commissioner John Koskinen. "Together in partnership with other tax authorities, we are demonstrating how far we have come in the fight against offshore tax evasion."

The CAAs with the UK and Australia are the first to be signed. The US expects further CAAs with other competent authorities in IGA jurisdictions to be signed in the near future.

EC finds Fiat and Starbucks tax deals illegal under EU state aid rules

The European Commission found, on 21 October 2015, that Luxembourg and the Netherlands had granted selective tax advantages to Fiat Finance and Trade and Starbucks, respectively. These are illegal under EU state aid rules.

Commissioner Margrethe Vestager, in charge of competition policy, said: "Tax rulings that artificially reduce a company's tax burden are not in line with EU state aid rules. They are illegal. I hope that, with today's decisions, this message will be heard by Member State governments and companies alike. All companies, big or small, multinational or not, should pay their fair share of tax."

Following in-depth investigations, which were launched in June 2014, the Commission concluded that Luxembourg had granted selective tax advantages to Fiat's financing company and the Netherlands to Starbucks' coffee roasting company. In each case, a tax ruling issued by the respective national tax authority artificially lowered the tax paid by the company.

EU state aid rules require that incompatible state aid is recovered in order to reduce the distortion of competition created by the aid. In its two decisions the Commission set out the methodology to calculate the value of the undue competitive advantage enjoyed by Fiat and Starbucks, which amounted to €20 to €30 million each. The precise amounts must now be determined by the Luxembourg and Dutch tax authorities.

In the two investigations the Commission has for the first time used information request tools under a Council decision by Member States of July 2013. Using these powers the Commission can, if the information provided by the Member State subject to the state aid investigation is not sufficient, ask that any other Member State as well as companies to provide all market information necessary to enable the Commission to complete its assessment.

SOVEREIGN COMMENT

Tax rulings as such are perfectly legal. They are comfort letters issued by tax authorities to give a company clarity on how its corporate tax will be calculated or on the use of special tax provisions. However, the two tax rulings under investigation were found to have endorsed "artificial and complex" methods to establish taxable profits for the companies. They did not reflect economic reality. This was done, in particular, by setting prices for goods and services sold between companies of the Fiat and Starbucks groups (so-called "transfer prices") that did not correspond to market conditions. As a result, most of the profits of Starbucks' coffee roasting company were shifted abroad, where they were also not taxed, and Fiat's financing company only paid taxes on underestimated profits.

OECD issues final BEPS reports

The OECD published, on 5 October 2015, 13 final reports and an explanatory statement under its base erosion and profit shifting (BEPS) project. It was endorsed by the G20 Finance Ministers' meeting in Peru on 8 October.

The reports are the culmination of a two-year project that began with the Action Plan on BEPS, which G20 leaders endorsed in July 2013. The project considers 15 action points, aimed at addressing increasing international concern at multinational enterprises avoiding taxes through BEPS and aggressive tax planning. More than 60 countries participated in the BEPS project, and participating countries have agreed a comprehensive package of measures that could lead to significant changes to taxation regimes internationally.

A number of the recommendations require changes to national legislation and participating countries have agreed on four "minimum standards" to prevent any adverse impact on competitiveness that might result from inaction by individual countries:

- Country-by-country reporting – to provide tax administrations with a global picture of the operations of multinationals;
- Treaty shopping – to put an end to the use of conduit companies to channel investments;
- Curbing harmful tax practices – in particular in the area of intellectual property and through the automatic exchange of information on tax rulings; and
- Effective mutual agreement procedures – to ensure that the fight against double non-taxation does not result in double taxation.

Other recommendations require changes to double taxation treaties. The OECD is co-ordinating negotiations among more than 90 countries to develop a multilateral instrument capable of incorporating the tax treaty-related BEPS measures into the existing network of bilateral treaties. The instrument is due to be open for signature by all interested countries in 2016,

In addition, guidance on the application of transfer pricing rules will be updated, including to prevent taxpayers from using so-called "cash box" entities and to redefine the concept of permanent establishment. The OECD is also encouraging governments to adopt stronger rules covering controlled foreign companies (CFCs), interest deductibility and hybrid mismatch arrangements to enable double non-taxation.

