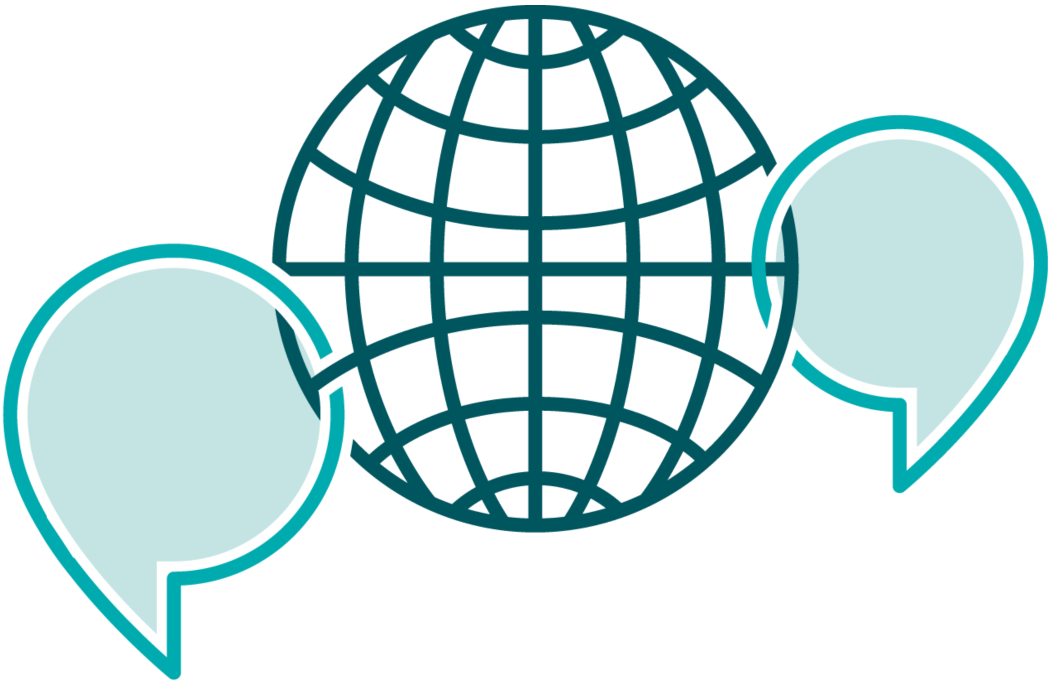
Global Insight – November 2017



Human resources

- Are lifelong hours the answer to flexible working?
- Tax-free fringe benefits for expats in China
- Hiring staff in the US and dealing with the labor laws

Financial technology

- Bitcoin bonanza
- Fintech and crypto currencies

International tax planning

- Gearing up for a changing tax landscape
- UK subsidiaries of overseas groups – commercial and transfer pricing warning on audit exemption
- India and GST – One nation, one market, one tax

News round-up

- Malta's new platform for raising capital
- Ukraine relaxes temporary residence permit rules to attract foreign investors

Are lifelong working hours accounts the answer to flexible working?

The world of work is facing huge change, with decision-makers grappling with issues such as Industry 4.0, digitisation, demographic change, diversity and the integration of different cultures.

Employees increasingly want the option of working in different locations and flexible working hours, while employers need to ensure that new working practices comply with the law. Concepts such as 'New Work' and 'Work 4.0' that reflect changing attitudes and innovative employment practices are transforming the world of work.

The proliferation of co-working and public work spaces is already blurring the boundaries between work and free-time. The internet, network technologies and mobile devices have made it possible to work almost anywhere around the clock.

However, employment regulations such as Germany's statutory 48-hour week with a maximum ten working hour day, strict rules on breaks and the ban on work on Sundays and public holidays run contrary to these changing needs and obstruct the true flexibility that many people would like to see.

Changing life phases

Working hours geared more towards the different life phases people go through is one model of flexible working gaining increasing interest. The aim is to stagger the 'rush-hour' of people's lives – the period between the ages of around 25 to 45 – so employees can adapt their working hours to the changing needs of their lives.

A lifelong working hours account or long-term company work accounts could be used to implement a working hours model attuned to different life phases, based on a free agreement between the employee and the employer. For example, employees could choose to forgo part of their wages or paid time off for a period of their working lives and redeem them at a later date for longer periods away from work.

Flexible framework

To be able to structure these options for organising working hours sensibly, the framework conditions need to be adjusted. Currently, the European Directive 2003/88 EC sets forth a 48-hour week which can be departed from by mutual agreement. This could be used to relax the strict labour regulations in Germany and many other countries to bring them more into line with the social change they are experiencing.

