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HOME


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JACK'S CORNER
SHOW THEM TO ME

Rodney Carrington, a fairly famous Country Western Singer and Comedian, recently released a song – Show them to Me – that just may provide the solution to world peace. If you would like to hear the song that made me wonder this fresh new approach may just be the answer, please send me an email...and proof you are of age as, well, most people may think Rodney is not for family hour.

GENERAL POWER OF ATTORNEY – YUCKY POOH!!!

Many thanks to the many readers who commented positively about my negative viewpoints in my last Jack's Corner regarding General Powers of Attorney. "Unethical", "unprofessional", "don't use banks that accept these meaningless documents" and some four letter words for the purveyors of this nonsensical document were well-received in my Inbox. Please help me to stamp out the use of such documents by educating your clients, banks and practitioners.

CHEAT, HIRE GREAT COUNSEL AND, VOILA, ALL WILL BE OKEYDOKEY. NO JUSTICE, JUSTUS

The Internal Revenue Service recently settled with Mr. Oleg Olenicoff, a former UBS client, who received a non-custodial sentence despite being accused of evading US\$7.2 million in taxes by concealing US\$200 million of assets in offshore accounts. Rather than prison where I imagine most ordinary USA persons would be headed (query is Olenicoff with such financial resources "ordinary"?), Olenicoff, a billionaire property developer, was sentenced to two years of probation, a fine of US\$3,500 and 120 hours of community service after pleading guilty to a lesser charge of willfully filing a false tax return for the tax year 2002. Perhaps I am a cynic, but, well, gee whiz, I wonder whether or not Olenicoff is a major contributor to someone important in Washington DC ☹

ENCOURAGING BAD BEHAVIOR

Thanks to CNN Money for producing the table below. US\$11.5 trillion in less than two years to bailout a bunch of people who have proven they are completely incapable of responsibly handling money. Give a drug addict more of the drug and, well, you are just encouraging bad behavior.

Date	Bailout	Allocated	Spent
December 2007	Term Auction Facility	\$2.9 trillion	\$447.6 billion
February 2008	Economic Stimulus Act of 2008	\$168 billion	\$168 billion
March 2008	Bear Stearns bailout	\$29 billion	\$25.9 billion
March 2008	Discount window	n/a	\$90.4 billion ¹
May 2008	Student loan guarantees	\$130 billion	\$9 billion
September 2008	Fannie Mae and Freddie Mac bailout	\$400 billion ⁺²	\$13.8 billion
September 2008	Foreign exchange dollar swaps	Unlimited	\$375 billion
October 2008	FHA housing rescue	\$320 billion	\$20 billion ⁺³
October 2008	Auto industry energy efficiency loans	\$25 billion	\$0
October 2008	Troubled Asset Relief Program	\$700 billion	\$296.9 billion
October 2008	Bank capital investments	\$250 billion	\$196 billion
November 2008	AIG capital investment	\$40 billion	\$40 billion

November 2008	Citigroup capital investment	\$20 billion	\$20 billion
November 2008	Citigroup loan loss backstop	\$5 billion	\$5 billion
November 2008	TALF loss provisions	\$100 billion	\$100 billion
December 2008	Auto industry bailout	\$24.9 billion	\$24.9 billion
December 2008	General Motors Government bailout of automaker to keep company afloat and help it achieve viability for the future. Last \$4 billion subject to congressional approval	\$13.4 billion	\$9.4 billion
December 2008	Chrysler Government bailout of automaker to keep company afloat and help it achieve viability for the future. Last \$4 billion subject to congressional approval	\$4 billion	\$4 billion
December 2008	GMAC Government bailout of auto finance company to which Federal Reserve granted bank holding company status. \$5 billion went to GMAC directly and \$1 billion to GM to make an investment in the company.	\$6 billion	\$6 billion
January 2009	Chrysler Financial Government bailout of auto finance company to which Federal Reserve granted bank holding company status.	\$1.5 billion	\$1.5 billion
January 2009	Bank of America capital investment	\$20 billion	\$20 billion
February 2009	Foreclosure prevention	\$50 billion	\$0
February 2009	Public-private investment fund	Unknown	\$0
n/a	Funds left unallocated	\$190.1 billion	n/a
October 2008	Money market guarantees	\$659 billion	\$15 billion
October 2008	Commercial Paper Funding Facility	\$1.4 trillion	\$248.7 billion
November 2008	Unemployment benefit extensions	\$8 billion	\$8 billion
November 2008	AIG	\$152.5 billion ⁺⁴	\$123.7 billion ⁺⁴
November 2008	Treasury capital investment	\$40 billion	\$40 billion
November 2008	Bridge loan	\$60 billion	\$37.4 billion
November 2008	Collateralized debt obligation purchases	\$30 billion	\$27.7 billion
November 2008	Mortgage-backed securities purchases	\$22.5 billion	\$18.6 billion
November 2008	Citigroup loan-loss backstop	\$301 billion	\$245 billion
November 2008	Term Asset-Backed Securities Loan Facility	\$1 trillion	\$0
November 2008	GSE mortgage-backed securities purchases	\$500 billion	\$65.1 billion
November 2008	GSE debt purchases	\$100 billion	\$33.6 billion
November 2008	FDIC Temporary Liquidity Guarantee Program	\$1.5 trillion	\$258 billion
2008	FDIC bank takeovers	n/a	\$16.7 billion
January 2009	Bank of America loan-loss backstop	\$118 billion	\$97 billion
January 2009	Credit Union deposit insurance guarantees	\$80 billion	\$0
January 2009	U.S. Central Federal Credit Union capital injection	\$1 billion	\$1 billion
February 2009	American Recovery and Reinvestment Act	\$787.2 billion	\$0
February 2009	Tax cuts for individuals and businesses	\$212 billion	n/a
February 2009	Direct spending	\$267 billion	n/a
February 2009	Appropriations spending	\$308.3 billion	n/a
2009	FDIC bank takeovers	n/a	\$1.7 billion
	Total:	\$11.5 trillion	\$2.2 trillion

