ETC: Excellent Tax&Corporation Management

Network of international attorneys and tax counsel

Offshore Company Formation

Tax planning via a network of international tax advisers and attorneys

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About us – Introduction

We are a tax advisory and law practice that is part a network of international tax advisors and attorneys (Low Tax Net), serving clients from many countries (including Denmark, Germany, Spain, England, the US, Italy and France). We specialize in the formation of foreign companies (active companies and holding companies), primarily for the purpose of reducing tax burdens on firms.

We form companies in:

1. **the EU (European Union):**

Germany, England, Cyprus, Czech Republic, Slovakia, Spain, Malta, Madeira (Free Trade Zone)

2. **Countries with DTAs (Double Taxation Agreements):**

Switzerland, Singapore, United Arab Emirates (Dubai, including UAE Free Trade Zones), USA

3. **Non-DTA countries (offshore):**

Belize, BVI, Liechtenstein, Cayman Islands, Bahamas, Hong Kong

Other areas of interest include:

- Expatriation of natural persons to low-tax countries
- Formation of banks, financial service and insurance companies in New Zealand, Isle of Man, USA, Switzerland, Germany and offshore.
- Gambling licenses, licenses for sports betting (Malta, Isle of Man, England, offshore)

How to reach us

Please click here for our contact information or to fill out our contact form. Please note that our office can only conduct business in German or English. We are currently unable to advise non-English-speaking clients. Thank you for your understanding. Upon submission of the contact form, you will be contacted by a designated tax adviser or attorney, and/or a designated office from within the network will call you. We will typically need the following information from you:

-Current and target situation, goals

-Current legal structure of the company

-Type of business to be conducted as part of the formation of the foreign company

-Your legal residence status with regard to taxation

-Would you or an appointee be willing to relocate to a foreign country (the company’s country of residence) and act as director, nominee or permanent director in the foreign country?

Setting up a company formation in a foreign country

The client or an appointee does NOT relocate to the foreign company's country of residence (appointment of nominee or permanent General Manager)

As most countries have laws that prevent the abuse of incorporation practices, we choose to distance ourselves from so-called cheap company formation, in which only a mailbox is established in the foreign country and/or, as part of a nominee scheme, a person who is not even an attorney or tax adviser enters into hundreds of nominee relationships. These types of structures become quickly transparent to local financial authorities and often result in a disaster for the client.

-Place of management:

If all income earned worldwide is to be taxed in the foreign country, the requirements for a "permanent establishment" in accordance with the DTA rules must be fulfilled. **This is essentially the "place of management."** There are several structural options for this purpose:

- An attorney/tax adviser in the foreign country (i.e., in the country of residence of the foreign company), or the advisory office as a legal entity, acts outwardly (i.e., as a nominee) as director of the company and hands over all rights and obligations to the nominator (beneficiary/client) via a nomination agreement.
- The client relocates his main place of residence to the foreign country and acts as director of the company. In certain cases, relocation of the "main place of residence" is not mandatory and requires only a management presence (be advised, however, that due to "daily business" requirements, this is seldom possible)
- An attorney/tax adviser in the foreign country, or the advisory office as a legal entity, acts outwardly (as a nominee) as director of the company, AND the client or his appointee relocates to the foreign country for certain periods of time to conduct management activities, in which case both parties possess only joint signing authority.

In addition to these solutions, there is also the option of appointing an attorney/tax adviser/employee from the formation advisory office in the company's country of residence as ***General Manager,*** i.e., with an employment contract (no nominee relationship) and a "regular salary." The "regular salary" amount must be line with income levels in the company's respective country of residency and would need to be between EUR 600 - EUR 1,800 per month, depending on required expenses/time. This internal relationship can be set up such that the foreign-based General Manager operates only under instruction, or the client becomes a secondary director, in which case both parties possess only joint signing authority. In special cases, "internal agreements" may be established in which the foreign-based General Manager "reduces" a part of his salary, if necessary and advisable. As a matter of course, the foreign-based General Manager declares his income when submitting his tax return and pays wage taxes and/or social security contributions in accordance with the laws of his country of residence. The foreign-based General Manager's income is considered part of the foreign company's expenses and is correspondingly deductible. In many countries (e.g., Cyprus), a legal entity may be appointed as the General Manager, which is often more useful for both sides. In these cases, a **General Manager's Contract**

is signed between the foreign company and the "Director’s Limited Company.” No nominee relationships come into play in this scenario.

These laws may be circumvented by establishing in the foreign country a production site, a mine, a quarry or any other site for the extraction of natural resources or by conducting construction or installation activities over a period longer than 12 months. In accordance with Article 5 of the DTA, these are then considered permanent establishments in the foreign country, regardless of the company director’s identity or country of origin.

- Ordinary Place of Business in the foreign country

A “mailbox” is never considered an ordinary place of business in the foreign country. Rather, the company in the foreign country must be reachable by mail, including certified mail, and by phone. The minimum requirements include: A deliverable postal address (including for certified mail), accessibility by telephone during normal business hours, accessibility by fax. So-called “Registered Offices” are generally not sufficient, as these are readily apparent to local financial authorities, or the foreign company’s country of residence may deny the issuance of a tax ID number (for example, in the UK). Along with Registered Offices, we offer so-called "Head Office solutions" that provide credible documentation for an ordinary place of business in the foreign country.

An overview of our services:

-Formation of the corporation, entry in the commercial register

-Establishment of an ordinary place of business

-Upon request: Establishment of a nominee director in the company’s country of residence, or a permanent director

-Upon request: Establishment of a nominee shareholder or bearer stock, if permitted by the respective country

-New bank account setup in the name of the company, including online banking and credit cards

-Referral to a tax adviser in the company’s country of residence for bookkeeping, annual reports and sales tax reporting.

The client or an appointee relocates his main place of residence to the foreign company’s country of residence

In such cases, the client or his appointee (e.g., an employee) acts as director of the company in the foreign country. A main place of residence is defined as follows: Presence in the foreign country (company's place of residence) during 51% of the year and a domicile in the director’s own name (hotels or stays with relatives do not count as a main place of residence). Upon request, we can handle all of the required services:

-Formation of the corporation, entry in the commercial register

-Establishment of an ordinary place of business

-New bank account setup in the name of company

-Referral to a tax adviser in the company's country of residence for bookkeeping, annual reports and sales tax reporting.

Foreign holding companies

The establishment of a foreign holding company is an excellent tool for diverting the profits of domestic capital investment firms to a foreign country tax-free. This is particularly true in cases where the EU Parent-Subsidiary Directive applies, i.e., where an EU-based company is involved as part of a foreign holding company / subsidiary relationship.

Legal consequences of an EU holding company: No establishment of a commercial business operation is required (EU Freedom of Establishment), no tax withholdings under the EU Parent-Subsidiary Directive, as long as the requirements of the Directive are fulfilled (minimum participation amount and time).

As a result, *Cypriot holding companies* are not taxed. The same applies to Swiss companies with holding company privileges (see: Applicability of the EU Parent-Subsidiary Directive) as well as Spanish "SL's" based on the conditions for holding company privileges. Cyprus offers particular advantages for holding companies, as it not only offers true holding company privileges, but also dividend payouts to non-Cypriot nationals are not taxed.

Is there ONE ideal location for a holding company?

No, not necessarily. It depends on the company's current situation and its goals. Within the EU, holding companies in Spain, the Netherlands, Luxembourg and Cyprus generally offer the greatest benefits. However, Switzerland is also of interest due to its holding company privileges and the applicability of the EU Parent-Subsidiary Directive. Holding companies in Austria and Denmark are also suitable for many corporate structures. Some countries, such as the UK, present disadvantages. Due to the lack of a DTA, the establishment of a holding company in an "offshore" country (i.e, one with no DTA) is generally not a good option (tax withholdings from the subsidiary, assumption of abuse of incorporation practices, etc.)

When selecting the appropriate location for a holding company, several factors come into play:

- Location of the subsidiary (existence of a DTA, EU membership, no DTA)
- Pros and cons of each potential holding company location in light of predefined goals
- How are non-holding activities taxed in the potential holding company's country of residence?
- Are there any holding company privileges (such as in Cyprus, Switzerland, Spain), i.e., no taxes on the receipt of dividends (e.g., Cyprus, Switzerland, Spain, Netherlands) or expatriate taxation?
- How are disbursements/dividend payouts from the holding company to the home country or foreign country taxed (tax withholdings)?
- How are interest and license payments to the holding company taxed?

- What are the rules regarding deductions for losses on the sale of assets and partial value depreciation?
- What are the rules regarding deductions for affiliated company losses/shareholder debt financing?

Our foreign holding company formation services include the following:

-Selection of a suitable location for the holding company

-Formation of the holding company, entry in the commercial register

-Establishment of an Ordinary Place of Business at the location of the holding company

-Setup of tax privileges for holding companies with the local financial authorities

-Upon request: Appointment of a nominee director or permanent General Manager at the holding company location

-New account setup, including online banking and credit cards

-Referral to tax adviser at the holding company location

Parent companies and subsidiaries in the European Union (EU Parent-Subsidiary Directive) and EU Mergers Directive

Introduction

In accordance with the EU Parent-Subsidiary Directive, after-tax profits (dividends) of foreign companies may be transferred between corporate entities tax-free. Participation limits are as follows:

- 20% from January 1, 2005, to December 31, 2006;
- 15% from January 1, 2007, to December 31, 2008; and
- 10% from January 1, 2009.

Example:

A Cypriot limited liability holding company holds a 50% share in the client's company outside of Cyprus but within the EU. In accordance with the EU Parent-Subsidiary Directive, the Cypriot Ltd receives 50% of the dividends tax-free, as the country of the Subsidiary has no withholding tax requirements.

As part of our international holding company formation package, we offer all the required services:

-Formation of the corporation, entry in the commercial register

-Establishment of an ordinary place of business

-Upon request, establishment of a nominee director in the country of residence of the holding company, or a permanent director

-New bank account setup in the name of company

-Referral to a tax adviser in the company's country of residence for bookkeeping, annual reports and sales tax reporting.

·-Tax classification as a holding company with the financial authorities of the country of residence

Double Taxation Agreements, Definition of Permanent Establishment (Article of the DTA)

(1) For the purposes of this Convention, the term "permanent

establishment" means a fixed place of business through which the business

of an enterprise is wholly or partly carried on.

(2) The term "permanent establishment" includes especially :

(a) **a place of management** ;

(b) a branch ;

(c) an office ;

(d) a factory ;

(e) a workshop ; and

(f) **a mine, quarry or any other place of extraction of natural resources.**

(3) A building site or construction or installation project constitutes a

permanent establishment only if it lasts more than twelve months.

(4) Notwithstanding the preceding provisions of this Article, the term

"permanent establishment" shall be deemed not to include :

(a) the use of facilities solely for the purpose of storage, display or

delivery of goods or merchandise belonging to the enterprise ;

(b) the maintenance of a stock of goods or merchandise belonging to

the enterprise solely for the purpose of storage, display or delivery ;

(c) the maintenance of a stock of goods or merchandise belonging to

the enterprise solely for the purpose of processing by another

enterprise ;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise ;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character ;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e) of this paragraph, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

(5) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, where a person - other than an agent of an independent status to whom paragraph (6) of this Article applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph (4) of this Article which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

(6) An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

(7) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Important information regarding offshore companies (those with no DTA relationships)

International tax laws in almost all countries differentiate between DTA and non-DTA relationships. A **Double Taxation Agreement** (DTA), correctly described as **an agreement on the prevention of double taxation,** is an internationally recognized agreement between two countries that regulates to what extent taxation laws affect the parties to the agreement with regard to income earned within their territories. The DTA is designed to prevent the double-taxation of natural persons and legal entities who earn income in both countries. A DTA also describes the conditions for setting up a permanent establishment in the home country and/or the foreign country.

Excerpt of Article 5 of a DTA:

ARTICLE 5

PERMANENT ESTABLISHMENT

(1) For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

(2) The term "permanent establishment" includes especially :

(a) a place of management ;

(b) a branch ;

(c) an office ;

(d) a factory ;

(e) a workshop ; and

(f) a mine, quarry or any other place of extraction of natural resources.

(g) A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

(3) ***THE TERM "PERMANENT ESTABLISHMENT" SHALL BE DEEMED NOT TO INCLUDE:***

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise ;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery ;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise ;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise ;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character ;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e) of this paragraph, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

(4) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, where a person - other than an agent of an independent status to whom paragraph (6) of this Article applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph (4) of this Article which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

For most of our clients, this means that they are protected by an existing Double Taxation Agreement prior to setting up a Permanent Establishment in the home country (client's country of residence), as long as only a representative office, an advisory office (for support activities) or a storage warehouse is established in the home country. In contrast, most countries stipulate that in cases where no DTA exists, a representative office, a storage warehouse or an advisory office does constitute a Permanent Establishment in the home country. This would mean that global taxation or primary taxation of the foreign company would not take place in the foreign country at all but in the client's home country, even if the "place of management" is located in the country of residence (i.e., in the foreign country). The formation of a true offshore company (with no DTA) must be carefully considered in light of these factors.

As most countries have DTAs with **Cyprus, Switzerland, Singapore or the United Arab Emirates (UAE),** the benefit of forming a true offshore company in these countries is often clear. **Cyprus** taxes active companies at a rate of only 10%. As a member of the EU, it also benefits from the EU Freedom of Establishment law.

Singapore does not tax foreign-earned income, and the **UAE** imposes no taxes on any income whatsoever. In **Switzerland (Zug),** the total tax burden for active companies equals about 15.5%. It is also possible to form a foreign company under a DTA scenario in which the company is subject to little or no taxes.

If, due to other considerations, an offshore company is nevertheless required, it should be structured as strictly as possible with regard to the law, and no representative or advisory offices or storage warehouses should be established in the client's home country. Offshore companies do generally offer certain benefits: No international law enforcement treaties, no fiscal extradition agreements with other countries, generally no public commercial register, and Exempted Company status (for companies that only generate earnings outside the country of residence).

Our offshore company formation services include:

-Company formation

-Establishment of an ordinary place of business

-Upon request: Establishment of a nominee director in the company’s country of residence, or a permanent director

-Upon request: Establishment of a nominee shareholder or bearer stock, if permitted by the respective country

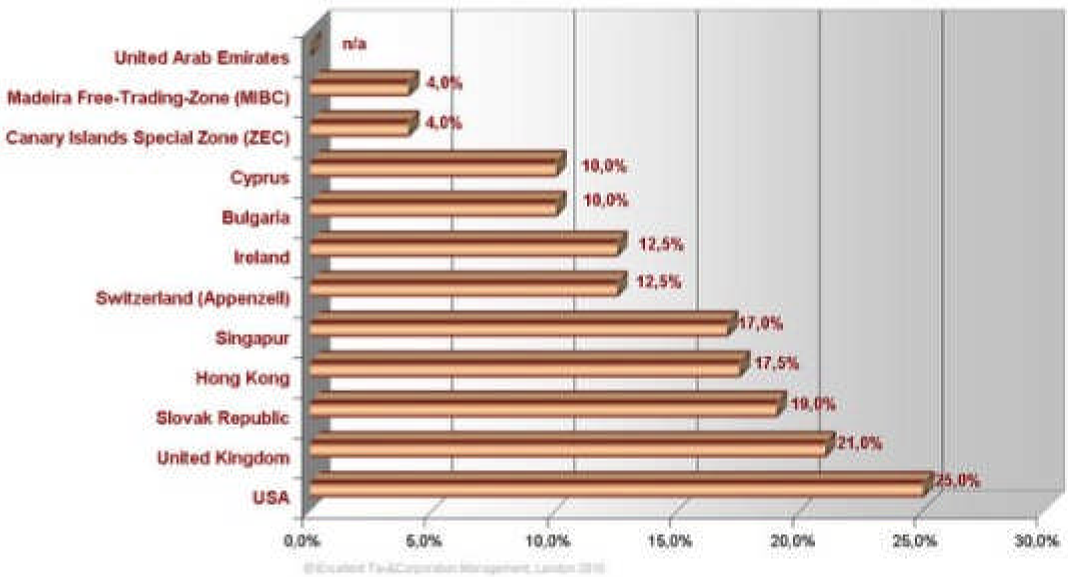
-New bank account setup in the name of the company, including online banking and credit cards

-Referral to a tax adviser in the company’s country of residence for bookkeeping, annual reports and sales tax reporting if required

-Presentation of Exempted Company status to the local authorities

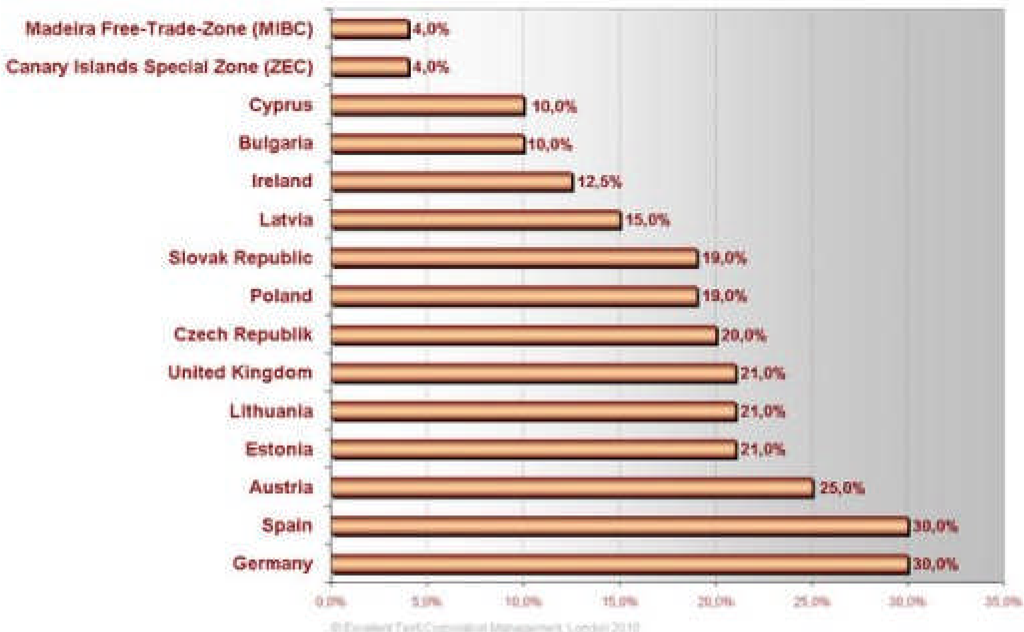
Tax haven rankings

CORPORATE TAXATION AT IMPORTANT LOCATIONS



UAE: No taxes, exempt on oil companies, petro-chemical industries and banks. Switzerland: By Kanton. Average tax level is 21%. Singapore: No taxation on first $ 100,00.00; 8,5% taxes on $ 100,001.00 to $ 300,000.00; Thereafter a Flat Rate of 17%. Exempt companies and foreign income is tax free. USA: Taxation depends also on state law. Federal Corporate Income Tax is 15% on net earnings up to US$ 50,000.00. Taxation thereafter rises progressively to a maximum level of 35%.

CORPORATE TAXATION IN THE EU



Canary Islands Special Zone: Does not belong to EU VAT territory. Special requirements as providing new jobs and investment have to be met. United Kingdom: 21% taxation on mid-sized business up to £ 300,000.00 net earnings. Taxation thereafter rises progressively to a maximum level of 30%. Germany: Total taxation burden is set by Coporate Tax (15%) and local Business Tax. Madeira Free-Trade-Zone: Special requirements as providing new jobs and investment have to be met. Switzerland: Taxation is ruled by the Kanton. Total taxation burden is set by Federal Tax plus Kanton-Tax and local tax. Total taxation burden alternates between 12,5% and 28%.

1. EU member countries

Advantages: The recognition of a permanent establishment in the foreign country, from the point of view of EU member states, does not require establishment of a commercial business operation (see also EU Freedom of Establishment); also, applicability of the EU Parent-Subsidiary Directive (tax free receipt of foreign dividends, e.g., in the case of a German capital investment firm) and general existence of DTAs.

1.1. **Cyprus:** 10% income tax, regardless of profit. Profit distribution is not taxed in the case of foreign shareholders. Holding companies are tax exempt.

- EU Freedom of Establishment Yes
- DTA: Yes, with most countries
- EU Parent-Subsidiary Directive applicable: Yes
- Holding company privileges: Yes
- Banking secrecy: High
- Nominee relationships allowed: Yes

Advantage: EU Freedom of Establishment as well as DTA, very low taxes compared to the rest of Europe, dividend payouts to non-Cypriots are tax exempt (otherwise subject to 15% defense tax). Holding companies are completely tax exempt.

1.1.1. Bulgaria

10% income tax (Flat Tax), regardless of profit. Profit distribution is not taxed in the case of foreign shareholders.

- EU Freedom of Establishment Yes
- DTA: Yes, with most countries
- EU Parent-Subsidiary Directive applicable: Yes
- Holding company privileges: No
- Banking secrecy: High
- Nominee relationships allowed: Yes

Advantage: EU Freedom of Establishment as well as DTA, very low taxes compared to the rest of Europe.

1.2. **England:** 21% for small to medium-sized companies (up to GBP 300,000 in profit), thereafter gradual increase up to 30% VAT registration required only upon reaching GBP 60,000 (approximately EUR 100,000). Very liberal attitude toward offshore companies, maintains a DTA with the Isle of Man.

- EU Freedom of Establishment Yes
- DTA: Yes, with most countries
- EU Parent-Subsidiary Directive applicable: Yes
- Holding company privileges: No
- Banking secrecy: High
- Nominee relationships allowed: Yes

Advantage: EU Freedom of Establishment; also DTA, low tax rates for small to medium-sized companies compared to the rest of Europe

1.2.1 Setting up a UK Ltd with an offshore company, UK Ltd as agent only: Up to 90% profit transfer before taxes allowed

A maximum of 90% of UK profits BEFORE taxes in the UK may be transferred to an offshore country as long as the UK Ltd acts only as an "agent" (profit transfer and domination agreement between the offshore and UK Ltd).

1.3 **Ireland**

· EU Freedom of Establishment Yes

·DTA: Yes, with most countries

· EU Parent-Subsidiary Directive applicable: Yes

·Holding company privileges: Depending on type of formation

·Banking secrecy: High

·Nominee relationships allowed: No

Ireland has a corporate tax rate of 12.5%. Disadvantages include a high income tax rate of 20-60% for natural persons and the fact that nominee relationships are either prohibited or practically impossible. Suitable for "actual company relocation."

1.4. **Portugal/Madeira**

Short summary of advantages:

- **EU membership,** EU Freedom of Establishment and EU Parent-Subsidiary Directive applicable

- Portugal/Madeira belong to the **VAT Zone (**the Canary Islands and Canary Island Special Zone (ZEC), for example, do NOT); no import sales tax on the import of goods into the EU, 6th EU Directive applicable

  Taxes:

- Type I: **Completely tax exempt**
- Type II: **Tax rates of 4 % until 2012 and 5 % until 2020 guaranteed**

Tax exemption or reduced taxation are subject to requirements such as creation of jobs and establishment of a commercial business operation. Our office in Madeira is equipped to meet the necessary requirements (normally only suitable for actual corporate relocation or establishment of an actual business in Madeira.) However, even in the case of no actual business establishment, our partners can help you meet the requirements for tax exemption or reduction. This requires the contractual employment of local citizens in the company (at EUR 400/month) and the leasing of an office. Monthly costs apply in this case.

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2. Non-EU, but with DTA

From the point of view of most countries, the recognition of a permanent establishment requires establishment of a commercial business operation in the country of residence. The financial authorities in your home country may require proof of residency from the foreign country's financial authority. If no commercial business operation is established, the domiciling of the company via a Business Center (www.regus.com) with 10 hours of monthly office space use is usually sufficient. The nominee General Manager may act as a permanent employee, in which case his compensation must be "regular."

2.1. **Switzerland:** Tax rates vary by canton, as the total tax liability equals the federal tax (8.5%) plus the cantonal tax. An income tax rate of 15.5% is achievable (in Zug). Special conditions: Tax payments are considered business expenses, which correspondingly reduces tax liability as of the second year.

- EU Freedom of Establishment No
- DTA: Yes
- EU Parent-Subsidiary Directive: Switzerland has subscribed to the EU Parent-Subsidiary Directive; bilateral recognition agreements are in place
- Banking secrecy: Very high
- Nominee relationships allowed: Yes
- Bearer stock: YES

Advantages: Low tax liability, easy access to cash, banking secrecy.

Special terms regarding branch offices of EU foreign companies: These are treated as Swiss corporations without the initial CHF 20,000 capital stock investment requirement; commercially established business operation not required. Tax liability under domicile privileges only 8.5%.

2.2. **Dubai/UAE:** ZERO taxation, except for oil companies, chemical companies and banks.

- Low tax country as per the German Foreign Transactions Act (AStG): Yes
- Applicability of Section 8 of the AStG (CFC taxation in the case of dominant influence by a German national): YES
- EU Freedom of Establishment No
- DTA: Yes
- EU Parent-Subsidiary Directive applicable: No
- Banking secrecy: Very high
- Nominee relationships allowed: Yes

Advantages: No taxes. If adequately structured, so-called "white income" (i.e., tax free income in Germany) may be divertible to Germany.

Disadvantage: Very high capital stock required in comparison to other legal structures, high formation and licensing fees, at least 51% of the shares of the company must be held by local citizens except in Free Trade Zones, nominee solution is an option. The "Dubai Offshore Company" allows for the establishment of a legal corporate structure without capital stock.

2.2.1: **UAE, Exempted Companies**

- EU Freedom of Establishment No
- DTA: Yes, with most countries
- EU Parent-Subsidiary Directive applicable: No
- Banking secrecy: High
- Nominee relationships allowed: Yes

Advantages: No taxes. If adequately structured, so-called "white income" (i.e., tax free) can be channeled outside the country.

2.3. **Singapore**

- EU Freedom of Establishment No
- DTA: Yes, with almost all countries
- EU Parent-Subsidiary Directive applicable: No
- Banking secrecy: Extremely good
- Nominee relationships allowed: Yes

Singapore is known, not inaccurately, as the "new Switzerland." Foreign income is not taxed. Domestic income is taxed at 18%; the first 200,000 Singapore dollars are tax-free.

2.4. **USA:** Tax liability depends on the individual state and the "object of taxation." An income tax rate of 15% is achievable. Normal tax rate: 30%.

- EU Freedom of Establishment No
- DTA: Yes, with almost all countries
- EU Parent-Subsidiary Directive applicable: No
- Banking secrecy: Average
- Nominee relationships allowed: Yes
- Bearer stock allowed: No, but shareholders are not entered in the commercial register

Advantage: The "Inc" is the pure form of incorporation, and is a good structure for capitalization, no capital stock investment required, generally low costs in comparison to other corporate structures, one-person formation possible. Shareholders are not listed in the commercial register. **Most US states have no sales tax.**

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3. Non-DTA countries (offshore):

·EU Freedom of Establishment No

·DTA: No

·EU Parent-Subsidiary Directive applicable: No

·Banking secrecy: Very high

·Nominee relationships allowed: Yes

·Public commercial register: generally none

·Bearer stock allowed: Yes, bearer stock is allowed in most offshore countries In general, no nominee shareholder is required.

Taxes: In most countries, Exempted Companies (those that only generate income outside the country of residence) are not subject to taxes. Isle of Man imposes a flat tax of GBP 450. Liechtenstein offers no tax exemption, depending on corporate structure and sales

Sales taxes: Typical offshore countries (Seychelles, Mauritius, Hong Kong, British Virgin Islands (BVI), Bahamas, Nevis, Dominica, St. Vincent, Belize) have no sales tax.

Countries include:

- **Asia & Pacific:** Seychelles, Mauritius, Hong Kong
- British Virgin Islands (BVI), Bahamas, Nevis, Dominica, St. Vincent, Isle of Man
- **Latin America**: Panama, Belize

- **Liechtenstein (AG, GmbH, Trust, Anstalt [institution], Stiftung [charitable foundation])**
- **Isle of Man**: GBP 450 annual flat tax for foreign income. Is a member of the EU VAT Zone.

When establishing offshore companies, the client should be aware of the political and economic stability of the country.

Advantages: Generally no or low taxes, no public commercial register, no international law enforcement treaties or fiscal extradition agreements with other countries.

Disadvantages: See above.

What?	**Who offers it**
Excellent bank secrecy	Andorra, Bahamas, Cayman Islands, Isle of Man, Mauritius, Panama, Singapore, Nevis, BVI
Suited for holding companies	Cayman Islands, Hong Kong, Isle of Man, Vanuatu, UAE
Zero-tax-haven Exmp. Status	Belize, Cook Islands, Grenada, Mauritius, Seychelles, BVI, UAE
No income taxes from foreign sources	Costa Rica, Hong Kong, Seychelles, UAE
No taxes on capital gains	Andorra, Bahamas, Cayman Islands, Vanuatu, UAE
Captive Insurances	Bahamas, BVI, Cayman Islands, Hong Kong, Isle of Man, Mauritius
Ship's register and administration	Bahamas, BVI, Cayman Islands, Mauritius, Panama, Vanuatu, Singapore, Hong Kong
Individuals:	
No income taxes	Andorra, Bahamas, Cayman Islands, Vanuatu, UAE
Low income taxes	BVI, Hong Kong, Isle of Man, Mauritius
No inheritance tax	Andorra, Bahamas, Cayman Islands, Isle of Man, Mauritius, Panama, Singapore, Nevis, BVI
Bearer shares	Bahamas, BVI, Cayman Islands, Mauritius, Panama, Vanuatu, Singapore, Hong Kong

Advantages and Disadvantages of Tax Locations in the Caribbean and the Bermudas

Country	Advantages	Disadvantages	Taxes
Bahamas	Bank secrecy regulated by law, no automatic information exchange in tax matters with EU states.	Since 2006 Mutual Legal Assistance in tax matters, however not automatic, rather only upon request. Taking up residence: At least 150,000 B$ must be invested in the country	No income taxes, corporate income tax, capital gains tax, withholding tax, gift or inheritance tax on individuals and companies
BVI	Bank secrecy regulated by law, no automatic information exchange in tax matters with EU states.	Cost of Living corresponds with the US Level.	Income tax 3-20%, corporate income tax 15%, foreign proceeds are tax free
Cayman Islands	Bank secrecy regulated by law, no information exchange in the event of tax offences, seventh largest banking center worldwide, high political stability	In the case of taking residence an investment of at least 180,000 USD is required, Cost of living approx. 18% higher than the USA	Pure Zero-Tax-Haven
Dutch Antilles	DBA with the Netherlands permits the transfer of profits to the Antilles at a favorable tax rate, no extradition treaties for fiscal offences	Information exchange agreement with OECD, no statutorily regulated bank secrecy, high taxation of residing legal entities	Non-Residents pay for all revenue generated on the Antilles approx. 3% income tax, no property tax, no inheritance tax, no withholding tax on dividends and interest. Offshore companies pay until 2020 5.5%, in addition tax privileges for certain companies exist
Bermudas	Tax haven for companies	No statutorily regulated bank secrecy, residence permit for foreigners is practically not possible, purchase of real property not possible, extremely high cost of living.	No income, corporation or withholding tax
Barbados	No currency restrictions, preferential custom's tariffs	Information exchange agreement with OECD	Non-Residents pay income tax of 1-2.5%, no capital gains tax, inheritance, gift, property or withholding tax on dividends and interest. An IBC pays, provided 100% is held by a

			foreign entity, 2.5% corporation tax. Domestic companies pay no taxes.

