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MOORE STEPHENS
MONACO

Mediterranean briefing

inside

Prince Albert II succeeds to the throne with a vision.

Under the reign of Prince Rainier III, known familiarly as the "Builder Prince", Monaco has blossomed into a modern and dynamic country through the guidance and vision of a Prince dedicated to the Principality.

Prince Albert II in his inaugural speech following the period of mourning showed the same enthusiasm and vision for the continuing development of Monaco; based on achievements already realised in the areas of tourism, culture, sport, leisure, ecology, finance and strong valued added activities which concern not only industry but also the intellectual domain.

The Prince highlighted the fact that Monaco's accomplishments are still not sufficiently widely known outside Monaco, and re-iterated the need for the developments in the service and advisory industries and in the banking world continue to be promoted. He indicated his commitment to making Monaco "one of the world leaders on the financial markets". To quote from the speech he confirmed that it is his "firm intention to contribute towards making Monaco one of the world poles in financial engineering, by adding management skills to the already renowned banking skills. Monaco must develop state of the art know-how in this domain to render our private equity pole capable of operating efficiently on all markets… We must encourage exceptional education and develop existing networks ."

In line with Monaco's pledges to meet its international obligations the Prince emphasised that the Principality's development must be achieved in an ethical manner, with respect for recognised good practice, and within the requirements of FAFT-GAFI (Financial Action Task Force on Money Laundering). The Prince's wish is that Monaco becomes a "society model, and a model society".

Relationship with France

The signing ceremony to be attended by Prince Albert and Jacques Chirac on 9 September has been delayed due to the ill health of the French President. New agreements are to be signed regulating the Franco-Monegasque relationship. The revision normalises Monaco's relationship with its larger neighbour, putting the two States on equal footing, updating the 1930 convention, and giving the Principality the autonomy promised in the build up to its entry into the Council of Europe. The agreement removes the restriction whereby French civil servants are appointed to many important positions in Monaco.

In anticipation of this agreement three new Monegasque national appointments were made to the Government on 1 February and the structure was modified. Gilles Tonelli, became Councillor for the department of Equipment, Environment and Urbanism; Denis Ravera, Councillor for the department of Social affairs and Health; Rainier Imperti became délégué to the Minister of State for External Relations.

EU savings directive update

Monaco

As most readers may already be aware Monaco, (along with the 25 EU countries, 10 associated and dependent territories, and four other third countries), has put in place the necessary legislation to apply the EU savings directive with effect from 1 July 2005.

The general rules affecting the payment of "interest" to EU beneficiaries have been well publicised. The legislation is common across most jurisdictions, and is based on the EU text. Unfortunately the interpretation and application of the rules is different in each country.

The application of the regulations concerning corporate structures and fiduciary entities such as trusts should be carefully considered on a case-by-case basis. The nature of the transactions, and role of the parties involved in any flow of funds must understood and implications measured. For transactions involving the movement of funds between different jurisdictions, and involving legal entities formed or administered in different countries the legislation in each country needs to be reviewed along with the manner in which that legislation is applied. Some specific country matters which have arisen are discussed below.

The person/entity which makes available "interest" for another person (the "relevant payee") is the "paying agent". This will normally be a bank in the first instance, however the full chain of transactions needs to be taken into account to determine precisely who is the paying agent.

If the person receiving the interest is resident (as defined and interpreted by each country) in one of the 25 EU countries then there will either be a withholding tax or disclosure (depending on the rules of the jurisdiction of the paying agent). In Monaco, there is a choice of either with clients being able to choose between a system of tax retention and a voluntary declaration to the tax authorities.

Where trusts are involved there are again subtle differences in interpretation between jurisdictions. In most cases it will be necessary to determine whether it is a life-interest trust or not.

In Monaco all Corporate Trustees will be considered to be paying agents. There is only a distinction where there is an individual trustee, in which case if it is an interest-in-possession trust then the bank should consider a payment of interest as a payment directly to the beneficiary and should apply the directive.