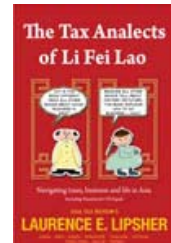
+1 - Daily average
 +2 - \$200 billion set aside in September 2008; \$200 billion additional in February 2009
 +3 - At least \$20 billion
 +4 - Includes \$40 billion under TARP
 Sources: Federal Reserve, Treasury, FDIC, CBO
 Note: Figures as of Feb. 23, 2009

NEW MEANING FOR CORPORATE AMERICA

The USA Government, long a defender of capitalist principles, recently went socialist in a big way when taking a 36% stake in Citigroup. ICBC, the largest bank in the world and based in China, is listed on the Shanghai Stock Exchange and the Hong Kong Stock Exchange. In the former, the Chinese Government in one form or another owns approximately 70% of the equity. In the latter, the Chinese Government via the National Council for Social Security Fund recently disclosed owning 4.2%. Yes, I am afraid the United Socialist Republic States of America has reared its ugly head. Alas, a new meaning for "Corporate America".

THE TAX ANALECTS OF LI FEI LAO

Our good friend and AOA Executive Committee Member, Larry Lipsher, has finally put pen to paper and produced, arguably, the best, and certainly the easiest and most fun, tome on all things tax, business and life in Asia. Visit www.lifeilao.com to learn more about this most unique presentation of an otherwise less than breathtaking topic!



Onwards and upwards...and beware creeping government that offers to solve your problems when everyone should know it is YOU who must suffer to achieve greater things!!!



GCSL NEWS

GCSL BACK TO THE BOOKS WITH THOMAS JEFFERSON SCHOOL OF LAW

As part of our ongoing desire to keep Cathy Compliance happy, train our staff, provide a better service to our clients and be prepared to meet the challenges of the global business environment, GCSL enjoyed an online training session with the excellent professors of Thomas Jefferson School of Law (<http://www.tjsl.edu/>), an American Bar Association accredited law school in San Diego, California. Our initial training session covered Company Law, Governance and Compliance. GCSL will continue with quarterly courses in 2009 and beyond as part of our commitment to staff training, compliance and better service for our clients.

GCSL SINGAPORE EDUCATES NUS GRADUATE STUDENTS ON "OFFSHORE"

Jack, Lawrence and Ooi offered graduate students at the National University of Singapore some insight into the offshore world in February with presentations covering technical aspects of structures, anti-money laundering and international banking.



JACK TO CHAIR OFFSHORE EVENT IN SHANGHAI

The Seychelles International Business Authority ("SIBA") will be sponsoring a seminar entitled **Offshore Planning for Chinese Companies in 2009**. Jack has accepted an invitation to Chair the event, which will be from 8:30am through lunch on March 26, 2009 at the Hyatt on the Bund in Shanghai. C'mon over from the Asia Offshore Association Conference in Bangkok (22nd to 24th March) to hear what some well-qualified people have to say about offshore vis-à-vis China. Conference agenda follows:

08:30 – 09:30 Registration

09:30 – 09:35 Introduction

Jack W. Flader, Jr., President, Asia Offshore Association; Chairman & CEO, The GCSL Group of Companies Ltd.

09:35 – 10:05 China tax update 2009 and comparison of offshore destinations

Laurence Lipsher, CPA & Director, Lipsher Accountancy Corporation

10:05 – 10:35 Tax strategies and transfer pricing in China taking advantages of offshore planning

Eltan Huang, Tax Partner, PwC

10:35 – 11:00 Tea break

11:00 – 11:30 Risk control for offshore planning

Peter Burian, MD, Mayfair Trust Group Ltd. and **Bobby Brantley Jr.**, MD, Sterling Offshore Ltd.

11:30 – 12:00 Panel Discussion: Successful offshore examples

Moderator: **Philippe Boullé**, MD, Intershore Consult (Pty) Ltd.

12:00 – 12:05 Closing remarks

12:05 – Luncheon

CATHY COMPLIANCE KEEPING THE FINGER ON THE PULSE

Over the past month I have had the pleasure of visiting our offices in Samoa and the Cook Islands in my capacity as Group Legal Counsel and Compliance Officer.

As is the norm, both offices played welcome hosts and Puai even managed to organize a Stingray outside his house while we were having a pleasant farewell BBQ. Sadly, Puai didn't have the skills to catch the ray and cook it open style, but the sight of this beast swimming with its fin up in the lagoon is enough to make me think twice (again) about swimming in any water!

While in the Cooks my trip coincided with the Asia Pacific Group (APG) and Offshore Group on Banking Supervision. Along with Puai and members of the Cook Islands Trustee Companies Association, we took the time to meet with the Group and discuss issues relating to anti-money laundering and countering the financing of terrorism. At the meeting I was able to relay my thoughts that the Cook Islands has indeed some of the more stringent due diligence and monitoring standards of any jurisdiction in which GCSL operates.

The Cook Islands were removed from the Non Cooperative Countries & Territories (NCCT) black list by the FATF in June 2006 and is monitored in terms of its procedures since. Like everyone else from the Cook Islands we were rattled with the lateness of the Group to the meeting as the meeting was helpfully scheduled for the Cook Islands 7's team match with Samoa played at the New Zealand Wellington 7's. Fortunately the Group wrapped the meeting up and we were allowed to adjourn to watch Samoa only narrowly beat the Cooks.

The Cooks office has grown so much in terms of structures, especially on the trust side that I no longer have time to review all the files. This is always pleasing from my point of view.

