



Cross-Border Company Formations

Finding the right structures
to meet client expectations

Virtual Round Table Series
Accountancy Working Group 2017



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International expansion has many challenges ranging from accessing new markets, absorbing new regulations and sourcing new employees. Before all this can happen though, the way a company is structured needs to be prioritised to ensure the business can operate efficiently and effectively.

Efficient structuring can be crucial to find the right vehicle with the right features and flexibility to meet the unique demands of a client's operations. Partnerships, limited liability companies, public corporations, trusts and sole proprietorships all have different features designed to suit different commercial enterprises.

Tax efficiency and privacy are also important considerations and jurisdictions across the world will have different regimes. Understanding how specific vehicles available in various countries treat taxation and privacy can help clients to make decisions about which jurisdictions to locate businesses in or where to develop holding structures for international assets.

With this in mind IR Global brought nine members of its Accountancy Group together to discuss company formations. The aim of the feature is to give members and their clients some insight into innovative approaches to company formation strategies across a range of jurisdictions. We assess the structuring options available and tap the expertise of each participant to understand when and how certain vehicles should be used and the benefits each can offer.

We also consider how recent global regulatory changes such as CRS and FATCA have affected company formation and highlight important domestic regulations or bodies in each jurisdiction that will influence structuring options.

The following discussion involves IR Global members from the United States – Arizona and Oklahoma, UK, Switzerland, Australia, Isle of Man, Belgium, Spain and Hong Kong



The View from IR

Thomas Wheeler

MANAGING DIRECTOR

Our Virtual Series publications bring together a number of the network's members to discuss a different practice area-related topic. The participants share their expertise and offer a unique perspective from the jurisdiction they operate in.

This initiative highlights the emphasis we place on collaboration within the IR Global community and the need for effective knowledge sharing.

Each discussion features just one representative per jurisdiction, with the subject matter chosen by the steering committee of the relevant working group. The goal is to provide insight into challenges and opportunities identified by specialist practitioners.

We firmly believe the power of a global network comes from sharing ideas and expertise, enabling our members to better serve their clients' international needs.



ISLE OF MAN

Stuart Foster

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Stuart joined Peregrine in 2004 and is responsible for the day to day operations of the firm, enjoying regular contact with many clients. In his role, Stuart provides high quality professional advice on Corporate and Trust structures to private clients and their advisors. He prides himself on understanding his clients, their businesses and their lives in as much detail as possible to enable him to become a trusted advisor.

Stuart gathered experience working in public utilities, consumer credit and investment banking in the UK prior to moving to the Isle of Man. In 2007, Stuart qualified as a chartered certified accountant and was appointed to the board of Peregrine the same year.

Stuart has attended the majority of IR conferences promoting Peregrine and the Isle of Man to other professional firms involved in IR. As a result he can call on a wide variety of contacts in different countries around the world to assist Peregrine clients with their international affairs. He is also on the Accountancy Steering Committee which is run by IR.

In his spare time, Stuart is a keen traveller and football fan, although supporting Everton doesn't give him many opportunities to travel far from home.



OKLAHOMA, US

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John E. Curzon is a certified public accountant accredited in business valuation and is a chartered global management accountant. He is a certified valuation analyst and a certified merger and acquisitions advisor.

John's major areas of practice include: merger and acquisition consulting; business transition and succession planning; strategic business structure planning; international and domestic income tax consultation; estate and retirement planning; operational strategies; and business valuation.

He is a member of the Alliance of Merger & Acquisition Advisors; the National Association of Certified Valuation Analysts; the American Institute of Certified Public Accountants; and the Oklahoma Society of Certified Public Accountants (OSCPA).

John is a member and Chair of the Oklahoma Governor's International Team, and chairman of the OSCP Editorial Board of CPA Focus Professional Magazine. He is a past chairman and past member of the Professional Ethics Committee of the OSCP.



UK

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Chris has more than 14 years' international tax and accounting experience in advising and working with businesses to facilitate their aims, particularly with regard to both domestic and international expansion, and through the provision of bespoke tax advice. His clients include high net worth individuals, growing small and medium-sized enterprises and multi-national businesses.

As a chartered accountant and chartered tax adviser, Chris is well placed to provide clients with a tailored, bespoke service. His experience ranges from leading on-site audits, to representing clients during business acquisition or sale, as well as a variety of tax and business planning projects.

Inspire was formed in 2004, with the intention of filling a gap in the market for a unique firm of advisers providing a service to entrepreneurs, owner managers and their businesses focused on delivering a proactive, relationship-based approach to clients.



HONG KONG

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Andrew To, began his career at Value Plus+ in 2009 and quickly rose to the position of chief executive officer. It was there he met Billy Cheung and the two soon decided to strike out on their own, specialising in accounting and tax planning, as well as consulting for strategic business development and management.

