

# Mediterranean briefing

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## Monaco to enter the Council of Europe

On 22 June France and Monaco concluded an agreement to modify the 1930 treaty. Although the text is not published at this stage it is understood that the revision removes the restriction whereby French civil servants are appointed to many important positions in Monaco.

"The way for Monaco's accession as the 46th member state of the Council of Europe is open," announced Peter Schieder, President of the Council of Europe Parliamentary Assembly. "I have received letters from both the Minister of State of Monaco and the Permanent Representative of France to the Council of Europe informing me that the negotiations for a new Convention to replace the 1930 instrument have been concluded. In particular, agreement was reached on the principle that Monegasque citizens may have access to all public-sector posts in their country."

This marks an important step towards Monaco's entry into the Council of Europe, and re-confirms Monaco's status as an independent sovereign state.

"Monaco is now well on the way to joining the Council of Europe", said the head of its Strasbourg delegation, Jean-Charles Gardetto. "Membership will offer fresh protection to Monegasques and other residents, who will now have access to the European Court of Human Rights."

Last April the Parliamentary Assembly of the Council of Europe authorised Monaco's National Council to participate in the work of the Assembly under Special Guest Status. Monaco is represented in this body by a delegation of 2 representatives.

Monaco is committed to introduce new laws as part of the process of joining the Council of Europe. As well as undertaking to sign the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) upon accession, and to ratify this

Convention and Protocols 1, 4, 6, 7 and 13 within a year of accession. The Government of Monaco has also undertaken to submit the necessary Bills aimed at defining arrangements for: police custody; pre-trial detention; the provision of grounds for negative administrative decisions; and the expulsion of foreigners and suppression of forced exile. These measures will help ensure the compatibility of Monaco legislation with the ECHR and its Protocols.

HRH The Prince Sovereign declared that "this is a new illustration of our international status" and "a greater openness towards Europe through a reinforced co-operation in essential areas of human rights, the environment, education and culture."

## Amendments to the fiscal convention with France.

In February 2004 the French Government proposed a "Projet de Loi" amending certain aspects to the fiscal convention between France and Monaco.

France and Monaco are bound, with respect to income and corporation taxes by the convention of 18 May 1963, modified in June 1969. In order to take account of the evolution of taxation and to reinforce co-operation between the two countries a text has been presented comprising an amendment modifying five articles of the convention and an exchange of interpreting letters concerning six articles, which, among other things, agrees the basis of the sharing of VAT/TVA receipts.

**Article 1** modifies the deductible limits for the remuneration of directors of Monaco companies. It is proposed for 2005 to limit these to €3.5m for service companies and €7m for other companies.

**Article 2** introduces wealth tax "ISF" for French nationals resident in Monaco since 1 January 1989, the date of its introduction in France.

**Article 3** allows the deductibility in France of certain expenses where there is a relationship between the beneficiary and the paying company.

**Articles 4 and 5** relate to the exchange of information between the two countries.

### Offshore Focus British Virgin Islands

#### Virgin Islands Special Trusts Act, 2003, Trustee (Amendment) Act, 2003, "Vista" Trusts

The BVI has crafted legislation to provide for the drafting of trusts to meet a wide range of client requirements, including:

Revocable and non-revocable trusts

Short-form or long-form trust deeds

Full discretionary or fixed interest settlements

Accumulation and maintenance settlements for minors

Charities and protective trusts to remove future creditor risks

New legislation has been introduced including Virgin Islands Special Trusts Act, 2003, Trustee (Amendment) Act, 2003, Property (Miscellaneous Provisions) Act, 2003.

Of particular interest is the new concept of the VISTA trust which is designed for owning shares in active businesses. This has historically been a difficult area for trustees to satisfy both the requirements of the Settlor and their legal obligations. The "prudent man of business rule", has traditionally made the trust an unattractive vehicle to hold such assets and where a trust holds a business interest, the trustee is usually required to monitor (and where necessary intervene in) the management of the company.