Brief examples of foreign company structures

The client's business consists of advisory activities only, no production facilities

The client is unhappy with the high tax burden in his home country. The company's business activities do not necessarily constitute a permanent establishment in the home country (e.g., France) as per Article 5 of the DTA, as only advisory services are provided, i.e., no physical production.

Solution option: Formation of a foreign company within the EU – Cyprus is selected. As the client is unwilling to transfer his own main place of residence to the foreign country, he chooses the option of appointing a nominee or permanent director in Cyprus. Additionally, a Head Office is established in Cyprus with a deliverable mailing address, telephone and fax. A purely representative office is set up in France in which only advisory activities take place as per the DTA, Article 5. The company's clients then sign agreements with the Cypriot limited company, i.e., the company's permanent establishment in Cyprus, and receive only advisory services in France. The client acts as 50% shareholder in the Cypriot Ltd, the other 50% is held by an offshore company in the Seychelles set up by the client for this purpose. Tax implications: Global taxation of the company takes place in Cyprus at an income tax rate of 10%. Any dividends distributed to clients are subject to income taxes in France. Otherwise, the client receives a fee from its Cyprus-based limited company, as its representative in France. This (naturally low) fee is taxed in France accordingly. As no Cypriot national is a shareholder in the Cypriot Ltd, Cyprus's 15% defense tax does not apply, and the company's total tax remains at 10%. Investments (e.g., real estate purchases in Spain) are not conducted by the client but by the Cypriot Ltd.

The client is involved in production activities

The client conducts business in the home country (e.g., France) constituting a permanent establishment per the DTA, Article 5, e.g., production activities or a retail business. He is unsatisfied with his total tax liability. The permanent establishment is to remain in the home country, i.e., France in this example.

Solution option 1:

First, the permanent establishment in the client's home country, i.e., France in this case, is taxed. The client forms a foreign holding company within the EU (e.g., in Cyprus, Switzerland or Denmark) that holds 100% of the shares of the permanent establishment in the home country.

In accordance with the EU Parent-Subsidiary Directive, home country dividends (in this case France) are received by the foreign holding company tax-free, with France (for example) having no tax withholding rights over these dividends.

Solution option 2, separately or in combination with the solution option 1:

The client forms a foreign company within the EU in a country that maintains a DTA with France. The foreign company invoices the French company, thereby reducing profits before taxes in France.

The client conducts production activities and would like to relocate the business completely or partially to a foreign country

A foreign company is formed in a country with a favorable tax rate and low wage and production costs. A production facility is then set up in the foreign country, as well as a commercially established business operation, and an employee, who relocates to the foreign country, is appointed as General Manager of the foreign company. In the client's home country, e.g., France, a permanent establishment or a solely representative office is maintained. The home-country permanent establishment (for example, in France) holds shares in the foreign permanent establishment. If the foreign permanent establishment is in the EU, tax-free flow of dividends into France may take place. If the foreign company is outside the EU but in a DTA country, tax-free flow of foreign dividends into France may take place with a 5-10% tax deduction withheld in the foreign country.

The client conducts import/export operations

The client forms a foreign company in a country that maintains a Double Taxation Agreement with the home country. The foreign company will purchase goods in another foreign country, e.g., in China, in the future. The "delivery location" of the goods is designated as the warehouse of the foreign company located in the client's home country. Per Article 5 of the DTA, a warehouse does not constitute a permanent establishment. Customers (buyers) order goods from the foreign company; "advisory/call centers" may be set up intermittently that do not constitute a permanent establishment, as long as only advisory services are provided.

How can I retrieve money from my foreign company without relocating my main place of residence to the company's country of residence?

First, you must consider to what extent the flow of funds to the natural person located outside the foreign company's country of residence is avoidable and/or at all advisable. The foreign company, as a legal entity, can naturally conduct investments and/or establish assets internationally . Additionally, the foreign company's representative office can ascribe expenses relating to foreign permanent establishments to the foreign company, such as office costs, telecommunication services, vehicles, business meals, business trips, etc. The money is therefore considered "utilized" and not "spent". If the flow of funds outside the country (i.e., the client's country of residence) is nevertheless required, the following strategies can be helpful:

-The client/founder of the foreign company withdraws cash in the home country using the foreign company's credit card: This is recorded as a "Foreign company bank to foreign company cash account" transaction. Therefore, no cash flow to a natural person takes place. In the case of hidden profit distribution (Amount X is no longer in the cash account, no deductible expenses/invoices available), most countries will tax the hidden profit distribution at a rate between 10-25%. This type of tax can be significantly lower than income taxes that apply in the case of a direct flow of funds to a client/founder.

-At the time of the desired profit distribution (e.g., dividend payout), the client relocates his main place of residence to a low tax country and assumes the role of shareholder of the company. If the client wishes to return to the home country, the country of refuge must maintain a double taxation agreement with the home country. After relocating his main place of residence to the foreign country (51% of the year, domicile in own name), the dividends are paid out and taxed in the low tax country.

-The client/founder receives a loan from the foreign company.

-The client forms a capital investment company in the home country, which holds shares in the foreign company. If both companies are resident in the EU, tax-free receipt of foreign dividends by the home-country company are allowed. DTA only: Tax-free receipt of foreign dividends by the home-country company, with a 5-10% withholding tax deduction.

-The Money Laundering act goes into effect in most countries as of EUR 10,000 or 15,000. Therefore, if the client receives money in the country where the foreign company is based and imports funds below this limit into the home country, the financial authorities of the home country are not notified.

These are only some examples of structural options. In general, please be advised that any funds attributable to the taxable entity as income are taxable in the country where the taxable entity maintains ordinary residence. If these funds/income are not declared to the home country’s financial authorities as income, this constitutes criminal tax evasion.

Why form a company in a foreign country with a tax accountant specialized in international tax law?

The prospect will find numerous agencies specialized in foreign company formations in the internet. As a rule, however, these companies do not employ Tax Accountants specialized in international tax law. Frequently, such formation agencies are not – or only insufficiently - versed in international tax law, or are not permitted to provide advice on legal or tax matters in countries as a consequence of the Legal Advice Act. Formation agencies - or even Tax Accountants – located in the forming countries (for example: Cyprus, Belize etc…) often are only knowledgeable in domestic tax law. If one takes a look at the relevant internet offers, it quickly becomes apparent, that a great deal of the providers publish incorrect or insufficient information, working according to the strategy "The cheaper the better".

The following factors, among others, are to be observed within the scope of international tax planning / company formation in a foreign country:

-Most countries have laws for the prevention of tax evasion and/or have laws that formulate the right to impose taxes domestically. It is not in the interest of these countries, that companies and individuals have their income taxed in foreign countries, even though "in truth" the managerial supervision is located domestically and / or the activities are transacted / performed domestically and / or "in truth" the taxpayer resides in country and/or a production site is not installed in the foreign country. In many countries, (for example: USA and Germany) "tax evasion" is, in fact, a criminal offense. For this reason, it is somewhat naive to believe, that the right to impose taxes can be relocated to a foreign country, by simply investing a few hundred Euro for the formation of a company in a foreign country. It is true, that almost everything can be done, however domestic tax laws must be observed and – to the extent a production site is not installed in a foreign country, or no site for the exploitation of mineral resources or construction works, whose duration is greater than 9-12 months exist (in the event a Double Taxation Agreement exists this will always constitute a permanent establishment), the impression must be avoided that the foreign company is just a „bogus company".

- The permanent establishment in a foreign country:

1. Managerial supervision

A production site, a site for the exploitation of mineral resources or construction works, whose duration is greater than 9-12 months, always constitutes the establishment of a place of business in the formation country - at least in the event of a DBA-situation (Double Taxation Agreement). Otherwise the definition of a permanent establishment is based, among other things, on the "place of managerial supervision". As a rule, this means that a resident of the formation country (ordinary residence) acts as the Company Director. Either the client relocates his ordinary residence to the formation country and acts as the Director of the company himself OR a citizen of the formation country is hired to take the position of Director OR the client himself acts as the Director, and provides proof that he is present in the formation country to perform customary managerial supervision OR our Law Firm in the foreign country provides a Nominee Director.

In the event, a Nominee Director is provided the following factors must be observed:

-The responsibilities of the Nominee Director should be performed by an Attorney or Tax Consultant in the formation country of the company (in the case of a legal entity as a Trustee Director of a Law Firm). This ensures, that the trustee relationship is not disclosed for "incidental" grounds. Only attorneys can effectively protect the trustee relationship from third party access. It goes without saying, that attorneys will demand the corresponding fees and will not just demand a few Euros for their services as a Trustee Director.

Under certain conditions, it can even be required or useful, that a person in the formation country is employed as the Director of the company, i.e. with an employment contract between the company and the Director, payment of payroll taxes and social security contributions; to the extent they are collected. We are also able to provide such an "employed Director".

The so-called "Formation Directors" are **"absolute nonsense"**, who resign after the company has been registered and transfer the company and position to the actual beneficiary. In this situation, the "actual Director" can quickly be identified. A Trustee Director must of course be registered and reachable during the entire agreement term.

One "can" deviate from such an arrangement, if the foreign company is formed in a country, which has not entered into a Double Taxation Agreement and / or a Mutual Legal Assistance (MLA) Agreement.

An "Offshore Director is also **"absolute nonsense"**, an example of this is that a legal entity acts as the Director of an English Limited in Belize. Such a constellation is "asking for it" i.e. asking to be accused of "Avoidance Abuse" and of course, such a company will not be able to open an account or be issued a Value Added Tax ID Number.

2. **The place of business in a foreign company**

A "Post Office Box" or an "Answering Machine" does not constitute an ordinary place of business. Accordingly, "Registered Office Addresses" do not meet the prerequisites for a proper place of business.

The minimum requirements of a proper place of business are:

-Serviceable postal address, also for registered mail

-Reachable by telephone during normal office hours, personal call reception with the name of the company.

It does not always have to be "large offices", but it must not be a post office box. The configuration / structure of the place of business is to a high degree dependent upon the company activities. If one assumes that a company can only perform its business activities, if it has 3 offices and 4 employees on-site, then a pure virtual office would indeed appear rather odd. In this situation a "sense of proportion" is required, everything must be plausible.

3. The company account in a foreign country

Many formation agencies offer "help in opening an account". This means, in plain English, that an account is not opened, for example an English bank will not open an account, if the Director resides on Belize (unless he is present at the opening of the account, which is not probable). Also many banks will not open a company account, in the event only bearer shares are issued (with the exception that the owners are present at the opening of the account or in certain countries such as Switzerland or Belize. However, in these countries the owners must at least be disclosed to the bank and often must be present at the opening of an account.) "Just fill out a few forms" and the opening of an account is done, is, in most cases, nothing but a fairytale and has nothing to do with real-world business practices.

-Taxes must not be paid in tax-haven countries?

Also in this case, a great deal of nonsense is published in the internet. In reality, there are only very few "zero-tax havens", like for example the Cayman Islands. In fact, many countries (Belize, BVI, Nevis etc…) offer the formation of so-called offshore companies (as a rule International Business Companies, IBCs), i.e. companies who only transact business and generate revenues outside the country, however onshore companies (companies, who transact business domestically) are indeed taxed. Offshore companies must of course provide proof, that they only transact business outside of the country, and they must of course keep their books in order. In addition, there are a series of other taxes (withholding tax, capital gains tax, inheritance tax, property tax, income tax etc…) that may be of interest to our clients and may under certain circumstances be levied in "tax-haven countries".

- Are tax-haven countries always the most suitable countries for the formation of a company?

Certainly NOT. Tax-haven countries are defined as countries that have not entered into Double Taxation Agreements, Mutual Legal Assistance (MLA) Agreements, or extradition treaties for fiscal offences with other countries that at a minimum do not tax revenues that have been generated outside of the country.

The "screening effect" is not in effect against double taxation, specifically due to the lack of a Double Taxation Agreement. If a company, located in a tax-haven country is, for example, a stockholder of a company in Germany or the USA, in that event dividends distributed to such company in a tax-haven country are subject to the full withholding tax in Germany or the USA; while Double Taxation Agreements, as a rule, limit the withholding tax rate to 5%. Double Taxation Agreements also define under which circumstances the prerequisites for the existence of a permanent establishment are met and that a stock of goods or merchandise (warehouse), a permanent agent or a representation in another contracting state as a rule do not constitute a permanent establishment. Should, for example, a company in Belize maintain a stock of goods or merchandise (warehouse) in another country, this warehouse as a rule does constitute a permanent establishment in the other country, i.e. taxation of the proceeds generated there.

Also the EU Parent Subsidiary Directive does not apply to tax-haven countries. This can have substantial disadvantages for associated companies; because in the case of the application of the EU Parent Subsidiary Directive the dividends distributed between the companies are tax-free (this fact of course is only advantageous to clients from EU states).

Companies in tax-haven countries do not receive Value Added Tax IDs. This could result in substantial disadvantages, if these companies want, for example, to transact business with European companies.

In addition, if one considers the fact that for example Cyprus (EU Member, Double Taxation Agreement with almost all countries) has an income tax of only 10% or the Canton of Zug in Switzerland has a total tax burden of 15.5% for companies or that the EU special economic zones (Maderia, Canary special economic zone) entice with income tax rates below 5%, one should ask oneself the question, if the formation of a company in a tax-haven country is really the correct alternative.

Factors, such as "economic and political stability", play also a major role. Example Belize: As long as the British military protects Belize against territorial claims of its neighbor Guatemala, investments can reasonably be made. If the protectors withdraw, one can assume the worst will happen. Should one decide to make an investment, one should take out an insurance policy against imminent domain.

Of course, good reasons may exist with regard to forming a company in a tax-haven country. Specifically the fact that Mutual Legal Assistance (MLA) Agreements, and extradition treaties for fiscal offences do not exist and that many tax-haven countries do not maintain a commercial register, can be very helpful in certain constellations.

And of course there are also clients, who setup an "actual company" in tax-haven countries, with offices, employees and an employed Managing Director who maintains his ordinary residence in the foreign country. In such cases, of course, the situation is to be assessed differently.

- Tax Planning within the scope of "associated companies"

Within the scope of associated companies, it is of extraordinary importance, if the EU Parent Subsidiary Directive is applicable and / or if a Double Taxation Agreement has been entered into and / or if the respective country levies withholding tax on outgoing distributed dividends. This - and other details - must be considered in international tax planning.

-Tax Planning within the scope of Holding companies

Numerous details must also be observed in the formation of a foreign holding:

- Location of the subsidiaries (DBA-Situation, EU, Non-DBA Situation?)
- Advantages and disadvantages of individual holding locations, with regard to the high priority objectives
- How are non-holding-activities taxed in the seat country of the Holding?
- Does a holding privilege even exist (for example Cyprus, Switzerland, Spain), i.e. no taxation on the distribution of incoming dividends (for example, Cyprus, Switzerland, Spain, the Netherlands) or low taxation?
- How are outflows /dividend distributions of the Holding taxed, if they are distributed out-of-country or distributed in-country (withholding tax)?
- How are interest and license payments of the Holding taxed?
- How are deductions due to losses from sale and write-downs to the lower going concern value addressed?
- How are deductions of expenditures for interests / stockholder debt financing addressed?

Conclusion

International tax planning is a very complex subject and belongs in the hands of trained specialists. "Just forming a company on the fly for a few hundred Euros" can have fatal consequences for the client. Good advice costs good money. And a waterproof company constellation, which would standup to subsequent verification - is simply not feasible for a small amount of money.

Basic Considerations regarding the Formation of Companies in „Zero-Tax Havens" i.e. in countries that have not entered into Double Taxation Agreements with other countries

Countries, such as Belize, BVI, Cayman Islands, Nevis etc... have not entered into Double Taxation Agreements with other countries, no judicial assistance or Mutual Legal Assistance (MLA) Agreement exist nor do extradition treaties for fiscal offences exist and such countries often do not maintain public commercial registers. In addition, as a rule these countries do not tax income that has been generated outside of the country (exempted companies, offshore companies / corporations). The presumptive advantages can, however, turn into a "tax trap", if specific prerequisites are not met.

To begin with many countries (USA, Germany, EU countries, Switzerland etc...) have laws for the prevention of "tax evasion" i.e. define laws which give the state the right to impose taxes domestically. In the case of doubt, the „suspected tax evader" must provide evidence, that the purpose of a foreign entity is not solely that of tax evasion (reversal of the burden of proof), which has the following consequences in most countries :

- Provision of proof, that an orderly place of business has been installed for a company located in a foreign county (e.g. Belize, BVI, Cayman Islands etc...). In most cases, this includes an office, a serviceable postal address and the foreign-based company must be reachable by telephone, and a lease must be entered into between the foreign company and a lessor. A mere „Post Office Box" or a „Registered Office" does not constitute an orderly place of business and quickly leads to the assumption of a "bogus firm".

- **The proof, that in a foreign country (zero-tax-haven) the personnel prerequisites are given**, to even be able to conduct and realize the businesses activities of the company. In the event, normally or comparably, for example a company would need 10 employees, to be able to conduct business activities, and the company does not have any employees at all, naturally the tax authority will pose the question - how is the foreign company able to discharge its business. The same applies with regard to the necessary employee qualifications.

- **The proof, that the foreign company has an employed Managing Director** (Managing Director Agreement, Earnings Statements). It is indeed quite „odd", if a foreign company only invests 200 USD per year in its purported Managing Director (*place of business supervision as place of the permanent establishment).* In this context the question is legitimate, as to which Managing Director is willing to accept consideration of only approximately 14 USD per month.

One can deviate from this, in the event a production site has been installed in a foreign country (zero-tax haven), construction works, which last for more than 12 months or a site for the exploitation of mineral resources. In this event – it is always operations in a foreign country, independent of the "place of managerial supervision".

One can deviate from this, if for example the official Managing Director of the foreign company is a resident of Denmark, and provides proof, that he is routinely present overseas (seat of the foreign country) to execute the managerial supervision of the business. In the case, for example of a mere holding company, the "managerial supervision" is not so extensive that the permanent presence of a Managing Director would be required at the foreign company. In this case, it would be credible, if the client (in this example, a Danish citizen) for example traveled to the country in which the foreign company is located once a month, to discharge the required managerial duties.

-If required, provide proof that the company actively transacts business abroad.

The screening effects of a Double Taxation Agreement do not apply

The Double Taxation Agreement's (more correctly: Agreements for the Prevention of Double Taxation), purpose is to prevent companies or persons from being taxed twice - double - in "both countries". In the event the "screening effect" does not exist (which is the case in "zero-tax havens", because they have not entered into Double Taxation Agreements with other countries), then the possibility exists that a company or person can be taxed twice - double. In addition, Double Taxation Agreements define the existence of a domestic and foreign fiscal permanent establishment. As such a mere „activity of auxiliary character", a consultation, a stock of goods or merchandise (warehouse) or a "permanent agent" does not constitute a permanent establishment in the other contracting state. In the event, a Double Taxation Agreement is not applicable; it is exactly these activities that constitute a permanent establishment according to domestic laws. Example: Formation of a company in Belize. This company maintains a stock of goods or merchandise (warehouse) in another country. As a rule, this constitutes a permanent establishment in the other country i.e. the country in which the warehouse is located has the right to impose a tax. Another Case: Formation of a company for example in Cyprus (Has entered into Double Taxation Agreements with almost all countries) and a stock of goods or merchandise (warehouse) is located in a different country. As a rule, this does not constitute a permanent establishment in the other contracting state, because according to Article 5 DBA a stock of goods or merchandise (warehouse) does not constitute a permanent establishment.

Likewise the screening effect is not applicable in the case of "associated companies". The majority of Double Taxation Agreements define that the tax deducted at the source state is, in the case of dividend distribution, 5 % for companies and 15 % for individuals. In the event a Double Taxation Agreement does not exist, as a rule the full domestic withholding tax is due, this tax exceeds 30% in many countries.

EU-Parent-Subsidiary-Directive is not applicable

According to the EU-Parent-Subsidiary-Directive dividends can be collected exempt from taxes between associated enterprises – if specific prerequisites are met. The companies must have their seat in the European Union, must actively conduct business and must meet the "participation threshold". In addition, the participation/interest must evidently be setup for at least one year.

No Value Added Tax-ID-Number

Most zero-tax-havens do not impose Value Added Tax and for this reason cannot assign a Value Added Tax ID Number. This can be disadvantageous for international businesses, if the company transacts business with companies in the EU or in countries which impose VAT.

Clients from countries with similar statutory provision as the German add-back taxation (*Hinzurechnungsbesteuerung*)

Germany and the US, as well as other countries, maintain "taxation of fictitious distributions" statutes in their tax legislation provisions. In the event an individual or a company holds more than 50% interest in a foreign company (the so-called "controlling financial interest") and in the event the foreign company is established in a low tax country and only generates "passive income" (for example: pure services), then the profit after taxes (dividends) will also be taxed domestically, in the event the dividends are not distributed. Many countries even tax dividends applying the full income tax rate (to the extent a person is a shareholder) and not with the otherwise applicable reduced tax rate. However, the European Court of Justice has deemed this practice to be illegal with regard to European companies, i.e. not compatible with the principles of freedom of establishment. Example: A German is a shareholder in a company located in Cyprus, with an interest of greater than 50%. The company in Cyprus only generates passive income. According to the German add-back taxation, the dividends from the Cypriote company, would be taxed at the full income tax rate applicable to a German shareholder, and not taxed with the 25% final withholding tax, because Cyprus is a low tax country. Due to the fact, that the German add-back taxation is illegal in the EU, the 25% final withholding tax applies, to the extent the dividends are distributed to Germany. In the event, the dividends are not distributed, in that case they are not taxed. Another example: The same example as above, with the exception the German holds interest in a company in Belize. In this case the "taxation of fictitious distributions" has full effect.

In what situation does the formation of a company in a zero-tax haven (Non-DBA-Situation) makes sense?

Of course, in those situations in which the disadvantages listed above do not occur or play a subordinate role in the overall context. In the event, for example a company is formed on the Cayman Islands, where all characteristics of an ordinary permanent establishment are met (orderly place of business, employed Managing Director etc…), the company actively transacts business and for example a German Stock Corporation holds interest in the company, in this case the place of business is taxed in the Cayman Islands (i.e. no taxation). The distribution of dividends to Germany (shareholder) are not subject to tax collection at the source and the German Stock Corporation, subject to 5% taxation of inter-corporate dividends, may collect such dividends tax free (domestic German tax law, other countries apply similar provisions).

Formation of a Company in a Zero-Tax-Haven as a mere Tax Model

We discussed the risks above. However, the principle applies „Where no plaintiff, No judge". If the Tax Authority, located in the state of the client (founder), cannot identify a connection between the offshore company and the actual "beneficiary", in that case such constellations remain undiscovered. The issue is however „the utilization of the dividends". If the dividends flow into the home state of the client / founder, a relation to the foreign company quickly becomes evident. In this event, the dividends should either remain in the foreign country or for example flow into a Swiss account. It is possible to employ an intermediary in the form of a Lichtenstein Institute as a shareholder of the foreign company in the tax-haven state. The foreign company, or the Liechtenstein Institute, then transacts worldwide investments, purchases for example a house on Lake Constance. If the client / founder needs money, then he can "pick up" the money in Switzerland or in Liechtenstein. This remains undiscovered, to the extent a maximum of 10,000 Euro is picked-up (Money Laundering Acts of the Countries). Of course, in most countries this type of „behavior" is deemed to be "tax evasion", but the risk of discovery is usually low, to extent certain factors are stringently observed:

-No direct money flow from the „zero-tax-haven" into the home country of the client/founder.

-All documents (Trust Agreements, Stocks, Bearer Shares, Account Documents) should, for example, be kept in a safe-deposit box in Switzerland or in Liechtenstein.

- The "impression is to be avoided", that the "managerial supervision " is actually "in truth" in the state in which the client resides, a stock of goods or merchandise (warehouse), a representation or a permanent agent may not be installed outside of the zero-tax haven.

On the basis of the described factors, the formation of a company in a zero-tax-haven as a "pure tax model", as a rule is only suited for specific business areas, for example "Internet businesses" (downloading of specific files for fees, gambling, gaming etc…).

Alternatives to the Zero-Tax Haven

As described above, the formation of a foreign company makes more sense for most clients in countries with Double Taxation Agreements and / or in countries in the European Union. The client profits from the „screening effect" of the Double Taxation Agreements and /or from the effect of the EU-Parent-Subsidiary-Directive and / or the EU Freedom of Establishment.

In some cases, it is better to pay a little tax and to act in a legal manner, than to pay no taxes and live in constant fear of possibly being indicted for tax evasion.

To this point, there are true tax-havens located within the European Union: Cyprus with only 10% income tax, the EU-special economic zones Madeira and the Canary special economic zone with approx. 5% income tax or for example England with 19% income tax for small to medium sized enterprises. Even Switzerland entices with low taxes, for example: 15.5% in the Canton of Zug.

Which offshore country is the right one?

First, it must be checked (compare to the above discussion) if an offshore company (Definition: Not a DBA-Situation, Zero-Tax-Haven) is in fact, the right legal form for the client. In the vast majority of cases, this question must be answered with a NO, with regard to fiscal practice. Accordingly, EU companies (Cyprus, England, Madeira etc…) or companies with DBA-Situation (for example: Switzerland) are much more suitable. In the event, however, one comes to the conclusion that an offshore company is a suitable option, then various considerations play a role in the selection of the location.

- Are exempted companies offered, i.e. companies which only conduct business outside of the country the company is located in and as such are tax-free?
- Total Fiscal Situation: Income taxes, corporation income tax, capital gains tax, withholding tax, gift tax or inheritance tax for individuals and companies?
- How robust is bank secrecy, is this anchored in the constitution?
- Have Mutual Legal Assistance (MLA) Agreements, agreements regarding information exchange in tax matters been entered into? (In the case of US citizens or US companies only Nevis can be considered)
- Are bearer shares permitted, to the extent the client wishes to issue bearer shares?
- Is there a publicly accessible commercial register?
- In the case of actual plant relocation / immigration: What are the conditions for foreigners (Prerequisites, Visa etc…), are there minimum wages, social security insurances, how high are the unit labor costs, are subsidies available for the establishment of new business?

British Virgin Islands Company Formation

Factor	Description
Income tax Offshore Companies	None
language of documents	English
Operational objects	No requirement to specify
Authorized capital	Not required as a concept
Minimum paid-up capital	No specific requirements
Considerations to the capital	In any currency or in kind
Most effective number of shares (maximum amount at minimum state fee)	50,000 shares (with or without par value)
Bearer shares	Yes (but to be held by a custodian only)
Registered Agent in BVI	Required
Registered Address in BVI	Required
Minimum number of directors	One
Non-resident directors	Allowed
Corporate directors	Allowed
Register of Directors	To be kept by the Registered Agent
Register of Directors filed for public record	No, but may choose to do so
Minimum number of Members (shareholders)	One
Register of Members	To be kept by the Registered Agent
Register of Members filed for public record	No
Holding of Annual General Meeting	Not required
Convention of Meetings of Directors / Members	Anywhere in the world, also by proxy
Corporate Seal	Mandatory
Imprint of Corporate Seal	To be kept by the Registered Agent
Corporate Minutes and Resolutions	To be kept by the Registered Agent
Disclosure of beneficial owners to Registrar	No
Disclosure of beneficial owners to Agent	Yes (confidential due diligence)
Keeping of accountst	Internally, only to enable a reasonably accurate determination of financial position
Auditing of accounts	Not required
Filing of accounts	Not required
Double-tax avoidance treaties	Switzerland, Japan
Currency controls / restrictions	None
Available special types of company	Restricted purpose company Segregated portfolio company
Redomicile a foreign company into BVI	Yes
Redomicile a BVI company abroad	Yes

Company Formation Bulgaria

Next to Cyprus, Bulgaria is the tax haven in the European Union, with taxes on profits of **only 10% (flat rate)**, and dividend distributions to natural or legal persons residing in or outside of Bulgaria are not subject to tax at source. The required minimum share capital for an "OOD" (= Druschestvo ogranitschena otgovornost) is, following a change in company law as applied to Bulgaria, now **just 1 euro. Further** advantages:

-As Bulgaria is part **of the European Union**, the EU parent company-subsidiary company directive (tax-free collection of dividends between associated companies within the EU, provided that the requirements of the parent company-subsidiary company directive have been met) is beginning to take effect, as an effect of the EU directive governing mergers and judgements of the European Court of Justice concerning freedom of establishment

-Bulgaria has a **double-taxation agreement (DTA) with many countries** and, consequently, has the shielding effect of a double-taxation agreement available and a low rate of tax at source on dividend distributions made to Bulgaria. The existence of business premises is defined, as things stand within the DTA, in accordance with §5 of the double-taxation agreement.