Andrew is a certified public accountant, a chartered global management accountant and a certified fraud examiner. He is also a certified merger and acquisition advisor with the Alliance of Merger & Acquisition Advisors and an international affiliate of the Hong Kong Institute of Certified Public Accountants.



AUSTRALIA

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Ric is a chartered accountant and has worked in public practice since 1989. He graduated from University of Technology Sydney (UTS) in 1993 with a Bachelor of Business, going on to complete a Masters in Taxation Law with UTS in 1996.

He was admitted to the Institute of Chartered Accountants in Australia as a Member in 1996 and as a Fellow in 2013, becoming a SMSF Specialist Advisor in 2013.

Along with his extensive tax knowledge, Ric assists clients to structure their business affairs in order to minimise tax, protect their financial interests and provide maximum flexibility with respect to wealth building goals.

Ric also acts as resident director, secretary and public officer for a number of Australian subsidiaries of overseas companies and local agent for foreign companies registered in Australia and advises on corporate matters generally in regards to those positions.



SPAIN

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Joan founded HyC Consulting in order to provide finance and accountancy support to small and medium-sized companies.

He began his career as an auditor, auditing companies from different industries including consumer goods and distribution, manufacturing and textiles. He has acted as a controller for one of the biggest Spanish Builder/Real Estate companies and worked as a country manager for the Spanish subsidiary of an industrial US company with their head office in Florida.

In his current role he maintains strong collaborations with many professional and experienced lawyers and finance and tax specialists.

HyC Consulting is a group of multidisciplinary professionals who provide services to meet the needs of small and medium enterprises, providing comprehensive advice and support. It is a professional business with extensive experience in financial management, both in national and international environments, always ensuring a technical, personal and professional quality of service.



ARIZONA

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Todd graduated early from high school to focus on a career in accounting, graduating from Brigham Young University with a Bachelor in Science and a Masters in Accountancy.

Following receipt of his CPA qualification, he took a job at Ernst and Whinney in Los Angeles, and now has 30 years of experience as a trusted advisor to clients, providing insight and the tools to help them successfully achieve their goals.

Todd's true love is giving back to his local community, where he serves on the board of a New Leaf and is a co-founder of youth organisation, Lucky Sevan.

He is a member of both the American Institute of Certified Public Accountants and the Arizona Society of Certified Public Accountants. When Todd is not working he spends time with his wife and two granddaughters, on the prowl for his next culinary experience, playing Scrabble with family and friends, or planning his next excursion overseas.



SWITZERLAND

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Florian Diener is managing partner and founder of Diener Advisory.

Diener Advisory is a global award winning independent Management Consulting Company helping professional services firms to bring all their financial and operational related topics to the next level of organisational effectiveness. Diener Advisory helps companies to expand EBIT, increase profitability and enhance shareholder return.

Florian Diener has more than 20 years of experience in management consulting and interim management of companies and institutions of all industries with an emphasis on all finance, accounting and controlling related matters, including business process improvement, restructuring and outsourcing advisory.

He holds a master's degree in business administration (MBA/Dipl.-Kfm.) from the Munich School of Management (LMU) and a banking degree from the Bavarian chamber of commerce (IHK). He has also published various business articles and is founding member of an exclusive Swiss referral network (Beraterzunft).



BELGIUM

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Yves, is a certified accountant and tax advisor and general manager of Comptafid Benelux NV, a Belgian company established in Brussels in 1978 and Antwerp in 1995. The company is mainly active in accountancy and tax advice (national and international), guiding its clients to the different specialists on the Belgian market such as notary firms, law firms, insurance brokers, real estate and financial specialists, marketing and publicity firms.

Comptafid Benelux NV services Belgian clients and, at the same time, focuses on foreign clients for their Belgian as well as their international transactions. Located in the capital of Europe, Comptafid is committed to produce high quality work on a personal basis, delivered and aimed at practical solutions.

With its international experience, Comptafid emphasises the knowledge of languages and is sensitive to different legal cultures. Languages such as English, French, Dutch and German are commonly spoken in the company.

QUESTION 1

What is the most commonly used corporate structure in your jurisdiction and why?

Switzerland –Florian Diener (FD) Switzerland is a country that offers great investment opportunities to foreign investors. Depending on the nature and size of the business, available capital and business needs. The country caters well for large corporation as well as small and medium sized businesses.

The single-owner company or sole proprietorship is used for individuals who are Swiss residents and want to run a business on their own like freelancers or individual entrepreneurs. This is the most popular business form in Switzerland with more than 325,000 registered. Liability is unlimited, but you don't need any capital to found it. You have to register a company if the annual sales exceed 100,000 Swiss Francs and the individual owner's name has to appear in the company name.