This is different to the Channel Islands position where any trustee will be considered to be the paying agent when it is trustee of a discretionary trust, but not of a life-interest trust.

If the trustee is considered to be the paying agent then the trustee should apply the rules of the country in which it is based (ie withholding tax or disclosure) in respect of payments of interest to EU residents. If the trustee is not in a country which has signed agreements concerning the directive then the payment is out of scope.

In the UK Inland Revenue Guidance to the Savings Directive it is stated that "Savings income received on behalf of a discretionary trust is not reportable and distributions by the trustees of a discretionary trust are not savings income".

Monaco has put in place legislation concerning fiscal fraud, solely with respect to fraud on the EU savings directive.

UK resident non-domiciles

Monaco will not apply the directive where the individuals concerned are subject to a general tax exemption. This is the case for UK resident non-domiciles (who are not taxed on interest earned outside the UK if it is not remitted there). A Monaco paying agent will need to obtain proof of this status (probably annually) in the form of one of the following:

- tax exemption certificate issued by the Inland Revenue
- copy of an exchange of correspondence between tax advisors and the Inland revenue confirming the non-domicile status
- opinion from a lawyer or accountant confirming the non-domicile status

Monaco resident certificates

A foreign national who is MC resident may need to show to a third country paying agent that he/she is resident in Monaco (e.g. for an account in Jersey).

Monaco will not issue a tax residence certificate, but will issue a Certificate of Residence, subject to (among other things) confirmation that the individual is resident in Monaco for more that 6 months a year, or that they have their centre of economic interests there.

Whether or not this will be acceptable evidence for the other countries will depend on the legislation and practice there.

Home country rule

To decide whether or not a fund or product held by a Monaco paying agent is IN or OUT of scope (or on what basis the interest element should be calculated for that investment) Monaco will accept the basis in accordance with the rules of the country in which the fund is domiciled/issued.

Gibraltar Reacts Over EU Savings Tax Directive Disapproval

Various criticisms have been raised concerning the application of the Directive arising from the special status of Gibraltar as an integral part of the EU.

While Gibraltar is fully compliant with the terms of the Directive, it has been realised that the effects are not the same as for other low-tax territories. As was stated by the Gibraltar Government and the UK Government in a joint press statement the Directive does not apply as between the UK and Gibraltar because they are not separate member states in relation to each other. The two governments are in discussion to agree appropriate arrangements for exchange of information between them outside of the legal framework of the Directive.

Negative Effect of the Savings Directive on Bermuda Funds

Surprisingly Bermuda has not applied the EU directive. Although it was originally mentioned in early drafts it was removed at later stages. This had had a perverse effect on the fund industry where distributions from Bermuda incorporated funds may pass through paying agents in jurisdictions which are applying the regulations, and where withholdings or reporting may be required. These funds do not appear to benefit the exemption of UCITS type funds.

The British government has apparently begun negotiations with Bermuda to bring the jurisdiction within the scope of the European savings tax directive.

Swiss businesses obtain important tax advantages as a result of EU Savings Tax Directive

The agreement forms part of the second series of bilateral agreements signed with the EU in October 2004. This includes the abolition of the taxation of dividends, interest and royalty payments between related companies in the source state (e.g. head office in Switzerland with subsidiaries in France). In this way the tax burden of Swiss companies operating across Europe will be eased.

Accouting and financial management

Isle of Man Companies Bill 2005 - Consultation

Treasury has issued a consultation document on the proposed new Companies Bill. The consultation document outlines the framework for a "New Manx Vehicle".

Dubai

The Dubai Financial Services Authority ("DFSA") has released a consultation draft Trust Law for adoption within the Dubai International Financial Centre ("DIFC").

