



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

Focus on: **BRITISH VIRGIN ISLANDS** Bearer shares - deadline for exchange for regular shares or deposit with authorized custodian

Under the BVI Business Companies Act 2004, as amended by the BVI Business Companies (Amendment of Schedules) Order 2006 and the BVI Business Companies (Amendment of Schedules) Order 2007, on 31 December 2009 all bearer shares of British Virgin Islands (BVI) companies must be exchanged for regular shares or lodged with a custodian.

The deadline is applicable for all British Virgin Islands (BVI) companies formed prior to 1 January 2005, whose memorandum and articles of association still provide for the issue of bearer shares or who have bearer shares on issue.

On 31 December 2009, all bearer shares not exchanged for regular shares or lodged with a custodian will be "disabled." While disabled, bearer shares do not carry any of the entitlements they would usually carry and any transfer of an interest in the shares will be void.

In addition, if such companies have not filed an election by 31 December 2009, along with a declaration that all bearer shares on issue have been delivered to a custodian (or exchanged for registered shares), the company will lose the ability to issue bearer shares. If no bearer shares are on issue and the company does not wish to retain the ability to issue bearer shares, no action is required.

Companies incorporated after 1 January 2005 are already subject to the provisions of the BVI Business Companies Act 2004 which specify that bearer shares cannot be delivered to the beneficial owner of the shares but must be delivered to a custodian, and the rights attached to bearer shares are disabled unless they are deposited with a custodian.

When depositing bearer shares with a custodian, the custodian must be provided with information regarding the beneficial owner of the shares. Disabled bearer shares cease to be disabled when deposited with a custodian.

MALTA

Amendments to tax legislation

On 9 November 2009, the Budget for 2010 was presented to the House of Representatives by the Minister of Finance, the Economy and Investment. The main amendments to tax legislation should generally apply from 1 January 2010 and are summarized below.

- SMEs with up to ten employees shall be entitled to a 40% tax credit when they invest in new technologies or create new jobs. The tax credit will be increased to 60% if the SMEs are in Gozo.
- A microfinance scheme worth EUR 10 million shall be set up to help small businesses obtain loans up to EUR 25,000.
- Financial assistance shall be given to employers who incur costs in connection with childcare facilities.
- The option to opt out of a 12% final withholding tax on transfers of immovable property in Malta and instead choose to tax the actual gain made on such transfer, has been extended from 5 years to 7 years for transfers in 2010 and 2011.
- No refund would be given to taxpayers in regards of overpaid income taxes, where there are outstanding income tax returns.
- No refund on overpaid VAT would be granted to persons registered for VAT in Malta where there are outstanding VAT returns.

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- Registration and licences for small boats shall be reduced. Furthermore the registration tax system for commercial vehicles shall also be revised.
- The VAT Department and the Customs Department shall merge. Furthermore a Taxpayers' Charter shall be established allowing for more clarity and guidance to taxpayers.
- EUR 400 million has been earmarked for capital projects and EUR 80 million for the embellishment of attractive zones.

USA

US Treasury Department reissues list of boycott countries that result in restriction of US tax benefits

The US Treasury Department has reissued its list of the countries that require cooperation with or participation in an international boycott as a condition of doing business. The countries listed are Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, the United Arab Emirates, and Yemen. The new list is dated 28 October 2009 and is unchanged from the list issued on 16 July 2009. The Treasury Department stated that Iraq is not included on the list but that its future status remained under review.

The listed countries are identified pursuant to Section 999 of the US Internal Revenue Code (IRC), which requires US taxpayers to file reports with the Treasury Department concerning operations in the boycotting countries. Such taxpayers incur adverse consequences under the IRC, including denial of (i) US foreign tax credits for taxes paid to those countries, and (ii) income inclusion under Subpart F of the IRC in the case of US shareholders of controlled foreign corporations that conduct operations in those countries.

FRANCE

Council of Ministers plans to strengthen anti-avoidance measures

On 16 November 2009, the French Council of Ministers issued a Finance Amendment Bill for 2009 which provides for retaliatory measures against non-cooperative tax jurisdictions. The measures shall come into force by 1 January 2010. However, amendments and additional measures may occur before the French Parliament adopts the Bill.