The second type of company is a general partnership, which is commonly used by freelancers working together, such as architects, lawyers and craft people. No capital is required, but partners must be Swiss residents with a Swiss address. There is unlimited liability and registration is mandatory for actually around 8,000 of these companies in Switzerland.

Thirdly, there is the limited liability company (GMBH or SARL). This form is used for a small or medium sized company, often opened by investors, that can't be listed on the Swiss Stock Exchange. It must have at least one capital holder, which can be a sole proprietor or a corporate body mentioned in the company documents or disclosed in the corporate register,

A minimum capital amount of 20,000 Swiss Francs is required to establish this company and one director needs to be a Swiss resident. There are 92,000 companies existing in this form and any capital gains from share deals are tax free in Switzerland, which is a big advantage.

Lastly there is a corporation or joint stock company (AG or SA). These are suitable for all business needs and shareholders have limited liability and can remain anonymous. You need about 100,000 Swiss Francs to establish an AG, with 50 per cent paid in at the time of incorporation. Around 112,000 of these companies exist in Switzerland.

Belgium –Yves Lecot (YL) For local residents, as for small overseas private persons starting a business in Belgium, we often use a private limited company (BVBA) with a small share capital (EUR 18,600). There is also a 'start-ers regime' where the shareholder only requires EUR 1 minimum, but within three years they have to increase the share capital to EUR 18,600. For international companies wanting to establish a corporate entity, the NV (SA or LTD) is used. Minimum share capital of EUR 62,500 is required.

As Belgium is attractive for the non-profit sector and inheritance planning, the Foundation, as a balance against the Trust, is also popular.

UK –Chris Downing (CD) There are three primary routes to take in the UK. The first is self-employed, the second is a partnership and the third is a corporate body. Unless you are in a litigious area or have a sizeable business, the decision to use a specific type of vehicle is usually tax motivated.

There is no requirement for a UK person to hold shares in a business, and we do see most clients leaning towards a private limited company (Ltd), which is the equivalent of the SARL or GMBH companies in Switzerland. This gives a good deal of privacy but also provides the protection that limited liability brings. Tax rates in the UK are historically fairly low, and, presently, profits in such a company would be taxed at 19 per cent, although that figure is coming down soon.

The main advantage of a limited company is that you are only taxed on the profits that the company makes, whereas if you are self-employed you are taxed on all earnings, regardless of whether they are extracted or not. The Ltd structure allows individuals to control how much profit they take out of the company, making it a popular formation vehicle.

For larger companies, there is a PLC route (a public limited company) which corporate entities use when wishing to publish their results or publicly trade their shares.

Australia –Riccardo Raso (RR) In Australia, the most common corporate structures are either a company or trust (with corporate trustee).

A company has limited liability and is a separate legal entity. Each company needs just one director and one shareholder and all business operations are controlled by directors and owned by shareholders. Profits belong to the company unless paid out as dividends. A company can be easily formed within a day of receiving instructions for as little as AUD1000. Identifying the foreign directors or shareholders will be required to register the company with the Tax Office. There is no minimum capitalisation requirement for companies, with most set up with minimal capital of just AUD1.

A trust is an entity that holds property or income for the benefit of others and be set up simply and easily at a low cost. It requires a formal trust deed and trustees who perform administrative tasks. The Trust is generally not taxed as it acts as a flow through mechanism for the beneficiaries, who are taxed on their share of the income.

Most overseas companies would incorporate an Australian company to conduct business in Australia. This allows them to control the Australian entity but keeps it separate from themselves. The company will normally be registered as a Proprietary Company having at least one director who must be a resident in Australian.

Smaller foreign controlled companies are eligible to apply for exemption from needing to prepare and lodge audited accounts. Australian companies do not generally require audited accounts so this exemption simply puts smaller foreign controlled companies on the same footing as Australian companies.

Spain –Joan Lluís Hereter (JH) In Spain there are also different types of company available when setting up a business, and it is important to choose the one that is right for your business.

The most common type of companies in Spain are the Sociedad Anónima (SA) which is like a public limited company, and the Sociedad Limitada, which is a limited liability company, restricting liability to the amount invested.

Data from the central register in Spain shows that 98% of Spanish companies are limited liability, while only 2% are public limited. The other types of company in Spain, like individual or sole ownership, are residual in Spain.

There is no restriction regarding local shareholders, but foreign shareholders need to undergo identification checks with the Spanish tax authorities. The minimum investment to establish an LLC is 3,008 Euros, while the minimum for PLCs is 50,000 Euros.

The cost of setting up a new company is around 500-600 Euros, which includes the acceptance of the name at Companies House, notarising and public deeds. It usually takes between 15 and 30 days to complete the certification process.

