



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



Focus on: Gibraltar

The large cut of corporate tax rate



In his budget speech held on June 3rd, the chief minister Peter Caruana announced a reduction of the existing corporate tax rate from 33% to 27% as of July 1st, 2008.

In Gibraltar there is no capital gains tax, sales tax or VAT. There are a corporation tax and two special tax regimes for offshore companies, i.e. exempt companies and qualifying companies.

Exempt companies are resident companies or registered branches of non-resident companies which have been certified as exempt companies and which fulfil the following conditions:

- no Gibraltarian or resident of Gibraltar has an interest in any share of the company other than as shareholder of a public company listed on a recognised stock exchange;
- the company cannot trade within Gibraltar without the consent of local authorities, but trade with exempt or qualifying companies is permitted;
- share registers, or certified true copies of share registers in the case of registered branches of non-resident companies, is in Gibraltar; and
- no change is made to the purpose of the company without consent.

An exempt company does not pay any corporation tax but only an annual levy.

Qualifying companies are resident companies or registered branches of non-resident companies which have been certified as qualifying companies and which have complied with the same main conditions which apply to exempt companies. The applicable tax rate on the income of qualifying companies is set between 0% and 33% by the Financial and Development Secretary and no withholding tax on interest paid to a non-resident by a qualifying company is levied.

In order to comply with EU law, according to the government, the exempt company regime is to be phased out by 2010. However, the existing successful economic model must be replaced with a very competitive corporate tax model which should stimulate investment for overseas companies, due to their high importance to the economy of the country.

The large cut in tax rate will be therefore continued in 2009 and 2010, when it will be established up to 10% or 12%. The preference of the government is the 10% rate, although the economic impact of such a reduction must still be evaluated. In the intervening period, the Government will be in fact engaged in an intensive, detailed and lengthy process of consultation with the different economic sectors.

Opportunities for taxpayers: new opportunities for tax planning.

Contents

FOCUS ON:

GIBRALTAR:

The large cut of corporate tax rate

AUSTRALIA:

New withholding tax regime for managed investment trusts

USA:

Procedure for APAs in transfer pricing cases updated

INTERNATIONAL MODELS:

The Seychelles trust regime

AUSTRALIA

New withholding tax regime for managed investment trusts

The Australian Treasury released Draft Regulations with regard to the proposed reduction of withholding tax on distributions of managed investment trust income to foreign residents. At present, payments of Australian sourced net income of the mentioned managed investment trusts (other than dividends, interest and royalties) to non-residents is subject to a 30% non-final withholding tax.



The application of the new withholding tax regime will depend on the residence of the foreign investor. Where the foreign investor is resident in a country with which Australia has effective exchange of information on tax matters, the tax treatment will be as follows:

- fund payments of the first income year following Royal Assent of the enabling legislation will be subject to non-final withholding at 22.5%;
- fund payments of the second income year will be subject to a 15% final withholding tax;
- fund payments of the third and later income years will be subject to a 7.5% final withholding tax.

Out of the countries with which Australia has effective exchange of information the Draft Regulations lists: Argentina, Bermuda, Canada, China, Czech Republic, Denmark, Fiji, Finland, France, Germany, Hungary, India, Indonesia, Ireland, Italy, Japan, Kiribati, Malta, Mexico, the Netherlands, New Zealand, Norway, Papua New Guinea, Poland, Romania, Russia, Slovakia, South Africa, Spain, Sri Lanka, Sweden, Taiwan, Thailand, United Kingdom, United States and Vietnam.

As a transitional measure, for the first income year of operation, investors residing in the said countries will be eligible to claim a deduction for expenses related to their fund payments with the net amount to be subject to tax at a new rate of 22.5%.

By contrast, foreign investors of jurisdictions with which Australia does not have effective exchange of information will be subject to a 30% final withholding tax.

USA

Procedure for APAs in transfer pricing cases updated

With Revenue Procedure 2008-31 the US Internal Revenue Service (IRS) updated the existing procedures for obtaining advance pricing agreements (APAs) in transfer pricing cases.

APAs are important international instruments through which the appropriate transfer pricing methodology to be used in cross-border transactions between affiliated companies is jointly established in advance by the taxpayer and the tax administration. According to such agreements, in fact, a taxpayer files a tax return using the chosen transfer pricing method to related party transactions. The resulting benefit is that the taxpayer is protected against tax assessments or claims by the administration involved, which is bound to the agreed method.

The APA process increases the efficiency of tax administration by encouraging taxpayers to come forward and present to the Service all the facts relevant to a proper transfer pricing analysis and to work towards a mutual agreement in a spirit of openness and cooperation. The prospective nature of APAs lessens the burden of compliance by giving taxpayers greater certainty regarding their transfer pricing methods, and promotes the principled resolution of these issues by allowing for their discussion and resolution in advance before the consequences of such resolution are fully known to taxpayers and Service.

The above mentioned US Revenue Procedure, modifying the 2006-9 one, expands the scope of the APA Program with regard to transfer pricing issues that arise under Section 482 and US income tax treaties, on a prospective basis. Furthermore, the APA Program may be used to resolve the following and related subsidiary issues:

- attribution of profits to a permanent establishment under an income tax treaty;
- determination of the amounts of income effectively connected to a trade or business in the US; and
- determination of the amount of income derived from sources partly within and partly without the US.

The new Revenue Procedure is effective as of June 9th, 2008.

INTERNATIONAL MODELS

The Seychelles trust regime

The government of Seychelles is keen to attract a lot of foreign investment, with particular emphasis on the tourism and offshore financial services sector. To this purpose, a number of laws have been enacted since 1994 to provide an attractive legal regime for business operations.

With specific regard to trust, any person may carry out business from Seychelles through an international trust set up under the International Trust Act 1994. National law only establishes a regime for international trusts, being domestic trusts not provided. The following are some of the key features of the Seychelles trust regime:

- An international trust may be created in writing, by will or by oral declaration; deemed trusts are admitted, as are those resulting from a decision of the Court;
- Purpose trusts are permitted;
- The settlor must reside outside the Seychelles for the duration of the trust; at least one trustee must reside in the jurisdiction;
- The trust property may not include any Seychelles movable or immovable property;
- The trust may not be revoked by the settlor, unless the trust deed contains an express power to do so;
- The settlor may choose under which law the trust will operate and the settlor or trustees may themselves be named as beneficiaries under the trust;
- The names of settlors and beneficiaries are confidential under the Act, unless a Court orders disclosure under the Anti-money Laundering Act;
- The standard perpetuity period is 100 years; but it does not apply to purpose trusts;
- The accumulation of income is permitted;
- Forced heirship judgements are specifically excluded.

An international trust is not subject to any income taxes, stamp duty or capital gains taxes in Seychelles. A registration fee is payable. Registration of trusts must be carried out by one of the two licensed trustees currently operating in the Seychelles.



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