SPRING 2008

MOORE STEPHENS
MONACO

Mediterranean briefing

inside

Thin end of a wedge

Recent developments highlight the growing attraction of Monaco

As the dust settled on Chancellor Alistair Darling's first Budget, it became clear that British tax payers and non-domiciled individuals are being squeezed as the government attempts to refill the coffers.

The Budget confirmed plans to charge the "non-doms" who claim on the remittance basis an annual fee of £30,000, after they have lived in Britain more than seven out of nine tax years. They are also to lose their personal allowance and capital gains tax (CGT) annual exemption. While Mr Darling appears to have backtracked on the original January proposals, for example on offshore trusts, for some it may represent the thin end of the wedge.

Meanwhile, although the basic rate of income tax has dropped from 22% to 20%, the fact remains that Britain's middle classes, according to the OECD (Organisation for Economic Cooperation and Development), have seen the highest increase in their taxes over the last five years of any of the big Western economies.

Invariably, media reports cite Geneva and Dubai as possible destinations for disgruntled wealthy people the world over, with little mention of Monaco. Leaving aside the Principality's obvious attractions – its superb Mediterranean location, sunny climate and central position with easy airport access – it also offers an unprecedented level of security, good health care and educational facilities.

Top ranking: indeed, a recent report by the defence, international risk and national security open source provider, *Jane's,* ranked Monaco 4th in a league table of nations. Compiled after a one-year investigation of 235 countries and dependent territories using multiple weighted factors affecting country stability in distinct categories: political, social, economic, external and military and security, the ranking's top ten also included Sweden, Luxembourg, Gibraltar, Liechtenstein and the UK (7th), with Switzerland at a lowly 17th having lost points for its social achievements.

However there is another important advantage that Monaco has over its rival and it relates to taxes. Potential Swiss residents are attracted by the country's tax regime known as the "forfait basis" whereby the amount of tax paid is negotiated beforehand and depends on the canton (district) in which residency is planned. However, it only applies if the individual has never engaged in substantial economic activity in Switzerland.

Advantages: in Monaco, it is possible to be resident and employed, and still benefit from an attractive personal tax regime. Additionally many wealthy families looking to relocate their family base may hold assets through trust structures for estate planning purposes. In Switzerland the taxation of these structures for Swiss residents remains a complex issue requiring a case by case analysis, potentially by rulings specific to each canton. In October 2007 the Swiss Tax Conference published a circular which attempts to harmonise tax practices across the cantons but it is not formally binding.

In Monaco the situation is much clearer in that there is no attempt to tax wealth structured in such a manner. The ratification of the Hague Convention on the law applicable to trusts and their recognition in Monaco (see last issue of Briefing) provides certainty in the

Principality on the separation of trust assets from those of the settlor, beneficiaries, or trustees.

The 90-day rule: incidentally, for individuals, often British nationals, claiming non-residence in the UK who want to live and work out of Monaco, the 90 days they are allowed to spend a year in the UK will not now include days of arrival and departure, as originally proposed. The test from 6 April 2008 will be whether they were in the UK on a particular day at midnight.

Looking ahead: the Sovereign Prince Albert II has proved after nearly three years at the helm that he is embracing innovation to secure the independent future of his state as a financial hub.

For example, last September two laws were introduced which have significantly broadened the scope of financial activities, and attracted increasingly sophisticated expertise in the management of assets. New Fund Management companies have been created directly as a result. These laws came shortly after a new corporate vehicle known as a SARL *(société à responsabilité limitée)* made its appearance, offering a flexible, limited liability structure, which has already further stimulated activity in the Principality.

More recently, Monaco has been added to the list of countries which qualify for the United States' reciprocal freight tax exemption scheme. It makes the Principality an acceptable place of residence for ship owners- see Shipping News for details.

To conclude, for those seeking a new home for their families and wealth, Monaco has a great deal to offer on many levels.

More on Monaco

A healthy election fever

Monégasque nationals turned out in force for elections held in February 2008 to elect Monaco's parliament *(Conseil National).* There are around 6,800 nationals (total population circa 34,000) of which some 6,300 are eligible to vote. With 63 candidates across the three parties it meant 1% of the population were standing for election and turnout was an impressive 77%.