The Trust Law provides a fundamental framework for the creation of trusts in the Centre and the powers and duties of trustees. It comprises 10 major parts, General, Choice of governing law place of administration, Judicial and non judicial proceedings, Creation, validity and modification of a DIFC trust, Beneficiaries of a trust, Protective Trusts, Office of trustee, Duties and powers of trustees, Liability of Trustees and The Protector.

BVI update

BVI Business Companies Act

A new corporate statute has been enacted on 1 January 2005. This will ultimately replace both the BVI's International Business Companies Act and domestic Companies Act, remove the "ring-fencing" of IBCs from the BVI's domestic income tax code under a unified zero tax statute and augment the range of corporate offerings available from the jurisdiction. The BVI Business Companies Act contains all the attractive characteristics of the existing IBC Act, but allows considerably greater flexibility. For example, the Act will provide for companies limited by guarantee, hybrid companies and unlimited liability companies with or without share capital, restricted purpose companies for use in specialised transactions and segregated portfolio companies will now be available to mutual funds.

There will be a two-year period during which the existing domestic Act, the IBC Act and the new Act will all be in force.

In 2005 Companies may be incorporated under the IBC Act, the domestic Act or the new Act. In 2006 Companies already incorporated under the IBC or domestic Act will continue their existence under those Acts, but all new incorporations will be under the new Act only. From 1 January 2007 onwards all companies that may remain under the IBC or domestic Act will be automatically re-registered under the new Act.

Although the Act has already been introduced the BVI Financial Services Commission will manage a consultation exercise regarding any amendments considered necessary to improve the Act.

A new Payroll Tax System will be introduced, relating more specifically to those who have, or wish to establish a domestic presence within the jurisdiction.

Compliance matters

EU Third Money Laundering Directive

This Directive incorporating FATF recommendations was agreed by EU finance ministers in June and will be applicable to the financial sector as well as lawyers, notaries, accountants, real estate agents, casinos, trust and company service providers.

Provisions include identity checks on customers opening accounts and on the making of any transaction over EUR15,000, stricter checks on 'politically exposed persons' and penalties for failure to report suspicious transactions.

"Beneficial owners" for corporate entities are defined to include a 25% control criteria. In the case of legal entities, such as foundations, and trusts, a similar definition is found:

- where the future beneficiaries have already been determined, the natural person(s) who is the beneficiary of 25% or more of the property of a legal arrangement or entity;
- where the individuals that benefit from the entity or arrangement have yet to be determined, the class of persons in whose main interest the entity or arrangement is set up or operates;
- the natural person(s) who exercises significant control over 25% or more of the property of a legal arrangement or entity;

Member States should implement the Directive within two years after its publication, expected towards the end of 2005.

OECD

The OECD welcomed an announcement by the Principality of Andorra that it has accepted an invitation to participate in the next meeting of the OECD Global Forum on Taxation reviewing issues of transparency and effective exchange of information. The meeting is expected to take place in November 2005 in Australia.

Andorra has not at this stage made a commitment to implement transparency and effective exchange of information, as have 33 other non-OECD jurisdictions that are working with the OECD to curb harmful tax practices. However, Andorra and other financial centres have been invited by Global Forum participants to join in its work in order to widen the dialogue now under way.

FATF

Current List of Non-Cooperative Countries and Territories

The current list (updated 11 February 2005) of non-cooperative countries and territories comprises Myanmar, Nauru and Nigeria.

The Financial Action Task Force and the Asia/Pacific Group on Money Laundering (APG) held their first joint Plenary meeting in Singapore in June focusing on the Asia-Pacific region.

The FATF adopted a revised Interpretative Note to Special Recommendation VII on wire transfers, which clarifies obligations to include in wire transfers identity data crucial for detecting terrorist financing, and which provides additional guidance for the implementation of these requirements. The intention is that cross-border wire transfers should be accompanied by "originator" information. Countries may adopt a de minimus threshold (no higher than USD or EUR 1,000). The originator is defined as the account holder, or where there is no account, the person (natural or legal) that places the order with the financial institution to perform the wire transfer. Implementation is expected by December 2006.

