

Newsletter November 2009

Where do we go, glassy human being? Glasnost – Orwell (1984) – OECD directive for exchange of information

Shock fall off- even persistent countries like Singapore and the United Arab Emirates have decided to comply with the OECD directive for exchange of information to circumvent a grey or black listing.

Yes, the Western countries, with their crumbling banking systems, need money to fill the hole in the budget of the exchequer.

Tax Revenue dropped at double figure percentages and exchequers had to give their support for rescuing the banks. They are now crushed to death by the social system with immense unemployment figures.

In fact, no opportunity is left out to ask the current taxpayer for payment and support of the ex-taxpayer. High tax countries are now mainly grasping at their citizens bank accounts in foreign countries. Therefore, low tax countries are obliged to give information to high-tax countries for the purpose of getting hold of the tax exile`s money (also see 9. and 10. of the newsletter).

Until now, the UBS case constitutes an exception (we reported on this in our September newsletter), but how long will it take until the information duty reaches the level that banks have to disclose the bank account details of high-tax country citizens to the tax authorities of these countries?

What remains to be done?

We didn`t find the philosopher`s stone, but we can adapt our advisory activity to the actual situation.

The objective is to secure the proceeds of your honestly acquired assets- or the assets themselves. Through filing under company law structures and by exploitation of advantages of the double tax treaties, there are legal possibilities existing which enable you to restrict or avoid the grasp of high-tax countries.

Is your domicile in the UK, and do you rent your apartment/villa in Dubai? You have to pay tax on your rental income in UK.

Are you an Australian resident, receiving dividends from your company in the UAE or interests out of your assessment in UAE? You have to pay taxes in Australia.

Do you have a Free Zone Company with Flexi Desk? The European tax will come sooner or later and you will have to pay tax on all profits you have made here. Why? Because a flexi desk doesn't constitute an establishment!

All of this can be avoided, if you take our legal advice.

Yours,

Theodor Strohal

Office news

Our new website is online: www.advocates.cc or www.slg-strohallegalgroup.com.

You can read our newsletters and address questions. We are always on demand, in keeping with our slogan "CONSIDER IT SOLVED".

We once again highlight the opportunity to rent a room in our office villa. We offer a complete infrastructure: reception, conference room, cultivated ambiance and the best location in the city - 50 m away from the beach - for moderate prices.

There are two key advantages:

- Your rented office space is in accordance with the requirements of an establishment, which is mandatory in double tax treaties
- You have your own " in-house attorney " .

Did you know that in Old China, doctors were paid just in case their patients kept fit and well? A "very healthy" system!

In light of this system, we offer our clients a new honorary structure:

By payment of monthly retainers you can ensure our permanent assistance in non-contentious matters. Retainers are calculated on the basis of your company's size and the expected extent of legal work. Hybrid forms, like lower hourly rates or a lower retainer can be negotiated as well.

In any case, our work is not more expensive than an internal legal department, and you have the advantage that fully trained lawyers with adequate experience are on demand anytime (even on weekends). In the event that legal malpractice should occur, we are liable to the

extent of our indemnity insurance - your in-house lawyers would practically not be liable in such a case.

Give us a call to discuss our conditions!

Hotspot Middle East

1- Ministerial decree on new Wage Protection System (WPS):

The Minister of Labour issued on 20-7-2009 a Ministerial Decree No. 788 of 2009 which entered into force in 1 September 2009 and applies on all the emirates.

According to this decree a new system is installed which is an electronic salary transfer that allows institutions to pay workers' wages via banks, bureau de change, and financial institutions approved and authorized to provide the service. The system covers all institutions registered with the Ministry and allows the Ministry of Labour to create a database that records wage payments in the private sector to guarantee the timely and full payment of agreed-upon wages.