The VISTA Act 2003 limits the liability of the trustee and removes the trustees duties of monitoring and intervention. This change in legislation will encourage licensed trust companies to act as trustees for special trusts for designated shares.

VISTA trusts may only hold shares in BVI IBCs or domestic companies and there must be a provision in the trust deed that the VISTA Act applies.

#### Clarification of changes to BVI legislation, bearer shares, and directors register.

There have been various conflicting statements about changes being made for BVI companies, particularly

concerning bearer shares and the maintenance of a register of directors in the BVI.

The position confirmed by the FSC is detailed below.

Existing BVI company fees:

The IBC (Amendment) Act 2004 establishes the principle that companies which elect to retain the power to issue bearer shares will be charged a premium licence fee over the fee payable by companies that do not retain this power. The BVI Government has accepted there should be a transitional period for existing companies to come into line with the provisions of the 2004 and 2003 Amendments to the IBC Act. The premium licence fee will thus not immediately apply to companies on the Register prior to 1 January, 2005. These will have up to 31 December 2010 either to remove the power to issue such shares or to start paying the premium licence fee.

However, the Government has indicated that it will consider giving legal effect to the recommendation of the special panel that a modest increase be added to the licence fee for those companies that retain the power to issue bearer shares during the final three years of the transitional period i.e. after 2007. This is intended to serve as an incentive to prohibit the issuing of bearer shares before 2010 by those companies that neither have issued such shares nor intend to issue them.

#### Register of directors

IBCs incorporated before the IBC (Amendment) Act 2003 comes into force on 1 January 2005 will have up to 12 months, i.e. up to 1 January 2006, to establish and maintain a Register of Directors. IBCs incorporated after the 1 January 2005 will be required to comply with Section 10 of the IBC (Amendment) Act of 2003. Good practice suggests, and the FSC strongly encourages, all Corporate Service Providers (Registered Agents) to begin the process now of establishing and maintaining a Register of Directors for all IBCs. This will ensure a smooth transition.

#### Isle of Man yacht registration

Yachts have been registered on the Isle of Man for many years as evidenced by the Island's thriving pleasure yacht industry. Since January 2003, however, the Isle of Man has begun a commercial yacht register for yachts of 24 meters or more which are in class and which comply with the UK's Mega Yacht Code.

#### Benefits

The commercial yacht register shares many of the benefits of the Isle of Man's prestigious category 1 International British Register and in addition offers the yacht owner:

- An efficient, effective and fast registration process and an experienced and supportive Marine Administration that is backed by the Island's financial services industry;
- A one-off low initial registration fee to cover registration, survey and certification, which is set at a level intended only to recover the administrative costs involved;
- No annual tonnage taxes;
- Effective vehicles for yacht ownership that include Exempt Companies, International Business Companies and International Limited Partnerships, all of which enjoy favourable taxation status. (A zero rate of income tax will apply to all Manx businesses with effect from 2005);
- EU Value Added Tax (VAT) planning since, uniquely among offshore financial centres, only the Isle of Man belongs to the European Union free trade and VAT system;
- Security of mortgages registered on the Island;
- The prestige attached to the British Red Ensign (not a Flag of Convenience), which all Manx registered vessels are permitted to fly.

#### Registration Process

The yacht registration process in the Isle of Man consists of 5 main steps, namely:

- Submission of application for approval of name and an application to register the vessel;
- Survey of the vessel by one of the approved classification societies and by an Isle of Man Marine Administration Surveyor;
- Filing of title documents consisting of a builder's certificate, the bill of sale and the declaration of ownership;
- Verification by the Registrar of the marking of the vessel's name, official number, port of registry and tonnage; and
- Registration of vessel, which includes the issue of the Certificate of British Registry.

Moore Stephens, Isle of Man are accredited yacht registration agents and can assist with the provision of effective yacht ownership vehicles, VAT and other advisory services.