Company formation Bulgaria: Public Limited Company in Bulgaria

Setting up a public limited company in Bulgaria is possible without any great problems. The organs are the company general meeting and the managing director/managers. There are no provisions for a supervisory board. In most cases, only the minimum statutory requirements are included in the memorandum and articles of association. Additional details are usually laid down in an internal set of rules of procedure. The minimum share capital required for a PLC is currently BGN 5,000, which is around 2,500 euros. At least 70% of the share capital must be lodged when setting the company up. The valuation of non-cash contributions is carried out by three experts nominated by the court. According to the new company law an OOD can even be set up with a share capital of just one euro.

The memorandum and articles of association do not require the services of a notary, with putting them being enough on its own. However, the specimen signature of the managing director must be notarised. The liability of the partners is limited to the value of their share in the share capital.

There is also the option of setting up a so-called one-man (single-person) PLC, whereby one hundred per cent of the share capital may remain in the ownership of the foreign founder of the company. In this case, an "E" (= Ednolitschno - for "one-man") is placed in front of the Bulgarian designation for PLC "OOD" (= Druschestvo ogranitschena otgovornost). The memorandum and articles of association, in the case of an EOOD, are replaced by a deed of incorporation. Even this does not require the services of a notary. The general meeting and the management can be combined in a “managing partner” in the case on an EOOD.

Services of Our “Company formation in Bulgaria” -Law Firm

-tax advice, also in the context of associated companies, pivotal for clients from the EU, Switzerland and the Russian Federation

-setting up of the company through a law firm in Bulgaria

-recording on the register, certified translations of the registration documents, apostille

-registered office, virtual office up to and including an actual office (prevention of the acceptance of a paper company or letter-box company in Bulgaria, that is the "proper registered office")

-opening of an account for the company (including online banking, credit card and cheques)

-acting as an agent with tax consultants in Bulgaria (accounts, provisional turnover tax returns, annual accounts and balance sheet).

-on request and insofar as required:

-trust director (a person who is normally resident in Bulgaria appears as the managing director of the company, acting as a trustee: 5 DTA:

"*place of the senior management of the business"* as the location of the business premises for tax purposes in this sense, insofar as it is *not a production plant or a site for the exploitation of mineral wealth or construction work lasting for longer than 9-12 months*, in which case there must always be business premises in Bulgaria, irrespective of *the location of the senior management of the business*).

All rights and obligations are transferred to the trustor through a trust agreement. In this situation, as a tax and law firm, we do not just provide a founding managing director but a person who is the managing director recorded in the trade register and who can be contacted throughout the term of the contract (trust agreement). In addition, the trust director can, on request or insofar as this is legally required, provide appropriate signatures.

-trust partners (a legal person appears as a partner in the company, acting as a trustee): sometimes it may be necessary for the partner to want to be or need to be anonymous to the outside world. In such an event we offer solutions, e.g. by making use of a partner acting as a trustee.

-setting up of an intermediate holding company for sending dividends through, tax-free, to the actual owner of the shares

-when setting up operational facilities: help with the search for suitable offices, warehouses and/or production sites, taking care of visa matters for managers and employees, and development funds, nationally and within the EU.

SPECIAL SERVICES FOR CLIENTS FROM THE RUSSIAN FEDERATION

We offer consultations, a setting-up procedure and complete execution, on request, in the Russian language. But please note that our secretary's office is only English or German-speaking. If, however, you send us an e-mail in Russian, we can deal with it appropriately.

For clients from the Russian Federation it is very worthwhile setting up a company in Bulgaria as:

-it is geographically close to Bulgaria

-Russia has a double-taxation agreement with Bulgaria (there is the shielding effect of a double-taxation agreement available, a low rate of tax at source when distributing dividends to Bulgaria. The existence of business premises is defined solely by §5 of the DTA).

-tax of only 10% on profits, with dividends paid to Russia not being subject to any tax at source in Bulgaria

Fees Company formation Bulgaria

The fees depend on the services. We will be pleased to send you an overview of our charges.

Watch out for agencies that just set up companies and people offering cheap deals

When setting up a company abroad/an international tax structure it is of crucial importance that the client is advised by well-versed and experienced specialists (tax consultants in international tax law or with comparable qualifications). However, in the case of approx. 98% of the providers on the Internet, what is involved are agencies that merely set up companies and that do not have sufficient qualifications within the context of international tax law.

In this situation, setting up a company abroad can quickly become a trap, if the domestic tax laws, international tax law and/or internal law in the country in which the company is to be set up are not observed, e.g.:

- -internal regulations aimed at preventing abuse of a dispositive right. Almost all countries are familiar with corresponding laws/regulations, in particular Germany, Austria, Spain, the Russian Federation, the USA and even Switzerland. The aim, at all times, is to define the domestic taxation law. Naturally, countries have no interest in the right to taxation being shifted wholly or in part to another country.
- -law on double-taxation agreements, pivotally the clauses on abuse in DTAs (activity qualifications, subject-to-tax clauses, remittance-base clauses, anti-treaty shopping clauses etc.).

-domestic regulations concerning the taking out of permanent business premises under DTA - and, above all, under non-DTA circumstances

-G20 Agreement (agreements on sharing information between states)

Within a low-tax network the client can be assured that he is being advised on both sides (country of residence of the client and the state in which the foreign company has its registered office) by well-versed and experienced specialists in international tax law. This means, at all times, tax consultants in international tax law or with comparable qualifications (lawyers with additional qualifications, LL.M;a degree in business economics or a degree in law with in-house or external qualifications in international tax law).

BVI FORMS OF COMPANY

The vast majority of companies formed in the BVI for offshore purposes are incorporated under the International Business Companies Act 1984 (see below). However this law did not supersede the existing Companies Law 1963, also known as Cap. 285, which is based on English law and is used to form various types of company used by businesses trading in the BVI, and also for certain other special purposes.

Companies formed under the Companies Act 1963 are often referred to as 'CAC', 'CapCo', or 'Cap. 285' companies. They can be private companies limited by shares, by guarantee, or hybrid; or they can be unlimited, but that is rare. Public companies can also be formed under the Act. For all these types of company, Memorandum and Articles of Association must be filed at the Companies Registry, along with the registration fee. For companies limited by shares the Articles of Association can follow the Memorandum - 'Table A' applies if no Articles are registered.

Foreign companies can re-establish themselves in the BVI without the necessity for reciprocal arrangements in the original country of incorporation. An IBC wishing to leave the BVI may do so.

Responding to international pressure, the BVI Government has legislated to restrict bearer shares. The International Business Companies (Amendment) Acts of 2003 and 2004 provide the legal framework for immobilising bearer shares. The Acts came into force on 1 January 2005. The Financial Services Commission (Amendment) Act of 2004 addresses the regulatory framework for immobilising bearer shares, in particular the rules governing custodians.

Companies formed before 1 January 2005 will have until 31 December 2010 to comply with the new rules. Companies formed after 1 January 2005 must comply from their date of formation.

Those eligible to apply as an “authorised” custodian will be service providers licensed under any BVI financial services legislation, as well as bodies corporate incorporated or formed outside the BVI that are not resident in, and do not have a place of business in, the BVI. Those eligible to apply as a “recognised” custodian will be investment exchanges or clearing organizations that operate securities clearance or settlement systems in a jurisdiction which is a member of the Financial Action Task Force.

All applicants to be “authorised” custodians will have to satisfy the Financial Services Commission that they meet certain “fit and proper” criteria and have the necessary systems in place for safe custody of their bearer shares. For bodies corporate, the Commission will consider the prudential regulation and anti-money laundering regulations with which the bodies have to comply.

Commenting on the new bearer shares regime, Robert Mathavious, Managing Director and CEO of the Financial Services Commission, said, “These measures enable the BVI to comply with all international standards, including the 40 anti-money laundering recommendations of the Financial Action Task Force. They are the result of close cooperation between the BVI private sector, government and regulator.

A company issuing bearer shares must provide the Custodian with:

- the full name of the beneficial owner of the shares; and
- the full name of any other person having an interest in that share or a statement to the effect that no other person has any interest in the share.

In October 2004 new Chief Minister Dr. D. Orlando Smith informed the country's Legislative Council that a two-year transition period will be put in place to smooth the changeover to the proposed new Business Companies Act, which will lower the income tax rate to 0% for both local and International Business Companies.

The new legislation, expected to take effect on 1st January 2005, has been drafted to ensure the territory is fully compliant with the European Union (EU) Savings Tax Directive and EU Code of Conduct on Business Taxation, as required by the United Kingdom of all its Overseas Territories.

Under the transition arrangements announced by Dr Smith, new incorporations will still be possible under old legislation throughout 2005. Then, in 2006, new incorporations must be made under the new Business Companies Act, although companies already on the register will be permitted to operate under the old IBC Act or Companies Act for an additional year. By 1st January 2007, it is expected that all companies will operate under the new legislation.

The Act requires companies to use a registered agent to ensure compliance with the new laws, and the government intends to launch an educational initiative to raise awareness of the impending changes.

Ordinary Resident Company

An ordinary resident company limited by shares is usually formed for the purposes of carrying on local business. It must:

- have two or more members;
- restrict the transfer of its shares;
- not invite the public to subscribe for its shares; and
- must not have more than 50 members.

Residence depends on the location of management and control; usually, if more than half of the directors are resident in the BVI, then so is the company. If a resident company carries on business in the BVI it must obtain a Trade License, and will pay a license fee depending on whether the shareholders are residents or foreigners. The fee due on incorporation is $200 plus $15 for each $10,000 of nominal capital in excess of $10,000. Annual registration fees are from $25 to $10,000 depending on the gross value of the company's external (non-BVI) assets.

Ordinary Non-Resident Company

An ordinary non-resident company limited by shares is subject to the same rules as a resident company.

Company Limited by Guarantee

Under the Companies Act, a company limited by guarantee must have a minimum of two members; the Memorandum of Association contains a statement of the amount up to which the members guarantee the company's debts. The Articles can provide for the members to have differing 'shares' of the assets and liabilities.

The Company Limited by Guarantee has certain advantages, including that there is no list of members on the annual return, and that control over assets can be achieved without the use of shares; in some jurisdictions, profits realised from such companies are classified as capital gains rather than as income. Specialist advice is required by anyone considering the use of a company limited by guarantee.

Companies limited by guarantee can be resident or non-resident, as for those limited by shares. The fee payable on incorporation is $100, and annual registration fees are as for companies limited by shares.

Hybrid 'Cap 285' Company

A hybrid company under the Companies Act usually has a group of shareholding members which is distinct from the group of guarantors. The shareholders can have 100% of the voting power, and can execute a trust deed in respect of their shareholdings; under the BVI's trust legislation a trust Protector can be appointed to oversee the trustees' actions. The result, if the company is set up correctly (specialist advice needed!), is to separate control and membership of the company from beneficial interest, which is sometimes desirable.

Hybrid companies can be resident or non-resident, as for companies limited by shares. The fee payable on incorporation and the annual registration fees are as for companies limited by shares.

Public Company

A public company formed under the Companies Act is similar to a private company limited by shares except that it must have 5 or more members, and the restrictions listed above do not apply.

International Business Company

The International Business Company is the most widely used vehicle for offshore operations in the BVI; it normally takes the form of a private company limited by shares. The governing legislation is the International Business Companies Act 1984, updated by the International Business Companies (Amendment) Act 1990 and the International Business Companies (Amendment) Acts of 2003 and 2004, which immobilise bearer shares (see above) and impose record-keeping requirements on professional intermediaries. Existing IBCs will be able to amend their Memoranda of Association to state that they are authorised to issue only registered shares and that these may not be exchanged for bearer shares. They will be required to file this statement with the BVI Registrar of Companies, along with a declaration that they have no bearer shares in issue.

Under the International Business Companies (Amendment) Act 2003, from December 31, 2004, all international business companies (IBCs) located in BVI are required to establish and maintain a Register of Directors, and must appoint their first director within 30 days of the IBC's incorporation. Other statutory requirements however remain minimal, and flexible:

- Only one director and one shareholder are required;
- Shareholders, directors and officers need not be resident in the BVI and there is no stipulation as to their nationality;
- There is no minimum capital requirement; shares may be either registered or bearer and may be issued in any currency (bearer shares now have to be

deposited with an authorised intermediary, who must record the identity of the beneficial owner);
- Accounts need not be kept; however, if they are kept there is no requirement for an audit;
- No returns are needed of shareholders, directors or officers;
- Shareholders' and directors' meetings need not be held in the BVI and can be held by telephone;
- The Memorandum and Articles of Association are the only documents to be held on the public record.

IBC status is granted subject to certain conditions:

- No business may be transacted with residents in the BVI;
- No ownership interest in real property in the BVI is permitted; property may be leased for office use only;
- Banking or trust business may be carried on only if an appropriate license is issued;
- Likewise, a licence is required to carry on insurance or re-insurance business;
- Engaging in the business of company management or providing registered facilities for BVI incorporated companies is not permitted.

IBCs are permitted to own shares in other BVI companies, maintain bank accounts in the jurisdiction and employ the services of local professionals. IBCs are exempt from BVI taxes by statute.

It is usual to use a registered agent in the BVI to incorporate an IBC (eventually it is obligatory to appoint one anyway; there are about 70 of them, licensed by the Government). Fees for incorporation of an IBC are based on the company's authorised share capital. Normally, the incorporation process takes no more than one day; however, for banks, trust companies and insurers the process is lengthier .

Statutory incorporation fees are $300 for capital up to $50,000 and $1,000 thereafter. The annual license fee is:

Authorised Capital	Fee
Up to $50,000	$300
Over $50,000	$1,000
No authorised capital	$350
Below $50,000 and some or all of the shares have no par value	$350

Limited Partnership

BVI Limited Partnerships are governed by the Limited Partnerships Act 1996; as regards general partnerships this act reproduces almost exactly the common law provisions of the English Partnership Act 1980, but the clauses dealing with limited partnerships follow modern US Delaware precedent.

Formation of a limited partnership is normally carried out by a registered agent (it is obligatory to nominate one on formation in any event). The agent files the Memorandum and Articles of Association with the Registrar of Limited Partnerships, who issues a Certificate of Limited Partnership; the partnership then exists; but if there is no certificate, the partnership will be deemed to be a general partnership. The fee payable on registration if $500 and there is an annual license fee, also $500.

The rights and limitations of limited partnerships under the Act mirror those of the International Business Company (see above); however the Act distinguishes between local and international partnerships - local partnerships may transact local business but are not tax-exempt, while international partnerships are tax-exempt but barred from local business.

The BVI limited partnership legislation was designed to facilitate the use of such vehicles in investment and mutual funds. As is usual in limited partnerships, there are one or more general partners with unlimited liability and management responsibility, while limited partners are liable only to the extent of their capital contributions, and their identity does not need to be disclosed. It is possible for the same person to be both a general and a limited partner in the same partnership. A limited partner's interest in the partnership is assignable. There are no minimum capital requirements or prescribed debt:equity ratios.

Trusts

The trust law of the British Virgin Islands is based on English trust law. The Trustee Amendment Act 1993 (the "Amendment Act") updated the original British Virgin Islands Trustee Act (itself largely based on the English Trustee Act 1925).

The Amendment Act introduced a fixed perpetuity period not exceeding 100 years, and has modern 'wait-and-see' provisions to deal with interests that might vest outside the perpetuity period. The Amendment Act also introduced purpose trusts.

BVI trusts are exempt from registration under the Registration and Records Act, and trustees are exempt from any need to file annual returns and from any other reporting requirements.

The majority of BVI trusts are exempt from all taxes provided there are no beneficiaries resident in the BVI, and that the trust does not conduct any business in the BVI or own any land in the jurisdiction. A trust duty of $50 is imposed on each trust instrument subject to BVI proper law.

The Amendment Act provided for the appointment of a 'protector of trust', effectively a supervisor of the trustee(s), and also managing and custodian trustees. A company offering trust services must obtain a licence under the Banks and Trust Companies Act 1990 and conform to various conditions.

With effect from 1 March 2004, three new pieces of Trust Legislation came into force in the BVI:

- The Virgin Islands Special Trusts Act (VISTA);
- The Trustee (Amendment) Act; and
- The Property (Miscellaneous Provisions) Act.

The Vista Act allows trustees of VISTA trusts which hold a shareholding in a BVI International Business Company to disengage the trustee from management responsibilities. The use of trusts to cater for the succession of shares in companies has historically been impeded by the 'prudent man of business' rule of English trust law which is designed to help preserve the value of trust investments. The new legislation leaves the responsibility for managing the company to the directors of the company.

The new Act applies only where there is an enabling provision in the trust instrument. Where the new Act applies, designated shares will be held on “trust to retain” and the trustee’s duty to retain the shares as part of the trust fund will have precedence over any duty to preserve or enhance their value. It is also possible to amend existing trusts to allow the provisions of the VISTA Act to apply to them.

The Act is confined to shares in BVI International Business Companies and Companies Act companies; and the trustee of a VISTA trust must be a company which holds a licence to undertake trust business under the Banks and Trust Companies Act, 1990.

The Trustee (Amendment) Act makes a number of amendments to the BVI Trust law. These include: new regulations improving the BVI's purpose trusts regime and some amendments in relation to conflicts of laws provisions, including robust, comprehensive and carefully crafted provisions protecting BVI trusts (and dispositions to their trustees) against “forced heirship” claims.

Trust duty has increased from $50 to $100.

The Property (Miscellaneous Provisions) Act provides that deeds executed by individuals no longer need to be sealed.

In the British Virgin Islands there is no capital gains or capital transfer tax, no inheritance tax, and no sales tax or VAT. The main tax for resident companies is income tax; there are also stamp duties on certain transactions, and property taxes.

In September 2002, Chief Minister and Minister of Finance, Ralph T O'Neal confirmed that the government was seriously considering the abolition of both personal and corporate income tax on the Islands. Although he explained that no pressure had been brought to bear on the BVI government to impose a zero rate of income tax, as it stands, the jurisdiction's current tax regime could come under fire for 'ring-fencing' certain tax advantages; one of the criteria laid out by the OECD for defining 'harmful preferental tax regimes'.

In October 2004 new Chief Minister Dr. D. Orlando Smith informed the country’s Legislative Council that a two-year transition period will be put in place to smooth the changeover to the proposed new Business Companies Act, which will lower the income tax rate to 0% for both local and International Business Companies.

The new legislation, expected to take effect on 1st January 2005, has been drafted to ensure the territory is fully compliant with the European Union (EU) Savings Tax Directive and EU Code of Conduct on Business Taxation, as required by the United Kingdom of all its Overseas Territories.

Under the transition arrangements announced by Dr Smith, new incorporations will still be possible under old legislation throughout 2005. Then, in 2006, new incorporations must be made under the new Business Companies Act, although companies already on the register will be permitted to operate under the old IBC Act or Companies Act for an additional year. By 1st January 2007, it is expected that all companies will operate under the new legislation.

The Act will require companies to use a registered agent to ensure compliance with the new laws, and the government intends to launch an educational initiative to raise awareness of the impending changes.

Under the new legislation, the current income tax system for employees will also disappear. However, in its place, a new payroll tax is to be levied at a rate of 14%, 8% of which will be paid by the employee and the remainder by the employee, although the first $7,500 of income will remain tax free. However, the contribution for small business, defined as those employing less than seven people and with a payroll of less than $150,000 per year, will be only 2% whilst all other businesses will contribute 6%.

Furthermore, local firms will be required to pay annual licence fees, whilst IBCs will face a maximum 20% rise in their annual licence fees.

Income Tax

Income tax (now abolished) was levied on the chargeable income of resident BVI Companies Act Companies. As applied to a company, 'resident' means that the management and control of its business is exercised from the BVI. Normally, if more than half of the directors are resident in the BVI, then so is the company. There are three possible cases:

- the company is resident, in which case it paid income tax of 15% on its world-wide chargeable income;
- the company is non-resident, in which case it paid 15% income tax on its chargeable income arising in or remitted to the BVI; or
- the company is resident but is an 'offshore trading company', meaning that 90% of its profits arise from activity conducted outside the BVI, and it paid tax at the rate of 1% on its world-wide income.

Chargeable income was assessed after deduction of expenses; tax credits are allowed on foreign tax paid in treaty countries and certain other countries.

Taxation of Trusts

Trust income is exempt from tax if:

- the trust is created by or on behalf of a non-resident person; and
- owns no land in the BVI; and
- does not carry on business in the BVI.

Withholding Tax

There are no withholding taxes in the BVI. However, the BVI, like other British 'dependent territories', will be forced to apply the EU's Savings Tax Directive from 1st July, 2005, and has chosen to apply a withholding tax (initially of 15%) to the returns on savings paid to nationals of EU Member States. The Directive does not apply to corporate entities.

Belize Company Formation

double taxation agreements (DTA)	NO
Income tax Offshore Companies	NO
Income tax Onshore Companies	Yes, No for job creation
tax free receipt of foreign dividends	Yes
EU Parent-Subsidiary Directive applicable	No
Holding company privileges	Yes
Banking secrecy	High
Nominee relationships allowed	Yes

Belize is a Central South American Country which borders the Caribbean Sea between Guatemala and Mexico. Formerly known as The British Honduras the official name was changed to Belize in 1973 with full independence granted within the Commonwealth on 21 September 1981, although this was not accepted by Guatemala until 1992 because of its historical disputes over the territory with the United Kingdom.

As with many former British colonies, Belize has adopted English law and its traditions and models for business formations, which take the form of: sole proprietor, partnerships, limited liability partnerships, Trust Funds, private companies, limited life companies, investment companies, Joint Venture and Cooperatives partnerships and International Business Companies (IBC)

There are over 25,000 international business companies registered in Belize, many of which have been formed to hold legal title to real property in jurisdictions outside Belize or to create securities trading accounts in Europe, Canada or the United States. One of the major advantages of the Belizean IBC is the exemption from income tax, capital gains or transaction tax.

The jurisdiction is highly rated for its banking secrecy; corporations do not have to disclose beneficial ownership;, and Trusts need not disclose the names of their beneficiaries. The regulatory restrictions are minimal and foreign investment is actively encouraged and facilitated by the Commercial Free Zone Act 1994 which provides for the development of designated commercial free Zones and Export Processing Zones which allow trading in areas such as manufacturing, processing, and the distribution of goods and services. These zones are exempted from foreign exchange restrictions and have other attractive benefits.

The IBC formation costs are very competitive, the Belizean IBC Registry is modern and computerized and incorporation can be completed within one hour

Offshore Company Formation Formalities

Belize offshore entities can take one of three forms: the International Business Corporation, the Trust and the Offshore Bank.

The International Business Corporation is the most common offshore company formation and as with most jurisdictions the trading activities of a Belizean IBC are restricted by statute.

The international Business Act 1990 specifically prohibits an IBC from:

- Conducting local business activities;
- Owning any interest in Belizean real property: an IBC can only lease property for office purposes;
- Undertaking business in banking; insurance or re-insurance, company management or registered facilities for Belizean incorporated companies;
- The legal requirements are not overly onerous and secrecy is guaranteed;

- A registered office and registered agent must be maintained in Belize and the registered agent appropriately licensed with the necessary professional qualifications. The information about the office and agent are the only details that will appear on the public record. Details of shares and beneficial ownership are protected from public scrutiny;.
- There are no minimum capitalization requirements, the nominal authorized share capital is usually US$50,000.00 divided into shares with or without par value but capital can be expressed in any currency;
- Bearer shares can be issued with or without par value. Registered shares, preference shares with or without voting rights can also be issued;.
- Only one director and share holder are required and a company secretary is optional. There are no nationality requirements;.
- The company name must end in: Limited, Ltd, Corporation, Inc, Sociedade Anonima, SA or a similar ending which will identify it as having limited liability;
- Transfer of Jurisdiction: IBC legislation permits foreign companies to be re-domiciled in Belize;.
- There are no requirement for meeting of members and Directors;
- There is no requirement to file annual returns with the exception of franchise tax;
- Company Incorporation formalities can be completed within 24 hours.

Trusts

Belizean Trusts are regulated by the Trusts Act 1992. The intention of the statute was to integrate both modern and flexible asset protection provisions. Trusts can be created (other than a unit trust) by oral declaration or by a written document including a will or codicil. A unit Trust can only be created by a document.

A Trust other than a constructive Trust over land situated in Belize is not enforceable unless evidenced in writing.

Registration of Trusts is optional. The maximum duration of a Trust other than charitable Trust is 120 years from the date of its creation.

Once validly created, a Belizean Trust is impenetrable and cannot be set aside or varied by a Belizean Court; nor can a court adjudicate in favour of any claim against Trust property arising from the Order of a foreign court in Divorce or Insolvency/Bankruptcy proceedings. It is a common feature that the Trust is used in conjunction with an IBC to facilitate the anonymity of beneficiaries from IBC's officers.

Taxation

Incorporated Belizean local businesses pay Corporation Tax of up 25% on turnover and employees pay up to 45% tax on income in addition to social contributions.

There is also Sales Tax up to 12% on the production of goods and services, stamp duty, Inheritance and Capital Gains taxes.

IBC's, offshore Banks and Trusts (provided that the Settlor and Beneficiaries are not resident during the tax year and Trust property does not include any land situated in Belize) are exempt from income tax, taxation on the payment of dividends and interest, gifts, stamp duty, Inheritance and Capital Gains taxes.

However, Withholding tax of 25% is levied against non resident companies and individuals in relation to management fee, mortgage and debenture interest, insurance premiums and rental of plant and machinery.

Banking

The major local banks provide a full range of international banking services including foreign currency savings and checking accounts earning tax-free interest and operated for the purpose of exchange control on a non-resident basis.

Belizean Offshore Bank can establish, maintain and operate a business office in Belize; transact offshore banking business through its business office in Belize without restrictions; and transact offshore banking business with a local entity in Belize licensed under the Banks and Financial Institutions Act, 1995.

Belize Offshore Banks are not subject to exchange control regulations.

The Central Bank of Belize was established pursuant to the Central Bank Act of 1982, the Bank Act. The Central Bank has a statutory obligation under the Bank Act to foster monetary stability and promote credit and exchange conditions conducive to economic growth within the context of the government's economic policy. One of the most favourable benefits, subject to references, is that all Belizean companies can open up a bank account with the Bank of Belize without additional verification making it one of the most competitive jurisdictions.

Employment law

Under Belizean law employees are entitled to a minimum wage. Contractually the first two weeks of employment is the probation period. Between 2 weeks and 6 months, three days notice of termination must be given; between 6 months and one year, one weeks notice; and after that 2 weeks notice. Employees are entitled to 2 working weeks annual leave, and to 16 days sick leave at their basic rate of pay providing they have worked an aggregate period of not less than 60 days within the previous 12 months.

The Labour Department is responsible for the regulation of trade unions, personnel management and policies, the security of workers, management responsibilities including the collective bargaining process and grievance and disciplinary procedures. Industrial and employment disputes are handled by the Labour Commissioner who will instruct a Labour Officer to apply conciliation procedures.

The Constitution prohibits antiunion discrimination both before and after a union is registered.

Geography, people and culture

Belize is the most sparsely populated nation in Central America. Slightly more than half of the population lives in rural areas. About 25% live in Belize City, the principal port, commercial centre, and former capital.

Most Belizeans are of multiracial descent. About 46.4% of the population is of mixed Mayan and European descent (Mestizo); 27.7% are of African and Afro-European (Creole) ancestry; about 10% are Mayan; and about 6.4% are Afro-Amerindian (Garifuna). The remainder, about 9.5%, includes European, East Indian, Chinese, Middle Eastern, and North American groups.

English, the official language, is spoken by virtually all except the refugees who arrived during the past decade. Spanish is the native tongue of about 50% of the people and is spoken as a second language by another 20%. The various Mayan groups still speak their indigenous languages, and an English Creole dialect (or "Kriol" in the new orthography), similar to the Creole dialects of the English-speaking Caribbean Islands, is spoken by most.

The rate of functional literacy is 76%. About 60% of the population is Roman Catholic; the Anglican Church and other Protestant Christian groups account for most of the remaining 40%. Mennonite settlers number about 7,160.

Immigration and Residency

An application for permanent residence can be made after one year of legal residence in Belize on a continuous basis. To acquire nationality status an applicant should have permanent residence or have resided legally in Belize for at least 5 years.

There are also incentives for permanent residence for Investors and Belizeans living overseas.

Legal and Political System

Belize is a parliamentary democracy based on the Westminster model and Queen Elizabeth II is head of state and is represented by a Governor General. The primary executive organ of government is the cabinet, led by a Prime Minister (head of government). Cabinet ministers are members of the majority political party in parliament and usually hold elected seats in the National Assembly concurrently with their cabinet positions.

The National Assembly consists of a House of Representatives and a Senate of 12 members. The 29 members of the House are elected to a maximum 5 year term. The Governor General appoints the Senate. Six are appointed on the recommendation of the Prime Minister, and 3 with the advice of the leader of the opposition. The Belize Council of Churches and the Evangelical Association of Churches, the Belize Chamber of Commerce and Industry and the Belize Business Bureau, and the National Trade Union Congress and the Civil Society Steering Committee each advise the Governor General on the appointment of one senator each. The Senate is headed by a president, who is a non voting member appointed by the governing party.

Members of the independent judiciary are appointed. The judicial system includes local magistrates, the Supreme Court, and the Court of Appeal. Cases may, under certain circumstances, be appealed to the Privy Council in London

The current Belizean Government is headed by the People's United Party (PUP), which was elected to a second consecutive term in office on March 5, 2003. The opposition party is the United Democratic Party.

Economy

The currency is the Belizean dollar, fixed at BZ$2 = US$1.

Forestry was the only economic activity of any consequence in Belize until well into the 20th century when the supply of accessible timber began to dwindle. Cane sugar then became the principal export. Exports have recently been augmented by expanded production of citrus, bananas, seafood, and apparel.

Domestic industry is limited, constrained by relatively high-cost labour and energy and a small domestic market.