The procedure of payment is detailed in the decree and is as follows: The Company shall open an account with one of the banks operating in the country, in case it doesn't have one upon joining the WPS and it shall enter into contract with a WPS agent that is approved and authorized by the Central Bank of the UAE to provide this service, be it a bank, bureau de change, or a financial institution. The employer shall issue instructions to its bank to transfer wages to workers accompanied by a detailed wages list and a copy of the list shall be sent to the agent. The WPS will send workers' details and wages as well as the salary transfer instructions electronically to the Central Bank of the UAE, who will then forward those details to the Ministry of Labour database in order to make sure that the details received correspond with those registered with the Ministry. The WPS will send the approved information to the appointed agent in order to start paying the wages.

The decree imposed deadlines on the institutions to start transferring workers' wages via WPS according to the number of their employees. When the number of employees is above 100 employee, the period granted is 3 months, between 15 and 99, the period is 6 months and less than 15 employees, the period is 9 months

2- Dubai Courts To Launch E-Notary Services

Dubai Courts will become in December the first entity in the region and only the fourth worldwide after Australia, Italy and the United States to introduce online notary – or e-notary–services where 50 online services will be offered under the notary public system among which Power of attorney.

The customer will be able to feed in the required information and will only have to visit the courts to collect the document. The process will allow the consumer to make required changes to the templates and receive responses automatically.

And in addition to this, called Barwa, Dubai Courts plans to launch four other online systems – Nebras, an electronic navigation device, Al Salfa, a case registering system, Barza, a network of screens allowing court proceedings to be monitored, and Nayek, which will offer comprehensive court services on a single website.

3- Creation of a centre for amicable settlement of disputes in Dubai

His Highness Sheikh Mohammed bin Rashid Al Maktoum, Vice-President and Prime Minister of the UAE and Ruler of Dubai issued on September 2009 law Number 16 of 2009, which created and established a centre for amicable settlement of disputes in Dubai. The law becomes effective from the day of its promulgation and publication in the official gazette.

The new Law enables the centre to examine disputes that are to be defined in a statute from the chairman, whatever is their nature or values involved. The disputes will be presented before the centre, where a panel of experts led by a judge will try to settle them amicably and any dispute coming under its ambit will not be filed before a court of law till it is tried by the centre. If an amicable settlement is not reached, it may be transferred to a court.

Cases to which the government is a party and cases necessitating temporal order or summary proceedings will be exempted. Also exempted will be cases that do not fall under the existing jurisdiction of courts and those filed before the issuance of this law.

4- Establishment of a unified record for companies in Dubai

Sheikh Mohammed bin Rashid Al Maktoum, in his capacity as the Ruler of Dubai, also issued law No.22/Year 2009 regarding the unified record for all the establishments and companies in the emirate of Dubai. This record will compile all the details of the establishments and companies operating in the emirate including the free zones.

The Dubai Department of Economic Development will be responsible for preparing and maintaining this unified record in coordination with the Dubai e-government. The department will also publish periodic statistical reports based on the information compiled in the unified record.

5 - Law drafted to permit part-time work posted on 27/09/2009

The Ministry of Labour has prepared a draft law permitting private firm employees to work for those other than their sponsors for daily fixed hours. The draft law detailed the conditions and procedures for

part-time work.
The part-time or temporary work is defined as being a job not exceeding six months. The ministry will submit the draft law for further action shortly. According to Ahmed Khalaf Al Mazrouie, Deputy Chairman of the UAE Contractors' Association the move would benefit companies hit by the current global financial crisis who could not afford to sponsor new workers from overseas and allow them to loan workers from other companies for a certain time. On the other hand, it would also benefit the expatriate employee living and working in the country by increasing their monthly income by taking up an additional job with the other establishment, which requires hiring him for certain hours.

6- RAK properties announces profit of Dhs 181m

RAK properties, which has around 135 million of square feet of land in their land bank, has announced a net profit of Dh 181, 49 million in the third quarter. They are expected to hand over around 94 villas in the first stage of its flagship development, the Dhs 10 billion Mina Al Arab in this quarter of 2009.

The project shall consist of 5500 units including apartments, townhouses and villas and eight five- star hotels including Intercontinental and Hilton.

Other projects like the Julfar twin towers are expected to be completed in the first quarter of 2010, as well as RAK Tower which is already sold out.

Meanwhile the mountain resort Masafi development and the waterfront project of Fisherman`s Quay are in the pipeline.