SOVEREIGN COMMENT

The final OECD report was due to be presented to G20 Leaders in November 2015. The BEPS project will then move into the implementation phase as the latest reports do not contain a timescale for implementation, on which the relevant parties have yet to reach agreement. Co-ordination will be essential to ensure that the competitiveness of markets is maintained. The OECD has stated that it expects the final multilateral instrument to be ready by the end of 2016 and that it is in ongoing consultation with other countries and international bodies, aiming to build an inclusive framework to encourage wider participation globally. Further editions of Sovereign Report will report on the implementation of the BEPS initiative.

OECD issues new compliance ratings on transparency

The OECD Global Forum on Transparency and Exchange of Information for Tax Purposes published, on 3 August 2015, new peer review reports for 12 countries or jurisdictions. The British Virgin Islands and Austria were both reassessed as "Largely Compliant" following supplementary reviews of their exchange of information practices.

Jurisdictions may request supplementary reviews to assess their responses to the recommendations of the Global Forum identified in previous reviews. A supplementary report on the BVI, which assessed progress made since its Phase 2 report in July 2013, concluded that based on significant improvements having been made, its overall rating be upgraded from "Non-Compliant" to "Largely Compliant".

Austria, which was rated "Partially Compliant" in July 2013, has also since implemented a number of recommendations leading to an upgrade of its overall rating to "Largely Compliant" in its supplementary report.

Phase 1 reports on Albania, Burkina Faso, Cameroon, Dominican Republic, Lesotho, Pakistan and Uganda assessed their legal and regulatory frameworks for transparency and exchange of information on request. These countries were all cleared to move to the next stage of the review process, which will assess exchange of information practices.

The Global Forum also reviewed exchange of information practices through Phase 2 peer review reports on Lithuania and Sint Maarten. Lithuania received an overall rating of "Compliant", while Sint Maarten was rated as only "Partially Compliant".

A supplementary report on the Marshall Islands, which had been blocked from moving to Phase 2 due to significant gaps in its legal framework, was also published. It said key changes to its legislation now enabled the Marshall Islands to move to Phase 2.

The Global Forum has now completed 198 peer reviews and assigned compliance ratings to 80 jurisdictions that have undergone Phase 2 reviews. Of these, 21 jurisdictions are rated "Compliant", 46 are rated "Largely Compliant", 10 are rated "Partially Compliant" and three jurisdictions are "Non-Compliant". A further 11 jurisdictions are blocked from moving to a Phase 2 review due to insufficiencies in their legal and regulatory framework.

To encourage smooth implementation of the OECD's standard on Automatic Exchange of Information, the Global Forum has launched a multilateral process to evaluate confidentiality and data safeguards frameworks in more than 90 jurisdictions that have committed to begin automatic information exchange by 2017 or 2018.

Luxembourg announces tax amnesty for undisclosed assets

Luxembourg Finance Minister Pierre Gramegna announced, as part of the draft budget on14 October 2015, "a temporary scheme...for the regularisation of assets and income held by persons with tax residence in Luxembourg". It is the first tax amnesty in the Grand Duchy.

The penalties normally applied to tax evaders will be lifted provisionally. The budget bill says the amnesty covers penalties for wilful tax evasion, tax fraud and involuntary tax evasion. Generally, sanctions are issued of up to twice the amount of the tax evaded, plus a jail term of one month to five years.

To qualify for the "temporary regularisation regime," taxpayers will be subject to two conditions: they must submit "a corrective statement" to the tax administration taking into account "all assets held and income received which remained unregistered"; and then pay the full amount of taxes owing.

A 10% withholding tax will be applied on the amount of taxes owing and which will be regularised in 2016, and 20% for the adjustments in 2017. This scheme will be open for three years. Luxembourg taxpayers who have already been involved in an administrative or judicial procedure will not be allowed to take advantage of the amnesty.

UK proposes new "special measures" regime for tax avoiding companies

HM Revenue & Customs (HMRC) released, on 22 July 2015, a consultation document entitled "Improving Large Business Tax Compliance". This is designed to equip HMRC with additional tools to tackle the small number of large businesses that continue to engage in tax avoidance or aggressive tax planning, or resist full and open engagement with HMRC. legislative changes will be implemented in Finance Bill 2016.

Under the proposals there will be a legislative requirement for all large businesses to publish their tax strategy on an annual basis and adhere to a voluntary "Code of Practice on Taxation for Large Business", which will define the standards of behaviour expected by HMRC of its large business customers.

