

# The International Tax Letter

5-6 – May-June 2007



International news and analysis to help you in your international tax strategy.



## Focus on: EU-PORTUGAL - EU Commission approves tax reductions for free zone of Madeira for period 2007-2013



On 28 March 2007, the Italian tax authorities issued a ruling according to which the controlled foreign corporation (CFC) rules can be disregarded if the effective tax burden of a group as a whole is congruous.

On 27 June 2007, the European Commission announced that it had approved under the EC Treaty State aid rules a scheme that provides tax reductions worth EUR 300 million until 2020 to companies establishing in the free zone of Madeira (ZFM).

According to the approved aid scheme, the ZFM consists of an industrial free zone, an international service centre and an international shipping register. New companies, which obtain a license to carry on business in the ZFM between 1 January 2007 and 31 December 2013 will benefit from a reduced corporate income tax rate of 3% in 2007-2009, 4% in 2010-2012 and 5% in 2013-2020.

To be admitted to the scheme, the companies must create a minimum number of permanent jobs. In addition, the tax benefit is limited by a ceiling imposed on the taxable base per company, which ranges from EUR 2 million (if less than 3 new jobs are created) to EUR 150 million (if more than 100 new jobs are created). Finally, only those companies may have access to the ZFM, which carry out specific activities determined by the Portuguese authorities. As under the previous scheme, which the Commission approved on 11 December 2002, financial and insurance intermediary activities, financial and insurance auxiliary activities and "intra-group services" (coordination, accounting and distribution centres) are explicitly excluded.

The Commission observed that under the Regional Aid Guidelines for 2007-2013, Madeira qualifies for regional aid until 2013. Although the fiscal advantages of the scheme constitute operating aid, which is generally prohibited under the EU State aid rules, the new Regional Aid Guidelines allow operating aid in outermost regions provided that the aid is limited to offsetting the additional costs for pursuing economic activities in these regions. Madeira qualifies as an outermost region under Art. 299(2) of the EC Treaty. In addition, the Commission was satisfied that the aid is targeted at specific handicaps of Madeira and is proportionate to the additional costs resulting from these handicaps. Moreover, as the Commission pointed out, in the past the measure has contributed positively to the regional development of Madeira.

**Opportunities for taxpayers:** new opportunities for tax planning.

## ITALY

### Deemed residency of a non-resident holding company

On 11 June 2007 the Italian Supreme Court deposited Decision No. 13579 having as its object the applicability of the inheritance tax on shares of a non-resident holding company under the assumption that the latter is deemed as resident in Italy.

- Facts. An individual resident in Italy inherited from a non-resident individual the controlling shares of an SA company having its legal seat and tax resident in Switzerland (the "Shares").
- Issue. Whether the *mortis causa* transfer of the Shares should have been subject to inheritance tax in Italy.
- Decision. The Italian Supreme Court, with regard to Art. 5(6) of the double tax treaty on PE matters, recalled a

## Contents

### FOCUS ON: EU-PORTUGAL

EU Commission approves tax reductions for free zone of Madeira for period 2007-2013

### ITALY:

Deemed residency of a non-resident holding company

**ITALY-SWITZERLAND:** Italian Tax Authorities interpret application of Art.15 of EU/Swiss Agreement

**INTERNATIONAL MODELS:** Formation of Exempt Companies in Guernsey



Orienta Sagl is member of Pragma's network.  
[www.pragma-eu.com](http://www.pragma-eu.com)  
[info@pragma-eu.com](mailto:info@pragma-eu.com)  
Tel: +33 (0) 3 20 55 62 55 - Fax: +33 (0) 3 20 55 62 50  
Coordinator: Nathalie Facon



We speak: English, Italian, French, German

ORIENTA Sagl

Prof. Dott. Gilberto Gelosa

Prof. Dott. Stefano Graidi

Dott. Uberto Meraviglia Mantegazza

Dott. Alessandra Del Sole

Palazzo Gargantini, Riva Albertelli, 1 CP 6525 - CH - LUGANO

Tel: +41 (0) 91 921 21 22 - Fax: +41(0) 91 912 50 60

[orientasagl@bluewin.ch](mailto:orientasagl@bluewin.ch) ; [orienta@pragma-eu.com](http://orienta@pragma-eu.com)