## Monaco Yacht Show

Moore Stephens is sponsoring the "management meetings" on the second and third days of the Monaco Yacht Show (23rd & 24th September) from 9.30am till 12pm. (Breakfast and registration will start at 8.30am). Ayuk Ntuiabane from Moore Stephens, Isle of Man will be a panellist. The two sessions will provide a unique opportunity to debate and discuss 'Fiscal Liabilities and Obligations' and the current fiscal status of large yachts, the beneficial owner and their associated personnel, in a open forum. A panel of Fiscal and Legal experts will present the latest cases and real situations that have affected the large yacht market during the 2004 season.



## Compliance and regulatory matters

### War on Tax Shelters

The Tax Commissioners of Australia, Canada, the United Kingdom, and the United States have now established a joint task force to increase collaboration and the co-ordination of information about abusive tax transactions by signing a Memorandum of Understanding.

An initial focus of the work will include the ways in which financial products are used in abusive tax transactions by corporations and individuals to reduce their tax liabilities, and the identification of promoters developing and marketing those products and arrangements.

### FATF Non-co-operative countries and territories

In 2004 the Financial Action Task Force has removed Egypt, Ukraine, and Guatemala from the list of non-co-operative countries in the fight against money-laundering.

The list currently comprises: The Cook Islands, Indonesia, Myanmar, Nauru, Nigeria and the Philippines.

### OECD Harmful tax practices

In March the OECD released a report updating the progress in eliminating harmful tax practices. The report focuses primarily on the work as it relates to OECD member countries, but also looks at co-ordinating defensive measures that its members could take to combat harmful tax practices.

In June a meeting of the Global Forum on Taxation discussed the process of achieving the objective of a global level playing field based on high standards of transparency and effective exchange of information in tax matters. The meeting focused on achieving this objective in a way that is fair, equitable and permits fair competition between all countries, large and small, OECD and non-OECD.

It was agreed to continue work in the compilation of transparency and information exchange practices currently applied by all OECD countries, all non-OECD Participating Partners and significant financial centres that are outside these two groups.

The Global Forum intends to engage in a dialogue with financial centres that up to now have not participated in the process.

### Exchange of information between national tax authorities

The OECD's Committee on Fiscal Affairs has agreed on new provisions for the exchange of information between national tax authorities. The new arrangements are set out in a revised version of Article 26 of the OECD's Model Tax Convention, which covers the exchange of information on tax matters. The provisions of Article 26 are widely accepted as providing the international standard for exchange of information between tax authorities. In its updated version, Article 26 now reflects current practices in many countries as well as an agreement between OECD countries on the ideal standard of access to bank information for tax purposes.

Significant changes include the prevention of "domestic tax interest"

requirements from hindering exchange of information. Contracting States should obtain and exchange information irrespective of whether they also need the information for their own tax purposes, as well as ensuring that ownership information and information held by banks, financial institutions, nominees, agents and fiduciaries can be exchanged. New paragraph 5 prevents bank secrecy from being used as a basis for refusing to exchange information.

### New Zealand To Impose New Requirements On Foreign Trusts,

Plans have been revealed to amend the Tax Administration Act to impose new requirements on foreign trusts setting up in New Zealand and ensure the country can meet its international commitments to full disclosure with other tax jurisdictions.

Foreign trusts will be required to have an IRD number, keep records for New Zealand tax purposes, provide certain information when they are first set up in New Zealand or appoint New Zealand trustees, and provide information to Inland Revenue on a regular basis.

Under New Zealand law, foreign income derived by non-residents is outside the New Zealand tax base.

Consequently, under current rules foreign trusts established in New Zealand do not have to file domestic income tax returns or keep records if they receive only foreign-sourced income.

The law will be changed to provide an effective mechanism for obtaining information on these trusts. New Zealand will collect, store and transfer the information to the relevant foreign tax authorities on request, and to Australia on an annual basis.

The changes are to be included in the tax bill planned for introduction in November 2004, and will apply from April 2005.

## Taxation matters

### EC savings tax directive developments

Final touches are being made to the arrangements to be put in place by dependent and associated territories, and third countries to comply with the provisions of the EU directive on the taxation of savings (see previous briefing).

It was originally intended that the new regime would be in place on 1 January, 2005.