During my trip to Samoa I met with Sieni and Chesire from the Samoa International Finance Authority (SIFA) to discuss changes to the bearer shares regulations requiring bearer shares to be immobilized to a licensed Samoan custodianship on 5th April 2009. One of our competitors could do with a hurry up on this front as a client wishes to transfer the custodianship of their bearer shares to GCSL but the competitor wants a disproportionate transfer, or as we at GCSL call it "extortion" fee.

I gave SIFA a few tips on how to deal with visiting Hong Kong for the sevens rugby. Unfortunately the news was later passed on that SIFA won't be touring this year which will be much missed as their presence always spices up the event and pre-match functions. Especially when Samoa lose to the New Zealand team. Regards also to our good friend of the offshore industry, Erna Vaai, who was off Island during my visit. I duly note that the staff do not drink much when Erna is not there.

So big thanks to Laura and Fono in Samoa and Tai, Puai, Emilie, our new recruit Foreman, and of course Puai and Tai's two little adorable monsters Teupare and Teivanui for their hospitality.

And all the best to Laura who is due any day to give birth to another GCSL baby.

*Contributed by Cathy Odgers, Group General Counsel and Compliance Officer, The GCSL Group of Companies Limited.
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AOA

AOA BANGKOK, MARCH 22 – 24, 2009: The stage is set for a most excellent conference – Thai style – at **The Oriental** (www.mandarinoriental.com/bangkok). Our first night extravaganza will be held at the Rim Thai riverside restaurant at The Oriental. We are pleased to announce that **Mike Grover, Tax Specialist, Labuan IBFC** will be our **Keynote Speaker** discussing the essential role of double taxation treaties in international tax planning. Executive Committee Member, **Michael Doyle, Partner, Seri Manop & Doyle** (www.serimanop.com) will update delegates on the latest Thailand business law issues facing foreign investors. Closely following on Mike's comments will be Global Advisory Committee Member, **Gabor Szabo, Partner, Dr. Gabor Szabo & Partners** (www.offshorg.com) discussing some of the cutting edge European tax issues. **Patrick Trainor, General Manager, Asiatic Trust** (www.asiatic.com) will discuss the new LLC legislation in the Cook Islands and mutual funds legislation in Samoa. We will end the day with and are especially delighted to have **Dennis Meseroll, Director, Tractus Asia**, offering delegates the good, bad and ugly about doing business in Thailand. Our second night fun will include a riverboat cruise. On Tuesday, we will learn about global intellectual property issues from **Franck Fougere, Director, Vidon & Partners (Thailand)** (www.vidon.com). **Howard Fisher, Partner, The Law Offices of Howard S. Fisher** (www.howardfisher.com) will parachute into Bangkok from Beverly Hills to enlighten delegates regarding pressing international tax issues. Executive Committee Member, **Peter Tay, Director, Mossack & Fonseca Singapore** (www.mossfon.com) will address the latest developments in private wealth in Malaysia, Singapore and Indonesia. Our last speaker, **Kevin Whitcraft, Director, The RMA Asia Group of Companies** (www.rmasia.net), will offer some unique insights of a foreigner working, doing business in and basically living the life in IndoChina. C'mon over to The Big Mango for a wonderful event at The Oriental.



GREATER CHINA UPDATE

ICBC #1

In 2006, the Industrial and Commercial Bank of China was third largest bank in the world. According to a recent study in February, ICBC, with a market value of USD 167.2 billion, overtook JPMorgan Chase Bank with USD90.8 billion to become the largest bank and closely followed by China Construction Bank and Bank of China.

CHINA REAL ESTATE MARKET

After Chinese New Year, real estate transactions in first tier cities, such like Beijing, Shanghai and Hangzhou, have increased 63.66%, 83.71% and 98.82%, respectively. However, the draft market stimulus policy expected in March does not focus on the real estate market. The China central

government prefers to see market values decrease with increasing transactions. **Note:** Foreign natural persons who legitimately live in China for more than one year can buy one property in China for self use. By using a corporate structure like a Wholly Foreign Owned Enterprise (WFOE), one property can be purchased for self use purpose immediately.

CHINA STOCK MARKET

Despite the fact other stock markets around the world are not doing well, China shares are recovering from the last quarter of 2008 and doing well for the first month of The Year of the Ox. The market is expecting great things from China's central government stimulus policy, which will be announced in March. It is worthwhile noting that foreign individuals can not invest in China A stock market but B stock Market. A Wholly Foreign Owned Enterprise (WFOE) can invest in China A Stock Market.

*Contributed by Johnson Chien, Managing Director, GCSL Shanghai
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HONG KONG TO OFFER INCOME TAX BREAK

In response to the worsening economic crisis, the Hong Kong government, through Financial Secretary John Tsang, is likely to announce income tax rebates of HK\$6,000. Although a rebate was expected, the number is far short of the previous year's rebate – 75% reduction in tax bill up to a maximum of HK\$25,000. Even at that level, the government ran a record high surplus for the 2007/2008 fiscal year. This year, with lower overall tax revenues expected, Hong Kong will see its first budget deficit in since the SARS epidemic. Accounting firm Deloitte had recommended the government offer similar relief this year, and many are disappointed the government is not acting more aggressively. Experts believe the decision was made on the hope that the economy would reverse course by the second half of the year, but, if it shouldn't, the government would still be in a position to offer further assistance at that time. The rebates generally benefit Hong Kong's middle class, who have been hardest this time around, particularly as many of the city's blue chip companies have announced significant lay offs. The relief offered in the previous year was not in response to poor economic performance but rather the opposite as a positive reflection of the government's overflowing coffers. As such the caution this year is understandable. As to the seeming optimism about the economic turnaround, those of us in Hong Kong hope it is more than just "spin".