In addition, a more narrowly targeted "Special Measures" regime is intended to provide HMRC with additional powers to tackle businesses that are perceived as persisting in aggressive tax planning and which refuse to engage with HMRC in a collaborative and transparent manner.

LEGAL NEWS

UK Supreme Court sets aside financial orders based on fraudulent dishonesty

The UK Supreme Court held, on 14 October 2015, that intentional non-disclosure will be material in divorce settlements and the presumption is that a final financial order based on fraudulent dishonesty will be set aside.

In *Sharland and Gohil*, the judgment concerned two similar cases in which two women, who had reached divorce settlements with their husbands, later found out that their husbands had misrepresented their finances.

In *Sharland*, the husband and wife were in dispute about the husband's shareholding in a company. The experts did not agree as to its value, but the husband maintained both before, and in evidence during, the final hearing that no IPO was imminent or likely in the near future. Agreement was reached and a consent order was drawn up and approved by the judge. However, before it was sealed, the wife discovered the husband had lied about the IPO. She applied to the court to resume the hearing of her claim.

At first instance it was found that, although the husband's evidence about the IPO had been deliberately dishonest, the non-disclosure was not material because any order that would have been made if proper disclosure had taken place would not have been substantially different from the heads of agreement incorporated into the draft, unsealed order. Mrs Sharland appealed but the Court of Appeal held that the judge at first instance had been entitled to decide that the non-disclosure was not material.

In *Gohil*, Mrs Gohil issued divorce proceedings in 2002 and the decree absolute was pronounced following the conclusion of financial relief proceedings by agreement in 2004. The financial dispute resolution (FDR) proceedings had been protracted by continued dispute as to the extent to which Mr Gohil had provided full, or even adequate, disclosure of his financial circumstances.

Following settlement, the wife applied in 2006 for an upward variation of her maintenance payments and enforcement of certain terms of the original FDR settlement order. She also applied unsuccessfully to the High Court for leave to appeal out of time against the 2004 consent order.

In 2007 the wife issued a further application to set aside the 2004 consent order on the grounds of alleged serious material non-disclosure, fraud and misrepresentation by the husband. The husband had faced criminal proceedings for fraud and most of the wife's information about the husband's fraudulent activity came from his trial. She sought full disclosure from the Crown Prosecution Service (CPS). This was ordered in May 2012 but the CPS and Secretary of State successfully appealed the disclosure order.

The wife's case before the first instance judge referred to this information, which was never disclosed to the family court, and the court granted permission for her application to be reopened. Mr Gohil appealed. The Court of Appeal sided with the husband, making clear that any application for a new trial in a case heard by a High Court judge must be made to the Court of Appeal.

The principal legal consideration for the Supreme Court in both cases was whether an order made in the absence of full and frank disclosure should only be set aside in cases where the court would have made a substantially different order if proper disclosure had in fact taken place. The Supreme Court ruled in favour of both wives, overturning the Court of Appeal decisions and remitted both cases back for re-trials because in each case the husband's disclosure had been fraudulently dishonest.

SOVEREIGN COMMENT

The ultimate success of Mrs Sharland and Mrs Gohil demonstrates that anything less than full and frank disclosure of assets in divorce cases will not be tolerated by the courts, where this has an outcome on the order that the court would otherwise have made. This has significant implications for other cases where assets are suspected of having been concealed, and could see many other recently finalised cases being reopened. Anyone currently going through a divorce should have a full and frank discussion with their legal representative to ensure their disclosures are 100%, regardless of whether their divorce is contested or not.

HMRC issues guidance on LLCs in wake of recent *Anson* decision

The UK tax authority (HMRC) published, on 25 September 2015, guidance on the UK Supreme Court's decision in *George Anson v HMRC* of 1 July 2015, which we reported in Sovereign Report 45. It concerned the application of the double tax treaty with the US to payments received by Anson from a US limited liability company (LLC), HarbourVest Partners, registered in the state of Delaware.

HMRC had contended that what Anson received was a distribution from the LLC, an entity, and no Double Taxation Relief (DTR) was due because the US tax was charged on a share of the profit rather than on a distribution of it. The Supreme Court agreed with Anson, restoring the decision of the First-Tier Tribunal (FTT), that the profits belonged to members as they arose and hence Anson was taxed on the same profits in the UK as had been taxed in the US. DTR was therefore due.