7- Julphar earns billions on H1N1 vaccinations

Julphar was established in 1980 under the guidance of Ras Al Khaimah's ruler, HH Sheikh Saqr Bin Mohammed Al Qasimi, and has since expanded to become one of the largest pharmaceutical manufacturers in the Middle East. It is publicly listed on the Abu Dhabi Securities Market and the government of RAK is the largest minority shareholder. The firm now boasts nine production plants in the UAE and a commercial presence in over 45 countries, specialising in the production of a broad spectrum of generic medicines.

Julphar has been appointed as the sole provider of the new vaccine preventing the infection of the H1N1 virus which causes swine flu.

8- Ras al Khaimah receives urgently needed electricity

The Federal Electricity and Water Authority (FEWA) guaranteed a supply of 400 MW of electricity for Ras al Khaimah. On the 13th of November, Dr. Khater Masaad announced that contracts with FEWA are to be signed shortly. He further explained that RAK Investment Authority (RAKIA) has already put 2 generating plants into operation which produce a total of 130 MW. Due to the RAK's rapid development, especially in industrial areas, there is a higher demand for electricity.

Dr. Massaad also explained that due to the high level of industrialization in RAK, the impact of the economic crisis was only slight. In the past 4 years, 380 industrial companies were established in this emirate, employing a total of 70.000 employees. None of these companies had to dismiss employees and levels of production were unaffected. Due to this increase in required space, rents and land prices increased extensively. With additional electrical power supply, existing areas will be able to be utilized.

9- OECD directive in double tax treaties

Belgium, Bermudas, Cayman Islands, Dubai, Gibraltar, Guernsey, Isle of Man, Jersey, Liechtenstein, Malta, the UAE and Cyprus have signed double tax treaties since the beginning of March, according to the OECD standard. Therefore, it is much easier for the exchequer to get information about black accounts.

Times are getting harder for owners of black accounts and even amended return will very soon not defend from punishment in all cases.

Furthermore, tax havens like Switzerland, Andorra, Hong Kong, Luxemburg, Macao, Monaco, Austria and Singapore are either negotiating with Germany about similar agreements or they have announced to follow the OECD standard from now on. And this standard does not just intervene if penal proceedings for tax fraud and other tax offences are opened.

Article 26 of the sample double tax treaty stipulates that countries have to provide the information which is necessary for the other country for the correct taxation and cannot be obtained otherwise. The same applies for bank information about owners of companies and founders and beneficiaries of trusts. It also has to be taken into account that OECD standard applies on all tax issues- not only on such which are regulated in the double tax treaties. This means that all income is disclosed to the German exchequer.

Moreover, an accentuation of the EU interest directive is planned: its scope shall be tightened to legal entities. Until now this directive could have been circumvented by the interposition of a foundation or trust. This possibility is now coming to an end. Starting in 2011, the tax rate of the EU- withholding tax will increase to 35 percent and is therefore higher than the final withholding tax, which was implemented in Germany in 2009.

Belgium will also apply the exchange of information starting in 2010. Furthermore Luxemburg, Liechtenstein and Switzerland provide help for foreign authorities, not only in case of tax fraud, but already in case of simple defraudation of taxes.

10- Amended return in case of fiscal return

If income, which was secretive until now, is declared later by amended return, the German exchanger grants a waiver of penalty. This waiver has a deadline; from the beginning of 2011, this way out could be barred. As aforementioned, numerous tax havens give broad information about tax- relevant data to German tax and prosecution authorities.

In particular, the law about abatement of fiscal evasion has to be considered. This law stipulates specific obligations to co-operate and to prove the accuracy of tax return for all persons who have business connections with countries which do not adhere to the OECD standard.

Taxpayers can be forced to issue an affidavit, confirming that they don't possess accounts or deposits in foreign countries. In this respect such persons who conceal foreign capital gains but confirm their declaration is correct have an increased risk by submitting an amended return- namely, they could face prosecution for giving a wrong affidavit.

Should the exchequer already investigate concerning black accounts, there could eventually exist one last way out, namely to make the banks which procured the offshore constructs liable.

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