



Ts Tax Advisors SA

_the international tax letter

Creation of Orienta, Sagl

Pragma founded along with the Swiss office Ts Tax Advisors the company **Orienta Sagl** specialized in international tax matters. This company can advise us and our customers about any tax opportunity all over the world.

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Services

international

International tax consultancy and planning particularly in the following areas:

- Company domiciliation and management including assistance with compliance in corporate and fiscal areas;
- Foreign investments funds;
- Trading and financing operations;
- Joint Ventures;
- Acquisition and extraordinary international operations, mergers, spin-offs etc;
- Trust activities.

domestic

- Incorporation, mergers and acquisitions in Switzerland
- Swiss tax assistance
- Negotiations, contracts and business law in Switzerland
- Litigation and assistance in court (Through Studio Legale Velo & Associati)
- Assistance and defence against penalties of whatsoever nature and Labour law consultancy (Studio Legale Velo & Associati)
- Registration of trade marks, patents or other intellectual property in Switzerland (Studio Legale Velo & Associati)
- Due Diligence
- Company liquidation

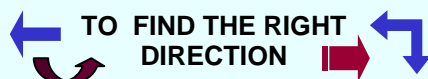
information

- Innovative tax suggestions to each Pragma's members
- Participation to the Journal with writings



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ORIENTA recalls:



ORIENTA means: **TO ORIENT**

EU

The Council adopts a Code of Conduct on **transfer pricing documentation**

On 20 June 2006, the Council adopted a resolution on the Code of conduct on transfer pricing documentation for associated enterprises in the EU. The Code of Conduct will standardise the documentation that companies must provide to tax authorities on their pricing of cross-border intra-group transactions ("transfer pricing" documentation). It will reduce significantly the tax complications that companies face when trading with associated enterprises in other Member States and, at the same time, facilitate the work of tax administrations by increased transparency regarding the group's transfer prices. It should also reduce the risk for businesses of double taxation and exposure to documentation related penalties. The Code is a political commitment but will not affect the Member States' rights and obligations or the respective spheres of competence of the Member States and the European Union. Member States have now to implement the Code as soon as possible in their legislation or administrative practices.

EU

Ecofin Council agrees to extend VAT Directive on **e-commerce**

During its meeting on 6 and 7 June 2006, the Council for Economic and Financial Affairs (*Ecofin*) agreed on a proposal from the European Commission of 15 May 2006 to extend the period of application of the VAT regime applicable to radio and television broadcasting services and electronically supplied services introduced under Council Directive 2002/38/EC until 31 December 2006 and not until 31 December 2008 as proposed by the Commission. A Directive to that effect will be adopted on a forthcoming Council meeting, after finalization of the text.

ITALY – GERMANY

Tax treatment of payments to non-resident sportsmen

The Italian tax authorities issued Ruling No. 79/E on 16 June 2006 regarding the application of withholding tax on payments in favour of non-resident sportsmen.

- (a) Facts. An Italian sport club, which manages professional cyclists, entered into employment contracts with sportsmen resident in Germany. The contracts (*contratti di collaborazione coordinata e continuativa*), which are regulated by Law of 23 March 1981 No. 91, treat the sportsmen as self-employed workers.
- (b) The taxpayer's request. The taxpayer requested a ruling from the Italian tax authorities on whether the 30% withholding tax, provided by domestic law for payments in favour of non-residents having an employment contract with an Italian entity, applies.
- (c) The ruling. The Italian tax authorities clarified that, under domestic tax law, income derived from *contratti di collaborazione coordinata e continuativa* is treated as dependent income, even if, from a legal point of view, the purpose of those contracts is to treat the sportsmen as self-employed workers. In this sense, as clarified in Circular Letter No. 67 issued in 2001, notwithstanding the place where the professional services are rendered, the remuneration paid to a non-resident by an Italian entity is subject to tax in Italy.

However, if the treaty provisions differ from the domestic provisions, the above described tax treatment may be overruled by the treaty provision. In this respect, Art. 17 of the treaty between Italy and Germany provides that a contracting state can subject to tax only the part of the income derived from the performance exercised therein. Consequently, following the treaty's provisions, the Italian tax authorities stated that the 30% withholding tax is applicable only to the proportionate part of income generated in Italy.

SWITZERLAND

Family office for a Family Business

The Family Office concept has been in circulation for many decades now and has reached extraordinary levels of breadth and depth.

The fact that a high number of marriages end in divorce and that the issue of successive marriages may pose a threat to the integrity of a Family Business patrimony is a compelling argument for trying to prevent an untimely fragmentation. Prenuptial agreements as well as the preparation of wills are mandatory. If a successor arrangement is not possible or viable, the existence of instruments, such as trusts or foundations, though available, should be seen and managed with the greatest of care in order to avoid some legal pitfalls, tax and otherwise, that might arise. While an important number of Family Office issues revolve around the succession, successional agreements or wills, a number of questions have to be answered in order to provide the most accurate legal advice, the first of which is to determine whether the business is a family business. Empirically, when a family holds more than 50% of the voting shares, furnishes a relevant part of the company's senior management, is effectively controlling the business, more than one generation is involved in the business, and the family considers the business a family business, then a Family Office might be warranted.

Not all families in a family business context have come to realize the need, or are willing to invest the resources to set-up an operative Family Office. Family Businesses comprise the whole range of sizes with a prevalence of the small to medium. Closely held companies are likely to be family holdings. Outside the United States and England, the vast majority of companies have controlling shareholders, often families that tend to vote as a bloc. In Switzerland, ownership and control usually go hand in hand. There are no special tax rules for a Family Business in Switzerland. Neither are there definitions in Swiss law as to what constitutes a small or medium sized company. For statistical purposes Switzerland uses the EU parameters of having less than 250 dependents. In Switzerland, according to the State Secretariat for Private Affairs (SECO), there are about 300,000 private law governed enterprises. The number of enterprises consisting of just one person numbers almost 40% of all privately owned companies. Generally, a Family Office offers a range of services which must be flexible, interdisciplinary and independently structured around the needs of the family.

There are more than 3,000 wealthy foreigners with residency status in Switzerland benefiting from special tax treatment. Approximately 13 out of Switzerland's 26 cantonal authorities offer a lumpsum tax to High Net Worth Individuals. This tax is generally calculated on a minimum amount – the equivalent of five times the annual rent or the rental value of the house the person concerned lives in. Many of these High Net Worth Individuals require a structure that is both efficient in economic and tax terms, and is able to overcome with integrity the passing of the Family Head ("FH"). The task of devising such a structure is a challenging one as it should not be calcified and must react to changing market conditions. This task can be achieved by means of a Family Office. A Family Office, being a multi-faceted endeavour cannot be seen from the sole perspective of the financial advisor, the trustee, the investment manager, the financial planner, the accountant or the attorney alone. Instead, a proper mixture and balance of all of these professions' inputs is required.

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