In its guidance, HMRC said the Supreme Court had made clear that it relied on the facts found by the FTT, in particular those regarding the rights of Anson that arose from the Delaware LLC Act and LLC agreement. As a result, HMRC said that where US LLCs have been treated as companies within a group structure, it will continue to treat the US LLCs as companies, and where a US LLC has itself been treated as carrying on a trade or business, HMRC will continue to treat the US LLC as carrying on a trade or business.

HMRC also proposes to continue its existing approach to determining whether a US LLC should be regarded as issuing share capital. Individuals claiming DTR and relying on *Anson* decision will therefore be considered on a case-by-case basis.

ECJ rules on treatment of gifts from a foundation to foreign beneficiaries

The European Court of Justice ruled, on 17 September 2015, in the Austrian preliminary ruling case *F E Familienprivatstiftung Eisenstadt v Unabhängiger Finanzsenat, Außenstelle Wien* (C-589/13) in respect of interim tax charged on capital gains and income from the disposal of holdings of a resident private foundation.

The case addressed Austrian legislation that denied private foundations the ability to take into account gifts paid to beneficiaries resident in other Member States when calculating their tax. During the course of 2001 and 2002, the private foundation, established under Austrian law, received capital gains and income from the disposal of holdings. At the same time, it made gifts to both a Belgium resident and a German resident.

Both foreign beneficiaries were subject to capital gains tax (CGT) at source and subsequently requested the Austrian tax authorities to reimburse the CGT charged on their gifts on the basis of the double tax treaties in force between Austria and their home states. At the same time, the private foundation reduced the amount of its capital gains and income derived from disposals of holdings by deducting the gifts made to the two beneficiaries from its taxable amount for both years.

The deduction was refused because it concerned gifts made to beneficiaries exempt from CGT under the applicable tax treaties. Had the beneficiaries been taxable in Austria, the deduction would have been permitted. The private foundation appealed on the basis of the free movement of capital.

The ECJ found that the legislation did amount to a restriction on the free movement of capital because it created a distortion, from a tax perspective, between international gifts that were less advantageous and national gifts that were more advantageous.

In analysing whether such a restriction could be justified, the ECJ rejected the argument that the situations between the resident and non-resident beneficiaries were not comparable. It also rejected the argument that the difference in treatment at issue was justified by the need to preserve a balanced allocation of the powers to tax because, it found, Austria voluntarily abandoned its powers of taxation on gifts to persons residing in the other Member State under the Belgium and German tax treaties.

Finally, it rejected a justification based on the need to safeguard the coherence of the tax system because the interim tax sought by the private foundation and the taxation of the beneficiaries related to different taxpayers.

ECJ finds French dividend treatment to be an unjustified interference

The European Court of Justice held, on 2 September 2015, that the differentiated taxation of dividends – according to the location of establishment of its subsidiaries – received by the parent companies of a tax-integrated group is contrary to EU law because it represents an unjustified interference with the freedom of establishment.

In *Groupe Steria SCA v Ministère des Finances et des Comptes Publics* (C-386/14), Steria argued that French rules entitling a tax-integrated parent company to neutralisation as regards the add-back of a proportion of costs and expenses, but denying such neutralisation where dividends originate from subsidiaries from another member state, were contrary to freedom of establishment. The case was brought before the ECJ by the Administrative Court of Appeal of Versailles.

The Court of Justice held that the French legislation did disadvantage parent companies that own subsidiaries established in other Member States. This made it less attractive for companies to exercise their freedom of establishment, as it would deter them from setting up subsidiaries in other Member States. Further, the ECJ ruled that this difference in treatment could not be justified, either by the need to safeguard the balanced allocation of the power to impose taxes between the Member States or by the need to safeguard the cohesion of the tax system.

SOVEREIGN COMMENT

A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes that have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of a European Union act. The ECJ does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals when a similar issue is raised.

Jersey Royal Court considers ethics of "aggressive" tax avoidance

The Jersey Royal Court may take into account the ethics of "aggressive" tax avoidance in its future rulings regarding trusts said Bailiff William Bailhache, on 31 July 2015, in his reasons for making of an order for rectification of a trust.

In the case of *IFM Corporate Trustees* (2015 JRC 160), the trust was an employee benefit scheme in which the UK employer made discretionary loans to employees, then settled its right to repayment into the Jersey trust, together with cash contributions to the trust fund.