Stéphane Valeri, President of the *Union pour Monaco* (UMP), won a second mandate with members of his list gaining 21 of the 24 seats. Executive power in the Principality is retained by the highest authority, the Prince. His representative is the Minister of State aided by a government council of advisors. Legislative and budgetary powers are exercised jointly by the Prince and the *Conseil National* – a good reason why the populace is so engaged in the process.

Tax matters

Extension sought for EU Savings Tax Directive

For the first time the European Union Council is publicly discussing its intention to ask more "third countries" to adopt measures that are equivalent to the EU's savings tax directive. The three which have been approached are Iceland, Norway and Bermuda.

Meanwhile, a committee is busy reviewing the efficiency of the directive's withholding tax regime which came into force on 1 July 2005. In the light of the Liechtenstein tax affair which erupted in February 2008, it has been asked to accelerate preparation of its report.

Savings tax measures currently apply throughout the EU, as well as in five European "third countries" – Andorra, Liechtenstein, Monaco, San Marino and Switzerland. Tax agreements are also in place in ten EU member states and dependent territories, namely Anguilla, British Virgin Islands, Cayman Islands, Montserrat, Turks and Caicos, Aruba, Netherlands Antilles, Guernsey, Jersey and the Isle of Man.

Russia puts Cyprus out in the cold

Russia has added Cyprus to a blacklist of "uncooperative" jurisdictions in a bid to deter companies from registering offshore then repatriating their dividends back home without paying tax.

The original list included some 59 countries but has since been reduced to 41. The addition of Cyprus appears to be part of an amendment to the Russian Tax Code which came into effect on 1st January 2008. This introduced a tax exemption on dividends earned by Russian companies through foreign subsidiaries, although it does not apply if the organisation is registered in the tax "friendly" territories that make up the list. Foreign companies who are investing in Russia through Cyprus subsidiaries are not affected by the amendment.

Netherlands beefs up treaty negotiations

Tax treaty negotiations and discussions on tax information exchange agreements (TIEA) are underway or will begin during 2008 between The Netherlands and some 29 countries. They include an intention to change the tax treaty with the Netherlands Antilles and to set up TIEAs with Bermuda, Guernsey and the Cayman Islands.

Treaty negotiations are also planned with Algeria, Australia, Azerbaijan, Brazil, Canada, China, Costa Rica, Cyprus, Cuba, Germany, France, Hong Kong, Indonesia, Iran, Isle of Man, Japan, Kenya, Kyrgyzstan, Libya, Mexico, Peru, Saudi Arabia, Slovakia, Tanzania, Turkmenistan, Turkey, the UK, South Korea, and Switzerland.

Offshore Focus

Jersey broadens its appeal

With the introduction early this year of several legal and regulatory changes, Jersey continues to confirm its status as a worthy jurisdiction for alternative investment funds.

Those implemented include: introduction of treasury shares to appeal to public companies; abolition of the prohibition on giving financial assistance; and tweaks to the rules governing cell companies to increase their flexibility and make them easier to administer. A change in the law also means that regulated financial services businesses can act as a corporate director of another Jersey company.

Once approved, more changes later this year should simplify procedures for companies planning to reduce capital and make distributions to shareholders. The rules on redeeming shares are also set to be relaxed. Meanwhile, public limited companies will be able to add 'plc' instead of 'Ltd' to their name and, if shareholders agree, can opt not to hold an annual general meeting.

These latest developments confirm that Jersey is working hard to maintain a balance between having adequate regulation without being too intrusive, while continuing to innovate. An example here is a new class of unregulated fund being introduced for investors with a minimum of $1 million to invest, or who represent a certain class of high net worth individuals. Other more fast-track "Expert Funds" for sophisticated investors have also been established and are proving to be of interest.

The development of the Incorporated Cell Company (ICC) is another example of how this jurisdiction reacts to the market. Having introduced Protected Cell Company (PCC) legislation in 2006, Jersey developed the ICC which, unlike the PCC, enables the fund manager to corral the assets in separate cells while having greater control of each one.