*Contributed by Jason Geber, Business Development Manager, GCSL Hong Kong
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NEW TRANSFER PRICING REGULATIONS - IMPACT ON FOREIGN BUSINESSES IN CHINA

China has finally unveiled a set of highly comprehensive rules and regulations governing Related Party Transactions under the newly unified legislations for Corporate Income Tax. On January the 8th 2009, the State Administration of Taxation published the 'Implementation Regulations for Special Tax Adjustments - abbreviated to the 'Implementation Regulations'. The Implementation Regulations establish a basis for the tax authority to make tax adjustments in relation to areas such as thin capitalisation, controlled foreign corporations and transfer pricing. It also provides detailed guidance for Chinese enterprises on entering Cost Sharing Agreements (CAS) and Advanced Pricing Arrangements (APA). In addition, the long awaited Contemporaneous Transfer Pricing Documentation requirement is also set out in the Implementation Regulations.

Apart from the new contents, the Implementation Regulations also supersedes previous major tax circulars governing the administration of Transfer Pricing. With the Implementation Regulations now established, those tax circulars have been revoked.

The Implementation Regulations set the milestone in the development of Transfer Pricing regulations in China. It demonstrates that the Chinese tax authority is strengthening governance of anti-avoidance. The Chinese tax authorities are increasingly capable and competent in dealing with sophisticated Transfer Pricing issues and are moving towards an international standard.

In the following, we highlight some of the key contents of the Implementation Regulations, which could have significant impacts on foreign investors.

Contemporaneous Transfer Pricing Documentation Compliance

The requirement to prepare Contemporaneous Transfer Pricing Documentation is for the first time being formally introduced into China's Transfer Pricing legislation. Currently, such requirement is only imposed on entities with a significant amount of cross-border Related Party Transactions. The previous regulations though did include the criteria for documentations that should be kept by companies and the Transfer Pricing basis relative to companies Transfer Pricing practices.

The criteria for which is defined as below:

- * Annual amount of Related Party purchase and sales is not less than RMB 200 million; OR
- * Annual amount of other Related Party transactions is not less than RMB 40 million.

The Contemporaneous Transfer Pricing Documentation shall include:

- * An Organisational Structure of the Group
- * A Summary of Business Operations
- * Information on the Related Party Transactions
- * A Comparability Analysis
- * A Selection and Application of Transfer Pricing Methods

Each obligated entity shall prepare the documents on an independent basis. Each entity within the same group shall submit its own set of contemporaneous documents, no consolidated documentation on the group level shall be accepted. Entities shall submit the documentation for the current fiscal year by May 31 of the following year. The deadline for 2008 has been extended to Dec 31st 2009. Refusal or failure to submit the Transfer Pricing documentation within the time limit could lead to a fine of RMB50,000. In addition, a penalty interest of 5% per annum could be imposed on the tax payment due from the special adjustments, however this penalty may be waived where if the Contemporaneous Transfer Pricing Documentation is available.

Transfer Pricing Audit

Detailed selection criteria for the targets of Transfer Pricing audits are set out in the Implementation Regulations. The tax authority tends to focus on enterprises with the following features:

- * Enterprises with Related Party Transactions of large amounts and multiple types;
- * Enterprises with long-term loss, slight profit or fluctuating profit;
- * Enterprises with profit lower than the industry level;
- * Enterprises with profit mismatching the function and risk assumed;
- * Enterprises which have transactions with Related Parties based in tax havens;
- * Enterprises which fail to declare Related Party Transactions or which fail to prepare contemporaneous documentations;
- * Enterprises which obviously violate the arm's length principle.

The Implementation Regulations permit tax authorities to use public as well as non-public information when carrying out a Transfer Pricing assessment. The tax authority will present a formal conclusion on whether the Transfer Pricing of the enterprise is reasonable or if tax adjustment is necessary. If an enterprise is required to carry out a tax adjustment, it will enter a 5-year tracking period, during which it should submit annual contemporaneous information and documents to the tax authority.

Enterprises with single function of processing activities

The Implementation Regulations reiterate the position that a contract manufacturer, which takes orders solely from Related Parties and which manufactures products for Related Parties, and which does not take on any other functions should not be taking losses resulted from management issues, such as the insufficient capacity, product obsolescence etc. A steady level of profits is expected for such type of entity if the related transactions are conducted on the arm's length basis.

Thin Capitalisation Rule

Prior to 2008, there was no thin capitalisation rule imposed on foreign invested enterprises. Since the unification of the Corporate Income Tax legislation however, foreign invested enterprises are also subject to the thin capitalization requirement. A safe-harbor debt-to-equity ratio of 5:1 for financial enterprises and 2:1 for all other enterprises has been announced. Interests attributable to the excessive leverage portion shall not be deductible for Corporate Income Tax.

The Implementation Regulations further provide detailed guidance on determining whether an enterprise is thinly capitalised. The Related Party debt-to-equity ratio is defined as the sum of the average monthly Related Party debt divided by the sum of the average monthly equity. The back-to-back loans through unrelated parties (e.g. entrusted loans) and debt with third parties that have been guaranteed or supported by a Related Party is also included in the scope of "Related Party Debt". In determining the equity component of the equation, the book value of equity is used rather than the fair market value of equity.

*Contributed by Ooi Hoay Beng, Business Development Director – Asia, The GCSL Group of Companies Limited.
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FIRST INTERNATIONAL SHIPPING WFOE APPROVED BY CHINA AUTHORITIES

The first and the largest foreign-invested enterprise, Qingdao Qianwan Container Terminal Co., Ltd. ("QQCT"), which is a joint venture of several well-known international shipping companies, received its approval from the National Development & Reform Commission and Ministry of Commerce to operate its facility located right in the heart of Port of Qingdao. QQCT will invest a total of RMB1.4 billion with the register capital of RMB490 million.