A major constraint on the economic development of Belize continues to be the scarcity of infrastructure investments. Although electricity, telephone, and water utilities are all relatively good, Belize has the most expensive electricity in the region, despite recent cuts in commercial and industrial rates.

Belize continues to rely heavily on foreign trade, with the United States as its number-one trading partner. Other partners include the United Kingdom, European Union, Canada, Mexico, and Caribbean Common Market (CARICOM) member states.

Legislation affecting offshore and non resident business

If you require more information on any aspect of company formations please contact us.

Belizean Nationality Act 1981
Commercial Free Zone (CFZ) Act 1994
Computer Wagering Licensing Act 1995
Exchange Control Regulations 1980
Export Processing Zone (EPZ) Act 1990
Fiscal Incentive Act No 6 Of 1990
IBC Act, 1990
Income Tax Amendment Act 1998
International Insurance Act, 1999
Limited Liability Partnerships Act, 1999
Limited Life Companies Act, 1999
Money Laundering (Prevention) Act, 1996
Mutual Funds Act, 1999
Offshore Banking Act, 1996
Protected Cell Companies Act, 1999
Registration Of Merchants Ships Act 1989
Retired Persons Incentive Act 1999
Trade Unions and Employers Organizations Act of 2000
Trust Act 1992

CAYMAN ISLANDS Company Formation

double taxation agreements (DTA)	NO
Income tax Offshore Companies	NO
Income tax Onshore Companies	NO
tax free receipt of foreign dividends	Yes
EU Parent-Subsidiary Directive applicable	No
Holding company privileges	Yes
Banking secrecy	High
Nominee relationships allowed	Yes

The Companies Law 1961 (as amended, chiefly in 1990 and 1995) is based on English law and is the main law governing companies in Cayman. There are four company types which are commonly registered in Cayman under the Companies Law: Ordinary Resident Company, Ordinary Non-Resident Company, Exempted Company and Exempted Limited Duration Company.

The Companies Law, true to its English origins, permits companies limited by shares, companies limited by guarantee, and unlimited companies; but in practice only companies limited by shares are used. Incorporation and registration of limited companies takes a day, and it can be less. Shelf companies are available but are unusual.

There is a Registrar of Companies, and registration involves submission of the Memorandum of Association; for companies limited by shares the Articles of Association can follow - 'Table A' applies if no Articles are registered.

There needs to be one shareholder of record (of any nationality); there are no rules regarding minimum capital, par value etc. There is no statutory requirement for audit or for annual filing of accounts. All companies must maintain registered offices in Cayman.

However, pressure from the OECD and other international bodies on the Cayman Islands to take steps to counter money-laundering has led to the imposition of more stringent 'KYC' rules on the offshore sector.

There are more than 65,000 companies registered in the Cayman Islands, but according to General Registry figures, the number of companies registering has steadily decreased in recent years. According to the official figures for January 2003 there were 587 new companies registered, compared with 613 for the same month in 2002, and 823 in January 2001. Full year figures show a similar decline, with 12,693 companies registering in 2000, 8,456 in 2001, and 7,106 in 2002.

Ordinary Resident Company

An ordinary resident company is usually formed for the purposes of carrying on local business. In addition to the Companies Law, it is subject to the terms of the Local Companies (Control) Law 1995 which requires licensing, and the annual submission of a list of shareholders. Only registered, and not bearer, shares are allowed. An annual general meeting must be held, and a register of members must be kept at the registered office, open to public inspection. The name of the company must end in Ltd or Limited. The list of shareholders of the company must be filed with the Registrar of Companies in January each year; the Immigration Board should also receive a similar list showing those shares beneficially owned by Caymanians. Registration fees are payable on incorporation and annually: CI$150 for capital not exceeding CI$42,000, CI$350 otherwise.

Ordinary Non-Resident Company

An ordinary non-resident company is subject to the same rules as a resident company, but under the terms of the Local Companies (Control) Law 1995, must not conduct any business within the islands. This form or that of the exempt company is the usual choice for offshore operations. The Financial Secretary will grant a certificate of non-residence if he is satisfied that the company does not and does not intend to trade onshore. The company is then relieved of the licensing requirement and the need to provide lists of shareholders to the Immigration Department. An annual list must still be provided to the Registrar, but it is quite usual to appoint proxies.

The normal minimum capital requirement is CI$42,000, and the minimum capital duty levied on incorporation of a nonresident company and annually thereafter is CI$400; for higher capital the rate is CI$565. There are no restrictions on the location of general meetings or of directors or the secretary, if there is one, except that one shareholders' meeting must be held in Cayman each year.

Records of members, directors, mortgages and charges must be kept. Financial records must be maintained although no audit is necessary and there are no filing requirements.

Ordinary non-resident companies can apply to convert to exempted companies.

Exempt Company

The differences between a non-resident company and an exempted company are as follows:

- An exempted Caymans company does not have to use Ltd or Limited in its name;
- it may issue bearer shares in addition to registered shares;
- it has to hold one directors' meeting a year in Cayman (but may use proxies); it does not have to hold a shareholders' meeting in Cayman;
- it need not file a list of shareholders annually, and does not even have to keep such a list;
- it may obtain a Certificate of Tax Exemption (ie against any future Cayman taxation)

An exempted company (or limited duration exempted company) is the normal form of choice for collective investment vehicles. Incorporation fees depend on capital as follows:

- CI$410 for capital less than CI$42,000
- CI$660 for capital up to CI$820,000
- CI$1,384 for capital up to CI$1.64m
- CI$1,968 thereafter

Limited Duration Exempt Company

Limited duration exempted companies are like exempted companies except that:

- the Memorandum of Association must limit the life of the company to 30 years or less;
- certain events are specified which automatically precipitate its voluntary winding-up and dissolution;
- it must at all times have not fewer than two members;
- the Articles may provide that no shares may be transferred without the agreement of all shareholders; and
- management may be carried out by the shareholders or may be delegated to a board of directors.

Fees are as for exempted companies, plus $200.

Foreign Company

Foreign companies are companies incorporated outside the Cayman Islands which establish a place of business, or carry on business in Cayman (which includes the sale by or on behalf of the company of its shares or debentures). Under the Companies Law a foreign company must register, providing the following information:

- a copy of its incoporation documentation in English;
- the names and addresses of its directors; and
- the name of a person in Cayman who can accept service on the company's behalf.

There is a fee of CI$850 on registration, and CI$500 annually thereafter.

A company can also transfer its domicile to the Cayman Islands 'by way of continuance' which obviates the need to incorporate afresh. The reverse process is also possible.

Limited Partnership

Cayman Islands partnership law is based on English law, with recent amendments. Limited Partnerships are formed under the Partnership Law 1995. One or more general partners have unlimited liability and are responsible for management; limited partners are liable only to the extent of their contributions.

To form a limited partnership a declaration must be filed with the Registrar of Limited Partnerships which describes all the partners and gives other information; this declaration is also published in the Cayman Gazette.

Exempted Limited Partnership

A limited partnership may become an exempted limited partnership, or one can be formed de novo, by filing a statement with the Registrar. Unlike the Limited Partnership declaration, this does not need to include the names of the limited partners or the amounts of their contributions.

An exempted limited partnership must not do business with the public in Cayman. An exempted limited partnership may obtain a 50-year Certificate of Tax Exemption (ie against any future Caymans taxation).

Trusts

Trust law in the Cayman Islands is based on English trust law, with some recent modifications in the Trusts Law 1996. Other recent changes include the Perpetuities Law 1985 which increased the perpetuity period to 150 years, the Special Trusts (Alternative Regimes) Law which introduced purpose trusts, the Trust (Foreign Element) Law 1987 which provided inter alia for the importation and exportation of trusts, and the Fraudulent Dispositions Law 1989 which includes specific asset protection provisions.

Trusts do not have to be registered; a company offering trust services must obtain a licence under the Banks and Trust Companies Law 1995; individuals do not have to do so.

Trusts can be exempt, like companies and limited partnerships, but must then be registered with the Registrar of Trusts, and pay a fee of CI$400 (CI$100 annually thereafter). The Governor gives a 50-year undertaking to the Trustees that no taxation will be imposed on the trust.

The Hague Convention has not been implemented in Cayman. Specific provisions exist for the non-recognition of foreign judgements and the exclusion of forced heirship.

In the Cayman Islands there are no taxes other than import duties (at varying rates), stamp duty at 7.5% on transfers of real estate (currently reduced temporarily to 5%), and stamp duty at rates up to 1% ad valorem on legal documents dealing with valuable assets or transactions; however issues of securities, mutual fund shares or units are normally exempt from stamp duty.

During 2003 the Cayman government battled to avoid inclusion in the scope of the EU's Savings Tax Directive, but in the end was forced to give in by the UK Treasury, and is applying the information exchange model under the Directive from 1st July, 2005. This means that information about interest on savings paid to citizens of European member states will be forwarded to the tax authorities of the member state in question.

The Cayman Islands authorities have put a brave face on this development, which they tried hard to avoid.

The Cayman Islands Financial Services Association expressed support for the government’s decision to opt for exchange of banking information: "Should the Directive become fully implemented as planned, we believe that automatic information exchange would be consistent with the Cayman Islands' promotion of transparency in its financial services industry", commented Eduardo D'Angelo P. Silva, a Director of CIFSA.

The Cayman Island’s Financial Secretary Mr George McCarthy said: "International business is attracted to the Cayman Islands because of the critical mass of experienced professional advisers, our robust and effective regulatory system, innovative products and services and an approach to tax which is business-friendly. We have signed and implemented commitments on tax transparency. We have consistently asked for fairness - a level playing field and equitable treatment. It is not a case of us asking to be let into your ports 'for a bit of financial raiding', but of the Cayman Islands correcting decades of negative spin by competing onshore financial centres."

In February 2004 the Cayman Islands Legislative Assembly voted to accept the terms of the European Savings Directive, the culmination of weeks of talks with the United Kingdom government who had threatened legislative action against the jurisdiction. Leader of Government Business McKeeva Bush urged members to vote for the motion, telling them that the Cayman no longer has a mandate to go it alone. Despite his plea however, the opposition People's Progressive Movement (PPM) chose to abstain. "I am not one that is normally pushed around," observed Mr Bush of a dispute that saw the Caymans challenge the right of the EU to impose the Directive on offshore dependent territories. I believe that you can only push so much. In effect then, our two alternatives are that we either reject the proposal and allow the UK government to put it in to place, or we agree, take what is offered and say, 'I live to fight another day.' "

In return for Cayman's acceptance of the Directive, the UK has agreed to pursue discussions on a Double Tax Avoidance Treaty.

Cyprus company formation

double taxation agreements (DTA)	Yes, with most countries
Corporate Tax	10%
tax free receipt of foreign dividends	Yes
EU Parent-Subsidiary Directive applicable	Yes
Holding company privileges	Yes
Banking secrecy	High
Nominee relationships allowed	Yes

Cyprus has double taxation agreements = DTA with most countries. Freedom of establishment in the European Union is applicable. From a European point of view, NO commercially equipped business operation is required for approval of a permanent establishment regarding the tax legislation in Cyprus, and neither is the proof of active business in Cyprus. The profit tax in Cyprus amounts to only 10%, irrespective of the amount of profits. Distributions of profits are not taxed.

Our Services within the scope of the Formation Package "Cypriote Limited"

• **Please note that our formation package contains the tax identification number and the value added tax ID number, accounting, annual financial statement, as well as the preparation of the annual return and advance turnover tax returns.** As such, the otherwise substantial fees associated with a Cypriote tax accountant do not apply (of course your collaboration is required: Presorting of the invoices, cash journal, bank statements etc…) **In addition, our formation packages contain:**

• **Account opening in Cyprus and Delivery and Shipping Service for letters / invoices!**

• Formation / Consulting by **Tax Accountants and Attorneys at Law**

• **No "Formation Director" or "Formation Shareholder"** Moreover a Cypriot is the **Director; the Director is registered and is reachable during the entire agreement term.** Provision of Nominees via a Cypriote Law Firm, no "Figurehead Directors".

• **No "Help with the opening of a bank account"** on Cyprus (which as a rule means that an account is not opened) **rather guaranteed account opening, incl. VisaCard and online banking. You do not have to travel to Cyprus.**

• **Serviceable postal address, also for registered mail, no post office box**

• **Upon request free within the scope of the total package:** Swiss company and / or personal account at a major Swiss private bank. Our clients are not required to open a branch office in Switzerland, to open a company account in Switzerland, (otherwise a prerequisite). A Swiss account could, for example, be used to "securely park and multiply" Cypriote dividends.

Stock Capital: The recommended authorized capital amount is CYP£ 1,000, unless you wish to commit a larger amount. The business of the company is not restricted to the amount of the authorized capital. The minimum amount of authorized stock capital for the registration of a Ltd. is CYP£ 1,000. In the event, however, the company opens an office in Cyprus (commercially structured organization), the minimum amount is CYP£ 10,000. We would like to point out the fact that this amount does NOT have to be blocked on Cyprus.

Configuration at the Formation of a Cypriote Limited

1. Director on Cyprus

A production site, a site for the exploitation of mineral resources or construction works whose duration is greater than 9-12 months always constitutes the establishment of a place of business in Cyprus, irregardless of "the place of managerial supervision". Otherwise a taxable permanent establishment is defined analogous to Article 5 DBA (Double Taxation Agreement) according to the "place of managerial supervision". Either you - or an agent – relocate your ordinary residence to Cyprus and act as the Director of the Cypriote Limited OR you hire a Cypriote as a Director OR our Law Firm in Cyprus provides for a Nominee Director. By the way, we also provide the possibility to our clients, that a Cypriot acts as an "employed Director" of the Cypriote Limited, with an employment agreement between the Cypriote Limited and the Director, as well as the payment of payroll tax and social security contributions.

Alternative: The non-Cypriote client / founder himself acts as the Director of the company and provides proof that he routinely travels to Cyprus to perform the required ordinary managerial duties (however, this is not feasible in the case of the necessary day-to-day decisions).

2. Shareholder of the Cypriote Limited

The shareholder is due the profits after taxes (dividends). In addition, the shareholder is the owner of the company. Shareholders of a Cypriote Limited can be natural persons, or domestic or foreign companies.

In the event a Cypriote is a shareholder a 15% defense tax is due, when the dividends are distributed or if no dividends are distributed for a period of two years. For this reason we offer a „Nominee Shareholder" within the scope of our services, more specifically our English Tax Accounting Firm acts as the Nominee Shareholder.

Cyprus provides the advantage, that dividend distributions to a non-Cypriote is not taxed. There are exceptions to this arrangement, which we would like to explain in more detail in a personal setting.

To the extent the client / founder or his company would like to act as the shareholder himself, the following factors are to be observed:

-Does your country have laws analogous to the „taxation of fictitious distributions", comparable to those in Germany and the USA?

Such laws result in the Cypriote dividends being taxed at the shareholder, even if they are not distributed. This is subject to the prerequisites, that the client / founder owns more than 50% of the shares (majority shareholder) and the Cypriote Limited located on Cyprus only generates passive income. In the event such laws exist within the European Union, this is illegal, based on the findings of the European Court of Justice.

If this is the case, the client / founder should "officially" only hold a maximum of 50% of the shares, the other shares should be held on a trust basis.

- Does the EU-Parent-Subsidiary- Directive apply? In the event the shareholder is a company located in the EU and should the company hold at least 15% of the shares of the Cypriote Limited and both companies (Cypriote Limited and Shareholder) are active companies and the interest is evidently set up for at least one year, then the dividends are distributed tax free to the foreign shareholder due to the EU Parent Subsidiary Directive.

Example:

A Danish corporation is the 100% shareholder of a Cypriote Limited. The Cypriote Limited is first taxed at a 10% rate. The dividends (earnings after taxes) distributed to the Danish corporation are tax free. Such dividends are first taxed in the event they are distributed to the shareholder of the Danish corporation, provided such shareholder is an individual.

Please consider, that it is not mandate of a Cypriote Limited to distribute dividends. Moreover, the Cypriote Limited can make investments across the globe, for example: purchase a house in Spain.

Private Company Limited by Shares

The relevant legislation is Cyprus Companies Law, Cap. 113, which is virtually a copy of the English 1948 Companies Act. A private company is one which by its articles:

- Restricts the right to transfer its shares
- Limits the number of its members to 50
- Prohibits any public subscription to shares or debentures

The Companies (Amendment) Law of 2000 (Law 2(I)/2000) introduced single-member companies. The Companies (Amendment) (No. 3) Law of 2000 (151(I)/2000) introduced new provisions as to the validity of transactions of companies and as to the information which must be included in the official documents of companies. The Companies (Amendment) Law of 2001, Law 76(I) of 2001 provided for a new system for the certification of companies' auditors and for the recognition of Bodies of Auditors and the grant of approval to auditors with foreign qualifications and also the recognition of accountants' companies by the Council of Ministers.

When 100% foreign-owned, a private company used to be referred to as an 'offshore company', although recently the expression International Business Company has come into favour. However, as from 1st January, 2003, an offshore company (IBC) no longer has a separate taxation status, and is taxed according to the same principles as a regular company. IBCs are now allowed to trade inside Cyprus. However, a pre-existing IBC which makes an irrevocable commitment not to trade inside Cyprus until 2006 is able to claim the existing low tax rate for the three years 2003, 2004 and 2005.

In order to form a foreign-owned company, a bank reference and copy of the owner's passport is required for the registration. The bank reference must be issued by a bank included on the Central Bank of Cyprus's list of qualifying banks.

The following information will be required for the formation of a standard Cyprus offshore company:

- Name of the company with two alternatives;
- Objects of the company (description of principal activities of a Cypriot off-shore company);
- Capital: a minimum of CYP 1,000 for a company with no offices in Cyprus, or CYP 10,000 for a company with offices in Cyprus. Payment of the capital can be extended in time.
- Full personal details of shareholders will be necessary.
- Full personal details of directors (minimum two) will be necessary.

Registration of a standard Cyprus offshore company takes three weeks typically.

In Cyprus, a company's formation documents and its annual return must be filed in Greek; the same applies to accounts when these need to be filed.

Amendments made in 2003 to the Companies Law as part of the EU accession process included the following changes:

- Every company must prepare a full set of financial statements in accordance with International Financial Reporting
  Standards, and every parent company that has one or more subsidiaries, other than a company which is itself a wholly owned subsidiary, should present consolidated financial statements.
- Under article 120, every company must complete an annual return within a period of 42 days from the date of its Annual General Meeting and must file immediately with the Registrar of Companies a copy of the annual return, signed by a director and the company secretary. Under article 121, the annual return filed with the Registrar of Companies must be accompanied by the full set of financial statements.

Public Company Limited by Shares

Any company registered under the Act whose Articles do not contain the restrictions applicable to private companies is a public company. A public company may obtain a listing on the Cyprus Stock Exchange.

Company Limited by Guarantee

As in England, companies limited by guarantee are normally used only for charitable or non-profit-making purposes. Apart from their share structure, they are similar to other types of private company and also fall under the Cyprus Companies Law.

Branch of Overseas Company

Any overseas company may operate in Cyprus as a branch. Within one month of establishment of such a branch, the following documents must be filed (in Greek) with the Registrar:

- A certified copy of the Memorandum and Articles of Association
- A list of the directors and secretary
- The names and addresses of persons residing in Cyprus authorized to accept all notices on behalf of the Company.

Companies with branches in Cyprus must also file their accounts annually, together with certified Greek translations.

Company law changes implemented in 2003 as part of the EU accession process include the following rules covering branches:

- Every foreign corporation that maintains a branch in the Republic must submit, for every financial year, copies of its financial statements as presented in its last AGM and published in accordance with the laws of the country of incorporation, except that EU corporations that publish audited financial statements in their countries of registration and submit these financial statements to the Registrar of Companies are exempted from preparing and submitting separate branch financial statements.

General Partnership

Partnerships fall under the Partnerships and Business Names Law Cap 116, basically similar to the equivalent English legislation. They must be registered with the Registrar of Partnerships within one month of formation, giving name, purposes, place of business, full particulars of the partners etc. Foreigners may belong, but need exchange control consent.

A general partnership may have between 2 and 20 individual members (up to 10 only, if it intends to conduct banking business).

Partnerships do not need to file accounts or to be audited.

Limited Partnership

These are similar to general partnerships except that they have one or more general partners with unlimited liability and one or more limited partners (whose liability is limited to the amount declared in the partnership return filed with the Registrar).

Limited partnerships, used in conjunction with offshore companies offer good tax planning possibilities.

Sole Proprietorship

A Sole Proprietorship falls under the Partnership and Business Names Law Cap 116, being essentially similar to the English sole partnership. It is subject to broadly the same rules as a General Partnership.

A sole proprietor has unlimited liability for his debts, and any business name (other than his own) must be registered with the Registrar of Partnerships.

Trusts

Local Trusts

A 'local trust' is governed by the Cyprus Trustees Law Cap 193, which closely follows the English Trustee Act 1925. The settlor and beneficiaries are normally residents of Cyprus, and the trust and its property are subject to exchange controls, although these are vestigial since Cyprus joined the EU.

Offshore Trusts

Offshore Trusts are the same as local trusts, but their beneficiaries must be non-resident, and all the trust's activities must be outside Cyprus. As with 'offshore' companies, the special tax status of offshore companies has ceased with Cyprus's accession to the EU.

International Trusts

The International Trusts Law of 1992 brought Cyprus trust law into line with that of other major international trust jurisdictions. Both settlor and beneficiaries must be non-resident, although one Trustee must be Cypriot. International trusts may have many tax and legal advantages.

ZYPRUS OFFSHORE LEGAL AND TAX REGIME

The offshore regime in Cyprus has changed as part of the island's accession to the EU, and as a result of agreements with the Organisation for Economic Cooperation and Development (OECD). Cyprus was excluded from the OECD's June 2000 'harmful' tax haven blacklist in return for pledging a commitment to amend its tax practices.

In July, 2002, as part of the Income Tax Act No. 118(I) of 2002, Parliament approved a uniform 10% corporate tax rate, to apply to both onshore and offshore companies, plus a 2% levy on wage bills (meant to subsidise pensioners), and a 'Special Contribution' related to defence which in effect applies the 10% corporate tax rate to inter-company dividend and interest payments. However, the rules are complex.

The 10% corporate tax gives Cyprus the lowest rate in the EU, after Ireland (12.5%), with the exception of the Isle of Man, which has announced a nil rate - but the IOM isn't really in the EU anyway for most purposes.

The new regime introduces a 'residence'-based system of taxation, and was in operation from 1st January 2003.

Further proposals include the exchange of tax and finance information, as well as the signing of double tax treaties, between Cyprus and additional OECD member countries. Cyprus has proposed to maintain its company and trust management regime, although the identity of the beneficiaries will have to be disclosed to the tax authorities when a company is registered or when a change of ownership takes place. The new rules came into effect from December 31, 2003 for new companies registering in Cyprus, while those that are already registered on the island will have until December 31, 2005 to comply with the new requirements.

After the EU finally agreed its Tax Directive in June, 2003, the Commission said it intended to give the ten acceding states, of which Cyprus is one, until 2007 to implement the Directive, which includes a 'Code of Conduct' on 'harmful tax practices' and rules to avoid the double taxation of royalty and interest payments. However, a statement released by the Cypriot Ministry of Finance said that Cyprus would adopt the new code in full in 2004. The royalties and company interest directive was in place from January 2004, according to the ministry, which pointed out that it was already compliant with the Code of Conduct rules as a result of its recent tax reforms.

The remainder of this section describes the offshore regime prior to implementation of the changes outlined above. As far as taxation is concerned, it is now mostly of historical interest, except that offshore companies in existence before the end of 2002 are allowed to continue to make use of the 4.25% corporation tax rate until 2006 if they so choose.

Cyprus Limited as Holding: no taxation!

Cyprus Holding (legal form of a Limited company) is not subject to taxation. In addition to the characteristics of a permanent establishment according to tax laws, it requires pure holding tasks and that the shareholders/co-partners perform active operations in their respective countries and are taxed or that the right of taxation is utilised, respectively. Example: an entrepreneur has independent enterprises in the form of limited liability companies in several countries, i.e. for example, an English Limited, a German GmbH and a Spanish S.I. All companies carry out active business in their countries and are subject to tax or the right of taxation is used, respectively. Now a Cyprus Limited is established, which becomes shareholder in the foreign companies. The foreign companies’ profits flow tax-free into the Cyprus Limited. Provided that they are European companies (directive on parent companies and their subsidiaries in the European Union), no withholding tax is imposed in the countries of the co-companies. That means that any profits may be received completely tax-free! It is again important that the Cyprus Limited (Holding) company meets all requirements of a permanent establishment according to tax laws:

·Place of business management: A Cypriot must hold the business management, at least to the outside (nominee solution)

No bogus company in its sense, but a regular registered office (deliverable postal address, availability by telephone and fax during normal business hours, company sign). Any office or employees (commercially equipped business operation) are not required, since the freedom of establishment in the European Union is applicable

Bank account in Cyprus

If the member companies are non-EU companies, withholding tax is usually imposed in case of a flow of profits into the Cyprus Limited. This withholding tax varies greatly within the individual countries.

Dubai Company Formation -Company Formation United Arab Emirates

double taxation agreements (DTA)	Yes, with most countries
tax Offshore Companies	NO
tax Onshore Companies	NO
tax free receipt of foreign dividends	Yes
EU Parent-Subsidiary Directive applicable	No
Holding company privileges	Yes
Banking secrecy	High
Nominee relationships allowed	Yes

Introduction/summary

Dubai/UAE has double taxation agreements = DTA with most other countries. EU freedom of establishment is not applicable. For approval of the permanent establishment according to tax laws, a commercially equipped business operation must be installed in Dubai/UAE, and active business must be transacted in UAE/Dubai.

Since only oil companies and banks are subject to taxation in the UAE/Dubai, and any other companies do not pay any taxes, this results in interesting opportunities for investment in Dubai/UAE. In order to be able to use the tax advantages, a permanent establishment according to DTA must be installed in Dubai. On the one hand, a Dubai company is no offshore company in this sense, since the UAE/Dubai also maintain double taxation agreements with many countries – including Sweden and Denmark – but on the other hand, the EU freedom of establishment is not applicable. Therefore, the following prerequisites for approval of a permanent establishment according to tax laws in Dubai must be met:

- Place of management: A manager resident in the UAE/Dubai according to tax laws must – at least on the outside – control the company's businesses.
- There must be a commercially equipped business operation, i.e. at least one office and one employee.
- It must be demonstrated that the Dubai company does actively transact business in the UAE.

Under the stated conditions, for example the Swedish could be a majority shareholder of the Dubai company, but nevertheless Dubai/UAE has the sole right of taxation, provided that the Articles of Association state that all relevant decisions are made at the shareholders' meetings, which exclusively take place in Dubai, at which the Swedish shareholder must be present. However, the UAE company law stipulates that 51% of the company shares must be held by persons resident in Dubai. As a rule, the founder will use a “sponsor”. This requirement may be omitted in case of company formations in the free zones. In the free zones, 100 % of the shareholders may be foreigners.

Introduction

The basic requirement for all business activity in Dubai is one of the following three categories of licence:

- Commercial licences covering all kinds of trading activity;
- Professional licences covering professions, services, craftsmen and artisans;
- Industrial licences for establishing industrial or manufacturing activity.

These licences are all issued by the Dubai Economic Department. However, licences for some categories of business require approval from certain ministries and other authorities: for example, banks and financial institutions from the Central Bank of the UAE; insurance companies and related agencies from the Ministry of Economy and Commerce; manufacturing from the Ministry of Finance and Industry; and pharmaceutical and medical products from the Ministry of Health.

More detailed procedures apply to businesses engaged in oil or gas production and related industries.

Practising some trade activities (e.g. jewellery and insurance) requires the submission of a financial guarantee issued by a bank operating in Dubai.

In general, all commercial and industrial businesses in Dubai should be registered with the Dubai Chamber of Commerce and Industry.

Fifty-one per cent participation by UAE nationals is the general requirement for all Dubai-established companies except:

- Where the law requires 100% local ownership;
- In the Jebel Ali Free Zone, Dubai Internet City, or the Dubai International Financial Centre;
- In activities open to 100% AGCC (Gulf Cooperation Council) ownership;
- Where wholly owned AGCC companies enter into partnership with UAE nationals;
- In respect of foreign companies registering branches or a representative office in Dubai;
- In professional or artisan companies where 100% foreign ownership is permitted.

In the past, each emirate followed its own procedures governing the operations of foreign business interests. In practice, however, Dubai and the other emirates followed the same general system, whereby foreign companies operated in one of three ways: with a local sponsor, through a partnership with a UAE national or company, or through a private limited company or public shareholding company incorporated by Ruler's decree.

Since 1984, steps have been taken to introduce a codified companies law applicable throughout the UAE. Federal Law No. 8 of 1984, as amended by Federal Law No. 13 of 1988 - the "Commercial Companies Law" - and its by-laws have been issued. In broad terms the provisions of the Law are as follows:

The Federal Law stipulates a total local equity of not less than 51% in any commercial company and defines seven categories of business organisation which can be established in the UAE. It sets out the requirements in terms of shareholders, directors, minimum capital levels and incorporation procedures. It further lays down provisions governing conversion, merger and dissolution of companies.

The seven categories of business organisation defined by the law are:

General partnership company
Partnership-en-commandite
Joint venture company
Public shareholding company
Private shareholding company
Limited liability company
Share partnership company
Partnerships

Partnership companies are limited to UAE nationals only. The Dubai government does not presently encourage the establishment of partnerships-en-commandite or share partnership companies.

Joint Venture Company

A joint venture is a contractual agreement between a foreign party and a local party licensed to engage in the desired activity. The local equity participation in the joint venture must be at least 51%, but the profit and loss distribution can be prescribed. There is no need to license the joint venture or publish the agreement. The foreign partner deals with third parties under the name of the local partner who - unless the agreement is publicised - bears all liability.

In practice, joint ventures are seen as offering a suitable structure for companies working together on specific projects.

Public and Private Shareholding companies

The law stipulates that companies engaging in banking, insurance, or financial activities should be run as public shareholding companies. Foreign banks, insurance and financial companies, however, can establish a presence in Dubai by opening a branch or representative office.