VIRRGIN takes off

The on-line system introduced by the British Virgin Islands Registry in 2006 continues to develop. VIRRGIN (Virtual Integrated Registry and Regulatory General Information Network) has greatly improved turn-around times for processing documents for new incorporations (eg trust companies) and has entered another phase. Documents submitted for filing such as Registers and Memorandum & Articles of Association (M&A) will now be processed electronically. A water mark emblem replaces the filed stamp and an electronic version of the M&A takes the place of the printed copy. A Registry certified document can be supplied on request. Note that all certificates are provided in hard copy.

Hong Kong gets together with Luxembourg

A double taxation treaty has been signed between Hong Kong and Luxembourg. Under the agreement Luxembourg is set to provide total tax exemption on profits made by its companies doing business through a branch in Hong Kong, and will reduce its current 20% withholding tax for dividends in certain circumstances. Hong Kong residents who earn shipping income in Luxembourg will also be exempted from income tax.

New company acts

The governments of St Vincent and the Grenadines (SVG), and the Seychelles have both recently introduced new IBC (International Business Companies) Acts. The Seychelles has also replaced its Mutual Fund Act 1997 by the Mutual Fund and Hedge Fund Act 2008.

A first for UK with Bermuda

The UK's first truly comprehensive tax information exchange agreement (TIEA) has been signed with Bermuda. If ratified it should come into force in about a year's time and will concern indirect as well as direct matters relating to tax. The UK has limited TIEA agreements with a dozen other jurisdictions, including Jersey, Guernsey, the Isle of Man and Gibraltar.

Shipping News

Good news for Monaco on US freight tax

The IRS (Internal Revenue Service in the US) has released the long awaited Rev Rul 2008-17 on the reciprocal exemption for shipping and aircraft income. For a country to qualify is significant as it confirms that it is an acceptable place of residence for owners and company formations, under the statutory exclusion scheme for freight tax.

The new ruling reflects the addition of Monaco, as a result of changes to its domestic laws that Moore Stephens has worked hard to achieve in conjunction with the Principality's Ministry of Finance. Others that have been added to the list based on their domestic laws are British Virgin Islands, Croatia, Gibraltar, Kuwait (shipping only), Qatar (shipping only), and Uruguay.

Angola, the Cape Verde Islands, Ghana and the Bailiwick of Jersey also feature, as they have exchanged diplomatic notes with the United States. Finally, Bangladesh and Sri Lanka qualify as they have entered into full tax treaties with the US which satisfy the latter's rules for reciprocity.

Norwegian tax case

Norway's Supreme Court on February 13 released its decision in a tax case that raised the question of whether a capital gain on a tangible asset could be allocated to the taxpayer's permanent establishment in Norway.

The case was essentially decided on the basis of a rather special rule in the 1985 tax treaty between Norway and the United Kingdom. Kellogg Brown & Root Ltd., a UK resident company, owned a multipurpose vessel built and equipped to carry out support functions for oil companies. The taxpayer bought the vessel in 1992 and sold it in 2000, deriving a capital gain of NOK 710 million. During the years that the taxpayer owned the vessel, it often had been used in activities on the Norwegian continental shelf, but it had also been used on other countries' continental shelves and in international waters.

The Norwegian tax authorities maintained that the NOK 710 million capital gain resulting from the sale of the vessel was part of the income of the PE on the Norwegian shelf, and successfully taxed it as such.

Tonnage tax changes delayed in UK

Proposed changes to the UK's tonnage tax regime have been postponed, while the European Commission seeks views from other member states on different schemes.

Moore Stephens LLP had warned that a move to activate an EU flagging rule could lead to some unwelcome changes to the UK's regime. Britain had negotiated an exemption for three years from the Finance Act 2005 which requires that a tonnage tax member who takes on a new vessel must fly an EU flag if certain conditions apply.