Hong Kong –Andrew To (AT) A limited company is the most commonly used structure in Hong Kong. This is a company which is incorporated in Hong Kong, meaning that the owner can take advantage of all the tax benefits and concessions available to any fully incorporated business. This includes the Closer Economic Partnership Arrangement (CEPA), which is a free trade agreement with mainland China. Most of the limited companies incorporated in Hong Kong are private companies limited by shares.

Arizona –Todd Skinner (TS) The most commonly used corporate structure in Arizona and also in the United States is the limited liability company (LLC). As with a corporation, the LLC provides liability protection to its owners, but provides certain advantages over a corporation.

An LLC is flexible in its treatment for purposes of income taxation. The company can elect to be taxed as a corporation or as a partnership, and if it only has one member and has not elected to be taxed as a corporation, then it is disregarded for income tax purposes, and its activities are reported on the income tax return of its owner.

LLCs also generally have fewer legal formalities than corporations, such as requirements for annual meetings of shareholders, boards of directors or annual filings with governmental authorities. In Arizona, corporations are required to file an annual report with the Arizona Corporation Commission, while LLCs are not subject to this requirement.

LLCs or corporations can be formed by and on behalf of overseas investors or new residents in Arizona.



Andrew To, pictured at the 2017 'On the Road' Conference in Singapore.

Oklahoma, US –John Curzon (JC) Each business must be evaluated to determine the best structure to meet the individual goals of the business owners. Generally, US based entrepreneurs use pass-through entities such as Limited Liability Companies taxed as Partnerships and S-Corporations.

Multiple entities may be used with each entity in the business structure designed to fit the particular type of business or type of revenue produced such as professional services, manufacturing, rental of equipment or real estate, or asset protection entities holding intangible assets.

Pass-through entities are used in the US when the overall tax analysis indicates that using a pass-through entity has the lowest combined tax impact for the business and the owner, evaluated over the reasonable life of the business. This analysis should consider the potential exit strategy for the owner and the tax impact on that exit.

Overseas investors who do not have other taxable income from US sources will typically benefit most from using a C-corporation for investing into the US, and then structure the operating entity as a pass through entity depending on the structure and requirements of other US owners. Consideration of treaty provisions and other factors will impact this decision as well as the status of any intangible assets related to the business.

Isle of Man –Stuart Foster (SF) We have both private and public limited companies in the Isle of Man, and the public companies incorporated here can be listed in the UK on the main FTSE or secondary AIM Stock Exchanges as well as many other international Exchanges.

We also have LLC and limited partnership structures, and for non-corporate holding structures we have foundations and trusts.

In 2006, the IoM brought in a new company form with various features designed to be attractive to non-residents investors. The “2006 Act” company has reduced administration requirements for public filing and flexible share capital, removing the requirement for authorised share capital.

Accountancy requirements are also reduced which, in many cases, means that companies incorporated under the 2006 Act can dispense with the requirement for an audit, which is a significant cost saving. There are also no capital maintenance requirements, apart from complying with a solvency test.

The distribution and buyback of shares can be done relatively easily and the act allows for the re-domiciliation of companies between different countries to happen quickly.

There is some increased compliance, with a requirement to appoint a registered agent on the island, which must be a licensed corporate and trust service provider. The registered agent has a responsibility to know the identity of the owners of that company and must also monitor its activities.

QUESTION 2

How much privacy is available in your jurisdiction in terms of beneficial ownership? How does that affect company structuring?

Switzerland –FD Switzerland has changed in recent years, as new laws have entered into force designed to prevent money laundering and tax evasion. In accordance with the new legislation, every person or entity that holds or acquires capital representing 25 per cent or more of a company needs to be registered as a beneficial owner. This makes it interesting for advisory companies when finding the documents and setting up the registration.

A beneficial owner is defined as a person who exercises control over an entity, so Swiss banks are under a lot of pressure to implement new and revised due diligence obligations in respect of anti-money laundering. Switzerland has also committed to automatic exchange of information, starting in 2018, so when banks and other financial intermediaries must systematically record and provide information on corporate structures and beneficial owners.

UK –CD This has become a very political subject in the UK, since people have begun talking about the state of the UK's finances. There is a lot of attention around trying to work out where a company belongs and therefore, where it should be paying tax. People have become a lot more interested in who the owners of a business are and how they are contributing to the UK economy.

There have been various different rules put in place recently by the UK registrar of companies, requiring more information about the company, including who the ultimate controlling shareholders are. If they are owned by a corporate body, then you can read further up the line to see who owns the holding company, or, if it is an overseas body, you have to name the individuals who have the overall control.

It's become a lot more difficult for the owners of a company to hide their identity and it's become harder to have nominee shareholders because legislation says you look past those arrangements. There has been a lot of movement towards removing any available securities that might have been previously available in the UK.