QQCT's investors included Qingdao Port Group, DP World, Maersk, COSCO, and Pan Asia Int'l Shipping. Its facility is located on the phase four of the Qingdao Port project with its lifting capacity of at least 70 meters outreach and 100 ton maximum lifting capacity for 15,000 TEU vessels. The facility can processed up to 18,000 TEU vessels. The estimated annual volume is expected to be at least 6 million TEU. After the completion of this project, Port of Qingdao aims to offer and improve its services to more international shipping companies in Northeast region of China.

INCREASING INTERNAL DEMAND: PART ONE – PROVIDE INCENTIVES AND REBATES FOR ELECTRONIC APPLIANCES PURCHASES FOR FARMERS.

In an effort to meet the national directives of creating "internal demands", the Chinese government officially launched the "Appliances for Countryside" program. This program will last for four years. Specifically, qualified individuals will get approximately 13% in rebate if they purchase television, refrigerators, washers, and mobile phones. So far the farmers and countryside works falls under the "qualified individuals" status. Some of the limitations placed by the governments are no more than one appliance per household. In addition to such, the price for television may not exceed RMB2000, Refrigerator may not exceed RMB2500, Washer may not exceed RMB2000, and Mobile Phone may not exceed RMB1000. Only certain models (mostly domestically produced) are qualified for this rebate program. Local governments are responsible for selecting qualified resellers who will in return get the rights to take advantage of this rebate program. It is foreseeable that the Chinese Government will continue to launch similar programs to stimulate its economy as part of the four trillion spending program. It is expected that programs such as this one will minimize the impacts of the current global economic crisis.

*Contributed by Henry Chen, General Manager – Fiduciary Services, GCSL Shanghai
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THIS YEAR'S CHINESE INDIVIDUAL TAX RETURN.

What's new? The expansion of line nine is brand spanking new!

Included for the first time, last year, was line 9 and one category: Income from transfer of stocks. This year, there are lines for three categories: Income from transfer of stocks; Income from transfer of property; Income from transfer of personal estate. And then there is line 10: "Incidental Income" How would you define this. I ask because the State Administration of Taxation has not explained, yet, what it means.

No, there is not estate tax in China. No, there is not, in essence, a capital gains tax in China. Were it not for a rather large case of worldwide economic acid indigestion, I think that inclusion of these lines on this tax return would really let the long term intentions of the SAT be known and fully understood.

Do I think it really makes a difference, now? Not really. Economic stability is more important. This means that it will be even a bit longer before Chinese citizenry is subjected to filing an individual income tax return.

The return, firstly, has a 120,000 RMB threshold. Under that amount, you do not have to file. Over that amount, who knows how many Chinese are making over that amount on an annual basis. With China being a 'cash transaction only' culture, it is open to conjecture how many are making enough to have to file taxes - certainly more than the 2-1/2 million filers who filed their returns last year, as per the SAT.

The fact that the return finally became available at a time when those who might actually be subject to it were either gone or going to be with the family over the Lunar New Year means to me, at least, that human resources at the State Administration of Taxation will be devoted elsewhere, this year, than to individual income tax return filings. The .pdf tax return was available on 23 January, as a two page form with a rather skimpy set of directions in Chinese-and English that totaled a little bit over a page and a half with 17 numbered instructions/comments, there are obviously more questions that a bean counter from the west would ask. It is the rice counters of the east who understand that perhaps, questions are best not asked and that if the space allocated for an answer is far smaller than the answer you'd like to provide, then forget your answer and figure out how to put something in just the space allocated. If you did not wish to file the two page return, you could get yourself an Excel spread sheet, one page, bi-lingual tax return - the space for answering is obviously diminished but then, we have less to answer!

*Contributed by Larry Lipsher, Lipsher Accountancy Corporate, Guangzhou, China
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SINGAPORE UPDATE

LIGHTS! ACTION!

Many a businessman, and this definition must include businessmen-to-be and wannabes, wives, relatives, friends, have been thrust into the position of being a company director, whether on their own behalf or others. Yet I suspect a large proportion of these directors have had little or no knowledge or training of any sort to assume that position in the first place. Case law will bear testimony to the many willful and un-willful infractions of director's duties.

The situation is in part made worse by the general motherhood position taken by statute laws on director duties, supported by a conundrum of copious case law which the layman will be ill-advised to read.

There may be light at the end of this tunnel yet.

Singapore Company directors could soon have a code written down in law clearly listing their duties. The proposal is being evaluated by a steering committee, chaired by Singapore's Attorney-General Walter Woon, which is in the midst of a fundamental review of Singapore's Companies Act.

This steering committee is studying the United Kingdom's approach, which sets down seven duties imposed on directors. These include ensuring that they declare vested interests in transactions and that they don't accept benefits from third parties.

In a recent address to the Singapore Institute of Directors, Singapore's Finance Minister Tharman Shanmugaratnam said "Looking at the UK experience, there are pros and cons to this approach. On the positive side, this helps directors to better understand the law on their fiduciary duties, which were previously difficult to interpret in light of case law." However, Mr Shanmugaratnam also said that the industry was concerned that legislation may not allow sufficient flexibility to keep pace with developments and evolving practices in the business arena. In addition, he also pointed out that they were concerned some companies could adopt a "box-ticking" approach i.e. ensuring that they followed the letter of the law, but not necessarily the spirit of it.

Among the other issues being studied by the steering committee, it is also considering whether to redefine which entities should be exempt from filing financial accounts with the Accounting and Corporate Regulatory Authority. In the process, a "small company" definition may be given to prevent larger companies from finding loopholes.

The steering committee is also studying reforms taken elsewhere to liberalise restrictions on financial assistance by a firm to acquire its own shares or those of its holding company.