Regulations and Compliance

BVI toughens up

A new Anti-Money Laundering and Terrorist Financing Code of Practice has been issued by the Financial Services Commission (FSC) in the British Virgin Islands. Designed to serve as a practical guide for compliance with general standards, the code replaces the 1999 "Guidance Notes on the Prevention of Money Laundering".

Monaco in the limelight

The Principality's Sovereign Prince Albert II made a long planned official visit to Germany at the end of February where he met Chancellor Angela Merkel.

Naturally, as the Liechtenstein tax scandal had just hit the press, the issue of transparency was discussed between the two leaders. The Prince stated that he had given his approval "for the strengthening of technical links between SICCFIN *(Service d'Information et de Contrôle sur les Circuits Financiers)* and the BKA *(Bundeskriminalamt)",* these being the intelligence units responsible for anti-money laundering and counter-terrorism financial matters in Monaco and Germany, respectively. It follows signature of similar cooperation agreements instigated by Monaco with 24 other countries, and does not change the basis of the information to be exchanged.

Money laundering update

AMPA *(Association Monégasque des Professionnels en Administration des Structures Étrangères)* issued a new set of recommendations relating to anti-money laundering and counter-terrorism financing in March 2008. It is the third time the association has revised these laws which were first adopted in the summer of 2006.

The association now has 38 members comprising corporate service providers established in Monaco.

Almost full marks

Moneyval, the Council of Europe's evaluation and peer pressure mechanism to counter money laundering and financing terrorism, reviewed Monaco's systems and laws for the second time in November 2006. Its report was finally adopted by the Moneyval General Assembly in December 2007. Of the 49 FATF (Financial Action Task Force) recommendations, 44 were judged to have been satisfactorily applied in the Principality. Key concerns include:

- SICCFIN, the Principality's financial intelligence unit, has limited means in terms of the number of bank inspections that can be carried out: according to Moneyval experts, banks should be reviewed every six years, not every 11 years as is being done at the moment
- current statistical tools are not sufficient and need to be reviewed
- laws governing casinos should also be reviewed and amended.

In the meantime, it has been reported that new laws on this subject are being adopted in 2008 to amend and update the previous ones which go way back to 1993.

Convention signed

The Principality of Monaco has ratified the Strasbourg Convention on the repression of terrorism dated 27 January 1977. The convention, which came into force on 1st January 2008, relates mainly to extradition rules between co-signatory states.

Moore Stephens Monaco News

Staff successes

Sylvia Rosso has successfully passed the STEP Diploma 2 : Company Law & Practice, and the Diploma 3 : Trust Administration and Accounts.

Cécile Marcon passed Financial Reporting, and Thomas Still passed Accountant in Business, Management Accounting, Financial Accounting of the ACCA exams. Amanda Lowe has completed successfully all of the Certified Accounting Technician examinations.

Congratulations also to Laure Chibane who has been elected for a second mandate as municipal councellor on the Mayor's team in La Turbie, the historic town on the hill tops above Monaco.

Top Marques Luxury Car Show invitation

The Principality once again plays host to what the organisers claim is the only "live" super car show. Top Marques Monaco runs from 24 to 27 April and for the fifth year running the world's most beautiful and powerful cars will be on display in the Grimaldi Forum, some of which visitors can test drive on the famous Grand Prix circuit (by invitation only). Moore Stephens Monaco will be present and take this opportunity to invite clients and friends who are interested in the event or in a test drive, to contact us if they have not yet received an invitation.

Contact Details:

Peter Brigham

Phillip Evans

Patricia Osborne

Andrew Gallagher

Moore Stephens Services SAM

L'Estoril,
Avenue Princesse-Grace,
MC 98000 Monaco.
Telephone: (377) 93 10 41 21
Facsimile: (377) 93 25 62 70

e-mail: ms@moorestephens-mc.com
www.moorestephensmonaco.com

An independent member firm of Moore Stephens International Limited

www.moorestephens.com

MSIL is dedicated to helping its clients build and preserve their wealth by providing them with worldwide access to its specialists, knowledge and highest quality personal service.
MSIL targets privately-controlled business and the families that own them.

épi - Monaco, Tel. 97 97 60 00 08072