Shareholding companies are suitable primarily for large projects or operations, since the minimum capital required is Dh. 10 million (US$ 2.725 million) for a public company, and Dh. 2 million (US$ 0.545 million) for a private shareholding company. The chairman and a majority of directors must be UAE nationals and there is less flexibility of profit distribution than is permissible in the case of limited liability companies.

Limited Liability Company

A limited liability company can be formed by a minimum of two and a maximum of 50 persons whose liability is limited to their shares in the company's capital. Such companies are recognised as offering a suitable structure for organisations interested in developing a long term relationship in the local market.

In Dubai, the minimum capital is currently Dh. 300,000 (US$ 82,000), contributed in cash or in kind. While foreign equity in the company may not exceed 49%, profit and loss distribution can be prescribed. Responsibility for the management of a limited liability company can be vested in the foreign or national partners or a third party.

The following steps are required in establishing a limited liability company in Dubai:

- Select a commercial name for the company and have it approved by the Licensing Department of the Economic Department;
- Draw up the company's Memorandum of Association and have it notarised by a Notary Public in the Dubai Courts;
- Seek approval from the Economic Department and apply for entry in the Commercial Register;
- Once approval is granted, the company will be entered in the Commercial Register and have its Memorandum of Association published in the Ministry of Economy and Commerce's Bulletin;
- The licence will then be issued by the Economic Department;
- The company should then be registered with the Dubai Chamber of Commerce and Industry.

Branches and Representative Offices

The Commercial Companies Law also covers the formation and regulation of branches and representative offices of foreign companies in the UAE and stipulates that they may be 100% foreign owned, provided a local agent is appointed.

Only UAE nationals or companies 100% owned by UAE nationals may be appointed as local agents (which should not be confused with the term "commercial agent"). Local agents -- also sometimes referred to as sponsors -- are not involved in the operations of the company but assist in obtaining visas, labour cards, etc and are paid a lump sum and/or a percentage of profits or turnover. In general, branches and offices of foreign commercial companies are not licensed to engage in importing activity except for re-export or in the case of products of a highly technical nature.

To establish a branch or representative office in Dubai, a foreign commercial company should proceed as follows:

- Apply for a licence from the Ministry of Economy and Commerce, submitting an agency agreement with a UAE national or 100% UAE owned company.
- Before issuing the licence, the Ministry will forward the application to the Economic Department to obtain the approval of the Dubai government and will forward the application specifying the activity that the office or branch will be authorised to undertake in the UAE, to the Federal Foreign Companies Committee for approval;
- Once this has been done, the Ministry of Economy and Commerce will issue the required Ministerial licence specifying the activity to be practised by the foreign company;
- The branch or office should be entered in the Economic Department's Commercial Register, and the required licence will be issued;
- The branch or office should also be entered in the Foreign Companies Register of the Ministry of Economy and Commerce;
- Finally the branch or office should be registered with the Dubai Chamber of Commerce and Industry.

Branches and Representative Offices of Foreign Professional Companies

Branches and representative offices of foreign professional firms may be 100% foreign owned provided UAE nationals or 100% UAE owned companies are appointed as local agents. Such agents are not involved in the operations of the firm but assist in obtaining visas, labour cards etc and are paid a lump sum as remuneration. The Economic Department is the authority in charge of licensing such branches or representational offices.

Sole Proprietorships

In setting up a professional firm, 100% foreign ownership, sole proprietorships or civil companies are permitted. Such firms may engage in professional or artisan activities but the number of staff members that may be employed is limited. A UAE national must be appointed as local service agent, but he has no direct involvement in the business and is paid a lump sum and/or percentage of profits or turnover. The role of the local service agent is to assist in obtaining licences, visas, labour cards, etc.

Offshore-Companies in the United Arab Emirates

Since the year 2003 the United Arab Emirates allow the formation of offshore companies in the Jebel Ali Freezone in Dubai. With this step Dubai is positioning itself as a regional alternative among the worldwide network of offshore locations such as Liechtenstein, Madeira, Malta and the Canal Islands.

The advantages of establishing an offshore company in the United Arab Emirates are obvious: there are no corporate or individual taxes existing in the Emirates as well as no value added tax, inheritance tax or tax on assets. In addition to the tax free environment there is a double taxation treaty existing since 1995 between Germany and the Emirates, which exempts German producers located in the Emirates from taxation according to the German tax law.

Substantial legal regulations for forming and operating an offshore company can be found in the „Jebel Ali Free Zone Authority Offshore Companies Regulations‟ (consists of 126 paragraphs). Concerning the activity of the offshore business there is no limitation except for banking or insurance businesses. The offshore company does not require its own personnel or maintain office space in the Emirates. In every case the company has to appoint a local representative (so called registered agent), who acts as the contact person for authorities in the United Arab Emirates.

Due to the low magisterial requirements the formation of an offshore company in the Jebel Ali Freezone offers an interesting alternative for foreign companies.

Hong Kong Company Formation

Hong Kong Scope of Profits Tax

Profits tax is levied under the **Inland Revenue Ordinance** on the "assessable profits" of corporate entities, partnerships, trusts and sole proprietorships. It is levied according to the "territorial principle" meaning that it is the source of the income rather than the residential or non-residential status of the entity that determines whether or not trading income is or is not subject to Hong Kong profits tax.

The territorial principle means that only income which meets the following 3 preconditions is subject to Hong Kong profits tax:

- The entity must trade in Hong Kong
- The income must arise from such a trade
- The income must arise in or be derived from Hong Kong

The residential or non-residential status of the entity is irrelevant as is the fact that the income is or is not exempt from tax in a foreign jurisdiction. Advance tax rulings are available in the SAR and are particularly favored and recommended on the question of whether or not for profits tax purposes trading income is deemed onshore and taxable or offshore and tax exempt.

"Source of income" for profits tax purposes has been defined as the geographical location of the operation which substantially gave rise to the income, but the Inland Revenue's Practice Note No 21 adds more precise criteria:

The establishment of an office in Hong Kong: does not of itself render a company liable to profits tax where that office is not generating profits from within the territory.

Place where the contract was negotiated and executed: A key criterion is the place where the contract was negotiated and signed. Income relating to a sale contract negotiated by the seller from the territory by way of facsimile or telephone where the negotiation did not require travel outside the territory is deemed Hong Kong source income for profit tax purposes. Likewise if the contract is negotiated and signed outside the territory and the goods sold are not sourced from within the territory then any income arising is not deemed Hong Kong source income for profits tax purposes. This is often achieved by utilizing an offshore company which re-registers in the territory as a foreign company but whose directors both remain non resident and negotiate and execute the contract from the offshore jurisdiction.

Booking Center: Where the Hong Kong entity is merely a booking center in the sense that it does not negotiate or draft the sale agreement (which is carried out abroad) but merely issues an invoice on instructions, operates a bank account and maintains accounting records covering the transaction then the income from such a transaction is not deemed Hong Kong source income for profits tax purposes.

Shares & Securities : Gains from shares and securities purchased and sold on the territory's stock exchange are deemed Hong Kong source income for profit tax purposes (assuming the entity is subject to profit tax on such an activity).

Cross Border Land Transportation: Income from cross-border land transportation is deemed Hong Kong source income if the passengers or goods are normally uplifted in Hong Kong.

Loans : Loan interest on a loan made available to the borrower within the jurisdiction of Hong Kong is deemed to be Hong Kong source income for profits tax purposes and taxable in the hands of the Hong Kong lender whereas loan interest on a loan made available to the borrower in a foreign jurisdiction is not deemed Hong Kong source income and is therefore not taxable.

Hong Kong Profits Tax Rates

A number of rates apply:

- Companies pay a standard rate of 17.5% on assessable profits.
- Businesses other than corporate entities pay a rate of 16% on assessable profits.
- Special concessionary rates of profits tax which are substantially less than the standard rates apply to the following businesses or sources of income:
  - Interest or capital gains made on qualifying maturity debt instruments are taxed at 8%.
  - The re-insurance of offshore risks is taxed at 8% of assessable profits.
  - Life insurance businesses are assessed at 5% of the value of the premiums arising in Hong Kong.
  - An entity whose business is to grant rights to use a trademark, copyright, patent or know how pays a flat profit tax of 1.75% (or 17.5% on 10%) of the payment received with all related expenses being non tax deductible. If the recipient of the payment is a related offshore licensing company the Hong Kong company must withhold and hand over 1.75% of the fee paid over.
  - Income from the international operations of shipping companies is exempt from tax unless the ships are operating in Hong Kong waters or proximate to the same in which case only that proportion of income earned in Hong Kong is subject to local tax of 17.5%. Shipping profits meeting the conditions of the double taxation agreement with the USA are exempt from profits tax in Hong Kong.
  - Irrespective of whether or not the company is managed and controlled from Hong Kong assessable profits are the proportion of income arising within Hong Kong (from the uplift of passengers and freight locally) to the proportion of worldwide income. Under a number of international aircraft double taxation agreements the government has agreed to include income arising abroad for taxation in Hong Kong where that income is exempted abroad under the agreement. Likewise profits meeting the conditions of the double taxation agreements are exempt from profits tax locally. The rate is 16% of assessable profits.
  - The sale of goods on consignment from Hong Kong on behalf of a non resident is subject to a tax of 1% of the turnover without any deductions unless the non resident can produce accounts to show that he would have paid less profit tax than consignment tax in which case a normal rate of tax will apply .The selling of goods on consignment is deemed to be the equivalent of creating a permanent establishment.
  - An entity whose business is to rent out a film, tape or sound recording for use in any cinema or television program pays a profit tax of 1.75% (or 17.5% on 10%) of the payment received with all related expenses being non tax deductible.

Hong Kong Calculation of Taxable Base

A number of factors including the territorial principle have created an extremely attractive fiscal regime exempting categories of income which in most other jurisdictions would normally be subject to a profits tax:

- Dividend income received by a Hong Kong parent company from either a resident or foreign subsidiary is not deemed income in the holding company's hands and is thus not subject to an assessment to profits tax.
- There is no separate schedule of capital gains tax in Hong Kong. Nor does the territory follow the practice of other jurisdictions and tax capital gains as trading income which is subject to profits tax. However by way of exception a business whose activities is to trade in capital assets is assessed to profits tax on any profits made on the sales of those capital assets as if these gains were trading income. Likewise if the asset is deemed a revenue asset as opposed to a capital asset then any profits made on its disposal are deemed trading income and assessed to profits tax. The absence of capital gains tax (often together with other factors) has had a number of fiscal consequences:

    - Profits remitted to a Hong Kong parent which represent the profitable disposal of its shareholding in a resident or non resident subsidiary are **not** assessed to tax in the territory both because the gains are capital gains and because (in the case of a non resident company) income arising outside jurisdiction is exempt from tax under the principle of territoriality.
    - The profitable disposal by a Hong Kong entity of foreign real estate is not assessed to tax in the territory both because the gains are capital gains and because of the principle of territoriality. This includes a disposal effected by means of the Hong Kong entity selling 100% of the shares in a company whose sole asset is the foreign real estate.
    - Since currency gains and losses are considered to have a capital nature they are neither taxable profits nor deductible losses.
    - The transfer by a Hong Kong entity of capital assets to a foreign or resident subsidiary or branch at market value and at a profit is considered a capital gain and thus does not attract tax in Hong Kong (unless the assets are classified as revenue assets).

- Rental income from foreign real estate is not assessable income in Hong Kong for profit tax purposes. (However depreciation & interest payments on loans made to finance the real estate tax are **non** deductible in the territory).
- The profits and losses of the foreign branch or subsidiary of a Hong Kong company are neither taxable profits nor deductible losses in Hong Kong owing to the territoriality principle.
- Interest income received by a resident or non resident business entity on deposits lodged with a financial institution are exempt from profits tax (By way of exception if the deposit was made by a "financial institution" then any interest received by the financial institution is deemed trading income for profits tax purposes and taxed accordingly).
- The tax treatment of loan interest payments and receipts requires a special mention. 3 situations apply:

    - Loan interest repayments **made** by a Hong Kong borrower to a foreign lender are only tax deductible in Hong Kong if the foreign lender is a "financial institution". If the foreign lender is not a financial institution but is the parent or subsidiary of the Hong Kong borrower the interest payments are not tax deductible in the territory unless the parent or

subsidiary is a connected company and is subject to Hong Kong profits tax on the loan interest receipts.
  - Loan interest repayments **received** by a Hong Kong company on a loan made to a 3rd party are not taxable income in the hands of the Hong Kong lender if the loan was advanced to the borrower from a foreign jurisdiction such as Gibraltar. If the loan was advanced to the borrower from Hong Kong then the loan interest repayments are taxable in the territory.
  - A Hong Kong parent company which borrows money to set up a subsidiary or a branch in a foreign country cannot deduct the cost of the loan for profit tax purposes since the income earned by the borrower has a foreign source. Therefore the loan should always be sourced by the foreign subsidiary or the foreign branch in the foreign jurisdiction in which it will be tax deductible.

- Owing to the principle of territoriality there is **no** controlled foreign company legislation under which the profits and capital gains of non resident subsidiaries can be taxed as if they were the profits of a resident parent company.(The converse applies in both the United States and the United Kingdom).
- Consolidated group accounting under which the profits of one company in the group can be set off against the losses of another company in the group so as to reduce the over all profit subject to profits tax does **not** exist in Hong Kong.
- Losses can be carried forward indefinitely. This compares favorably with other jurisdictions which only allow losses to be carried forward for a fixed period of time (usually 5 years).
- Since there are no debt/equity thin capitalization rules in Hong Kong a foreign parent can set up a resident subsidiary with a minimum of share capital and a maximum of loan capital and thereby reduce taxable profits arising in Hong Kong through excessive interest payments.
- The repayment by a foreign subsidiary to its Hong Kong parent of the principal of loan capital or share capital is free of tax in the territory including where the repayment is by way of a capital reduction or a final dividend distribution in a liquidation.
- The following sources of trading income are exempted from profits tax:

  - Interest received or capital gains made on the purchase, retention or sale of a Government bond issued under the **Loans (Government Bonds) Ordinance;**
  - Exchange fund debt instruments;
  - Hong Kong dollar denominated multi – agency debt instruments;
  - Specified investment schemes which comply with the requirements of a government supervisory authority are exempt from tax. Specified investment schemes include investments in unit trusts and mutual funds.

Profits Tax Deductible Allowances

The following allowances are deductible from assessable profits for profits tax purposes.

- A deduction is allowed for a contribution (or provision for a contribution) by an employer amounting to not more than 15% of the employee's annual salary into a recognized retirement scheme registered under the **Occupational Retirement Schemes Ordinance**. (It is in any event an offence for an employer to operate a pension scheme that is not registered under this Ordinance). Since the **Mandatory Provident Fund Scheme** came into effect on 1st December 2000 allowable deductions are either 5% of an employee's gross salary or a maximum of US$2,560 per month.

- Full deduction is allowed for charitable donations not exceeding 10% of annual assessable profits after deduction of depreciation allowances but prior to losses carried forward being added in.
- Hong Kong tax paid on foreign income which by law is chargeable to profits tax in Hong Kong is an allowable deduction for profits tax purposes. (N.B. foreign source income is not normally subject to tax in the territory).
- Any property tax already paid is deductible from income for profits tax purposes;
- Depreciation allowances for capital equipment are as follows:

  - 100% first year allowances for manufacturing plant and machinery;
  - 100% first year allowances for computer equipment;
  - 60% of the cost of all other plant and machinery can be written off in the first year with a rate of 10-30% written off thereafter.
  - 20% of the cost of construction of an industrial building can be written off in the 1st year with 4% per annum thereafter.
  - Expenditure incurred refurbishing or renovating business premises can be written off in 5 equal instalments.
  - In May, 2004, LEGCO expanded the scope of deduction for research and development expenses under profits tax to cover design-related expenses.

Hong Kong Property Tax

Property tax is levied annually on the owner or occupier of real estate located in Hong Kong. Since ownership may be split (eg an entity with a 100 year lease may grant a 50 year sublease to a 3rd party) separate assessments may be made on the same parcel of land. Property tax which is governed by the provisions of the **Inland Revenue Ordinance** has the following characteristics:

- The annual assessment to property tax is based on 100% of the annual rental income of the property less any rates paid, any bad debts, a repairs and outgoings allowance constituting a maximum of 20% of the annual rental income (irrespective of whether or not more was actually spent) and other allowable deductions. In determining "rental income" the Inland Revenue will include any premiums, service charges, management fees, rates, repairs and outgoings paid by the tenant either to the owner or on behalf of the owner under the terms of the lease. In order to assist the inland revenue to assess the rental income the owner is obliged to keep records for up to 7 years and inform the tax authorities of the actual sums received.
- Property tax is based on the territorial principle and is levied on buildings, parts of buildings, wharves, piers and other structures located in Hong Kong. The fact that the owner is non resident, non domiciled or a national of a foreign country is completely irrelevant and does not exempt him from having to pay this tax.
- The tax rate is 15% of the assessed annual rental income .
- Property tax is levied on a provisional assessment basis which takes into account the previous year's rental income with a tax credit being granted where the previous year's rental income exceeds the current year's rental income. Relief is also given where part of the assessed rental income is a bad debt.
- The following types of property are exempted from this tax:

  - The properties of foreign governments;
  - Charitable bodies exempted from taxation;
  - Business entities who derive profits from and pay profits tax on rental income derived from ownership of real estate are entitled to a set-off of property tax against profits tax with a tax credit being granted where the property tax exceeds the profits tax;

- A corporation which purchases a property for its own occupation does not pay property tax on the deemed rental income which it could have earned if it had rented out the building.

- It is advisable for properties to be owned by Hong Kong corporate entities since property tax does not make allowances for either depreciation or interest costs on a loan to finance the purchase, while such costs are deductible for corporate profits tax purposes. A foreign company cannot own real estate in Hong Kong unless it is registered as a foreign company under the provisions of the Companies Ordinance.

Hong Kong Stamp Duty

The laws on stamp duty are set out in the **Stamp Duty Ordinance**. Stamp duty is either a fixed fee or is calculated ad valorem depending on the nature of the transaction. It is payable on:

- Leases, assignments and conveyances of immovable property.
- The transfer of shares or marketable securities
- The transfer of bearer instruments (being instruments under which ownership is transferred through physical delivery).

Immovable Property Stamp Duty Rates

2 separate rates of stamp duty are payable on immovable property:

- **The Conveyance of a Freehold or the Assignment of a Leasehold:** The rate of stamp duty is progressive and varies from US$13 if value of the transferred interest is less than US$128,000 to a maximum rate of 2.75% where the property is valued at more than US$565,875 .
- **The Granting of a Short-Term Lease:** The stamp duty rate is progressive and varies between .25% and 1% of the annual rental value depending on whether the lease is for less than one year or more than 3 years. Any agreement which increases the rent reserved by a chargeable stamped lease is itself chargeable to stamp duty in respect of the additional rent which it makes payable.

Immovable Property Transactions Exempted from Stamp Duty:

The following immovable property transactions are exempt from stamp duty:

- **Non-Residential Property:** Instruments transferring "non residential property" are exempt from stamp duty. Non-residential property is defined as property which may not by law be used at any time for residential purposes.
- **Gifts to Charitable Institutions or Public Trusts:** Instruments transferring immovable property by way of gift to a charitable institution or public trust are exempt from stamp duty.
- **Approved conveyances on sale to diplomatic or consular bodies.**
- **A transaction conveying an interest in immovable property between "associated corporate bodies".** Entities are defined as associated corporate bodies when one entity holds over 90% of the share capital of the other or when a 3rd entity holds over 90% of the share capital of both entities. The association must remain for 2 years after the transfer in default of which the full level of stamp duty must be paid over retrospectively. The financing of the transaction cannot come from an unassociated body.
- **Mortgages:** Mortgages are free of stamp duty.

Immoveable Property Stamp Duty Anti-Avoidance Provisions

There are elaborate anti avoidance provisions in place aimed at deterring speculation. Thus where the beneficial owner of real estate executes an instrument in favor of a third party under which he undertakes to hold the real estate on trust for the third party duty is payable on this instrument as if a conveyance had taken place. Likewise stamp duty is payable where under an uncompleted contract of sale the vendor is deemed by law to hold on trust for the purchaser.

Stamp Duty Payable on Shares & Marketable Securities

Stamp duty of .225% is payable on the transfer of shares or marketable securities whereas .1% stamp duty is payable on the issued share capital of a company up to a maximum stamp duty fee of HK$30,000. In the long-term stamp duty on shares and securities is to be phased out completely.

Securities Transactions Exempted from Stamp Duty

The following transactions are exempt from stamp duty:

- Loan capital transactions, bills of exchange, promissory notes, certificates of deposit, exchange fund debt instruments and Hong Kong multilateral agency debt instruments.
- Transactions involving debentures, loan stocks, funds bonds or notes that are not denominated in Hong Kong currency except to the extent that they are redeemable in that currency.
- Stock donated to charitable bodies or public trusts which are exempt from taxation in Hong Kong.
- A transaction conveying stock between "associated corporate bodies". Entities are defined as associated corporate bodies when one entity holds over 90% of the share capital of the other entity or when a 3rd entity holds over 90% of the share capital of both entities. The association must remain for 2 years after the transfer, in default of which the full level of stamp duty must be paid over retrospectively. The financing of the transaction cannot come from an unassociated body.

Stamp Duty Payable on Bearer Instruments

The amount of stamp duty payable is 3% of the value of the instrument transferred.

Hong Kong Filing Requirements and Payment of Tax

The tax year starts on 1st April. The assessment to profits tax is provisional and is based on the previous year's assessable profits with 75% of the assessment being due by the 3rd quarter and the final 25% being due at the year-end. Tax payments delayed less than 6 months are subject to a 5% non-deductible surcharge whereas payments overdue by more than 6 months are subject to a 10% non-deductible surcharge. A tax credit is granted where the previous year's assessment exceeds the currents year's assessable profits.

Hong Kong Withholding Tax

There are no withholding taxes in Hong Kong as such, but there are certain circumstances in which a company making a payment to a foreign associate (subsidiary or holding company) which is deemed to be Hong Kong source income needs to needs to withhold the tax.

For instance, when a Hong Kong entity pays royalties for the use of intellectual property to its own offshore licensing affiliate, then tax is due of 10% of 16% = 1.6% and this must be withheld by the Hong Kong paying company.

Company Formation LIECHTENSTEIN

Liechtenstein corporate bodies are formed under the Law on Persons and Companies 1926, known as the PGR Code. Trust Enterprises are formed under the Law Concerning the Trust Enterprise 1928. A wide variety of types of entity can be formed under the PGR Code, the most commonly used of which are described below; other possible forms include the limited partnership with a share capital, the company limited by quota shares, the association, the cooperative association and the company without juridical personality; but they are not commonly met with in offshore situations.

All corporate forms that are allowed under the Code, and the Trust Enterprise, can additionally be either 'holding' companies (companies that hold investments) or 'domiciliary' companies (not having trading activities inside Liechtenstein). Holding, domiciliary and non-resident entities are sometimes known as 'exempt', ie exempt from certain types of taxation.

No permits or licenses are required to do business, except for financial sector companies and professional services. It is a notable feature of the Liechtenstein PGR Code that there is very great freedom, within the basic forms it describes, to constitute corporate and share structures in a flexible way according to the particular purpose of the entity and its originators' wishes. Therefore only rather general statements can be made about the rules governing the operation of the various forms; the rest will depend on circumstances.

Corporate bodies formed under the PGR Code (not Trusts) share a number of characteristics:

- there must be written Articles of Association; they are deposited with the Registrar and are available on the public file, including details of capitalisation, share structure, registered office, etc;
- the corporate body does not come into existence until its details have been entered into the public register;
- the names of the directors, officers and shareholders are kept at the registered office;
- the corporate name can be in any language and must include the name of the type of body concerned (Limited, Foundation, etc), but some words are not permitted, mostly those with national or international territorial meanings (exemptions may be available);

Company Limited by Shares

The Company Limited by Shares is designed to be used as a public company, although it does not have to be public. There are founders who are (can be) distinct from the shareholders.

The Company Limited by Shares has a minimum capital of SFr 50,000, 20% of which must be paid up, with a minimum paid up of SFr 50,000. Bearer shares must be fully paid up, although the Articles can permit them to be 50% paid up; the minimum is still SFr 50,000.

If there is to be no public subscription, the company is formed 'simultaneously', in one legal act, and the founders are the shareholders. They create the company by entering into a Deed.

If there is to be a public subscription, the company is formed 'successively': first, the founders declare their intentions in general, then the subscription process takes places, and in a general meeting of subscribers (shareholders) the final details of the company's constitution are ratified.

Shares can have variable voting rights (eg multiple votes, or restricted votes), but non-voting shares are not permitted. The appointment of an auditor, and the annual submission of audited accounts to the Registrar, are mandatory for the Company Limited by Shares.

Limited Liability Company

The Limited Liability Company (Aktiengesellschaft) is formed by two or more members and has a minimum capital of SFr 30,000. The minimum subscription amount from any one shareholder is SFr 50. Further amounts need not be paid up unless the Articles provide for it; but the joint liability of the shareholders on liquidation or withdrawal is the amount of the registered capital.

- Various types of share can be issued, including preference, registered, voting, no-par-value and bearer shares; only registered shares can be issued at below par value;
- voting rights can be allocated or not freely to all types of shares, and voting rights can be limited according to defined circumstances or occasions;
- a minimum of one director is required, who may be corporate; secretaries are not required; an exempt company needs to have a local professional as an agent;
- audited annual accounts have to be filed.

The Establishment (Anstalt)

The Establishment, or Anstalt, is a corporate form that is peculiar to Liechtenstein. It has no members or shareholders. It is an autonomous fund with beneficiaries. It is often used as a holding company for patents or royalties, or for estate assets. It has a founder or founders, who are not necessarily the same as the beneficiaries; the founders' rights can be transferred, if the capital is not divided into shares, giving the current tenants of the founders' rights considerable powers over the Establishment. In this respect, the Establishment is similar to the Foundation.

- The minimum capital, if not divided into shares, is SFr 30,000; and if higher, at least half (minimum SFr 30,000) must be paid up;
- the minimum capital, if divided into shares, is SFr 50,000 (but this form is never nowadays used);
- a minimum of one director is required; it is normal to delegate substantial powers of management to the director(s);
- if the Establishment has commercial objects, audited annual accounts must be filed; but note that the management of investments or other assets is not deemed 'commercial'

The Foundation (Stiftung)

A foundation exists to give effect to the stated, non-commercial wishes of its founder, as set out in a foundation deed and the Articles of Association (Statutes). In effect, the assets with which the foundation is endowed become a separate legal entity. The Foundation has no members or shares; it is set up by a founder (or founders). Most often, this is the form that is used for the continuation of family assets. The Foundation has beneficiaries, who may be identified in a variety of ways.

- No public registration is necessary, except that a copy of the Foundation Deed is lodged with the authorities. It need contain only very general statements about the purpose of the Foundation, while detailed rules are set out in private bye laws.
- Founder's rights are transferable, and they normally include the right to terminate the Foundation or amend the bye laws.
- Commercial activities are not permitted except in so far as they are in pursuit of the Foundation's non-commercial goals. The minimum assets of a Foundation are SFr 30,000, which can not be divided into shares; the assets do not necessarily have to pass to the Foundation on formation;
- A Foundation is normally administered by what amounts to a board of trustees.

The Trust Enterprise

The Trust Enterprise is set up by a Trustor (settlor) through a Deed of Trust which is equivalent to Articles of Association, and must specify the name and purposes of the Enterprise, the identity of the trustees, the composition of the trust fund, and (if the purposes are commercial) the identity of the auditors. As usual, 'commercial' does not include asset management or holding operations. The Deed of Trust is filed with the Registrar of Trusts. The minimum trust fund is SFr 30,000. The participants in a Trust Enterprise are largely shielded from creditors of the Enterprise, who have access only to its own assets.

A Trust Enterprise can be created either without legal personality, and is then called an 'active trust' (eigentliche Geschaftstreuhand), or with legal personality, in which case it is called a 'non-active trust' (uneigentliche Treuunternehmen). Only non-active trusts have gained currency in Liechtenstein, and they are frequently used to hold investment assets, for instance in merger situations, and for the distribution of income from real estate holdings. The legal form of the Trust Enterprise is close to that of the American 'Massachusetts Trust'.

One of the trustees must be a resident of Liechtenstein holding a recognised professional or other qualification. In the case of a non-commercial (ie unaudited) Trust Enterprise, this person certifies to the Registrar that the Trust has kept proper books and that no commercial activities have been carried out. This is the only reporting that is required.

Trusts

Liechtenstein is the only civil law jurisdiction which has adopted largely anglo-saxon trust legislation (contained in the PGR Code), although, unlike the common law trust, there is no bar against accumulation of income, nor against perpetuities.

A Liechtenstein Trust is set up by a written agreement (Trust Deed) between the trustor (settlor) and trustee(s) which does not have to contain the names of beneficiaries. If the Trust Deed is deposited with the Registrar of Trusts, it will not be publicly available, and later instruments (eg naming beneficiaries) will not have to be revealed; if the Trust Deed is not deposited within 12 months, details of the Trust must be placed on the public register. A registration fee of US$ 200 is payable on registration.

Some of the characteristics of Liechtenstein Trusts are as follows:

- a trustee (apart from the Liechtenstein professional mentioned above) can be an individual or a corporation or association;
- trustees are liable for breach of trust to the full extent of their assets; joint trustees are jointly liable; supervision of the trust is ultimately under the Court, even if the Trust Deed specifies alternative supervision;
- the interests of named beneficiaries can be embodied in trust certificates, which if registered are transferable securities;
- being a civil law jurisdiction, trust assets are vulnerable to forced heirship provisions, although there are time limitations on such claims;
- in general, there is a limitation of one year on creditors' claims;
- trust documents, including the Trust Deed, can be in any language.