Belgium –YL I agree with Chris, in that nominees are no longer very effective. They can be used, but we look through the structure. Accountants, lawyers, banks and notaries need to know the final beneficiaries as soon as 25 per cent of the share capital is controlled, regardless of whether it is a holding or trading company, or where the final beneficiary lives. This information stays confidential unless criminal activities are deployed.

Oklahoma, US –JC Generally, ownership of corporations and LLCs can be kept private from the general public in the USA. However, the IRS requires disclosure of owners greater than 20 per cent to the tax authorities, but that information is not available to the public.

Privacy for foreign ownership in US companies is changing as we speak. Regulations have been proposed that impact disclosures of disregarded entities, beneficial ownership and tax data exchange. Transparency is inevitable.

Spain –Joan Lluís Hereter (JH) There is not much room to play with regarding beneficial ownership in Spain. We are one of the jurisdictions that signed the 2014 framework programme around thematic exchange of information on tax and bank accounts.

Beneficial ownership defines who is the final individual owning the shares of the company and is always authorised by a notary. Tax policy in Spain during the last few years has been focused on limiting money laundering and reducing tax fraud, with the aim of addressing the informal economy and black market and applying strict controls on cash payments. Most recently the tax authorities have put in some strict controls on cash payments for trading operations, in order to combat this black market.

Isle of Man –SF We have a similar situation to the UK in that we have come under pressure from the UK Government to have a public register on beneficial ownership. What the Isle of Man Government has agreed on this point is not quite the same as the UK, where all the information is publicly available on the Companies House website for anybody to download.

The use of trusts and nominee shareholders is permitted in the Isle of Man and there is confidentiality of ownership on publicly available information. Our intention is that beneficial ownership information will not be made public, but will be available to competent authorities – that means details of any shareholder holding more than 25 per cent ownership. The information that is available to the tax authorities shouldn't cause problems for reputable companies.

The IoM was one of the first countries to sign up to FATCA and CRS concerning automatic exchange of information, the move away from secrecy is something that everybody is experiencing and I think that's just the way the world is going.

We have been reporting under FATCA for the last two years and this year the IoM falls under CRS and will begin sharing information on bank accounts, investment accounts and funds managed here. All corporate and trust service providers are considered financial institutions and will be required to share information about those clients that meet certain criteria.

I see transparency as a positive for the Isle of Man and the financial sector, because it shows to the world that there is nothing to hide. The way people viewed this island 20 years ago has changed. We are now a transparent and well-regulated financial jurisdiction which is very stable.

Arizona, US –TS The beneficial ownership of Arizona entities is fairly transparent; organisational documents are of public record and available online. Ownership in excess of 20 per cent is generally disclosed in these public documents.

If disclosure of beneficial ownership is a problem, then other avenues can be explored such as vesting ownership in an entity organised in another state, or in a jurisdiction outside the US, where ownership is kept private. In addition, a trust could be used as the owner of the entity, as only the trustee would need to be disclosed.

Any disclosures made on tax returns to comply with FATCA regulations are not publicly disclosed. Anything disclosed on a tax return is private and not disclosed by the government (except in the case of certain not-for-profit organisations).

Hong Kong –AT Hong Kong requires a company's directors and shareholders to be declared for public records, however, both nominee shareholders and nominee directors are important options when keeping your personal information private.

Using a nominee director means personal information (name, address, passport number, etc.) are only known to the official agent who incorporates your company. Control of business activities, bank accounts, and other managerial endeavours are still entitled to beneficial owners and will not be hindered by the nominee director whose role is restricted to that of company incorporation.

A Power of Attorney is provided while the nominee director represents the beneficial owner. All actions undertaken by the nominee director will be under this contract until it expires, upon which all rights revert solely back to you.

Beneficial owners, nominee directors and shareholders will be present together at corporate bank account opening appointment, but the nominee(s) have no knowledge of corporate bank account numbers and passwords and do not have any signing rights.

Nominee shareholders represent the shareholders of the company and are used for security reasons to protect the personal information of the actual shareholder. A contracted nominee shareholder will disclose the necessary information such as ID and passport numbers.

Australia –RR ASIC (Australian Securities & Investments Commission) regulates companies and it currently collects details of the legal owners and the ultimate beneficial owner of the company. This is public information and can be searched for a relatively minor fee (AUD\$18).

Only the legal owner is recorded so shares held in trust are simply noted as such but no details of the beneficial owner are recorded in the public register.

Under The Common Reporting Standard (CRS), banks and other financial institutions will collect and report on financial account information on non-residents. ATO will exchange this information with participating foreign tax authorities of those non-residents and receive financial account information on Australian residents from other countries' tax authorities. This will help ensure that Australian residents with financial accounts in other countries are complying with Australian tax law and act as a deterrent to tax evasion.