UK government amends Proceeds of Crime Act (PoCA)

Amendments have been made to the Act to modify the money laundering reporting regime. These are practical amendments which reduce the burden on both the regulated sector and the law enforcement authorities who have to deal with Suspicious Activity Reports to enable them to concentrate on more relevant areas of money-laundering.

Mauritius revises money laundering codes

New updated anti money laundering codes came into force in Mauritius in August. The three codes seek to prevent money laundering in management companies, insurance entities and investment businesses.

These codes have been updated to take account of changes to international best practice in the field.

- to take account of the revised recommendations of the FATF;
- to indicate situations where licence holding companies are required to apply enhanced due diligence procedures and situations where they may apply reduced or simplified due diligence procedures;
- to cover "introduced business" and "omnibus accounts".

TAX MATTERS

UK

Following the 2005 budget three new measures to counter avoidance of tax on capital gains were introduced. The new rules are to:

- ensure that trustees of settlements who are UK resident for capital gains tax purposes for only part of a tax year cannot exploit certain double taxation agreements to avoid UK tax;
- ensure that individuals cannot exploit certain double taxation agreements to avoid UK tax on capital gains realised while they are temporarily non-UK resident for tax purposes; and
- expand the range of assets that are treated as located in the UK for the purposes of tax on capital gains. Specifically all shares and securities of UK registered companies will be treated as located in the UK.

This will affect the ability of UK taxpayers to leave the UK to become resident in a tax treaty jurisdiction (e.g. Belgium) for only one year and avoid capital gains tax by selling assets during that period.

The Government continues to review the favourable UK tax treatment of non-domiciled individuals. It cannot be assumed that the issue will disappear.

MONACO MATTERS

Council of Europe

One of Prince Rainier's achievements was to guide Monaco into the Council of Europe. The Standing Committee of the Council of Europe's Parliamentary Assembly (PACE) met in Monaco on 1 September. As President of the World Association of Friends of Children, which was founded by Princess Grace in 1963, H.R.H. the Princess of Hanover participated in a current affairs debate on violence and all forms of exploitation and abuse of which children are the victims.

The new Minister of State, Jean-Paul Proust, used the press opportunity to clarify the reality of Monaco. The Principality has made significant progress in meeting its obligations as member of the Council of Europe; Three out of the five laws required to be put in place have already been adopted, being laws on nationality, freedom of the press, and sexual equality. Legislation is expected on the remaining areas of "justification of administrative acts", and the "freedom of association".

The European convention of Human Rights was signed by Prince Albert at the time of joining, and should be ratified by Parliament in the autumn, along with the European Convention for the prevention of torture, and the General Agreement on Privileges and Immunities for Representatives of the member States. The Social Charter already signed by Prince Albert is expected to be ratified in October 2006.

Association des Banques

The Monaco Association of Bankers has become affiliated to the European Banking Federation (FBE). The FBE is a significant voice of the European banking sector. It represents the interests of over 4500 European banks, large and small, from 27 national Banking Associations, with assets of more than EUR 20 000 billion and over 2.3 million employees. This affiliation will give the Monaco banking sector important access to key initiatives and projects involving the financial services sector throughout the continent.

Société d'Aide à la Création et au Développement d'Entreprise (SACDE)

By the creation of a State owned entity the Principality aims to encourage existing or new businesses to develop innovative projects in Monaco. Despite the already increasing number of new businesses (690 creations in 2004 compared to 633 in 2003) the authorities have allocated EUR5m to funding new ventures which are likely to create a positive impact on the Principality in terms of business synergies, employment and notoriety.

Staff matters

Congratulations are due to Cecile Marcon who passed papers 1.2 and 2.1 of the ACCA exams, and to Amanda Lowe who passed paper 1 of her Accounting Technician exams. Frank Walters also passed the STEP International Diploma module on Trust Creation Law & Practice (who says you can't teach an old dog new tricks?!).

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