The beneficiary class set out by the trust instrument included any specified employee and specified classes of relatives, but accidentally omitted certain other relatives and their spouses. Accordingly some of these persons, with the agreement of the other parties, applied to the Jersey courts for the terms to be rectified.

The Court was satisfied that there was a genuine mistake and that there was no practical remedy other than rectification. In respect of full and frank disclosure, however, there was little mention of the UK tax position and the Court was initially concerned that the scheme might have fallen into the category of aggressive tax avoidance. Had that been so, it might have been the sort of scheme where in the exercise of its discretion, the Court should consider whether such a fact, if true, should lead to the refusal to exercise discretion in favour of the applicant.

Bailhache noted: "This Court recognises that there are strong ethical arguments why tax payers should recognise their obligations to the state in which they live … On the other hand, it has long been the case that, as a matter of law, a citizen is entitled to retain his property unless by appropriate legislation, the state takes it away, or makes it chargeable to tax …

"Historically, the courts have always applied the principles of law rather than what are perhaps inchoate and uncertain ethical considerations in this area. What seems to us perhaps to be open to argument is whether, in an area which involves the exercise of a judicial discretion in cases where the court's assistance is being sought for a mistake which has been made, there is room for the argument that the discretion ought not to be exercised if on the facts of a particular case, the scheme in question is lawful but appears to be so contrived and artificial that it leaves the Court with distaste if, in effect, it is required to endorse it."

It turned out in argument that these considerations did not apply. The scheme used in the *IFM* case was notifiable under the UK Disclosure of Tax Avoidance Schemes (DOTAS) rules, which enable HMRC to keep up to date with what types of tax avoidance schemes are in circulation. The Court heard that the scheme promoter had been required to disclose the main elements to HMRC. It therefore accepted that full and frank disclosure had been made and accepted that the scheme did not constitute unacceptable tax avoidance. It agreed to vary the trust documents.

SOVEREIGN COMMENT

The final result in this case, no doubt came as a relief to the parties involved. However, careful note should be taken of the Bailiff's comments relating to the possibility that "aggressive" tax avoidance may have to be taken into account in future rulings. The UK's DOTAS rules in particular as likely to be rigorously enforced not only in Jersey but in the other Crown dependencies.

Canadian Court dismisses challenge to US FATCA tax data exchange

The Federal Court of Canada held, on 16 September 2015, that the collection of the information from large Canadian banks by the Canada Revenue Agency (CRA) for onward transmission to the US Internal Revenue Service (IRS) would not violate the terms of the Canada-US tax treaty.

Justice Martineau refused to issue an injunction blocking the transfer of the information, which was facilitated under an Intergovernmental Agreement (IGA) between Canada and the US to enable Canadian banks to comply with the US Foreign Account Tax Compliance Act (FATCA). The IGA permits Canadian banks to report data on US account holders to the CRA, rather than supplying it directly to the IRS.

A group called the Alliance for the Defence of Canadian Sovereignty, on behalf of Canadians Gwen Deegan and Virginia Hillis, filed the action challenging the Canadian legislation implementing the IGA last year.

Ms Deegan was born in US in 1962 to one American and one Canadian parent, and Ms Hillis was born in the US in 1946 to two Canadian parents. According to the lawsuit, both women had moved to Canada at the age of five and neither had subsequently lived or worked in the US, nor had they held a US passport.

The Court said that the IGA made the disclosure obligations on Canadian banks much less onerous for the financial institutions. The decision did not rule on the lawsuit's argument that the collection of the information violates the Charter of Rights and Freedoms, which is still before the courts.

IN THE PRESS

TAX EVADER CRACKDOWN COULD REDUCE OFFSHORE BANKING OPTIONS FOR EXPATS

A version of this article by Sovereign Group chairman Howard Bilton first appeared in *The Daily Telegraph* on 11 September 2015.

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.

The draconian Foreign Account Tax Compliance Act (FATCA), introduced by the US Government to tackle tax evasion by its citizens, has already affected Britons living in the United States.

The Expat Channel reported last month how expats in America are being threatened with having their UK bank accounts shut down if they fail to return forms needed to satisfy the US Internal Revenue Service.

Some financial institutions, annoyed by the bureaucracy required to comply with FATCA, are reportedly pulling out of doing business with people with American connections, both US citizens and those living in the USA.