Australia does currently abide by the FATCA requirements for US companies and must therefore report on any US ultimate beneficial ownership.



Joan Lluís Hereter, pictured at the 2017 Dealmakers Event in Barcelona.

QUESTION 3

What tax-efficient structures can be applied in your jurisdiction as part of a company formation process?

Oklahoma, US –JC Structuring a business operating in the US usually can be done to minimise the tax cost by assessing the character of its income; whether it is passive versus active, rental, portfolio, capital gain income, dividend income or compensation.

The US Federal tax system has additional taxes depending on the function of the business or the type of income. Tax calculated using capital gains rates are applied to certain gains for sale of capital assets held for more than a certain period (generally one year).

Net investment income tax was introduced with the Affordable Care Act, which is currently under scrutiny by the new administration and could have a limited shelf-life, while self-employment tax on earned income and alternative minimum tax are a few more to consider. In addition, there are tax credits available for foreign taxes paid, certain investment credits, research and experimentation and jobs credits among others. The business structure and entity type selection can have an impact on each of these taxes and credits.

Switzerland –FD Switzerland has a very attractive tax system and a moderate tax burden for individuals and corporations. It is flexible and structured around Federalism, with a flat Federal Government tax of 8.5 per cent and then local taxes applied by the Cantons and Communes. This creates tax competition and makes the choice of where to locate your company very important.

Lucerne has the lowest tax rate of 12.4 per cent, while the highest tax rate in French speaking Geneva is 24.2 per cent. This average tax rate in Switzerland is therefore 17.8%, which is attractive. Depending on the business case and planned investment projects, corporations can even be exempted from taxes.

In addition, Switzerland has entered into agreements with many key industrial nations and countries to prevent individuals and corporations from a double taxation burden.

Hong Kong –AT Hong Kong has a simple, predictable, low tax system. According to the 2016 Paying Taxes* study of 189 economies, Hong Kong has one of the most tax-friendly economies in the world. Why? The city only imposes three direct taxes and has generous allowances and deductions to reduce the taxable amount.

Profits tax is capped at 16.5 per cent, income tax is a maximum of 15 per cent, while property tax is 15 per cent.

More important are the taxes that Hong Kong does not impose. There is no sales tax or VAT, no withholding tax or capital gains tax and no tax on dividends or estates.

The ease of submitting tax returns is another attractive part of Hong Kong's business environment. Many people complete their tax returns themselves and can submit them online. Others rely on Hong Kong's many accountancy firms, large and small, for cost-effective tax services and advice.

One of the major advantage of profits tax (corporate tax) in Hong Kong is that it is only charged on trade, profession or business in Hong Kong in respect of its profits arising in or derived from Hong Kong (excluding profits arising from the sale of capital assets).

Belgium –YL If a non-resident company has activities in Belgium, the most tax efficient strategy is to arrange the establishment of a fixed entity and then the establishment of a Belgium company later on, along with the transfer of the foreign entity into the Belgian vehicle.

Normally a capital gains tax of 30 per cent is applicable in Belgium for resident or non-resident individuals. If dividends are paid out to companies in Belgium or to companies in Europe (mother-daughter rule) there is generally no withholding tax. For companies outside of Europe, it depends on the double taxation agreement but in a lot of cases no withholding tax is applicable.

Where dividends are coming out of other countries into Belgium, they are usually free of tax in 95 per cent of cases. Belgium has a very strict interpretation of 'own' capital, where, in other countries, loans might be included. As a result, Belgium will classify certain revenues as tax free dividends which, in other countries, might be treated as taxable interest.

Arizona, US –TS The most tax-efficient and flexible structure is the LLC, as the owners may elect the form the entity takes for tax purposes. When an LLC is taxed as a partnership, the entity itself is generally not subject to taxation, but the owners are taxed on their distributive share of the profits and losses of the LLC. The operating agreement of the LLC can be flexible in allocating income and losses among the members (within the guidelines of Treasury Regulations).

If the LLC has members that are non-residents of the US, then those members' share of the profits may be subject to a withholding tax. This tax is applied to the members' final income tax liabilities when they file their own income tax returns.

A corporation may be a preferred form of ownership if the non-US owners want to avoid an income tax filing requirement in the US. Corporations have their own income tax structure with a maximum federal tax rate of 35 per cent and an Arizona rate of 7 per cent on net income. Dividend distributions to shareholders are generally taxed at 15 per cent, but would also be subject to treaty provisions for those shareholders residing in treaty partners of the US.

Several grants and credits are available throughout the US and in Arizona in particular, depending on the industry and where the company is willing to locate. These can take the form of credits against income tax or sales or property tax subsidies.