Trusts may be set up under foreign law, but may not have more favourable treatment than would apply under Liechtenstein law. A trust under foreign law is a Liechtenstein Trust and subject to local taxation. Liechtenstein law applies to a foreign trust if the trustee, or more than half of the trustees, are resident in Liechtenstein, if the trust property is in Liechtenstein, or if the Trust Deed says so.

In Liechtenstein taxes are levied under the Act relating to National and Local Taxation 1961, as qualified in yearly Finance Acts. The main taxes impinging on businesses are Corporation Taxes (Profits Tax and Net Worth Tax), Capital Tax, Value Added Tax and Coupon (Withholding) Tax. There is no separate capital gains tax as such; capital gains are treated as taxable income unless they are from real estate, when Property Profits Tax applies.

The domestic taxation regime described here applies to resident companies, meaning those that have their registered office in Liechtenstein, or which are managed and controlled from Liechtenstein. However, 'holding' companies (companies that hold investments) or 'domiciliary' companies (not having trading activities inside Liechtenstein), have a separate taxation regime, as do Establishments, Foundations and Trusts.

In December, 2004, Liechtenstein signed an agreement with the EU by which the country joins EU and non-EU states implementing the Savings Tax Directive as from 1st July 2005. Liechtenstein will impose a 15% withholding tax on the returns from individuals' savings.

Profits Tax

Profits Tax is levied on taxable income at a basic rate between a minimum of 7.5% and a maximum of 15% according to a formula. The percentage rate is X, where

X = (Taxable Income x 100) / (Taxable Capital x 2).

It will be evident that a reasonably profitable company will always qualify for the maximum rate.

In addition, if dividend distribution exceeds 8% of Taxable Capital (same definition) there is a surcharge of up to 5% of Taxable Income in the year in which the dividend is declared, as follows:

Dividend as % of Taxable Capital	Profits Tax Surcharge, %

> 8 up to 10	1.0
> 10 up to 12	1.5
> 12 up to 14	2.0
> 14 up to 16	2.5
> 16 up to 18	3.0
> 18 up to 20	3.5
> 20 up to 22	4.0
> 22 up to 24	4.5
> 24	5.0

Thus, the maximum rate of profits tax is 20%, likely to be incurred by a company which makes a decent profit without much capital employed.

Calculation of Taxable Base

According to the legislation, profits tax (and capital tax, see below) are levied only on the proportion of income (or capital) that the Liechtenstein operation bears to the company's world-wide operations; plus, in the case of profits tax, any profits that are remitted to Liechtenstein. The interpretation of this rule is complex and cannot be simply explained here.

The following are some of the main provisions affecting calculation of the taxable base for the profits tax:

- Inventories are to be stated at the lower of cost or market value; FIFO is usually applied. General reserves up to one third of of value are usually accepted without demur.
- Capital gains, otherwise than from real estate, are treated as taxable income.
- Capital gains from real estate are taxed at between a minimum of 1.2% and a maximum of 35.64% (sic) depending on the amount of the gain, the length of time the property was held, etc etc.
- Foreign dividends after taxation are included in taxable income (but in the case of foreign subsidiaries, this interacts in a complicated way with the 'proportion' rule stated above, especially because there is no group relief in Liechtenstein).
- Companies may capitalise reserves or undistributed profits, but any resulting increase in the carrying value of shareholders' interests will be counted as taxable income for the company.
- Either straight-line or declining balance depreciation methods are allowed. Higher rates may be permitted on occasion. There are detailed schedules of depreciation rates applicable to various types of asset. It may be worth noting that goodwill can be depreciated at 25% per annum (declining balance) or 12.5% (straight-line).
- Gains on realisation of assets are taken to taxable income.

- Trading losses can be carried forwards for two years, but not backwards.
- There is no group relief.
- All taxes paid, including profits tax, are deductible from income in the accounting period in which they are paid (the year after the fiscal year, usually).

Net Worth Tax

The net worth tax is levied on the share capital of a company (original capital plus subsequent increases) plus open and hidden reserves, in so far as these form part of the company's net worth.

In this calculation, reserves might for instance include retained earnings brought forward, provisions for income and capital taxes, disallowed inventory and depreciation reserves, and any other disclosed or undisclosed reserves; deductions might include any current year loss, a net deficit brought foward, dividends in excess of the current year's net profit, and any capital increase in the current year. Other items might also be involved depending on circumstances.

The rate of net worth tax applying to a resident company is 0.2% of taxable net worth.

Stamp Duty

Stamp Duty in Liechtenstein is levied according to Swiss legislation, which was substantially amended by the Swiss Federal Law on Stamp Duty 1993. There is a liability to stamp duty on the issue of shares and bonds. Zero rates apply to mergers and other corporate transformations. Issuance of foreign securities was relieved from stamping in 1993, but turnover tax applies (see below).

As of 1998, the rate of stamp duty on shares (the issue of capital in a corporation) is 1%; but the first SFr 250,000 of any issue of capital (initial or subsequent) is exempt.

The issue of corporate bonds attracts stamping at 0.12% for each year of the term of a long-term bond; the rate is 0.06% per year for medium- and short-term bonds.

Turnover Tax

Turnover Tax is payable by securities dealers and traders (Effektenhandler), which includes banks, financing companies, investment funds, and other entities or persons whose business is focussed mainly on securities dealing, trading or broking. It also applies in general to companies whose assets include taxable securities valued at more than SFr 10 million.

The rate of turnover tax varies between 0.15% and 0.30%.

Property Profits Tax

The Property Profits Tax applies to any individual or corporate person who gains from a real property transaction. The taxable profit is the amount by which the proceeds of sale exceed the invested cost. 'Invested cost' is an officially-assessed value plus any excess of original purchase cost and subsequent capital additions (less maintenance costs) over the assessed value.

The rate of property profits tax is set annually by Parliament, and is usually equal to the rate of the general Profits Tax.

Value Added Tax

Alongside the entry of Liechtenstein into the EEA, Value Added Tax was introduced under the Law on Value Added Tax 1995. The law is very similar to the equivalent Swiss law.

The rate of VAT is 6.5%, with a reduced rate of 2% for food, printed matter and medecines. Exports are exempt, as are medical and educational services, and most real estate transactions.

Withholding Tax

Withholding (Coupon) Tax applies to companies whose capital is divided into shares, and is levied at the rate of 4% on any distribution of dividends or profit shares (including distributions in the form of shares). Generally, there is no withholding tax on interest or royalty payments, but it does apply to interest from bonds, to interest from time deposits with domestic banks in excess of 12 months, and to interest on some commercial loans over SFr 50,000 with a minimum term over 2 years. Most normal inter-company loans are not caught by the coupon tax.

Filing Requirements and Payment of Tax

Entities subject to Profits Tax must file a return within six weeks of the shareholders' meeting which adopts the financial statements, and no later than 1st July in the calendar year following the end of the company's fiscal year.

The tax assessment is then normally received in the autumn, and the tax due is payable within one month of receipt of the assessment. Instalment payment can sometimes be agreed with the tax authorities.

UK Limited Company Formation (United Kingdom)

double taxation agreements (DTA)	Yes, with most countries
Corporate Tax	21 % for medium-sized businesses up to a profit of £300,000, and then progressively increases up to 30%
tax free receipt of foreign dividends	No
EU Parent-Subsidiary Directive applicable	Yes
Holding company privileges	No
Banking secrecy	High
Nominee relationships allowed	Yes

England has a double-taxation agreement = DTA with most countries. EU freedom of establishment is applicable. From a European point of view, NO commercially equipped business operation is required for the approval of a tax operating business in England, and neither is the proof of any active business in England. The English income tax amounts to 0-19% for medium-sized businesses up to a profit of £300,000, and then progressively increases up to 30%. By bringing forward an Isle of Man Limited, the income tax load may be reduced, i.e. the profits are distributed in the Isle of Man Limited, which results in a lump-sum tax of £450 per year.

Switzerland company formation

Legal forms of business

Forms of domicile

An overseas individual or foreign company may choose the business form which best meets their needs. The time horizon,legal and fiscal framework and additional strategic issues of management require careful evaluation (headquarters, manufacturing or operating companies, sales office, financing or service companies).

Swiss law recognizes the following types of business forms:

• Founding a partnership or a joint-stock company

• Establishing a subsidiary or branch

• Acquiring an existing company in Switzerland (partnership or joint-stock company)

• Forming a joint venture (partnership or joint-stock company)

• Creating a strategic alliance with or without an equity investment

The most common forms of domicile for a foreign company in Switzerland are the subsidiary (in the form of a corporation or limited liability company) and the branch. The right choice of domicile and legal form can have a decisive impact on the success of a business relocation. It is therefore worth seeking the advice of someone familiar with the Swiss system at an early stage in the process.

Joint-stock company

The joint-stock company or corporation (AG) is the most widely used type of legal entity in Switzerland. Foreign companies often choose this legal form for their Swiss subsidiaries. A corporation is a distinct legal entity, and its liability is limited to its assets. The authorized capital is determined in advance and is subdivided into shares. The AG is the legal form chosen not only for large companies, but also for medium and smaller ones. It is the usual legal form for holding companies and commercial finance companies. The reasons for the popularity of the AG as a legal form are:

• Limitation of liability to the company�you s assets

• Anonymity of the capital providers

• Limitation of the shareholder‘s obligation to contribute additional capital

• Simple inheritance arrangements

• Publication of annual financial statements required only if the AG has outstanding bonds or if it is listed on the stock exchange.

Establishing a corporation or joint-stock company (AG):

• At least three shareholders are required. It is possible for shares to be held in trust by third parties. The single shareholder corporation is not uncommon.

• The minimum capital is CHF 100,000 of which at least CHF 50,000 must be paid in (at least 20% per share).

• The legally prescribed articles of incorporation and governing bodies are to be created.

• There is a formal incorporation procedure ending with entry in the commercial register. The entry is published in the Swiss Commercial Gazette.

The law prescribes three governing bodies:

• The General Meeting of Shareholders is the highest governing body. It has the most important powers, such as the definition and modification of the articles of incorporation, electing the board of directors, choosing the statutory auditors, approving the annual report, balance sheet and income statement, deciding on the distribution of profits and approving or ratifying the actions of the board of directors.

• The board of directors is the managing body of the corporation

(AG). It consists of one or more members who must also be shareholders. The majority of board members must be resident in Switzerland and either be Swiss citizens or citizens of an EU or EFTA member state. Exceptions are possible in the case of holding companies. But in every case, at least one authorized representative of the company must be resident in Switzerland.

• The statutory auditors examine the accuracy of the annual financial statements and report to the board of directors or to the shareholders at the annual general meeting. They must be certified and independent.

Limited liability company

After the new limited liability company legislation comes into force (on 1/1/2008), a limited liability company (German abbreviation GmbH) will be considered to be a company established as a legal entity in which one or more persons or companies come together in a new firm with predetermined nominal capital (equity). Each member contributes to the firm’s capital by taking one or several equity shares at a nominal price of at least CHF 100. Equity amounts to at least CHF 20,000 and must be paid in full. Equity shares can be easily transferred in written form. Due to the revision of the corporation law, the GmbH is enjoying increasing popularity as an alternative to the corporation. The GmbH is an attractive legal form for a company and is increasingly preferred over the AG by small and medium-sized companies. The GmbH does not have a Board of Directors, thereby somewhat reducing structural costs; responsibility is concentrated in the managing director/s (at least one of which must be domiciled in Switzerland). Depending on its size, the GmbH only has limited auditing requirements. Compared to the AG, it has the advantage of having a smaller amount of registered capital, and the disadvantage of no anonymity; all members, even those who join later on, are disclosed. The formation of a limited liability company and the costs involved are similar to setting up a joint stock company. Only one founder is required. Existing GmbHs must adapt their rules and regulations within the two years following the enactment of the new GmbH legislation.

Branch

Foreign companies often choose the legal form of a branch for entering the Swiss market. Branches are not distinguished as separate legal entities under Swiss civil law. There are only references to branches under other legal forms (e.g. corporation or limited liability company). The branch is subject to the provisions of Swiss law (civil law, contract law, international private law). As far as authorization, registration, taxation, and accounts are concerned, a branch is treated like a Swiss company.

Advantages and disadvantages

of legal forms

All possible legal forms have their advantages and disadvantages. These can best be identified through a comparison of the different forms.

The Holding Company

The 'Holding' Company is a Stock Corporation with a particular tax status (see Offshore Legal and Tax Regimes). Holding companies benefit from reductions in corporate income tax and capital gains at federal and cantonal levels, and from a reduction in net worth tax at cantonal level.

The Swiss holding company was a particular target of the OECD's 'unfair tax competition' initiative, and in 2004 an agreement was reached between Switzerland and the OECD whereby information about holding companies would be shared by Switzerland in circumstances where there was prima facie evidence of fraud.

For federal tax purposes a company is defined as a holding company if it holds either a minimum of 20% of the share capital of another corporate entity or if the value of its shareholding in the other corporate entity has a market value of at least 2m Swiss Francs (known as a "participating shareholding"). The reduction in the level of corporate income payable tax depends on the ratio of earnings from "participating shareholding" to total profit generated.

Although the definition of a holding company varies among cantons, broadly speaking a corporate entity is a holding company for cantonal corporate income tax purposes so long as it either:

- derives 51%-66% of its income from dividends remitted by the subsidiary; or
- holds 51%-66% of the subsidiary's shares.

The Domiciliary Company

Domiciliary Companies are Stock Corporations that are both foreign-controlled and managed from abroad, have a registered office in Switzerland (i.e. at a lawyer's premises) but have neither a physical presence nor staff in Switzerland. They must carry out most if not all of their business abroad and receive only foreign source income . The use of domiciliary companies can result in savings in corporate income tax levied on income and capital gains and net worth tax. See Offshore Legal and Tax Regimes.

The Auxiliary Company

An Auxiliary Company is essentially a Domiciliary Company which in addition may carry out a certain proportion of its business in Switzerland. Auxiliary Companies are possible in only seven cantons, and do not benefit at federal level. Treatment varies according to canton, but in most cases an auxiliary company may have Swiss offices and staff and be in receipt of Swiss income (which is taxed at normal rates). Most income though must be from a foreign source. See Offshore Legal and Tax Regimes.

The Service Company

Service Companies are Stock Corporations whose sole activity is the provision of technical, management, marketing, publicity, financial and administrative assistance to foreign companies which are part of a group of which the service company is a member. Service companies may not in general derive income from third parties (i.e. companies outside their corporate group). Service company status is obtained by way of an advance cantonal tax ruling (there is no benefit at federal level). See Offshore Legal and Tax Regimes.

The Mixed Company

Mixed Companies are Stock Corporations which have the characteristics of both domiciliary companies and holding companies but which do not qualify as either. There is no benefit at federal level, but at cantonal and municipal level there are corporate income tax benefits if the mixed company meets the following conditions:

- the company is foreign controlled;
- a minimum of 80% of its total income comes from foreign sources;
- the company has close relationships to foreign entities.

SWITZERLAND DOMESTIC CORPORATE TAXATION

Due to the federal structure of Switzerland there is no centralized tax system, with some taxes being levied exclusively by federal authorities whereas other taxes are concurrently levied at cantonal, communal and federal levels. Although the rate of tax levied at a federal level is consistent, that levied at a cantonal level varies from canton to canton. (There is currently legislation in the pipeline that aims to terminate this variation, and to reorganise the division of responsibilities and of revenues between the federal and cantonal administrations, but the timescale of change is not yet settled). Because significant differences presently exist in the rates of taxes levied at cantonal level the choice of canton is an important element in all tax planning.

In 2005 the EU put a warning shot across the bows of the cantons by threatening the tax regime in Zug, one of the more attractive cantons to foreign companies.

In a letter sent to the Swiss Mission in Brussels in October, the EU congratulated Switzerland on its decision to extend the free labour accord with the European Union. However, the letter also went on to point out that certain parts of the Swiss corporate tax regime "may be incompatible" with Switzerland's obligations under the agreement.

"The legislation in question, that is enforced in Zug and [canton] Schwyz, is said to grant fiscal advantage to undertakings for... economic activities taking place outside Switzerland," the letter stated.

Zug denied that its corporate tax regime breaches a 1972 Free Trade Agreement between Switzerland and the European Union. Guido Jud, head of corporate tax in canton Zug, said that he was "surprised" by the EU's viewpoint.

"The rules on taxation in Switzerland have not changed recently so we do not see why, in 2005, there should be suddenly be a problem," he stated.

Currently, the tax rate for companies in Zug ranges from 14% to 17%.

The federal government has played down the affair, saying the letter was merely a request for information rather than a formal complaint against the tax regime.

By international and OECD standards Swiss tax rates are relatively low.

Scope of Corporate Income Tax

For corporate income tax purposes a company is deemed resident in Switzerland if it is either incorporated in Switzerland or effectively managed from there. Thus a UK-registered company whose effective seat of management is in Switzerland is a Swiss resident company for corporate income tax purposes.

The General Assessment Rule is that resident companies are assessed on their worldwide income except for profits generated by enterprises, permanent establishments and real estate situated abroad, whereas non-resident companies are only assessed on profit generated by enterprises, real estate and permanent establishments situated in Switzerland as well as interest on loans secured on Swiss real estate.

Corporate income tax is levied at a federal, cantonal and communal level. The level of corporate income tax payable varies amongst the cantons but at present Zug and Fribourg are considered the best cantons in which to locate trading and holding companies respectively.

Corporate income tax payable to the federal authorities may be tax deductible for the purposes of an assessment to cantonal corporate income tax and vice versa.

Advance tax rulings on the level of corporate income tax payable are available and are advised as a matter of prudence.

Generally speaking capital gains are taxed as corporate income at federal, cantonal and municipal levels.

The Swiss branch of a foreign company pays the same rates of corporate income tax on profits, income and capital gains as would be paid by a Swiss-resident corporate entity. Profits remitted abroad by the branch are not subject to any tax in Switzerland.

Rates of Corporate Income Tax

Corporate income tax is levied at federal, cantonal and municipal levels.

The basic federal tax rate is 3.63% of taxable profits with an additional percentage based on a formula which relates trading profits to net worth (i.e. capital and reserves). The maximum rate of 9.8% is arrived at if profits exceed 23.15% of net worth.

Cantonal tax rates vary between 17% and 35% and like the federal tax are progressive, using a scale based on the relationship of profits to net worth.

Municipal tax on corporate income is calculated as a small proportion of cantonal tax.

Calculation of Taxable Base

There are substantial differences between the federal government and cantons, and between individual cantons, in the calculation of taxable income. The following list of broadly applicable rules must be checked in any given situation:

- GAAP principles apply to most aspects of the tax computation;
- Group or consortium relief does not exist in Switzerland;
- Losses can be carried forwards for between 4 and 7 years, but not backwards;
- There is no controlled foreign company tax legislation of the type which exists in both the UK and the USA;
- Capital gains made by a non-resident parent company on the sale of its shareholding in a Swiss subsidiary are not taxable in Switzerland (unless the Swiss subsidiary owns real estate in Switzerland);
- The payment of loan interest by a resident or non-resident subsidiary to a Swiss parent company is free of any corporate income tax in Switzerland;
- Provisions for future employee retirement liabilities are tax deductible;
- Income or capital gains accruing to a resident or non-resident company on the rental or sale of Swiss real estate (including the sale of shares in a company which owns real estate in Switzerland) are subject to corporate income tax at both federal and cantonal levels;
- Income and capital gains from foreign immovable property are exempt from corporate income tax;
- The profits of the foreign branches of a Swiss company are exempt from corporate income tax in Switzerland as are any capital gains made on a sale of a branch;
- The losses of the foreign branch of a resident company can be set off against the profits of the resident Swiss company.
- Where there is no double taxation treaty in place withholding taxes deducted in a foreign jurisdiction on remittances paid to a Swiss entity give rise to a tax credit in Switzerland. See Double Taxation Treaties.

Stamp Duty

The federation has the exclusive right to levy this tax. The rates are as follows:

- 1% on the issue of shares where the value of the shares is over SFr 250,000 including cases in which shares are issued at a premium. A loan made by a shareholder to the company without any consideration is also subject to this tax. The tax is also payable on the nominal value of shares where a majority shareholding is transferred as a consequence of a liquidation irrespective of the fact that the shares have virtually no market value in the circumstances. The issue tax is not payable by the Swiss branch of a foreign company.
- A rate of 0.15% on the transfer value of shares in Swiss resident companies and 0.3% on the transfer value of shares in non-resident companies where the transfer is effected by "security dealers" which definition includes banks, stock brokers, investment fund managers and other financial institutions. The definition of security dealers is quite wide and includes any company which owns securities with a value in excess of 10m Swiss francs and all intermediaries. The tax is split between the buyer and the seller and is automatically deducted by the dealer.
- A rate of 0.12% per annum on the value of bonds issued meaning that a 5-year bond pays 0.6% stamp duty.
- A rate of 0.06% per annum on bank-issued medium term bonds and on the issue of financial paper meaning that a 5-year bond pays 0.3% stamp duty.
- A rate of 5% on an insurance premium or 2.5% in the case of a life insurance premium paid in one contribution.

Filing Requirements and Payment of Tax

For federal tax purposes the tax year is the company financial year whereas for cantonal and communal tax purposes the tax year is the calendar year. Although the cantonal basis of assessment differs amongst cantons (i.e. it is occasionally annual) assessment is generally on a bi-annual basis meaning that it is based on the average profits of the previous 2 calendar years so that, for instance, the corporate income tax payable to the canton for the period 1st January 2003 to 31st December 2004 is the average of profits for the like periods in 2001 and 2002.

Net Worth Tax

This tax is levied by both the federal authorities and cantons. The tax is based on the value of a corporate entity's assets, normally equal to shareholders' equity (paid-in capital, legal reserves, and other retained earnings, public or otherwise). The rates are:

- A rate of 0.8% of the company's net worth is levied by the federal authorities annually;
- A rate of between 0.3% to 1% of the company's net worth is levied by the cantons annually, depending on the canton.

Foreign branches based in Switzerland are only assessed on the value of their Swiss assets for the purposes of this tax. Resident companies are not assessed on the value of any foreign-based real estate assets.

Withholding Tax

The federation has the exclusive right to levy withholding tax. The general rule is that withholding taxes are deducted at source from distributions made by Swiss entities. The rate is 15% on pension fund benefits, 8% on insurance benefits and 35% for "investment income", which includes corporate dividends and interest from bank accounts, bonds & debt instruments.

As from July, 2005, the EU's Savings Tax Directive applies in Switzerland, and a withholding tax of 15% is being applied to the returns on savings of citizens of EU member states.

No withholding tax is levied on royalties paid to foreign beneficiaries.

Profits repatriated abroad by the Swiss branch of a foreign company do not attract withholding taxes irrespective of any double taxation treaty.

NB: Switzerland has double taxation treaties with about 50 other countries, and these determine the rates of withholding tax in most cases, rather than the general rules above.

Double-Tax Treaties

Switzerland has Double Taxation Treaties with more than 50 other countries. The general effect of the treaties for non-residents from treaty countries is that they can obtain a partial or total refund of tax withheld by the Swiss paying agent. Although the full amount of withholding tax is deducted at source the difference can be re-claimed by the non resident from the Swiss tax authorities. Where there is no double taxation treaty in place withholding taxes deducted in the foreign jurisdiction on remittances paid to a Swiss entity give rise to a tax credit in Switzerland.

No withholding tax is levied on royalties paid to foreign beneficiaries. Profits repatriated abroad by the Swiss branch of a foreign company do not attract withholding taxes irrespective of any double taxation treaty.

Treaty abuse: A repayment of withholding taxes under the terms of a treaty will be denied where there has been "abuse". Abuse occurs when a foreign-controlled legal entity which is resident in Switzerland fails one of the 4 following tests:

- The entity must have a reasonable debt/equity ratio (generally the total of all interest-bearing loans should not exceed 6 times the company's equity);
- The entity must not pay excessive interest rates on debt (for the purposes of this test the accepted rate varies from time to time);
- The entity must not pay more than 50% of its income as management fees, interest or royalties to non residents;
- The entity must distribute at least 25% of the income which could be distributed as dividend.

Where any one of the 4 tests are failed the portion of withholding tax deducted and which is deemed refundable under the terms of the treaty is not refunded.

Additionally, treaty provisions do not apply to dividends, interest or royalties paid by a Swiss entity to a German, Italian, French or Belgian entity if the Swiss entity is wholly or partly exempt from cantonal tax under the tax incentives applicable to specific types of company (i.e. domiciliary, holding, auxiliary, mixed and service companies).

In October, 2004, Swiss President Joseph Deiss agreed with Japanese Finance Minister, Sadakazu Tanigaki, that informal talks would soon begin on the updating of the thirty-year-old double taxation avoidance agreement between the two nations.

The following are some of the countries which have double-tax treaties with Switzerland:

• Albania • Armenia • Australia • Austria • Azerbaijan • Belgium • Belarus • Bulgaria • Canada • CIS (ex-USSR) • Denmark • Egypt • Estonia • Federal Rep. of Germany • Finland • France • Georgia • Greece • Hungary • Iceland • India • Indonesia • Ireland • Italy • Japan	• Latvia • Lithuania • Luxembourg • Macedonia • Malaysia • Moldova • Netherlands • New Zealand • Norway • Poland • Portugal • Romania • Russia • Singapore • South Africa • South Korea • Spain • Sri Lanka • Sweden • Tajikistan • Trinidad & Tobago • Turkmenistan • Ukraine • United Kingdom • United States

• Kazakhstan • Kirghistan	• Uzbekistan

In July, 2005, representatives from the governments of Switzerland and Pakistan met in Islamabad to put their names to a new comprehensive agreement for the avoidance of double taxation.

The agreement, signed on behalf of Switzerland by Denis Feldmyer, Ambassador to Pakistan, and on behalf of Pakistan by Abdullah Yusuf, Chairman of the Central Board of Revenue, will encompass income from shipping, immovable property, interest, royalties and fees for capital gains and technical services.

Under the arrangement, business income will be taxable at the place of permanent establishment and Swiss firms will be given a tax credit in Switzerland on income earned in Pakistan.

The new agreement, initially concluded in 2002, updates the much older previous double tax avoidance agreement which dates back to 1959.

Table of Treaty Rates

The rates shown are those of withholding taxes applied to payments made by Swiss entities or persons to non-resident entities or persons; a zero rate applies to royalties. Although Switzerland recognises the member states of the CIS as successor states to the USSR, and therefore applies its USSR Double Tax Treaty to them, they are not included in the table because the USSR treaty does not contain concessionary rates of withholding tax for dividends or interest.

Country	Dividends, %	Interest, %
	Paid from Switzerland	Paid from Switzerland
Australia	15	10
Austria	5	5
Belgium	10/15 (Note 1)	10
Bulgaria	5/15 (Note 1)	10
Canada	15	15
China	10	10
Denmark	nil	nil
Egypt	5/15 (Note 1)	15
Finland	5/10 (Note 2)	nil
France	5 (Note 3)	10
Germany	10/30 (Note 4)	nil
Greece	5	10
Hungary	10	10
Iceland	5/15 (Note 1)	nil
Indonesia	10/15 (Note 1)	10

Ireland	nil/10 (Note 1)	nil
Italy	15	12.5
Japan	10/15 (Note 1)	10
Luxembourg	nil/15 (Note 1)	10
Malaysia	5/15 (Note 1)	10
Netherlands	nil/15 (Note 1)	5
New Zealand	15	10
Norway	10/15 (Note1)	nil
Pakistan	15/35 (Note 5)	15/35 (Note 6)
Poland	5/15 (Note1)	10
Portugal	10/15 (Note1)	10
Singapore	10/15 (Note 1)	10
South Africa	7.5	35
South Korea	10/15 (Note 1)	10
Spain	10/15 (Note 1)	10
Sri Lanka	10/15 (Note 1)	10
Sweden	nil/15 (Note 7)	5
Trinidad & Tobago	10?20 (Note 8)	10
UK	5/15 (Note 1)	nil
USA	5/15 (Note 1)	5

Notes:

(1) The higher rate applies if the payment is received by a company holding directly less than 25% of the capital of the Swiss paying company

(2) 5% if the recipient is a company

(3) Only 20% is refunded (making the effective rate 15%) if non residents of France have substantial interests in the recipient company, if the recipient company controls at least 20% of the Swiss company and if the shares of either company are neither quoted at a stock exchange nor traded over the counter

(4) The 30% rate applies to dividends from jouissance rights, participating loans and silent participations. Withholding tax shall not exceed the tax chargeable on the profits out of which the dividends are paid.

(5) The lower rate applies if the recipient is a company which owns at least one third of the voting stock in the Swiss company

(6) If the recipient is an individual no refund of the Swiss 35% withholding tax is granted

(7) The zero rate applies where the payer is a corporate shareholder which has a participation of at least 25% for a continuous period of at least 2 years immediately preceding the distribution. 5% applies where the participation requirement is satisfied but not for the requisite period and 15% is the rate for smaller holdings.

(8) The lower rate applies if the recipient is a company which controls directly or indirectly at least 10% of the voting power in the Swiss paying corporation

Other International Agreements

Switzerland has passed its own mutual assistance law, and is also a party to a number of international mutual assistance treaties, some multilateral and some bilateral, including the following:

- The European Convention on Mutual Assistance in Criminal Matters, 1959;
- Treaty on Mutual Assistance in Criminal Matters with the USA, 1973;
- The Federal Act on International Mutual Assistance in Criminal Matters, 1983, as amended in 1997;
- The European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, 1993.

The Federal Act, particularly since the 1997 amendments, enables the transmission of documents and information abroad for the purposes of criminal proceedings. From the point of view of banking secrecy the following can be said about the current situation:

- According to a recent decision of the Federal Supreme Court the transmission of such information requires the permission of the Swiss police authorities who must inform the customer about the order and give him a right to appeal;
- It is not permitted to forward information on persons who are not the subject matter of the investigation;
- Information will not be given if
    - The foreign authorities might use the information for purposes other than those for which it was requested;
    - The offence alleged is not equally punishable in Switzerland;
    - The requesting state does not offer Switzerland reciprocal treatment in these matters;
    - The offence is related to tax, politics or military matters.