The new United Kingdom code only comes into force in October this year. Much will depend on how that pans out.

*Contributed by Lawrence Fong, Managing Director, GCSL Singapore
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INTERNATIONAL UPDATE

HMRC DRAFT GUIDANCE ON THE UK RESIDENCE OF OFFSHORE CORPORATE TRUSTEES

Draft guidance has recently been issued by the UK revenue authorities ('HMRC') on the application of the UK tax rules concerning the residence of corporate trustees. This highlights the risks for offshore corporate trustees with UK affiliates, UK resident directors or who use agents in the UK.

An offshore corporate trustee will be regarded as UK tax resident if it acts as trustee in the course of a business carried on through a permanent establishment in the UK. If the sole trustee, the trust will be treated as UK resident for UK tax purposes. If there are other non-resident trustees the position will depend on the domicile and residence status of any settlor.

HMRC have specified three questions for determining whether corporate trustees are UK resident under this test.

1. **Is the corporate trustee carrying on a business in the UK?**
2. **If the corporate trustee is carrying on a business in the UK is it carrying on that business through a permanent establishment in the UK?**
3. **If so, is the corporate trustee carrying on the business of *that particular trust* in the course of its business through the permanent establishment?**

Extreme care is needed if the corporate trustee has directors or employees resident in the UK. If the director or employee is carrying out core trustee duties in relation to a trust it will be relevant whether the non-resident trustee has a permanent establishment in the UK. This may be the case if either the employee or director operates from a fixed base in the UK or habitually acts on behalf of the trustee with authority to make decisions on behalf of the trustee.

It is also necessary to consider whether a dependent agent carries out activities in the UK on the trustee's behalf. An unconnected person or a UK subsidiary of the trustee can be a dependent agent. If the services are provided at arm's length terms then it is unlikely that this will apply.

If a trustee is or becomes UK resident under these rules, becoming non-UK resident may trigger a liability to capital gains tax, so it will be desirable to avoid the inadvertent application of these rules.

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OFFSHORE UPDATE

ANGUILLA: IT IS NOT ANTIGUA

Given recent developments which have placed Antigua in the global headlines due to a flamboyant Texan named Robert Allen Stanford, (probably the most famous Texan since J R Ewing or maybe Lee Harvey Oswald outside of two George Bushes of course) and the history of confusion which has always existed in the minds of many, I thought it fit to state clearly and boldly, and without casting aspersions on anyone or country, that Anguilla: It IS NOT Antigua.

For centuries, Anguilla laid in obscurity. The British may have settled it from 1650 but that was all which was done. Poverty, famine, drought, migration and anonymity marked Anguilla's place in the world for most of its existence until one March morning in 1969, the British decided to invade and for the first time in over 300 years, the world heard of its existence. Then, in the 1980s, the benefits of geography and history came together to finally set Anguilla on a path of economic development and some measure of prosperity. Since then, many have beaten the path to find it, some good, some bad (the OECD officials come to mind), some indifferent, while many others, just irrelevant. The most famous visitors would be the two who dropped in one December afternoon in 2006, on a nice private jet, and who called themselves: Bill and Hillary Clinton.

And after they left and the few USA journalists and photographers who came departed with them, back to obscurity Anguilla went and this is the way we like it. Until last week when Antigua, our neighbor to the south, who have always outshone us with their world renowned cricket grounds and cricketers, including the great Sir Vivian Richards and many others, decided to make an appearance in print, video and all over the internet.

Whatever one thinks of the charges, the man, or the country, the sole purpose of this article is to stop the confusion in the minds of the readers. Anguilla, first and foremost, being a British Overseas Territory, always seems to proceed cautious with foreign investors due to the influence of the famous or infamous (depending on your point of view of course) Foreign and Commonwealth Office in London. Its presence, through the British Governor who lives what is left of colonial life, for good or ill, from a business point of view, prevents the dominance of Anguilla by any one investor. In addition, the close relationship between the US and the UK, would serve to provide a conduit of information to local authorities. How this information is used is the remit of the local electorate and body politic and thus ultimate responsibility for protecting Anguilla's reputation in all issues lies with Anguillians.

Since Anguilla has never envied Antigua for its good fortune, and never really benefitted from same, the premise of this article is rooted in the belief that it should not suffer as a result of any fallout which last week's Antigua drama brings. When discussing the saga, which some say will keep our Texan born but Antiguan knighted Sir Allen in the news for years and probably in business textbooks for decades, please make the distinction. While Anguilla is opened for business, it is only open for such business which hopefully will serve to buttress the jurisdiction's reputation regionally and globally to the extent that Anguilla has a global profile. So remember – Anguilla: It is not Antigua.

*Contributed by Carlyle Rogers, Managing Director, GCSL Anguilla
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BELIZE: THE FIU COMETH...

In January, as is his custom, Jack graced us with his presence in Belize, doing his normal routine of meeting with key persons in the industry here and discussing matters of relevance and importance to GCSL, and the Belize offshore industry in general. This time around, our visit took us to the office of Marilyn Williams, Legal Counsel and Director of the Financial Intelligence Unit. Our meeting took place on her very first Monday officially in office, and not without controversy, as the FIU the week before had made its biggest "bust" in history, finding almost US\$1 million in bags and suitcases at the house of a well-known businessman, after acting on information received.

She graciously invited us into her office, and sought to bring us up to speed on developments in the recent past. The presence of the new Anti-Money Laundering and Terrorism Prevention Act allowed for the FIU to be actively engaged in all sorts of surveillance and supervision of all types of financial activity. Particularly interesting to us was her emphasis on the importance for adherence to due diligence, in this post-9/11 world within which we now find ourselves. Too often providers within our small jurisdiction peddle their services all in the name of the Almighty Dollar (which of late has not been that almighty), and in an effort to get a leg up on the competition, have avoided the requirement by law that there must be the collection of due diligence data on the beneficial owners of the structures that are being sold, as well as the officers of the company or entity. There are too many providers out there who do this, with the view that an inspection from the International Financial Services Commission will not occur in the near future.