Lawmakers, of course, need to create clear frameworks to ensure employees are protected. But they should also give employees and employers the opportunity to organise their working conditions themselves and become more equal partners, within the scope of the legislation.

For more information, contact:

Daniela Nellen-La Roche
dhpg, Germany
T: +49 228 81000 100
E: daniela.nellen-la-roche@dhpg.de
W: www.dhpg.de

Tax-free fringe benefits for expats in China

Since 1994, China has allowed expatriate employees in the country to receive certain fringe benefits on a tax-free basis.

The use of fringe benefits to lower an expatriate's income tax benefit is worthwhile, although there have been some changes to the regulations over the years. While it is important to keep accurate records, as the tax office may request these at any time, the pre-approval of fringe benefit tax exemptions is no longer required.

Housing, meals and laundry expenses

Housing allowances, plus "reasonable" meal and laundry allowances received by an expatriate employee in non-cash form (e.g. paid directly by the employer) or on a reimbursement basis are usually tax-exempt. Many tax officials require appropriate rental agreements, valid commercial invoices and other supporting documents to be submitted when filing individual income tax returns. The "reasonableness" of expenses is generally assessed on the basis of the employee's level compared with the expenses of other expatriates at a similar level. The tax authorities reserve the right to make tax adjustments if the supporting documents do not sufficiently prove that the claimed allowances are reasonable.

The reimbursement of “reasonable” relocation expenses at the beginning or end of an expatriate’s assignment in China are also generally exempt from individual income tax. As with other allowances, it’s important to obtain and maintain supporting documents. Note that “relocation reimbursement” payments made to an expatriate on a monthly or other regular basis are not eligible for tax exemption.

Travel costs

Home leave allowances are generally exempt from Chinese individual income tax, as long as the expatriate can provide the relevant transport receipts or invoices. The home leave allowance covers up to two trips per year from China to the employee’s home (or to the home of the employee’s spouse or parents). However, only the cost of the employee’s travel is tax exempt. Spouse or other family members’ travel costs paid by the employer are considered as taxable income to the employee.

Other “reasonable” travel allowances provided to an expatriate for travel within or outside of China can also be exempt from individual income tax, again as long as receipts and other supporting documents are submitted to the tax authorities. In practice, however, some tax officials take a strict approach and include all such travel allowances as taxable income.

Spouses and children

If a spouse and/or children accompanies the expatriate employee on assignment to China, a reasonable allowance for language training and children’s education is exempt from individual income tax. Evidence must be provided to prove that the language training or education is obtained in China during the expatriate assignment period. Reasonableness is generally determined by analysing education fees charged in the area.

Other exemptions

Expatriate and domestic employees are now eligible to receive commercial supplementary medical insurance on a tax-free basis, but limits do apply. Furthermore, all employees can receive a single annual performance bonus at a significantly reduced tax rate. It’s usually beneficial to provide an employee with a substantial annual bonus, rather than to offer cost of living or other assignment-related salary adjustments.

Get professional advice

To sum up, employers should undertake an analysis of the available tax-free fringe benefits and how they can be utilised to maximise employee remuneration without adding to the overall tax burden. This will also help the employer ensure that any benefits paid to the expatriate employee are tax deductible for corporate income tax purposes. It's important to get advice from a Chinese taxation specialist to maximise these benefits.

For more information, contact:

Flora Luo
Nexia TS, China
E: floraluo@nexiats.com.cn

Scott Heidecke
E: scott@nexiats.com.cn

T : +86 21 6047 8716
W: www.nexiats.com.cn

Hiring staff in the US and dealing with the labor laws

There are many labor regulations to be aware of if your company has operations in the US.

Human resources (HR) departments are highly regulated in the US by federal, state and municipal rules and labor laws. Your compliance activities, hiring approach, benefits offering and recruitment efforts may all be affected by the regulations.

Here are some of the current key HR issues to bear in mind for US operations.

Verifying identity and employment authorizations

All new hires in the US must provide proof of their identity and ability to work in the US. Both employees and employers must complete the recently revised I-9 form, which can be submitted electronically.

Fair Labor Standard Act

The Fair Labor Standards Act (FLSA) injunction ended on 30 June 2017. The Department of Labor has accepted public input in formulating a revised regulation. However, it is unclear how the new Secretary of Labor will influence employment laws. Companies operating in the US will need to keep an eye on these issues as they develop so they can be proactive rather than reactive when new rules arise.