Key elements of the Bill are below.

- a) A specific French list of non-cooperative states or territories (NCSTs) is introduced. A specific domestic definition of NCSTs will be introduced. Accordingly, a state or territory will be defined as NCST if:
 - it is not a member of the European Community;
 - it has not implemented the OECD's standards on transparency and exchange of information before 1 January 2010, i.e. concluded at least 12 tax information exchange agreements (TIEAs); and
 - it has not signed a TIEA with France.

The list will be updated on an annual basis, in particular with regard to the effective implementation of TIEAs.

- b) Application of tax rules to transactions involving NCSTs is tightened. The Bill stipulates that dividends sourced in NCSTs will be excluded from the French participation exemption regime. In addition, withholding taxes on French-sourced passive income (i.e. dividend, interest, royalties) will be increased to 50% when paid to a NCST. Furthermore, French taxpayers will not be able to deduct payments made towards a NCST unless they prove that the related operations were not motivated by tax avoidance. Additional compulsory transfer pricing documentation will be required from French companies whose turnover or gross assets on the balance sheet exceed EUR 400 million.
- c) Anti-avoidance provisions are tightened. The burden of proof of the economic activity safeguard test provided by the CFC rules will be shifted to the French company if the foreign corporation is located in a NCST. In addition, French individuals will be deemed to meet the 10% participation requirement which triggers the CFC regime for individuals when they hold participations in entities located in NCSTs.

AUSTRALIA

Managed investment trust withholding under tax treaties

The Australian Taxation Office released on 20 November 2009 Interpretative Decision (ID) ATO ID 2009/138 that considers whether obligations of a trustee of a Managed Investment Trust (MIT) to withhold tax from payments to non-residents at a higher rate conflicts with a tax treaty that requires withholding at a lower rate.

The ID accepts that Australia's tax treaties are incorporated into the Income Tax Assessment Acts by the International Tax Agreements Act 1953 (ITA), Sec. 4(2) of which requires to apply the ITA, notwithstanding any inconsistency from the incorporation of the ITA into the Income Tax Assessment Acts. Accordingly, a particular type of income paid to a non-resident should not be taxed at a rate in excess of a rate required by the applicable treaty.

However, The ID noted that withholding obligations of a trustee of a MIT are imposed by the Taxation Administration Act 1953 (TAA) and not the Income Tax Assessment Act. The TAA merely provides for a collection mechanism.

It follows that the trustee must withhold at the rate specified in the TAA without causing Australia to breach its obligations under the treaty. Further, the trustee cannot reduce the withholding rate because the payee is a resident of a treaty country.

INTERNATIONAL MODELS

Private Trust Companies in Jersey

A private trust company (PTC) is a privately owned incorporated Jersey or non-Jersey company operating as a trust company. However, it does not offer public trustee services, but acts as the appointed trustee of a specific trust or a related group of trusts.

A PTC in Jersey is entitled to an exemption from the normal regulatory requirements, provided that the company meets the following criteria:

- Its purpose is solely to provide trust company services in respect of specific trust or trusts;
- It does not solicit from or provide trust company business services to the public;
- Its administration is carried out by a registered person registered to carry out trust company business.

The name of a PTC must be notified to the Jersey Financial Services Commission. There are no requirements for a PTC's memorandum and articles of association, nor to file accounts or any other information. This allows a PTC to remain a discreet, private structure.

PTCs might simultaneously have both commercial and charitable objectives. Therefore, families can utilise a PTC to consolidate the administration of multiple trusts, each for distinct purposes, thereby conveniently managing and preserving family wealth over generations and planning effectively for the future ownership and family business interests. A PTC will ensure greater family control over the family trusts and, above all, the management of the trusts' underlying investments.

PTCs offer high net worth families an attractive planning alternative to traditional trust structures for both their private wealth management needs and charitable purposes. Their convenience is mainly for those people who are eager to maintain an element of control over wealth and business interests across generations.



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