This was a practice which Mrs. Williams was adamant had to stop, as it was bringing our jurisdiction into disrepute. One can only be as well respected as the worst vagabond of the bunch, and Mrs. Williams was of the view that the FIU, being logistically and now legislatively placed to act, could assist the IFSC in conducting the audits and inspections that over a period of time had proven difficult for the IFSC to actively and regularly engage in.

At GCSL Belize, we applaud this move. We have long been advocates of due diligence collection, because we do not like thieves and crooks and terrorists. Legitimate law abiding citizens of this world do have to suffer inconveniences because of this collection requirement, but in fact we see routinely that fellow service providers fail in their duty to comply with this aspect of the law. If the FIU succeeds in its self-imposed mandate to conduct due diligence audits and inspections, then many a provider will have much to answer to. I can only but wish them well, and hope for the best. If you want to find a service provider that actively seeks to comply with the law, thus putting your entity above reproach in the eyes of the law, look no further than GCSL. The security of your entity, your peace of mind and comfort, are our primary concern. Perhaps you may need to think again as to whether or not that cheap IBC you bought is actually as great as you think it is. Come and talk with us so we can help you to make it secure.

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COOK ISLANDS: TRIATHLONS AND STIMULUS PACKAGES – COOK ISLANDS STYLE

One of our goals this year (aside from making lots of money) was to be health conscious and healthy. This month saw staff in the Cook Islands office get involved in the annual Team Triathlon event. This event has been running for nearly 15 years in the Cook Islands, and in fact was started by the Trustee Companies in the mid 90s...as you can imagine to let off steam on their competitive nature with each other. The event has evolved to be more than just about Trustee companies competing for bragging rights, but an opportunity for people from a wide spectrum of businesses to sample what triathlons are about with 28 teams registered this year.

The event involves a team of three competitors, each doing a 200 metre swim, an 8km cycle, and a 2km run – yes it's a complete sprint! The idea is that non-triathletes can participate in the event without enduring too much pain. Like everything else, it's supposed to be fun, but hey this is the Cook Islands, and nobody goes into these events for the "fun of it".

Well to top it all off the GCSL team came in a very respectable 6th overall out of the 28 teams. But the best part was that we were the first Trustee Company across the line!!! Tai did the three disciplines in 37 minutes with Puai completed the circuit in 33 minutes. The third member of the team was Roland Neurer, who did the course in a zizzling 27 minutes.

On other news: The Cook Islands government is to embark on an exercise that's designed to stimulate growth in the offshore financial services industry – a sector that has not registered any significant growth for some years.



Finance Minister Sir Terepai Maoate who is driving the offshore industry stimulus package is confident that the investment by

Government will pay off and see significant growth in the country's second largest revenue earner.

The offshore industry is second to tourism as the biggest contributor to the country's GDP and Sir Terepai stresses that the country needs to diversify away from tourism which can be a fickle industry.

The DPM chairs the Offshore Industry Committee, which he set up last year to examine the industry. The Committee subsequently commissioned offshore industry specialist Steve Breed to review the Cook Islands offshore financial services and make recommendations to government.

"The Breed report confirms for me that we can make a lot more money from our offshore industry, we can grow it so that the Cook Islands develops into a jurisdiction of greater international significance, but like any business, we need to put money into it to get money back."

The recommendation of the report is that a Financial Services Development Authority ("FSDA") be created with a board comprising both government and private Sector members. That the FSDA articulate strategic objectives for the industry and that the executive managing the FSDA be charged with implementation of a strategic plan and be responsible for the promotion and development of the industry in the international arena.

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SAMOA: INTERVIEW OF LEASI PAPALII TOMMY SCANLAN, GOVERNOR OF THE CENTRAL BANK, AND CHAIRMAN OF THE BOARD FOR SIFA (SAMOA INTERNATIONAL FINANCE AUTHORITY)

LAURA: Talofa and thank you for your time. In your recent interview with the local Samoa Observer, you discussed Samoa's position in view of the current global economic crisis. With respect to the Offshore business, what do you predict for us this year? Firstly for Samoa as a jurisdiction and for the Offshore industry in general?

TOMMY: The worsening global financial crisis will unfortunately affect even the small island countries like Samoa. With the increasing unemployment in our major trading partners, (i.e USA, N.Z. and Australia) tourism revenue and remittances to Samoa are expected to be adversely affected. In terms of offshore financial services business, I think it is unrealistic to expect the same high growth rates that we have enjoyed over the recent years to continue this year and possibly 2010. However, in saying that, we still anticipate an increase in revenue as investors will tend to shy away from the problem countries and banks, mainly as a result of the financial crisis.

LAURA: At the end of 2008, how has the industry done compared to 2007 for example? In other words, has there been a decrease or increase in the registration of International Companies compared previously?

TOMMY: There was a decrease in the number of new company incorporations in 2008, compared to the year before. However, we are encouraged by the fact that the rate of company renewals has been maintained at around 90%, which is about the same as in 2007.

LAURA: SIFA annually attends either the Asia Offshore Association (AOA) Conferences in Asia, together with the Hong Kong 7's as part of their promotion of Samoa as an Offshore jurisdiction. I believe attendance this year will focus on the Rugby 7's only. Explain a little the importance of SIFA's attendance to these Meetings and what Samoa stand to gain by them.