UK –CD The UK has several different structures that can prove beneficial. There is a concept applying to group structures called a Substantial Shareholding Exemption, which allows a group structure to sell off a subsidiary tax free for corporate purposes.

Overseas individuals receiving dividends from a UK company can be paid free of any UK tax, while there are also provisions for non-UK residents on capital gains tax.

Opportunities for non-UK domiciled individuals are becoming more limited though, as perceived wealthy overseas individuals not paying any UK tax are becoming a popular target. The government is changing legislation to cut out people who are not entitled to beneficial options for overseas individuals in the UK abusing the rules.

Australia –RR Companies are most often used as a structure for business rather than for investments. The main benefit is that the tax rate on profits is 27.5 per cent and they offer some protection for shareholders if the business fails or is sued.

Dividends paid to shareholders come with an accompanying tax credit for company tax paid (known as a franking credit or imputation credit). Dividends paid out by Australian companies to foreign parent companies or shareholders are not subject to withholding tax where the dividend is franked. Unfranked dividends are subject to withholding tax.

Trust income flows through to beneficiaries so if the trust is owned by non-resident beneficiaries, the income of the trust will be subject to withholding tax on the distributions. Obligations are placed on the trustee to withhold from distributions made to non-residents. Withholding tax will vary based on the type of income and will generally be 10 per cent on interest income, 15 per cent on unfranked dividends and 30 per cent on other profits (trading income or net rental income).

Australia also has special categories for Managed Investment Trusts (MIT). These MIT are eligible for certain tax concessions including 15 per cent withholding tax on all the profits where the distribution is to a country with Exchange of Information Agreements with Australia.

Gains on all assets are subject to CGT, with certain concessions applying (such as a 50 per cent discount on gains where the asset is held for more than 12 months and is held by an individual or trust). Non-residents can invest in Australian real property (residential or commercial) subject to certain conditions.

Spain –JH I would rather talk about the advantages or incentives one can get from the tax agencies in Spain. Tax policies are generally focused on pressurising taxpayers to pay their fair share, but there are some advantages and incentives we can still use.

The corporate tax rate in Spain is 25 per cent, but the effective tax rate can be reduced to 22.5 per cent when applying some capitalisation reserves. For new businesses, the corporate tax rate is 15 per cent on the first two year's profits.

In addition, there are a number of tax reductions around corporate tax that can really reduce the average effective tax rate paid by a company in Spain.

One important incentive is the Patent Box regime, that covers 60 per cent of revenues coming from the transfer of intangible assets. This regime is one of the most beneficial of all those that exist within the EU.

Spain also has a special tax regime for holding companies covering dividends from subsidiary companies, the transfer of shares and the repatriation of profits generated by foreign holding entities of non-resident partners.

Collective investment schemes for foreign workers (CCAP) have many advantages from a tax point of view, because, while the capital gains tax rates for residents are between 19-23 per cent, investments from a CCAP pay just 1 per cent, similar to investment funds.

The minimum required capital for a CCAP is 2.4 million Euros and the structure also requires 100 shareholders, however one shareholder can hold 99 per cent and the other 99 shareholders just 1 per cent, so this structure is used by many family offices with large fortunes, in order to take advantages of these tax benefits.

Isle of Man –SF For corporations in the Isle of Man the tax system is very simple. There is currently zero corporate tax and no capital gains taxes, there are no withholding taxes on dividends or distributions paid out, and that is the same regardless of whether the company is owned by a resident or non-resident. The Island offers a tax neutral environment, but it will not necessarily allow you to avoid the requirement to pay tax in other countries around the world. It will, however, provide a holding structure with no additional tax charges from the Isle of Man.

The only companies that have to pay tax are those doing business here and taking money from local residents. That includes real estate investors, banks and big retailers who are trading here.

Individual residents pay a maximum rate of 20 per cent, while, for the very high earners, there is a Tax Cap which effectively means that no tax is paid on any income earned over (approximately) GBP 650,000.

That tax cap has encouraged entrepreneurs to move their businesses here and create employment, spending their money in the local economy. They know their tax liability will be a definite amount and they can earn money tax free. There is a lot of support available from the Isle of Man Government for businesses that are moving and setting up operations here.

The types of businesses locating here are technology companies, biomed firms, online gaming and poker companies and those doing business in other industries that are regulated in the Isle of Man.

QUESTION 4

What types of industries do your clients most commonly come from? Do you have any examples of recent company formation work you have carried out?

Australia –RR The main types of industries where our clients come from are information technology, professional services, property investment, food services and hospitality.

As Australia operates a federal system of income tax, we can assist clients no matter where they wish to operate in Australia.