Criminal background checks

Many states have recently implemented stricter parameters on questions about an applicant's criminal background. Some states do not permit companies to ask about criminal background on an employment application. However, other states have hiring laws that require employers to carry out responsible due diligence on new hires.

Benefits documentation

This requires detailed attention. Take the plan document requirements under ERISA (*Employee Retirement Income Security Act of 1974*) for example. Most employers think their benefits carrier or broker supplies this information, but there is also an employer section that must be supplied. This is quick to correct and can be done electronically, but it is important to understand what is required.

Setting up in the US for the first time

US employer regulations are quite complex, so it is much better to uncover any compliance issues during a routine, 'friendly' assessment than from a regulatory agency or in response to litigation. It is worthwhile establishing a relationship with an HR consultant, legal counsel and insurance broker to help navigate labor and employment requirements. First-time employers in the US should make sure they work with professionals that have expertise in federal, state and local requirements so that HR functions are set up appropriately from the beginning.

For more information, contact:

Kim Orsolits
CliftonLarsonAllen, US
T: +1 407 802 1263
E: kim.orsolits@CLAconnect.com
W: www.CLAconnect.com

Bitcoin bonanza

With the global crackdown on foreign asset reporting and the growing use of virtual currencies for illegal activities, governments are expending significant resources to identify users and ensure compliance with reporting requirements.

The US Internal Revenue Service (IRS) is battling against online digital currency platform Coinbase[1] to obtain the identities of users of convertible virtual currencies (CVCs) such as Bitcoin.[2,3] This battle is being closely watched around the world as it touches on a number of hot issues, such as the privacy of Bitcoin holder accounts, the worldwide income taxation of CVCs and the international reporting of CVCs.

The court case comes at a time when governments worldwide are focusing on identifying and taxing the foreign financial assets of their tax residents. More than 100 countries recently signed up to the

1 https://www.coinbase.com/?locale=en-US
2 https://www.justice.gov/opa/pr/court-authorizes-service-john-doe-summons-seeking-identities-us-taxpayers-who-have-used
3 https://www.forbes.com/sites/kellyphillipserb/2017/09/05/irs-responds-to-privacy-other-challenges-in-bitcoin-records-fight/#4738dfdb65aa

Common Reporting Standard (CRS), agreeing to share information on the financial assets held in their country by residents of other countries.

Key challenges

When it comes to foreign asset reporting, CVCs such as Bitcoin pose two key challenges. First, CVC users are largely anonymous. They tend to value the privacy offered by CVCs , and governments are not currently able to uncover their identities. Second, countries disagree on how to define CVCs for income tax purposes – either as true currency or as personal property.

Governments are gradually making headway on anonymity. They are using court cases and actions to compel companies to reveal the identity of CVC owners. If these initial cases succeed, it will give governments access to information (such as evidence of improper reporting of taxable income from CVCs) that would allow them to make a stronger case for obtaining users' identities.[4]

The categorization of CVCs as currency or property may seem inconsequential, but it could result in major tax headaches for CVC owners who are taxed in multiple jurisdictions.

Cross-border differences

Only recently have individual countries started to define CVCs and clarify their tax treatment in-country. They have not yet reached a point where they can update their bilateral tax treaties. Without agreement on the nature of CVCs or guidance from treaties, countries may reach differing conclusions on:

- which country has the primary right to tax the income
- whether an income realization event has occurred and the timing of that event
- the type of income generated from the CVCs
- how the CVCs should be valued
- the cost basis of property purchased with CVCs
- how to determine the fair market value of the CVCs when a realization event occurs.