TOMMY: Samoa has, since the early 1990s, sent high level delegations to Singapore, Hong Kong and the People's Republic of China. The main purpose of these visits is to assist our Trustee Companies with their promotion of Samoan financial products and our Centre as the preferred jurisdiction. By having a high level delegation not only helps in portraying the images of reliability and stability but it also shows that the Government strongly supports our Finance Centre. The timing of these promotional visits usually coincides with the Hong Kong Rugby Sevens Tournaments because we want to capitalize on the success and popularity of our rugby sevens team at these tournaments over the years. Samoa has won this prestigious event twice now, first in 1993 and then in 2007. Of course the primary reason for our visits is to promote our Centre. And, because many of the clients of our Trustee Companies usually travel to Hong Kong at the time of the Rugby Sevens Tournament, that is another important reason why we time our visits then, to meet up and talk business with them. Given the increasing success that we have enjoyed over the recent years, especially with Asian clients, it is fair to say that our promotional visits to Hong Kong and other Asian countries have been worthwhile. This year we do not intend to send a delegation to Asia. The global financial crisis is the main reason why we are not going, although we strongly feel that our Rugby 7's Team will do well again this year.

LAURA: Can you talk about SIFA's sponsorship to the local community? This year, SIFA has been involved with the World Weightlifting Competition, Toa Samoa (Rugby League Team), and other local sporting activities. Why focus on sports alone? Has SIFA considered other activities or projects perhaps as part of their promotion?

TOMMY: Samoa is well known overseas mainly as a result of sports. Our Manu Samoa rugby team, although they did not do so well in the last World Cup in France, have provided some big upsets in a lot of international tournaments. Our boys play with a lot of flair and they are very hard tacklers. And, that is why they are popular with the crowds. A lot of our Samoan boys play for international teams in N.Z. Australia, Europe and Japan. We also have excellent Rugby League players as well as netball players on the Ladies side. SIFA has been a major sponsor in many local sports, including weightlifting and wrestling, because of the important role that sports play in the development of our young people's physical nature as well as their self esteem. Of course, the exposure that SIFA gets through the media via international tournaments that our Teams

participate in, is also a benefit. SIFA has also provided donations to the Old People's Home, the building of houses for the poor as well as other community related projects.

LAURA: Offshore business I find still attracts negative comments from people. Most of it I believe comes from the lack of understanding what the industry is about and the contribution it makes to Samoa's economy. What are your thoughts on this?

TOMMY: Unfortunately, there continues to be an increase in finger pointing being directed at the financial services industry as being responsible for harboring laundered funds. Also, there are claims that these Offshore Finance Centres are being used for tax evasion. These accusations are grossly unfair as they are substantially exaggerated and are mostly generalizations. Money laundering and tax evasion also take place, and on a bigger scale, through 'onshore' financial institutions and in many OECD countries. In the early years, since the establishment of our Centre in 1989, we deliberately slowed down in promoting it. The main reason being we wanted to make sure that our legislative framework was in place to ensure that only legitimate business was conducted through it. And, over the years we have continuously revised our legislations and administrative framework to ensure that we keep up with the latest developments in the financial services industry. SIFA is a member of most international organizations which are responsible for setting high standards of prudential supervision and compliance. Since its inception, our Finance Centre has contributed close to \$70 million to the Government budget. And, SIFA accounts for about 15% of our GDP annually.

LAURA: From experience, has the industry cleaned up its image, the one associated with Money Laundering?

TOMMY: Samoa is acutely aware of its obligations and responsibilities with regards to international standards of best practice set by the various international institutions such as the FATF, OGBS, OECD, APG and the IMF, on the prevention of money laundering and the financing of terrorists. We have been Co-Chairs of the OECD Global Forum, as well as the OECD Sub Group, on the issue of information exchange on tax matters, for the past six years. And, as I have indicated before, we have constantly reviewed our legislations to ensure not only that we keep up with the new developments in the industry but to also comply with the constantly changing regulatory environment.

LAURA: Finally, what new legislation might Samoa see in 2009?

TOMMY: SIFA is currently working on amending the current International Trusts Act 1987 to reflect the needs of the industry and our clients. We will also be considering the possibility of introducing new offshore investment vehicles which require new legislation to ensure that we continue to remain competitive and offer our clients more variety in terms of new products.

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TIDBITS

The things that make us smile, frown and generally make life interesting...

OUR MONTHLY QUOTE THAT MADE US SMILE

"To the world, you are someone. To someone, you are the world." - Anon

DRIVING IS FOR PEASANTS...

We were stunned to read about the South Korean grandmother who has taken and failed the written driving test 771 times since 2005 while wasting almost US\$4,000 in exam fees. Obviously not the sharpest pencil in the box and surely by now she most know driving is for peasants!!!

BEWARE CLEAN WATER

We were not shocked to learn that Sydney's worthy efforts to clean up its beaches and harbors has not only improved weekends for sunbathers, but has enhanced the environment for sharks to feed upon unsuspecting fish that prefer the clear water. Lucky sunbathers best visit Hong Kong where we have little expectation of the waters being cleaner any time soon!

RACERS, START YOUR ENGINES...AND PARK!

We recently read nearly 1,500 new cars have revved up on their engines on the streets of Beijing each day this year. This is fortunate in many ways as now traffic has reached the level of a parking lot and we will not have to suffer the dangers of horrible drivers running into us!

SORRY, I DON'T HAVE A POUND SO EITHER OPEN THE DOOR OR GET OUT THE MOP!

We read with a smile about Ryanair's CEO indicating the low cost carrier may begin charging passengers for using the toilet while flying. Yes, a coin slot at the toilet door will require GBP1 to enter. The obvious question is what about the person without GBP1 in his/her pocket and the response from a Ryanair spokesperson was "I don't think there is anybody in history that has got on board a Ryanair aircraft with less than a pound." Yeah, right, passengers on a budget airline always have a pound? Watch this space as we think it will not be too long before a passenger opts to squat in the aisle of a Ryanair plane and, well, do the needful!!!

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