Those living elsewhere in the world should be aware that a global FATCA-style information exchange initiative is now in the pipeline, which will affect people of all nationalities. The Common Reporting Standard (CRS), which is being driven by the Organisation for Economic Co-operation and Development, will impose similar obligations to FATCA on all foreign financial institutions (FFIs) around the world.

As with FATCA, the purpose of CRS is to prevent anybody evading tax by failing to make to make the proper declarations in their country of tax residence. The ambitious aim is to implement CRS globally by the end of 2017.

FFIs will be required to report financial information to their local tax authorities, which will then supply that information to the account holder's country of tax residence.

UK expats are going to be affected because many of them, quite reasonably and to some advantage, choose to bank in offshore financial centres such as Jersey, Guernsey and the Isle of Man. Account holders in those island jurisdictions receive interest paid gross (without deduction of tax at source) and are able to enjoy the stability and familiarity of jurisdictions governed by UK law, within the UK banking system and subject to regulations as robust as those in the UK.

A UK expat working in Dubai might feel more comfortable banking in the Isle of Man, say, rather than in Dubai. There is a great shortage of banks offering retail services in Dubai. There are no tax issues here but under CRS the bank in the Isle of Man will have to report information on the expat's bank account to the local Isle of Man tax authority and they must pass it to the tax department in Dubai (and to HM Revenue and Customs if the expat subsequently returns to the UK).

The CRS reporting obligations will inevitably create additional costs for the bank, which they will almost certainly pass on to the customer. The worst case scenario, as has been the experience of US expats, is that banks will simply decide to stop providing services for non-residents. It would be strange, but not impossible, if all banks decided they would only let local residents use their services.

CRS certainly presents a problem for any UK residents who are banking outside the UK and are not compliant in their reporting to HMRC. An automatic report of their dealings will be given to HMRC and that is likely to trigger a tax investigation, fines and possibly criminal penalties.

The exchange of information by tax authorities is nothing new. Most countries, including offshore financial centres, have already signed tax information exchange agreements (TIEAs), another initiative driven by the OECD, and various other reporting initiatives such as the EU savings directive have been around for quite a while.

CRS will make the exchange of financial information automatic, which means that there is nowhere to run and nowhere to hide for those who rely on confidentiality and non-disclosure to unlawfully evade taxes. Lawful offshore tax avoidance or mitigation will still be alive and well but all planning will have to be legal and compliant and stand up to scrutiny.

Expert advice is a good idea now and will be a necessity in the future. Anyone who doubts the legitimacy of their arrangements would be wise to seek professional advice immediately. Ignorance of the law is, and never will be, an excuse for failing to make the correct reports.

SIMON GARVEEN IS...

SOVEREIGN MAN

On charities – the clock is ticking

Like many of my successful friends and acquaintances, I have been giving much thought to what will happen when I, as is inevitable, fall off the perch. I suppose that starts being a concern for most people who have a decent wedge of assets once they pass the age of 45 – or who have had any sort of health scare to concentrate their minds.

I have five kids (from two wives) and I definitely don't want to demotivate them. I think their lives could be ruined if they think that all they need do is sit around and wait to inherit. I've seen too many "trustafarians" do just that and end up wasting their lives. So I've always kept my older kids on a fairly tight rein, helping them out when absolutely necessary but telling them that they have to earn their own money and budget accordingly. Why not? I made my own money and that "journey" has been a fulfilling and rewarding one.

I keep telling my kids not to expect any money when I'm gone because I'm either going to spend it or give it away to charity. I will give them the best education possible, help them buy their first house and then they're on their own. In fact I do intend leaving them something but I have decided not to tell them so that they expect the worst and take whatever comes.

Thought. If you don't need the money and don't want to leave it all to your children, what do you do with the rest? I already give reasonable sums to charity. I could of course dispose of the rest by leaving charitable bequests in my will but I'd rather see play a more active role so that I know the money is being used well and I can actually see the results.