The Swiss authorities now grant administrative assistance as well as judicial assistance. Administrative assistance is regulator to regulator contact as opposed to judicial assistance which takes place between judicial authorities within the scope of civil or criminal legal proceedings.

In March, 2003, the Swiss government announced that it had ratified a legal co-operation agreement with Italy. Although the accord had been agreed four years before, legislation introduced by the Berlusconi government giving Italy the right to dismiss the findings of investigations carried out in other countries, meant that the Swiss authorities were reluctant to ratify the agreement. However, according to a government statemen, a series of recent rulings in Italy's High Court had clarified the situation and allowed the two parties to resolve their differences over legal cooperation.

The Swiss Federal Banking Commission which regulates banks, mutual funds, stock exchanges and security dealers is the regulator charged with rendering administrative assistance. A number of conditions attach to the granting of administrative assistance by the Swiss Federal Banking Commission namely:

- The foreign authority must be recognized by the Commission as a supervisory authority authorized to request administrative assistance;
- The foreign authority may only use the information for the purposes of direct supervision of the institution concerned;
- The foreign authority must be bound by official or professional secrecy;
- The foreign body can only re-transmit the information under very restrictive circumstances. This is called the principle of specificity and means that information that was given for the purposes of a criminal offence such as drug

dealing cannot be used in proceedings for tax evasion. In practice the foreign authority must confirm that it will not so transmit the information unless required to do so by a competent court against whose decision it will appeal. Since the grant of assistance by the commission is discretionary if specificity cannot or was not guaranteed future assistance may be denied though in practice the commission is always eager to be seeing to play its part;

- If the information requested gives the name of a client he must be notitfied and given time to contest the decision;
- There is a right of appeal to the Federal Supreme Court.

Banking secrecy in Switzerland is evidently under threat from the international crusade currently being waged, overtly against money-laundering, but with a sub-agenda of fiscal harmonisation and information exchange. Switzerland is holding fast so far against the tide, but may have to give way in the future to a certain amount of information exchange. Along with Luzembourg, Switzerland refused to sign the OECD's declaration in late 1999 against 'unfair tax competition'. It did sign the unanimous OECD declaration in April 2000 on information exchange and banking secrecy, but stated immediately afterwards that in its opinion it already conformed to the necessary standards.

However, the task of enforcing regulation in the non-banking sector initially proved to be an uphill struggle for the new Money Laundering Control Authority. According to the Swiss Money Laundering Reporting Office's latest annual report, of the 311 reports of suspicious transactions in 2001, only 75 came from the country's 7,000 non-bank financial intermediaries. Of those 75, very few have resulted in prosecution, according to Swiss officials. Then in 2002 the number of suspected cases of money laundering rose sharply, with 652 cases being referred to the Money Laundering Reporting Office - an increase of 56 per cent over the previous year. The ministry said more rigorous control and reporting practices among Switzerland's non-banking sector were the main reason for the increase. The total amount of money suspected of having been laundered fell from SFr2.7 billion ($2 billion) in 2001 to SFr667 million in 2002. Since 1998, only one per cent of reported cases have led to a conviction.

In addition to dealing with the passive resistance of the non-banking sector and staffing shortages at the Money Laundering Control Authority, its chief Dina Balleyguier also faced the challenge of deciding if any other sectors should be brought, doubtless unwillingly, under the umbrella of greater supervision and reporting.

'There are about 10...open-ended questions,' she explained in November 2001: 'One is whether commodities traders must have a license with us; another is whether asset traders with one-man offshore companies should be included. Another is whether someone doing asset management for their family should be included. It's very complicated.'

The Swiss government is also considering extending existing money laundering laws to cover art and jewellery trading companies. Following the introduction of enhanced legislation on traditional financial institutions and banks in Switzerland, laundering funds through non-traditional channels such as art dealers, jewellery traders, and money changers has become an increasing problem for the authorities.

Although Swiss-based asset managers are already overseen by the country's anti-money laundering unit, the goverment has also announced that is considering whether the sector should be put under the authority of the Swiss Federal Banking Commission, which oversees banks, brokers, and investment funds.

Below is a joint response, from The Swiss Federal Banking Commission and the National Bank, to the members of the Financial Stability Forum who complained about the

Switzerland's inclusion on an OECD list issued in May of countries whose financial systems posed a risk to global stability.

To All Members of the FSF Berne/Zurich,
5 September 2000
Financial Stability Forum -
List of "Offshore Financial Centres" (OFC)

Dear Mr . . . Mrs

In May 2000, the Financial Stability Forum (FSF) published a list of "Offshore Financial Centres" (OFC) defined with respect to their compliance with international standards in the financial area. This list also includes Switzerland.

Switzerland is an international financial centre with a significant amount of business with non-residents. The same applies to other countries like the USA and the UK. However, it is incorrect to intermingle the typical features of international financial centres, such as the importance of financial business with non-residents, with the characteristics of "Offshore Financial Centres" as established by the OFC working group of the FSF itself (page 9, table 2 of the report). In fact, none of these characteristics apply to Switzerland. In our country:

-Business and investment income is taxed at rates close to the average of OECD countries. The overall tax burden of 33.8% in Switzerland (total tax revenue as % of GDP) is above the OECD average and higher than in the United States (29.7%), Japan (28.8%) or Australia (29.8%).

-A withholding tax of 35% applies to all interest and dividend payments of Swiss issuers or debtors, irrespective of the domicile of the recipient. The incorporation regime follows international standards. In particular, there is no regulatory or supervisory distinction between onshore/offshore or resident/non-resident activities. In Switzerland, there are neither offshore-licences nor is there preferential treatment for offshore activities. No shell-branches or brass-plate banks are admitted.
-The supervisory regime for financial services is in line with international standards and G10 standards in particular.

-Regulation does not offer the possibility to create trusts.

-Financial institutions without physical presence in Switzerland can not be licensed by the Swiss Federal Banking Commission (SFBC) and, therefore, can not lawfully operate as such from Switzerland.

-Swiss supervisors have full access to all files and privacy protection for bank customer information is no obstacle to international mutual assistance in criminal matters such as money laundering, corruption, insider trading or tax fraud.

-The volume of non-resident business does not "substantially exceed" the volume of domestic business despite the fact that, in general, the share of international transactions tends to be higher in smaller countries than in larger economies. In terms of funds under management, the share of domestic and foreign securities holders is about equal.

-The financial sector accounts for 11% of GDP.

The FSF argues that many supervisory and regulatory authorities of major financial centres referred to Switzerland as an OFC. This is certainly not an acceptable reason for placing Switzerland on the Forum's list. We urge you to take into due consideration that Switzerland is a G10-member with a regulatory and supervisory regime that is in compliance with international standards. Therefore, it is not understandable why Switzerland should be assessed as an OFC.

Yours faithfully
Swiss Federal Banking Commission
Dr Kurt Hauri Chairman

Swiss National Bank
Dr Hans Meyer Chairman of the Governing Board.

In 2001 the European Union began negotiations with Switzerland to attempt to gain agreement to the information-sharing required as part of the EU's withholding tax directive and without which it will not be effective.

Switzerland was politely helpful, offering to extend its 35% withholding tax on resident savings income to non-resident account holders, and to distribute much of the tax collected among EU member states, but the government was adamant that it will not shift on the issue of banking secrecy. The Finance Minister, Kaspar Villiger confirmed this, commenting frequently that: 'Banking secrecy is not negotiable'.

Jean-Baptiste Zufferey, a Swiss tax expert and professor at the University of Fribourg expresses the situation more bluntly: 'It's not because we fear banks would lose business, but most Swiss people have an attachment to the idea that a human being is entitled to financial privacy. It is the problem of foreign countries if they cannot tax their citizens. We in Switzerland don't have to help other countries do their job.'

This posed a serious problem for the EU - not just because the alpine jurisdiction is home an estimated one third of the world's offshore wealth, but because other countries, in particular Luxembourg and Austria, had said that they would refuse to back information exchange plans if Switzerland does not participate. The EU had set the end of 2002 as the deadline for final adoption of its information exchange plans, but Luxembourg's refusal to accept the Swiss compromise position as acceptable meant that negotiations continued into 2003. After last-minute haggling by Italy and Belgium, it was agreed by mid-2003 that the Directive would enter into force in 2005.

The Swiss banking fraternity certainly doesn't admit to any regulatory weaknesses, and is up in arms about what it sees as incorrect foreign attitudes towards Swiss banking. “We cannot have a situation where people claim that in Switzerland, control weaknesses supposedly keep occurring,” Urs Roth, chief executive of the Swiss Bankers Association told an August, 2003 seminar.

"Where Switzerland has excessive regulation compared with the foreign competition, nothing is done about it. In the long run this may produce a widening gap that could be very damaging for our banks and therefore our economy," warned Roth.

In January, 2004, Switzerland and the Organisation for Economic Co-operation and Development reached a long-awaited compromise deal over certain Swiss tax practices deemed harmful by the OECD. Following two days of discussions with the Paris-based organisation’s fiscal affairs committee, Swiss officials agreed to exchange information with other countries on Swiss holding companies, one of a number of issues that has dogged the relationship between Switzerland and the OECD in recent years.

Wilhelm Jaggi, Switzerland's ambassador to the OECD, stated that the agreement represents a “good and balanced solution for all sides." However, he was keen to emphasise that the issue remains entirely separate from the more delicate matter of banking confidentiality.

The two parties also managed to resolve another sticking point involving the issue of administrative notes on how taxable profits are defined by firms. But a third tax issue concerned with the method by which commercial expenses are deducted from tax statements remains unresolved.

Further agreement was reached, however, in the area of transfer-pricing, and the Swiss authorities have agreed to warn domestic firms to abide by OECD guidelines when transferring profits to subsidiary companies.

It has also emerged that the OECD is to undertake further analysis of the tax regimes under which Swiss finance and leasing companies operate.

In May, 2004, agreement was provisionally reached with Switzerland over the implementation of the EU Savings Tax Directive. The Swiss government had agreed the text of the Directive, but refused to sign it until assurances were given by the European authorities that the Schengen agreement on cross-border crime would not force it to compromise its banking secrecy by reporting on tax evasion, which is not a crime in Switzerland.

The agreed compromise is that Switzerland will provide legal assistance under the terms of the Schengen agreement in cases relating to indirect taxes such as customs, VAT, and alcohol and tobacco levies, but will be exempted from providing such assistances in cases of direct taxation.

Later in the month, representatives from Switzerland and the European Union signed the nine 'bilaterals II' agreements covering various topics including tax and the free movement of people. They had been held up pending agreement on the Savings Tax Directive.

The agreements concern: the taxation of savings; co-operation in the fight against fraud; the association of Switzerland to the Schengen acquis; participation of Switzerland in the “Dublin” and “Eurodac” regulations; trade in processed agricultural products; Swiss participation in the European Environment Agency and European Environment Information & Observation Network (EIONET); statistical co-operation; Swiss participation in the Media plus and Media training programs; and the avoidance of double taxation for pensioners of the Community institutions.

A protocol to the existing agreement on the free movement of persons was also signed, extending the agreement to the new EU Member States.

Right wing parties such as the Swiss People's Party, opposed to the plans to cooperate more closely with Brussels on security and other matters, threatened to force a referendum on the issue, but by November it was clear that the government was going to be able to put through the necessary implementing legislation with needing a referendum, and the Savings Tax Directive duly came into force in July, 2005, with Switzerland applying a 15% withholding tax to the returns on savings of EU residents.

Panama company formation

Panama Corporation (Sociedad Anonima)

The corporation limited by shares is the most frequently used corporate form in Panama, and is the usual choice for an offshore operation.

Corporations are formed under the Law No. 32 of 1927 and the Commercial Code (Decree-Law No. 5 of 1997, Article 5). A corporation is formed by two subscribers (or nominees in the case of absent foreign subscribers) who execute the Articles of Incorporation (Statutes) before a notary and then record them at the Public Registry Office, paying a capital tax (minimum $60.20 on the usual capital of $10,000 - see Direct Corporate Taxation for details of tax on higher amounts of capital). There is an annual registration fee of $300 (2006 level).

Following incorporation, only one shareholder is necessary. Shares can be of various classes, can have par value or not, may be registered or bearer. There is no minimum capital, and no paying-up rules, except that no-par-value and bearer shares must be fully-paid when issued. Strict regulations now apply to bearer shares: the registered agent must keep the bearer share certificate in safe custody and must notify the Registrar about such shares.

There must be at least three directors, and their names must be in the Articles as filed; changes to directors must also be filed. Each corporation must have a resident Panamian agent (a lawyer), named in the Articles; there are no other filing requirements unless the Articles are changed or the corporation is merged or dissolved.

Panama Foreign Corporation

A foreign company can be registered in Panama by depositing the following documents at the Public Registry Office:

- A notarised Spanish translation of the Articles of Association;
- A Board minute authorising the Panamian registration;
- Copies of the most recent financial statements;
- A certificate from a Panamian Consul confirming that the company is organised according to the laws of its place of incorporation;
- Notification of the allocation of capital to the Panamian operation.

Capital taxes on formation and annual registration fees are payable as for Panamanian corporations (see above).

A foreign company can transfer its 'seat' (meaning roughly speaking the place from where its directors control the company) to Panama, and will then be subject to Panamian laws regarding public policy, while remaining under its originating law in other respects. A foreign company operating in Panama but not registered there may be sued in the courts of Panama but does not have the right to sue.

Panama General Partnership

A General Partnership is permitted under the Commercial Code. The partners have unlimited liability.

Panama Limited Partnership

Limited partnerships (sociedad de responsibilidad limitada) are governed by the Commercial Code and Law No 24 of 1966. Such a partnership may have between two and twenty partners. There is no restriction on the nationality of the partners or their domicile. Capital must be between $2,000 and $500,000. The names of the partners must be registered in the Public Registry Office along with details of the amount of capital committed and paid in (in cash or kind) by each of them. The liability of each partner for the debts of the partnership is limited to the amount subscribed to but unpaid.

The partners can appoint an independent administrator for the partnership whose name must also be registered.

A limited partnership with up to 5 members is not obliged to hold meetings. Otherwise, the partners must meet at least once each year. There is no requirement for annual returns or the filing of accounts.

An Individual Limited Proprietorship (empresa individual de responsibilidad limitada) is set up in the same way as a limited partnership with the exception that there is only one member. Details must be recorded at the Public Registry. The sole proprietor transfers assets to the business for the purpose of trading. The business liability of the proprietor is then limited to the amount of the assets committed.

Panama Civil Partnership

The Commercial Code and Law No 24 of 1966 also govern the Civil Partnership (sociedad civil), which has legal personality, although the liability of the partners is unlimited. This type of partnership is often selected by professionals such as lawyers and accountants.

Panama Commandite Company

The Commercial Code and Law No 24 of 1966 also govern the Commandite Company (sociedad en commandita) which is a hybrid partnership and corporation. At least one partner must have unlimited liability, while the liability of the limited partners is limited to the amount of capital subscribed. In one form, the Commandite Company can have shares which are transferable; but the Commandite Company is seldom used nowadays.

Panama Foundation

The Private Foundation Law 1995 governs private foundations in Panama. Unlike the common law trust, the foundation is an autonomous legal entity with no members or shareholders. It is generally used for the protection of assets and no business activities are permitted.

The founder establishes the foundation by depositing a notarised private foundation charter at the Public Registry; or the Charter can be executed before the Notary Public. The Charter must specify the names of the Foundation Council (who administer the foundation on behalf of the beneficiaries), the property of the Foundation, its domicile, the name of its Panamanian agent and other details; but the names of beneficiaries and principles of operation can be contained in separate Regulations which do not need to be filed.

The minimum capital requirement is US$10,000. No accounts are necessary and an audit is not required. As with all Panamanian entities, tax is only levied on income generated within Panama. Foundations are subject to the same capital taxes (minimum $60) and annual registration fees ($300 from 2006, previously $250) as are Corporations. See Offshore Legal and Tax Regimes for further details.

Panamanian law specifically excludes the operation of foreign 'forced heirship' rules or judgements against foundation assets. Panama itself has abandoned these typical civil law provisions in its own legislation.

Panama Trusts

Panamanian trust law was updated with Law No 1 of 1984. Panamanian trusts (Fideicomiso) must be expressed in writing, so cannot be constructive. Trusts can be stated to be revocable but otherwise are irrevocable. The settlor, trustees and beneficiaries need not be Panamanian nationals or resident in Panama. A Panamanian lawyer must act as an agent for the trust. Trusts may be settled in respect of existing or future property; additional property may be included after the settlement either by the settlor or a third party.

There are no registration or minimum capital requirements, or fees, and trust documents can be in English or Spanish. Unlike foundations (see above), trusts are not protected by specific provisions against foreign inheritance laws, judgements or creditors. However, purpose trusts are allowed for.

If a trust earns a taxable income in Panama, then tax is levied directly on the trust and not on the trustee.

The National Banking Commission of Panama regulates the transactions of entities acting as trustees. The Banking Commission does not have the authority to investigate the terms of particular trusts or the relevant parties, except where complaints are raised by beneficiaries.

At the end of 2000, Panama enacted two laws addressing money laundering and issued Executive Decrees to effect accompanying administrative changes. As a result of these new laws, all financial institutions in Panama now come under the scrutiny of the bank superintendency, including trusts, whereas previously only banks were legally bound to report financial transactions over US$10,000 and other suspicious activities

Taxation in Panama, which is governed by the Fiscal Code, is on a territorial basis; this is to say, that taxes apply only to income or gains derived through business carried on in Panama itself. The existence of a sales or administration office in Panama, or the re-invoicing of external transactions at a profit, does not of itself give rise to taxation if the underlying transactions take place outside Panama. Dividends paid out of such earnings are free of taxation. See Offshore Legal and Tax Regime for details of the (minimal) taxation of companies which do not carry on business inside Panama, and companies in the Colon Free Zone.

In February, 2005, Panama’s unicameral legislature approved a major fiscal reform package in order to raise revenues from new business taxes, and reduce the country’s level of debt. The legislature voted 46 to 28 in favour of the measures, which include a new 1.4% tax on companies’ gross revenues, and a 1% levy on firms operating in the Colon Free Trade Zone – the largest free port in the Americas.

In July, 2005, all firms which prior to 2005 were exempt from value added tax in Panama are affected by a new interpretation of the country's Tax Code by the tax authorities. In a little publicised move, Panama's Revenue Office circulated a series of opinions which stated that the recent tax reform has abolished all VAT exemptions and special treatment given prior to February 2005.

The new interpretation centered on paragraph 26, article 1057-V of Panama's Tax Code which, although the wording is the same as the original draft passed in 1976, the Revenue Office has taken to be a new law after it was reproduced in the major reform approved in February 2005. Therefore, according to the Revenue, it is effectively a new law, which can be interpreted differently to the 'old' legislation.

Consequently output VAT could now be charged on clients previously exempted. Similarly, input VAT may also affect previously exempted taxpayers.

In addition to the taxes described below, employers pay social security contributions of 10.75% in respect of employees

Panama Scope of Income Tax

Income tax is payable on the income of a Panama or foreign corporation or other entity derived from business carried on within Panama; a corporation carrying on business both inside and outside Panama will pay tax on the proportion of its income that arises within the country. Capital gains are counted as income after deduction of allowances.

Panama Rates of Income Tax

The rate of income tax in Panama is 30% on chargeable income up to PAB 100,000 rising to 42% on income over PAB 500,000 for companies that are registered with the Official Registry of National Industry or that have government contracts.

There is a withholding tax of 10% on dividends paid out of taxed income. If less than 40% of taxed income is distributed, then Undistributed Profits Tax of 10% becomes payable on the undistributed balance; this therefore amounts to a maximum of 4% tax. In effect this is an advance withholding tax, and it is creditable against the 10% tax on later distributions of the taxed profit.

The 2005 reform package introduced a 'minimum income tax' provision, under which the net taxable income of a legal entity will be the higher of the amount resulting from application of the ordinary Income Tax rules (gross income minus deductible expenses minus deductible allowances equals net taxable income), or 4.67 % of gross income. Whenever the effective income tax rate exceeds 30% of the net taxable income earned by a taxpayer, a waiver may be obtained from the Tax Administration and no presumptive taxation will apply. The same will apply in the event of losses for taxable purposes. The waiver may be granted for a maximum period of 4 fiscal years (the year for which the waiver is granted and the 3 subsequent fiscal years).

Panama Calculation of Taxable Base

Taxable income is Panama-source income less allowable deductions, except that transportation sector companies may choose to calculate their taxable income as 3% of gross revenue; telecommunications companies need pay tax on only 50% of their normally taxable income.

Dividends are not included in taxable income (either because, if Panama-sourced they will have been subject to withholding tax at 10%, or because, if they are foreign, they are exempt). Expenses associated with receipt of dividends are not deductible. Interest received from time-deposits in Panama banks or from Government securities is exempt.

Stocks are valued at cost, with several different bases being allowed, including FIFO and average cost. 'Cost' means purchase price including import duties, or the cost of manufacturing including direct overhead.

Allowable deductions include:

- Expenses paid or incurred for the production of income or the maintenance of a source of income;
- Depreciation of capital assets is mandatory, usually by the straight-line method. The life of assets is at the tax-payer's discretion, subject to a minimum of 3 years (30 years for immovable property).
- Interest on loans employed for the production of income, but not if they are made on the security of a term deposit;
- Bad debt provisions are allowable up to 1% of sales, with a maximum reserve of 10% of receivables;

Losses can be employed over 5 years forward at 20% per year, but only to offset up to 50% of taxable income; any losses not so employed are lost. There is no group or consortium relief, although it is sometimes possible to assign tax credits between companies.

NB: This brief summary of some of the more important aspects of Panama income tax law is given for general information only; it should not be relied upon in actual situations, for which professional tax advice is necessary.

Panama Filing Requirements and Payment of Tax

The tax year is the calendar year, ending 31st December, although a different year can be agreed with the tax authorities. A tax return is due within three months (can be extended to six). The previous year's tax return must be accompanied by a forecast of the current year's tax, which is then payable in three instalments after six, nine and twelve months after the end of the previous year.

Any under-payment of tax must be paid along with submission of the previous year's return.

Panama Withholding Tax

Dividends paid out by Panamanian companies are subject to 10% withholding tax; the rate is 20% for dividends on bearer shares. Dividends paid to a Panamanian holding company however are not subject to withholding.

If less than 40% of taxed income is distributed, then Undistributed Profits Tax of 10% becomes payable on the undistributed balance; this therefore amounts to a maximum of 4% tax. In effect this is an advance withholding tax, and it is creditable against the 10% tax on later distributions of the taxed income.

Branches of foreign corporations pay the 10% 'deemed dividend tax' on their full taxed income (making their effective taxation rate equal to 37%); but they are not subject to withholding tax on eventual distributions.

Interest paid or credited to the account of a foreign lender is subject to a 6% withholding tax. Interest on bonds, notes and other registered securities is subject to a flat 5% withholding tax unless traded on a registered exchange in Panama. Royalties paid to a foreign movie or television production company or distributor also are subject to a 6% withholding tax.

The fiscal reform package introduced in 2005 includes a rule (Paragraph 1-B of article 694 of the Fiscal Code) that all payments remitted abroad to beneficiaries not resident in the Republic of Panama shall be subject to withholding if the payments are related to the generation of income within Panamanian territory or the conservation of a source of income located within Panamanian territory and are considered to be deductible expenses by the payer operating from Panama. As examples, a non-exhaustive list of payments subject to the new rule has been inserted, including fees and income relating to intellectual property rights, royalties, know-how, technological or scientific knowledge and the like.

The taxable base for application of the withholding tax (at income tax rates) is 50% of the payment involved.

Individuals or legal entities engaged in “international business activities” and carrying out operations outside Panamanian territory are however exempted from the tax, ie payments caught by the law are not considered to be Panamanian source income. The definition of 'international business activities' is not very clear at this stage.

Panama Real Estate Taxes (Capital Gains Tax)

There are annual taxes on the value of real estate, plus capital gains tax on profits from the sale of real estate, and a transfer tax arising on sale.

The annual tax, under Article 766 of the Fiscal Code, is based on official valuations, and is levied on a sliding scale, previously:

- 1.75% from $30,000 (lowered to $20,000 in 2005) to $50,000; plus
- 1.95% from $50,000 to $75,000; and
- 2.10% on values above $75,000

Valuations under the 'cadastral' system were updated in 2005, and from 2006 the tax was based on the new values at the following rates:

- 0.70% on any value exceeding US$30,000 up to US$50,000;
- 0.90% on any value exceeding US$50,000 up to US$75,000; and
- 1.00 % on any value in excess of US$75,000.

Capital Gains Tax is levied on real estate gains under Article 701 of the Fiscal Code and Articles 89 and 90 of the Income Tax Regulations. The rate of tax is 30% on the taxable gain after deductions, but the calculation basis is quite complex, at least for persons not otherwise paying much tax.

The tax on the transfer of real estate (not new homes) is 2%, payable by the seller, which is credited against capital gains tax.

Incentives introduced in 2004 to encourage development gave savings on a $200,000 home over 20 years of $69,250 – or about one-third of the purchase price of a high-quality home. But they were finally withdrawn on August 31, 2005, with existing projects needing to be completed within a year.

Residences with construction permits issued after September 1, 2005 , however, benefited from the following exemptions:

- Value up to $100,000: 15 years
- Value from $100,000 to $250,000: 10 years
- Value over $250,000: 5 years

Land is not exempt and property tax would continue to be paid on it if its value is above $30,000.

Panama Stamp Duty

Most official and public documents in Panama require stamping, including sales invoices, receipts, legal submissions and contracts. Fiscal stamps are on sale in various denominations; pre-stamped paper can be bought at PAB 4 the sheet.

It is possible to account for stamp duty on a quarterly or half-yearly basis to the tax authorities.

Panama Commercial License Tax

Companies carrying on business in Panama (not Free Zone companies or offshore companies) need to pay an annual Commercial License Tax of 1% of the net worth of the business (minimum PAB 10, maximum PAB 20,000). Certain rural and/or small business are exempt from the tax. In addition to the national business license tax, municipalities also levy similar taxes on businesses.

Company formation in the USA

In the U.S., just as in Europe and other parts of the world, a business can be structured to limit the liability of its owners and operators. There are Limited Partnerships, LLCs - Limited Liability Companies (the widespread story that an LLC is tax-free for foreigners or for income earned abroad, is a fairy tale) and there are Corporations. Of these business entities the Corporation offers the greatest protection and the most benefits for Europeans and other foreigners. Therefore, our information handbook only deals with the various aspects of the U.S. corporation.

As an owner or director of a U.S. corporation, you cannot be held personally liable for its business obligations and activities *(We surely need not point out how such protection from liability can be a lifesaver under certain economic circumstances.)* Although the liability protection of a European corporation is very similar, setting up a European corporation is quite expensive and requires a substantial amount of paid-in capital. Since the shareholders and directors of a U.S. corporation enjoy much higher liability protection than in a European corporation, a U.S. corporation is to be recommended even for businessmen who have no intention of being active in international business.

This should not be regarded as a call for tax evasion or other criminal activities. But there are many other good reasons for which one may wish to remain anonymous. In the states recommended by us, the owner (i.e. the shareholder) of a corporation does not need to be registered. Only the founder (i.e. we) and the directors and officers are registered with the state. You yourself can remain completely anonymous by appointing others to be directors and officers.

Inheritance taxes can be avoided by distributing your stock to your heirs during your lifetime (*however, in order to avoid the problems described in* ***"Can your corporation be taken over by the other shareholders?"*** *you might consider the issuance of 'preferred stock.'*) Since a corporation is not dissolved in the case of the death of the owner, it can continue to be operated without interruption. Also, your heirs would have access to the corporate bank safe-deposit box, which in case of your death would not be locked and could not be accessed by creditors or officials. At present, inheritance taxes in the US start with estates in excess of $675,000. This will be raised to $1 million by 2004. However, the Bush administration is planning to eliminate it altogether.

Anyone who at any time has had a business failure, knows well how difficult it is to get on one's feet again because of the negative information provided by credit bureaus. With a U.S. corporation, one can start afresh with a new name and still remain anonymous. The corporation can also bear the name of a person, such as Sir Lancelot, Inc., and have a bank account and a U.S. tax number in this name. *(If you are interested in having your name changed officially by an American court, our attorneys can be of assistance.)* We can also provide you with a Visa card in your new name and the name of your corporation.

In the states recommended by us, our attorneys are in a position to formulate the articles of incorporation in such a way that the business activities are not restricted to any particular purpose, but that the corporation may engage in any business or activity not forbidden by law. Thus, the corporation does not need to be re-organized in case it wishes to engage in a different business enterprise.

It is not generally known that since the federal tax reform of 1986 (and in spite of President Clinton), the U.S. has virtually become a corporate tax haven. Consider this: The federal income tax is only 15% on corporate net-profits of up to $50,000. The tax then increases in small increments, but stops at 36% (and only if you make over $10 million per year in net profits). Nevertheless, it should be noted that this tax structure applies only to the federal income tax, and that many U.S. states have individual tax structures that can be most unfavorable for the conduct of corporate business. However, most of the states recommended by us have no corporate income, sales, value-added or inventory taxes. When you consider that a corporation in Germany, for example, must pay an income tax of over 50% plus a hefty franchise tax, then our tax rates should sound pretty attractive. For instance, if a German corporation has a net profit of DM 100,000, then the German tax officials kindly permit it to keep nearly DM 30,000. If you were to pay taxes on the same DM 100,000 through your U.S. corporation, the corporation could keep over DM 80,000 in its own pocket.

How can a European save on taxes with a U.S. corporation?

Since we cannot condone illegal activities, our recommendations should not serve the illegal evasion of taxes but rather the legal avoidance of taxes. For this, it is necessary that the U.S. corporation be a legally established company, properly registered with the state of domicile with a U.S. tax number, U.S. telephone number, U.S. street address (not P.O. Box), U.S. bank account and a U.S. board of directors. If these conditions exist, there are many interesting possibilities for tax sheltering.