Due to delays in negotiations, practical issues and the uncertainty surrounding the political procedures to implement the regulations in Switzerland the EU Council has moved the effective date to 1 July 2005.

Clients concerned by this regulation may be best advised to await the finalised texts and dates of implementation before considering the appropriate actions.

### Tonnage Taxes

The Norwegian Government has issued a White Paper proposing a new shipping policy which involves harmonising the nation's tonnage tax " to a European level, typically Denmark, Britain and the Netherlands". A Norwegian government spokesman said the white paper's " overall ambition is to increase the possibility for growth for Norwegian shipping and related industries".

Tonnage Tax was introduced in the United Kingdom in 2000 as part of a number of measures designed to revive the UK shipping industry. A post implementation review of the tax is under way, and comments are sought from any party with an interest.

### New France/UK convention

The United Kingdom has entered into a new Double Taxation Convention with France.

The text of the Convention will come into force when both countries have completed their Parliamentary procedures and exchanged diplomatic notes.

It is understood that the new wording for Article 26 dealing with Non-Discrimination will allow the reintroduction of French taxation (Section 164 c) on UK nationals with second homes in France. This taxation may be applicable when a non-French national is resident in a country which does not have a tax treaty with France, and is particularly relevant for residents of Monaco.

### International Update Newsletter

A separate newsletter is produced regularly by Moore Stephens Doeren Mayhew and deals with International Taxation matters from a US perspective. It is available on our website at <http://www.moorestephens.com/monaco/pubs.html>

## Accounting and financial management

### IASB proposes standards for SMEs

The International Accounting Standards Board (IASB) has published a discussion

paper on its proposal to develop a separate set of international accounting standards for small and medium-sized entities (SMEs).

Specific financial reporting standards for SMEs have not yet been laid out, but will be proposed at a later date, the IASB said. Instead, the discussion paper focuses on the board's approach to the project.

Introducing the paper, Sir David Tweedie, IASB chairman, said: 'In most countries, many or even all entities have a legal obligation to prepare financial statements. Few countries require those entities to prepare financial statements that comply with the full requirements of the IASB's standards developed primarily for use in international capital markets.'

He added: 'Consequently, the IASB is looking for ways to simplify its standards for use by SMEs. At the same time, it will take care to adhere to the basic concepts that underlie those standards.'

## Monaco matters

### Document de Circulation

The government has created a new administrative document to assist children of Monaco residents in their foreign travel.

A "Circulation document" will be available to children under 18, and will look similar to a residence permit ("carte de séjour").

### AMPA

L'Association Monegasque des Professionnels en Administration de Structures Etrangères, a Monégasque association authorised by Ministerial Decree, has been formed grouping together Monaco Corporate Service Providers (CSPs).

This was created following a wish on the part of the Government to have a representative body for the profession (similar for example to the Bankers Association) with which the Government could communicate. Its role as a representative industry body includes:

Establishing two-way dialogue with the Government, and representation in Government Work Parties;

Liaison and contact with fellow associations in other jurisdiction;

Updating of the Government's Recommendations concerning the industry and/or proposing of legislation;

Dialogue with other associations in Monaco; and

Promoting professional standards and training programs.

Peter Brigham was appointed Secretary to the Association.

### Law 214 Trusts

Moore Stephens Services SAM has been approved as an authorised trustee in Monaco to act in respect of trusts formed under Law 214. Such trusts are of interest to foreigners resident in Monaco.

### Staff matters

Congratulations are due to the following members of staff:

Wei Bousquel who has passed her final exams for ACCA at the end of 2003.

Clivy Hoodman, Christophe Rotelli, Monica Longo and Dany Tabury who passed the STEP exams on Trustee Investment and Financial Appraisal. Clivy, Christophe and Monica have now all successfully completed the entire STEP Diploma exams.

Asa Svensson, Natacha Conil and Louise Moyne who passed the STEP Foundation course.

*We believe the information in Briefing to be correct at the time of going to press, but we cannot accept any responsibility for any loss occasioned to any person as a result of any action or refraining from action as a result of any item herein.*

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