previous judgement (No. 6799/2004) in which it was stated that even though it is true that the mere control of a company is not sufficient to prove the existence of a PE in Italy, it can constitute evidence supported by serious, accurate and consistent circumstances (*Circostanze gravi, precise e concordanti*). In this respect the Supreme Court, in recalling other judgements and ECJ positions, confirmed its tendency towards the principle "substance-over-form" in assessing the existence of a PE (Decisions No. 7689/2002, No. 10925/2002 and No. 3570/2003). Hence, the Supreme Court held that as no substantial evidence of the existence of a PE was presented, the mere control of an Italian company is not sufficient to prove neither (i) the existence of a PE nor (ii) a deemed residency in Italy of the Swiss company. It follows that the transfer *mortis causa* of the Shares does not fall within the scope of the inheritance tax in Italy.

Finally, the Supreme Court took the chance to express in this matter its point of view with respect to the so called "offshore countries" (e.g. a country with which Italy did not conclude a double tax treaty). Particularly, the Supreme Court stated that, contrary to the case at issue, the mere control of an Italian company may be sufficient to prove the existence of a PE or a deemed residency when the controlling company of an Italian company is placed in an off shore country.

## ITALY - SWITZERLAND

### Italian Tax Authorities interpret application of Art.15 of EU/Swiss Agreement

On 10 May 2007, the Italian tax authorities issued Ruling No. 93 having as its object the interpretation of Art. 15 of the Agreement between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments (the "Agreement"), published in the Official Journal of the European Union L. 385/30 of 29 December 2004.

- (a) Facts. An Italian resident company is 50.01% owned by a company resident in the Swiss Confederation and 49.99% owned by a company resident in the United States for tax purposes.
- (b) Issue. Whether Art. 15 of the Agreement applies to the Italian company taking into account that the Swiss Confederation tax authorities issued a certificate stating that the parent company is resident in the Swiss Confederation and is subject to federal, canton and communal taxes.
- (c) Tax authorities' opinion: the tax authorities argued that Art. 15 applies only if the parent company does not benefit from an exemption at any of the three levels of taxation (federal, cantonal and municipal taxes). In this respect, the tax authorities recalled the EC Decision of 13 February 2007 dealing with certain favourable holding company tax regimes in Swiss Cantons deemed as a form of State aid incompatible with the proper functioning of the 1972 Agreement between the EU and Switzerland. No further interpretation of Art. 15 of the Agreement has been given by the tax authorities.

## INTERNATIONAL MODELS

### Formation of Exempt Companies in Guernsey

Guernsey is a leading international financial centre with a good reputation and excellent standards. Factors contributing to and enhancing the status of this jurisdiction include:



- Guernsey does not levy VAT or other indirect taxes. There are no capital gains taxes, wealth taxes, death duties or inheritance taxes.
- Legislative and fiscal independence mean that the Island responds quickly to the needs of business.
- The unique relationship with the EU, provides some of the advantages of being in the Euro-zone without all of the implications of operating as a full EU member state
- Recent changes in the law during the summer of 2006, have further enhanced Guernsey's position as an international base for Intellectual Property. Legislation is modern and innovative and the Island has its own IP Registry and is fully TRIPS\* compliant
- Business sectors which are internationally respected for their innovation and professionalism. These include; company management, trust administration, insurance (Protected Cell Companies) and fund management. To meet the needs of these professional sectors, a highly skilled workforce has developed in Guernsey.

General information is detailed below outlining the formation and regulation of exempt companies in Guernsey, as embodied in The Companies (Guernsey) Law, as amended.

1. Incorporation: Incorporation can normally be effected within one week.
2. Minimum Capitalisation: There are no minimum or maximum capital requirements. Bearer shares and shares without par value are not permitted.
3. Directors/Company Secretary: The minimum number of directors required is one. However, a sole director cannot also act as secretary. There are no residency requirements for either directors or secretaries.
4. Registered Office: The registered office must be in Guernsey.
5. Annual Return: Every Guernsey company must hold an Annual General Meeting each calendar year and file an Annual Return. There is, however, no restriction on the location of meetings.
6. Accounts: There is no requirement to file accounts. However, proper books of account must be maintained and sufficient records must be kept in Guernsey to ascertain the position of the company at no more than six-monthly intervals.
7. Taxation: There is no taxation other than an exempt company fee of £600 per annum.