If the U.S. Corporation were to own all or parts of your overseas business, the appropriate profits could be channeled through a U.S. bank and would be subject only to the lesser U.S. tax. To allow funds to flow back into your own pockets, you could pay yourself a salary or borrow money from the U.S. corporation and -since you’re certainly well acquainted with the owner- pay it back at highly favorable rates and terms.

If you already own, or wish to purchase, property like aircraft, yachts, machinery, real estate, etc., but do not wish to pay large sales or VAT taxes, or wish to remain anonymous, the corporation can serve as the purchaser and owner of these objects. If any of these items need to be registered -such as aircraft or yachts- we could register them under an additional address in a state without sales or use taxes.

If you buy and sell real estate, there is the possibility of avoiding the capital gains tax (tax on profits in the sale of real estate) and property transfer tax. For this, one sets up a U.S. holding company, i.e. a parent company, and a separate subsidiary corporation for each piece of property. The property one buys is registered in the name of the subsidiary corporation. (This is possible in Europe, even in Germany where the tax authorities, after collecting the property transfer tax, have to issue a clearance certificate (cf. BHF, decision of June 12, 1995 = RIW 1996, pp. 88.) allowing the property to be registered in the name of the corporation.) Later, when a buyer is found for the property, nothing happens in the registry at the time of the resale, since not the property, but the corporation is sold. Thus, the transaction is not subject to transfer or capital gains taxes.

Assuming that your country allows the depreciation of certain business property (machinery, cars, buildings, etc.), that property can be sold to your U.S. corporation at the depreciated price. Your U.S. corporation may then lease the objects back to you at a substantially higher price. Naturally, the corporate profits are subject to U.S. federal income tax (albeit modest), but it is also possible to depreciate these items again, while you deduct your full lease payment from your own taxes overseas.

Another possibility for shifting the tax liability to your U.S. Corporation exists by using the U.S. corporation as a supplier of your merchandise. Here you would have the corporation buy the merchandise from your regular suppliers and then sell it to your company or store at such high prices that you would make little or no profit in your domestic company and thereby avoid a good portion of the taxes in your own country. Naturally, your U.S. corporation will have to pay taxes on the profits it makes, but it will be at the much lower U.S. tax rate.

Please take note that none of the above will work, if the U.S. corporation was not set up properly for your purposes. It is not enough to simply order a corporate shell from one of the many off-shore or Delaware incorporation mills. These folks have little or no knowledge of U.S. or European law. For instance, it is not widely known that under EU law, a company is taxed at the locale where the critical business decisions are reached, regardless of where the company is registered. Since the bylaws of a regular U.S. corporation do not ordinarily reflect a mandatory geographical limitation as to where the business decisions have to be made, our competitors' customers have to pay European taxes sooner or later. This does not happen to our clients, since the corporate documents prepared by our attorneys specifically state that the critical decisions for the activities of the corporation have to be reached within the geographical confines of the U.S. This naturally presupposes that the corporation has its company address and telephone in the U.S. If not, there might be unpleasant consequences. For example, for the German owner of a Delaware corporation, the Düsseldorf Appellate Court recently refused to recognize the corporate protection (analogous to paragraph 11, sec. 3, GmbHG, and sec.1, clause 2, AktG) and held him personally liable for activities of the corporation, because his corporation had no telephone number or address in a U.S. telephone book (OLG Düsseldorf, decision of December 15, 1994, — 6U 59/94). Such difficulties can be avoided through our telephone/fax service. As you can see, there are endless possibilities of how one may benefit tax wise from the ownership of a U.S. corporation, as long as it is set up properly. In case one also wants to avoid U.S. taxation, there is even a possibility for this by using an Antigua holding corporation (more about this interesting alternative on our brochure). Nevertheless, for any in-depth tax advice for your own particular situation, it is important that you consult with a tax attorney in your country as well as in the U.S.

If you want protection against threatening creditors, tax officials, or an angry spouse, the corporation can be the owner of your valuable objects, such as boats, airplanes, real estate, or bank accounts. All title documents can be kept in the corporation's bank safe-deposit box. In order to use these objects, you can lease them from the corporation under favorable conditions. In precisely the same way, your corporation can also appear as the owner of your domestic company, permitting you to remain anonymous as the real owner. Another advantage is that in the USA, a U.S. corporation is free of the withholding tax that is normally collected from foreigners in sales of real estate.

a) Capitalization through selling shares

A U.S. corporation can pledge its shares, which represent a mathematically precise proportion of the company, as security for loans or sell them as investment objects. *(In comparison with this, a limited liability Company such as a GmbH cannot issue shares and is difficult to capitalize.)* A U.S. corporation can sell its shares to investors throughout the world, although for sales within the USA there are certain restrictions imposed by the Securities & Exchange Commission (SEC) and state agencies.

b) Capitalization through bank loans

Not counting branch offices, there are a total of 24,437 U.S. banks with capital in excess of 50 trillion dollars. (There are less than half as many banks in all the rest of the world.) With such competition between money lenders, it is understandable that the credit climate in the USA is significantly more favorable than anywhere else in the world.

c) Capitalization through venture capital

Venture capitalists control billions of dollars of investment capital. Since a venture capitalist participates in the profits of the capitalized venture, he is naturally much more risk-friendly than U.S. banks which are forbidden to participate in the financial success of an enterprise. Thus, if a corporation cannot offer sufficient security for a bank loan or afford the expense of going public, a connection with a venture-capital company is the most promising path to capitalization.

UNITED STATES INTERNATIONAL TAX SITE: STATES' TAX REGIMES

Double taxation agreement Switzerland - USA

- Switzerland - USA (PDF/54KB)

See Article 22 and additions to Article 22 in the protocol and memorandum of understanding

Double taxation agreements in other countries

- Germany - USA (PDF/107KB)

See Article 28 and additions to Art. 28 in the protocol and memorandum of understanding

- Austria - USA (PDF/186KB)

See Article 16 and additions to Art. 16 in the memorandum of understanding

- France - USA (PDF/110KB)

See Article 30

- Netherlands - USA (PDF/163KB)

See Article 26, memorandum of understanding and Notes Exchange (protocol)

State income tax is levied in addition to federal income tax, except in certain cases noted below in which all or part of federal income tax paid is allowed to be set off against state income tax. See Forms of Company for details of structures (LLCs, 'S' Corporations etc) that allow a 'pass-through' tax situation, in which federal income tax (and therefore, state income taxes) apply to the owners of the organization rather than to the organization itself. For most incorporated commercial organizations (known as 'C' corporations) and foreign companies, federal income taxes will apply to income earned from business activity in the US, and state income taxes will apply in all of the states where a business has qualifying activity.

Business activity in a state will attract taxation there if the organization concerned has 'nexus' in that state. Nexus for income tax purposes is normally established when a corporation derives income from sources within the state, owns or leases property there, employs personnel there or has capital or property in the state. However, the exact definition varies from state to state.

Congress has however established some exemptions from state taxation. Law 86-272 provides immunity from state taxation if a business merely solicits orders for the sales of tangible personal property that are sent outside the state for approval or rejection and, if approved, are filled and shipped by the business from a point outside the state. The law does not cover leases, rentals, transfers of real property and the sale of services. The statute does not define solicitation; therefore, each state defines it differently.

Nexus is usually not created by the following activities:

- Advertising campaigns or sales activities and incidental and minor advertising;
- Carrying free samples only for display or distribution;
- Owning or furnishing automobiles to salespersons;
- Passing inquires or complaints to the home office;
- Maintaining a sample or display room for less than 14 days; or
- Soliciting sales by an in-state resident employee, provided that the employee does not maintain a place of business in the state, including an office in the home.

The sitaution regarding intellectual property is confused. In some states the licensing of a trademark is sufficient to establish nexus; in others, not.

Some states attempt (often unsuccessfully) to 'attribute' nexus to an entity based on the activities of related (eg subsidiary or affiliated) entities. Nexus is attributed using the concept of agency, the 'alter ego' theory, or the concept of unitary taxation (most famously in California against multinationals, where it failed).

State taxation is relatively simply if a company is doing business in just one state, but if a business operates in multiple states, income will have to be apportioned according to sometimes complex formulae, and there is plentiful room for dispute. The Uniform Division of Income for Tax Purposes Act (UDITPA) was established to provide uniformity among the states with respect to the taxation of multistate corporations, and it has been adopted, at least in part, by most states. UDITPA provides that a business is considered to be taxable in another state when:

- The corporation is subject to the other state's net income tax, franchise tax measured by net income, franchise tax for the privilege of doing business, or corporate stock tax; or
- The other state has jurisdiction to impose a net income tax on the corporation, whether or not the state actually does so.

Most of the states that impose a corporate income tax begin the computation of state taxable income with taxable income as reflected on the federal corporate income tax return (Form 1120). Those states use either taxable income before the net operating loss and special deductions (Line 28) or taxable income itself (Line 30). Those states whose computation of state taxable income is not coupled to the federal tax return could adopt their own state-specified definitions of gross and taxable income. Nevertheless, even those states typically adopt the majority of federal income and deduction provisions.

For 2004, the standard federal income tax rate for corporations in the US is 35% for income above $18.33 million. Lower rates apply for small company profits. Personal service corporations pay 35% regardless of income level. Personal holding companies pay an additional tax on undistributed income, of 15%. This tax can also apply to regular corporations in some circumstances.

Following the table of income rates in all states, given below, two individual states (Delaware and Nevada) with particularly favourable corporate regimes (not necessarily just tax) are reviewed in more detail.

In May, 2004, a poll conducted by Bloomberg's Wealth Management magazine, found that the state of New York ranked 49th in a league table measuring the tax burden in each state, with only Wisconsin and "tax hell" Rhode Island producing worse results.

By using an identical set of six tax parameters, the survey found that the most wealth-friendly state was Wyoming, where these parameters produced a tax bill of $7,259. By comparison, the same tax calculations resulted in a bill of $56,419 in Rhode Island.

US State Income Tax For Corporations - 2004

State	Income Tax (Range) %	Brackets ($)	Comments	Federal Tax Deductible?
Alabama	6.5	flat rate		Yes
Alaska	1.0 - 9.4	10,000 - 90,000		No
Arizona	6.968	flat rate		No
Arkansas	1.0 - 6.5	3,000 - 100,000		No
California	8.84	flat rate	1.5% for S Corporations	No
Colorado	4.63	flat rate		No
Connecticut	7.5	flat rate		No
Delaware	8.7	flat rate		No
Florida	5.5	flat rate		No
Georgia	6.0	flat rate		No
Hawaii	4.4 - 6.4	25,000 -		No

		100,000		
Idaho	7.6	flat rate		No
Illinois	7.3	flat rate		No
Indiana	8.5	flat rate		No
Iowa	6.0 - 12.0	25,000 - 250,000		Yes (50%)
Kansas	4.0	flat rate	Plus 3.5% over 50,000	No
Kentucky	4.0 - 8.25	25,000 - 250,000		No
Louisiana	4.0 - 8.0	25,000 - 200,000		Yes
Maine	3.5 - 8.93	25,000 - 250,000		No
Maryland	7.0	flat rate		No
Massachusetts	9.5	flat rate		No
Michigan	1.9	flat rate	wide tax-base	No
Minnesota	9.8	flat rate		No
Mississippi	3.0 - 5.0	5,000 - 10,000		No
Missouri	6.25	flat rate		Yes
Montana	6.75	flat rate		No

Nebraska	5.58 - 7.81	50,000		No
New Hampshire	8.5	flat rate		No
New Jersey	9.0	flat rate		No
New Mexico	4.8 - 7.6	500,000 - 1m		No
New York	7.5	flat rate		No
Nevada	zero			
North Carolina	6.9	flat rate		No
North Dakota	3.0 - 10.5	3,000 - 50,000		Yes
Ohio	5.1 - 8.5	50,000		No
Oklahoma	6.0	flat rate		No
Oregon	6.6	flat rate		No
Pennsylvania	9.9	flat rate		No
Rhode Island	9.0	flat rate		No
South Carolina	5.0	flat rate		No
South Dakota	6.0	flat rate		No
Tennessee	6.5	flat rate		No
Texas	4.5	flat rate	on 'earned surplus'	No
Utah	5.0	flat rate		No

Vermont	7.0 - 9.75	10,000 - 250,000		No
Virginia	6.0	flat rate		No
West Virginia	9.0	flat rate		No
Wisconsin	7.9	flat rate		No
Washington	zero			
Washington DC	9.975	flat rate		No
Wyoming	zero			

Delaware

More than half of the Fortune 500 are incorporated in Delaware. This is partly because Delaware has very business-minded legislation, and partly because Delaware corporate income tax applies only to business conducted in Delaware itself. If a corporation does not conduct business in Delaware, the only tax paid to Delaware is an annual 'franchise' tax which for most companies is between US$50 and US$100. The minimum annual franchise tax for a corporation with up to 3,000 shares of no par or $.01 par common stock is $30, plus a filing fee of $20.

The Delaware courts frequently handle significant cases on an expedited basis when time is critical to the litigants. Delaware's recently enacted Summary Proceedings Act offers a unique procedure to resolve major commercial disputes on an expedited schedule with special rules to minimize the burden and expense of litigation.

Corporate offices may be located anywhere in the world, as long as the corporation maintains a registered agent in Delaware, and a Delaware corporation, limited liability company, or business entity can be formed without a visit to the state. Delaware corporations have no minimum capital requirement.

In Delaware, a special type of corporation, known as the "professional corporation," exists for licensed professionals, such as doctors, architects, accountants, and attorneys, who by law or ethical rules may not practice in the form of a regular corporation. The salient features of the professional corporation are that only licensed professionals may be stockholders, each stockholder participates as a director in the management of the business, and each stockholder remains personally liable for his or her own professional negligence or malpractice and that of any other stockholder, employee or agent working under the stockholder's supervision and control.

For non-tax purposes, a Delaware general partnership is a separate entity from its partners, may conduct business, acquire, hold, and dispose of property, and sue and be sued in its name, without the need to join all partners as parties. Delaware authorizes a special form of general partnership known as a limited liability partnership. In a limited liability partnership, the partnership is required to register with the Delaware Secretary of State and maintain a specified amount of liability insurance. In return, partners are relieved of personal liability for obligations of the partnership. Partners remain personally liable for their own negligence or misconduct and that of persons under their direct supervision and control. The limited liability partnership is attractive to professionals who want the benefits of the partnership form but without the personal liability for the professional misconduct of other partners and employees.

Historically, the price for limited liability was that limited partners could have no participation in management of the partnership, which was vested entirely in the general partner. Delaware's current limited partnership laws provide great flexibility in this area, however, and it is possible to structure a limited partnership agreement that gives considerable management participation to limited partners without jeopardizing their limited liability.

Without loss of limited liability, limited partners may:

- Transact business with the limited partnership;
- Be a control person of a general partner;
- Consult with and advise the general partner;
- Serve on a committee of limited partners;
- Vote on matters such as dissolution, a sale of assets, a merger, and admission or removal of a general partner.

Limited Liability Company

Formed by filing a certificate of formation with the Delaware Secretary of State, a limited liability company is a separate legal entity having the power to conduct business, acquire, hold and dispose of property, and sue or be sued in its own name. A limited liability company needs to have only one member. Management may be by the members or by selected managers who may or may not be members themselves. As with limited partnerships, the relationships among members and the management structure are typically set forth in a written limited liability company agreement. A limited liability company agreement may provide for various classes of members and managers and their respective rights, powers and duties and it may also set forth the manner of allocation of profits and losses of a limited liability company to its members.

Principal attributes of a limited liability company include:

- any member or manager may bind a limited liability company;
- except in certain limited situations, no member or manager is personally liable for the debts or obligations of a limited liability company;
- perpetual existence.

Delaware Business Trust

A Delaware business trust, another extremely flexible business structure, is an unincorporated association created by a trust instrument and the filing with the Secretary of State of Delaware of a certificate of trust. A governing instrument, which includes the trust instrument, provides for the governance of the business trust and the conduct of its business. A governing instrument may provide for various classes of trustees and beneficial owners and define their respective rights, powers, and duties. A business trust has perpetual existence. It is managed by one or more named trustees who are not liable for the obligations of the business trust. The beneficial owners have the same insulation from liability as shareholders of a corporation, have an undivided beneficial interest in the business trust's property, and have no interest in specific business trust property. However, the governing instrument may alter any of these attributes. In most cases, at least one trustee must be either a Delaware resident or have a principal place of business in Delaware.

Delaware Investment Holding Company

A Delaware Investment Holding Company is a corporation that has been established in Delaware with the sole purpose to manage and maintain its intangible assets. These corporations, whose activities within Delaware are restricted to the realization of income from intangible investments, are exempt from Delaware taxation. Intangible investments include: stocks, bonds, notes and other debt obligations, patents, patent applications, trademarks, and other intellectual property.

Nevada

There are however some additional advantages of Nevada incorporation, including:

- Tight protection against 'piercing of the corporate veil'. In order to attack the foreign (ie out-of-state) owner of a Nevada corporation, a claimant must prove that the corporation is influenced and governed by the person asserted to be the 'alter ego', and that there is such unity of interest and ownership that one is inseparable from the other, and that adherence to the corporate fiction of a separate entity would, under the circumstances, sanction fraud or promote injustice. In 23 years, the courts have only once backed a claimant, and that was in a case of outright fraud committed in Nevada itself.
- Corporate officers and directors can be indemnified. Under a 1987 law, corporations are allowed to place provisions in their articles of incorporation that eliminate the personal liability of officers and directors to the stockholders of Nevada corporations. Although Delaware and some other states soon adopted similar laws, Nevada's law remains as strong as any. In addition, the Nevada Corporation Code allows for the indemnification of all officers, directors, employees, stockholders, or agents of a corporation for all actions that they take on behalf of the corporation that they had reasonable cause to believe was legal.
- Joint and several liability has been abolished in Nevada in damage litigation. Nevada now requires the court to assign a percentage of fault to each defendant, from zero to one hundred with the total equal to 100 percent. Every defendant found liable is required to pay a share of the total judgment no greater than his/her fault.
- Nevada's corporate law is particularly favourable to rights of small corporations. For instance, under Nevada law officers and directors are protected in cases of acts or omissions committed in good faith, officers are exempt from monetary damages, directors cannot be attacked for breach of a director's duty of loyalty, and both officers and directors are permitted to undertake transactions involving undisclosed personal benefit to the officer or director. Delaware law is considerably less favourable.

Given the combination of legal benefits offered under Nevada law, large numbers of large and small US and foreign corporations choose Nevada incorporation even if their business activities are going to take place in other states. Citibank is an example.

Company Formation Germany

We – namely our English-German Partner Law Firm within a network of international Tax Accountants and Attorneys offer "Company Formation services in Germany":

-Company Formation in Germany ((German Limited Liability Company (*GmbH*)), (Limited Commercial Partnership with GmbH as General Partner (*GmbH&CO KG*)), (Stock Corporation (*AG*)), (Entrepreneurial Company*)*, (Limited Partnership (*KG*))

-Branch office of an EU company, Swiss Corporation (*AG*)/Swiss Limited Liability Company (*GmbH*) or US Inc. in Germany

- Registration of a representation of a foreign company in Germany

-Registration in the German commercial register

-Tax ID and VAT-ID

-Upon request: Domiciliation of the company in Germany (from virtual office to office)

- Upon request: Nominee General Manager and / or Nominee Shareholder

- Upon request: Provision of agents / representatives at the establishment of a representation of a foreign company in Germany

- Upon request: Provision of a German branch manager at the establishment of a branch office of a foreign company in Germany

-Provision of an English speaking Tax Accounting Firm in Germany for bookkeeping, advance turnover tax returns and financial statements

-Account opening for the company

-Tax advice within the context of "associated companies"

Our fee schedule is based on the services provided. We welcome the opportunity to provide you with an offer detailing our services.

Legal Forms of German Companies

Civil Law Association / Partnership (GbR)

An association of several persons to attain a common purpose constitutes a Civil Law Association / Partnership (*GbR*), without having to comply with specific formalities or having to enter into an agreement.

The legal relationships of a Civil Law Association / Partnership (*GbR*) are stipulated in the German Civil Code (BGB). The special provisions of the Civil Law Association / Partnership (*GbR*) are stipulated in Sections 705 et seqq. German Civil Code (BGB).

The assets of the partnership are "joint property", i.e. all partners may only dispose of the assets jointly.

Each partner of the partnership is fully liable for the partnership's debts; this also applies to the partner's personal assets.

The partners of a Civil Law Association / Partnership (*GbR*) are not merchants as defined by the German Commercial Code (*HGB*), otherwise this would constitute a General Partnership (*OHG*) (General Partnership, Section 105 Commercial Code (*HGB*)) if a Civil Law Association / Partnership (*GbR*) engages in trade. For this reason, a Civil Law Association / Partnership (*GbR*) may not register the partnership in the commercial register. Due to the fact that the partnership cannot be registered in the commercial register, the partners must act under their own names.

Based on the judicial decision of the Federal High Court of Justice (*BGH*) a Civil Law Association / Partnership (*GbR*) may also express itself as its own legal personality and as such can sue and be sued. A liability limitation on the assets of the Civil Law Association / Partnership (*GbR*) is possible in individual cases, based on an individual limitation agreement with the respective client, however not by means of a general liability limitation in a partnership agreement.

It is a recognized fact, that upon joining a Civil Law Association / Partnership (*GbR*), the joining partner is liable for existing debts. For this reason, one should perform due diligence in examining the business transactions that have already been concluded and with regard to possible liabilities the partnership holds.

Conclusion:

- Minimal formation expenditure / effort and low costs

- A partnership agreement is not a legal requirement; we do however strongly recommend that such an agreement is concluded.

- The partners are subject to unlimited liability

- This legal basis is not suited to companies which generate significant business revenues and / or business operations involving risk.

- The Civil Law Association / Partnership (*GbR*) is suited to small business operations, whose business volume does not warrant registration in the commercial register.

German GmbH / German Limited Liability Company

The main characteristics of a German Limited Liability Company (*GmbH*) include notarized articles of association (Section 2 German Limited Liability Company Act (*GmbHG*)) and the subsequent registration in the commercial register (Section 7 German Limited Liability Company Act (*GmbHG*)), it is a legal entity with its own legal status (Section 13 Para.1 German Limited Liability Company Act (*GmbHG*)) and its liability is limited regarding the companies obligations/liabilities to company assets (Section 13 Para 2 German Limited Liability Company Act (*GmbHG*)).

Consequently, the shareholder's liability risk is – apart from exceptions – limited to their initial contributions to the stock capital. The total of the shareholders' initial contribution to the stock capital must amount to at least 25,000 Euro (Section 5 Para 1 German Limited Liability Company Act (*GmbHG*)).

The Limited Liability Company (*GmbH*) generally consists of two organs for operational management: the shareholder's meeting and management, whereby the member or members of management must not necessarily also be shareholders (Section 6 Para 3 German Limited Liability Company Act (*GmbHG*)). In the event, however, the Limited Liability Company (*GmbH*) is formed by a sole founder (so-called "one-man-GmbH"), in this case the founder may perform both functions simultaneously (so-called Shareholder Managing Director).

Entrepreneurial Company (Mini GmbH)

The **Entrepreneurial Company (Limited Liability)**, commonly referred to as a „Mini-GmbH" or „Ein-Euro-GmbH", was introduced in the course of the Limited Liability Company Law Reform Rechts der GmbH Gesetz zur Modernisierung des GmbH-Rechts und zur Bekämpfung von Missbräuchen by the Act to Modernize the Law Governing Privat Limited Companies and to Combat Abuses (Gesetz zur Modernisierung des GmbH-Rechts und zur Bekämpfung von Missbräuchen) (MoMiG) existenzgründerfreundliche as a promotional variant of existing Limited Liability Company (*GmbH*) (§ 5a German Limited Liability Company Act (*GmbHG*)).

The Entrepreneurial Company is formed in the same manner as the classic Limited Liability Company (*GmbH*), with the exception of some insignificant deviations. On the one hand articles of association must be concluded and on the other hand the stock capital must be contributed.

Principally, the stock capital is also 25,000 Euro, it can however be contributed in installments. The initial capital stock contribution amounts to a minimum amount of one Euro and a maximum amount of 24,999 Euro. The Entrepreneurial Company must create annual reserves, to save for the stock capital of 25,000 Euro. An Entrepreneurial Company automatically becomes a Limited Liability Company (*GmbH*) upon attaining capital stock in the amount of 25,000 Euro.

Limited Commercial Partnership with a GmbH as General Partner (*GmbH & CO KG*)

The particular characteristic of a Limited Commercial Partnership with a GmbH as General Partner (*GmbH & CO KG*), is the characteristic of a partnership with the limited liability of a corporation.

This hybrid is formed by the fact, that the Limited Commercial Partnership with a GmbH as a General Partner (GmbH & CO KG) is a regular Limited Commercial Partnership (KG), upon which a Limited Liability Company (*GmbH*) holds interest as a General Partner (subject to full liability). The provisions regarding General Commercial Partnerships in the German Commercial Code (Section 161 HGB) stipulate that only the General Partners of a limited commercial partnership are personally liable subject to full liability, while their limited partners are only liable for their contributions. The legal construct of the Limited Commercial Partnership with a GMBH as General Partner (*GmbH & CO KG*) described above can result in the exclusion of any unlimited personal liability, in the event the Limited Liability Company (*GmbH*) is the sole General Partner of the Limited Commercial Partnership (*KG*).

A "One Person Limited Commercial Partnership with a GmbH as General Partner" (*GmbH & CO KG*) is formed in the event an individual is simultaneously the Shareholder-Managing Director of the "General Partner Limited Liability Company" (*GmbH*) and the sole Limited Partner of the Limited Commercial Partnership (*KG*).

Irrespective of the liability limitation that can be attained via this vehicle, the essence of the Limited Commercial Partnership with a GmbH as General Partner (*GmbH & CO KG*) is, however, still that of a Limited Commercial Partnership (*KG*) and as such is, with the exception of some special provisions, subject to the provisions of the German Commercial Code (*HGB*) and the German Civil Code (*BGB*). The differences between the German Commercial Code (*HGB*) and the German Civil Code (*BGB*) and a Limited Liability Company (*GmbH*) are largely to be found in the realm of taxation.

Stock Corporation (AG)

A Stock Corporation (AG) is, like the Limited Liability Company (*GmbH*), a commercial company, which has its own legal personality (so-called "legal entity"). The Stock Corporation's stockholders, the shareholders hold interest in the company by means of their contributions to the capital stock; which is divided into shares. As in the case of the Limited Liability Company (GmbH), the Stock Corporation is only liable up to the amount of the Stock Corporation's capital stock to the creditors.

The Stock Corporation (*AG*), like the Limited Liability Company (*GmbH*) comes into existence upon its registration in the commercial register.

The minimum paid-in stock capital of a Stock Corporation (*AG*) is 50,000 Euro.

The share/stock embodies the equity interest and may be transferred without any restrictions. There are two kinds of Stock Corporations (AGs): Public Stock Corporations, listed, and privately held Stock Corporations, not listed. The shareholders as equity holders receive their profit shares in the form of dividends. The shareholders enjoy different rights, for example the participation at shareholder's meetings, the right to vote, the right to demand information and the right to dividends.

The **Stock Corporation's organs** (*AG*) consist of the Board of Directors, the Supervisory Board and the shareholder's meeting.

-The **Board of Directors** is charged with managing the business and assume full responsibility. The Board of Directors is appointed by the Supervisory Board for a period of no more than five years. The Board of Directors reports to the Supervisory Board, for example it submits the annual financial statement (and the management report).

-The **Supervisory Board** appoints, dismisses and supervises the Board of Directors. However, the supervisory board has no right to give instructions. (In contrast to the Limited Liability Company (*GmbH*): In this case, the shareholders have the right to give instructions to the Managing Directors!). The supervisory board audits the annual financial statement (and the management report) and calls the Shareholder's Meeting.

-The **Shareholders' Meeting** is composed of the Stock Corporation's shareholders. The shareholder's meeting elects the members of the Supervisory Board and adopts resolutions regarding the direction of the Stock Corporation. For example: Amendments to the articles of incorporation must be adopted by resolution of the shareholders' meeting. The shareholders also adopt resolutions regarding the utilization of the profit as shown in the balance sheet (distribution or retention of earnings).

In the interim, corporate law permits the formation of a Stock Corporation (*AG*) by an individual (one-person) (Section 2 German Stock Corporation Act (*AktG*), revised version). However, the minimum stock capital is 50.000 Euro. In the event, the minimum capital is not paid in upon formation, a surety must be furnished which guarantees the full amount of the stock capital. In the context of One-Man Stock Corporations, the fact that shareholder's meetings have been simplified and the utilization of funds has become more flexible must be noted.

Tightened liability terms apply to Stock Corporations according to Stock Corporation Law, as is the case with other areas of corporate law. According to the tightened liability terms, the standard is no longer that the company's board of directors has no knowledge of transactions in its own company; rather the new standard is based on the principle of "due care". For example: in the event a company utilizes software in its company, which is not properly licensed, this situation can result in the board of directors / members of the board being liable, if it / he has failed to establish a corresponding information system.

Conclusion:

-A corporation or stock-market listing is possible because of the unrestricted transferability of shares. As such, this provides for equity financing on a broad basis and minimizes the dependency on loans.

-The company's continuity is safeguarded by the free and unfettered trade of shares.

-The strict division of responsibilities, asserted by the organs, provides for distinct structures regarding management and responsibilities. The roles and rights with regard to obligations are clearly regulated by law.

-The replacement of the Board of Directors cannot be enforced by a minority of shareholders. Such measure requires a Supervisory Board resolution.

-“Small entrepreneurs” may have difficulties raising the stock capital.

-The stock corporation's construction is relatively complex due to the numerous provisions regarding capital preservation and codetermination. The “Small Stock Corporation” provides for some easing of the terms.

Branch Office of an EU Company in Germany

Based on the EU freedom of establishment companies from the European Union may establish themselves in Germany without having to form another company. For example: a English Limited may transact business via a branch office in Germany and is entered in the commercial register in Germany as Limited. Net income generated in Germany is taxed in Germany. The Double Taxation Agreement (in this case Germany/England) prevents double taxation.