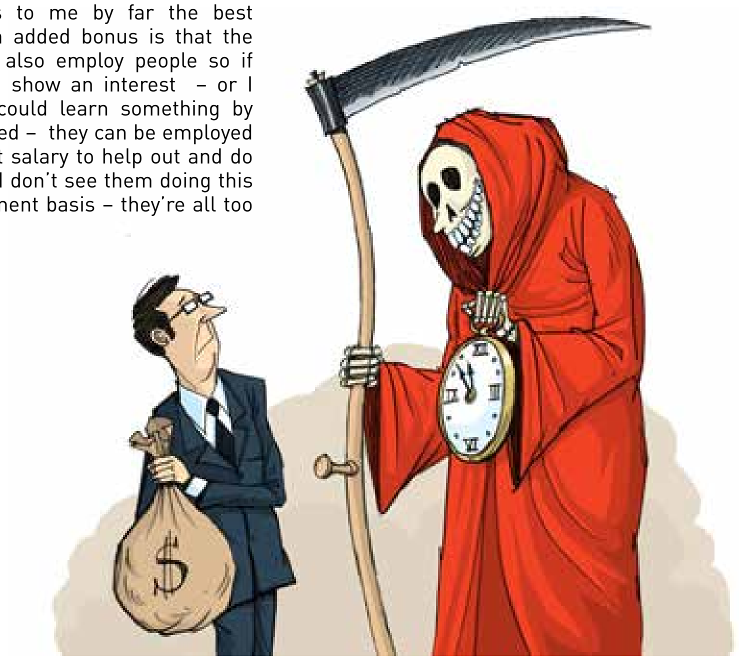
I've therefore decided to set up my own charity. I can inject a large sum and that takes it out of my estate for inheritance tax purposes. It also means that whatever additional money accrues from the assets will belong to the charity rather than me, and that means it won't be taxed. This way I can retain control of the money – by owning and controlling the charity – and ensure that it only benefits my chosen projects and causes.

I've discovered that it's surprisingly simple to set up a charity. I can either set up a trust or incorporate a company limited by guarantee. They will then produce a business plan and write to the Charities Commission to request official recognition as a charity, which gives the structure tax free status. This also means that anyone donating money gets a tax deduction – including me. I will own the voting memberships in the charity so I will be able to appoint directors of my choice (which will probably include me) and manage and control it, but the capital and income can only be distributed to charitable causes or to further the charitable aims of the structure.

"I can inject a large sum and that takes it out of my estate for inheritance tax purposes. It also means that whatever additional money accrues from the assets will belong to the charity rather than me, and that means it won't be taxed."

This seems to me by far the best solution. An added bonus is that the charity can also employ people so if my children show an interest – or I think they could learn something by being involved – they can be employed on a market salary to help out and do good work. I don't see them doing this on a permanent basis – they're all too ambitious for that – but it would be good experience and it would also be a great opportunity for them to work with their old man and find out what makes him tick. Now that would be a legacy!

Rather than prevaricate any longer, I'm going to get on with setting up my charity next week. After all, you never know what is going to happen or how long you've got – although somebody did suggest that I consult www.deathclock.com, which tells you exactly when you are going to shuffle off this mortal coil. I hope it is accurate because it gave me another 45 years, two months and 10 days – which means that even my youngest child will be older than I am now. And that's a long time to wait for a surprise.



CONTACT

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

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

British Virgin Islands
Tel: +1 284 495 3232
bvi@SovereignGroup.com

Cayman Islands
Tel: +1 949 7555
cay@SovereignGroup.com

China, Beijing
Tel: +86 10 6582 0268
china@SovereignGroup.com

China, Shanghai
Tel: +86 21 5211 0068
china@SovereignGroup.com

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

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

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

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

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

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

Sovereign Accounting Services
Tel: +350 200 48669
sasgib@SovereignGroup.com

Sovereign Asset Management
Tel: +350 200 41054
sam@SovereignGroup.com

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

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

Hong Kong
Tel: +852 2542 1177
hk@SovereignGroup.com

Isle of Man
Tel: +44 1624 699 800
iom@SovereignGroup.com

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

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

The Netherlands
Tel: +31 20 428 1630
nl@SovereignGroup.com

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

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

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

South Africa, Cape Town
Tel: +27 21 418 2170
sact@SovereignGroup.com

South Africa, Johannes-burg
Tel: +27 11 305 7480
sajb@SovereignGroup.com

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

Turks & Caicos Islands
Tel: +1 649 946 2050
tci@SovereignGroup.com

United Kingdom
Tel: +44 20 7389 0555
uk@SovereignGroup.com

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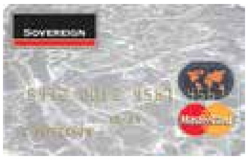

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