We regularly establish Australian subsidiaries for overseas companies and assist a number of Sydney's leading law firms with their client's requirements. We can provide a wide range of services to those companies including establishing the company, acting as resident director on behalf of the overseas parent company, corporate secretarial services, back office accounting services and treasury services, along with regular compliance work such as regular reporting, annual accounting and income tax returns.

Our clients include some subsidiaries of the world's leading companies.

Switzerland –FD In Switzerland we are known for our financial stability and, as a result, we are a hub for private banks, asset managers and insurance companies, including global players like UBS, Credit Swiss and Zurich Financial Services.

Most blue chip companies have at least a branch in Switzerland due to the attractive tax environment, and we are the home for pharmaceutical and food giants like Roche, Novartis or Nestlé.

The presence of these corporations also makes us attractive as a FinTech hub and to international consultancy businesses.

UK –CD We tend not to be sector specific, but rather aim at the individuals behind the business, since there are ambitious people in a lot of different sectors, who will all encounter the same business issues in their growth and development.

We are seeing technology companies and property companies in particular doing well. We recently helped a real estate developer who specialises in high end luxury properties to structure his developments in a more tax efficient way.

We are also helping a group that owns care homes to structure their business as they move along the acquisition curve. We are working with the owners on the formation side to help them add assets to their business in the most efficient way possible.

Spain –JH We do not have specific sectors in Spain either, but we have clients from a wide portfolio of sectors and industries, adapting our client needs to their industry.

Recently, we have helped some businesses to establish in Spain, setting up new local businesses but also subsidiaries from international companies. What it's most usual for us is setting up a holding company for a group of industries within a reorganization process. Trading companies often want to segregate their activities and we have found that some companies with different businesses want to run them as standalone entities.

Hong Kong –AT Most of our overseas clients are trading companies who take advantage of the offshore exemption of tax in Hong Kong.

The basic principle is to see what the taxpayer has done to earn the profit in question and where they have done it. It is based on the contract-effected test, namely where the contracts of purchase and sale were effected. Where both the contract of purchase and contract of sale are effected outside Hong Kong, no part of the profits are taxable.

Oklahoma, US –JC We have clients from a range of industries including manufacturing, distribution, construction and professional services.

We often establish c-corporations as the 'employer' of all employees in the business group. Their affiliated companies then pay to 'lease' employees from the c-corporation. All employee benefits are then managed in one entity increasing efficiency of processing and reporting. The LLC owns all the capital assets, which are then leased to the other operating companies.

Non-operating LLCs or divisional operations are formed in a group structure for asset protection from creditors, or for ease of spin off, if a particular business is intentionally developed for sale.

Isle of Man –SF Our main client base is private clients and families who set up a trust structure or a company structure to hold their assets in the Isle of Man. This may be because they are moving around the world for work and they want to hold their savings, or a proportion of their wealth or assets in a stable jurisdiction with good regulation.

We would typically set up a trust at the top of the structure and underneath that would be companies to hold various investments. One company might hold shares in a trading company or the family business, and there might be some real estate investments in a separate company. There may also be some money with a private bank held in the trust.

We do also act for some large corporations who want an Isle of Man company within their structure, but about 75 per cent of our business is private client work.

Belgium –YL Foreign citizens coming to Belgium to work, often set up a small entity such as a BVBA. They invoice their services to clients and manage their own costs in the company, in order to pay out a maximum of 36,000 Euros as a salary, in order to minimise income tax. On average they have a turnover of about 100 to 150,000 Euros per year, which they leave in the business, after deduction of their costs and corporation tax on the profits of 24.25 per cent. They keep that money in the company for two or three years, and, after a few years of taking advantages of tax incentives, they close the company and leave. If they plan the liquidation of the company a few years before, they can reduce the liquidation tax to 15 per cent.



People working for the European Commission benefit from European taxation which releases them from paying Belgian taxes. If they have an important position in their homeland, they set up a Belgium company meaning they don't have to declare their revenue from the European community. A lot of Parliamentary people undertake 'lobbying' or 'consulting' through such a Belgium company.

Arizona, US –TS Our clients come from a variety of industries including professionals, manufacturers and real estate developers and owner/operators. We also provide services to fiduciaries and their advisors, including estate and trust planning.

In Arizona, lawyers handle the details of actual entity formations, but we consult with all involved in developing the best and most tax efficient structure.

Recently, a client of ours from India purchased a commercial building in Arizona, and we assisted in developing the structure that suits them best. They happen to be US residents, so the structure that worked for them might be different for non-residents. In this case, an LLC made the most sense and provided the best flexibility while minimising the overall tax burden.

In another case, a client of ours is controlled by a group from the Middle East. This client has a group of entities established for the various aspects of its operations. Most are organised as LLCs, with the ultimate US parent electing to be taxed as a corporation to minimise the involvement of the ultimate Middle Eastern owners in the US tax system.

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