[4] https://www.thewolfgroup.com/13350-2/

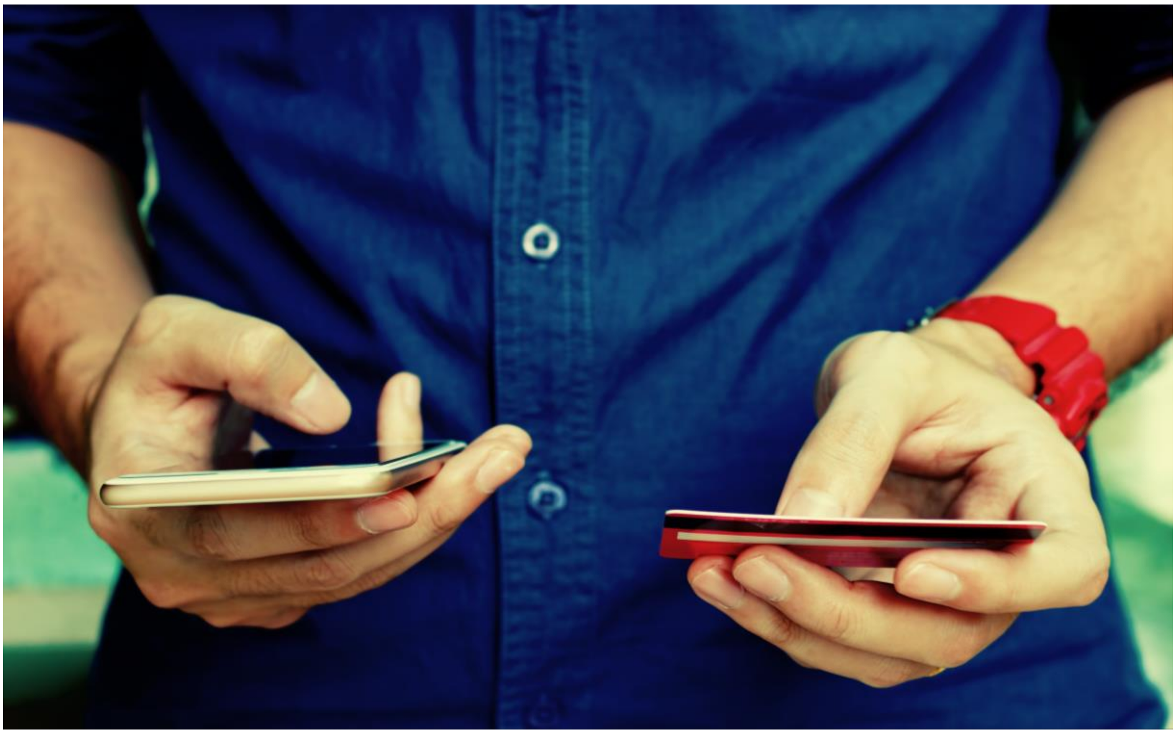
In all these cases, CVC users risk double taxation without the opportunity for relief.

Although CVC users may be tempted to hide behind the anonymity they offer, they do so at their own peril as governments intensify identification efforts. Users should be very conservative in their approach to informational reporting and taxation. They should also seek the advice of a competent tax adviser if they want to use CVCs as part of a complex planning structure.

For more information, contact:

Mishkin Santa
The Wolf Group, PC, US
T: +1 703 652 1720
E: msanta@thewolfgroup.com
W: www.thewolfgroup.com

Fintech and crypto currencies



Crowdfunding is on the rise, so it is important to understand the latest terminology, as well as the tax implications.

Fintech is one of the fastest-growing and most dynamic sectors in the global economy. The Swiss Canton of Zug has emerged as one of the key fintech centres, with more than 30 international fintech companies and foundations established there in recent years. This is due to its proximity to the financial capital Zurich, a strong university presence and the availability of specialist skills. Specialising in encryption technologies or 'cryptographic applications', the best-known companies include Bitcoin Suisse, Ethereum and Monetas.

The Swiss authorities are actively involved in developing the fintech industry in the country. For example, recent changes to the Swiss Banking Ordinance mean fintech businesses can now develop and test business models up to a certain size without being subject to the usual strict regulations of the financial sector. Zug's 'Crypto Valley Association' has been established to help bring specialists in this field together.

Understanding the terminology of fintech

While the concept of crowdfunding is well understood from a legal and tax standpoint, terms such as 'initial crowd offering' (ICO) and 'token generating event' (TGE), used in connection with blockchain crowdfunding, may not be entirely clear at first glance. From a tax perspective, it is also important in the digital world to understand what an individual receives in return for buying or subscribing to a TGE. Crowdfunding can take several forms, including crowddonating, crowdinvesting and crowdlending. Here are some of the key concepts.

- With crowdsupporting or reward-based crowdfunding, buyers/investors receive a product, work or service in return. Often, it is only the right to receive such a return that is being acquired, as the funds collected first need to be used to develop or produce the product, work or service.
- Crowdinvesting involves making a contribution into a company's equity. The investor participates in the company's earnings and may make a profit or loss on the purchase.
- Crowdlending refers to the granting of a loan with a fixed, variable or profit-based interest rate. This instrument can also be sold on the (digital) market like a bond.
- With crowddonating, the buyer of a coin donates money or cryptocurrencies without consideration.

It is important to understand these distinctions and the different tax implications depending on whether the transactions are treated as purchases, investments, loans or donations and what is received in return. In general, and as far as can be seen, both direct and indirect taxes follow this categorization in Switzerland.

For more information, contact:

Jürg Altorfer
ADB Altorfer Duss & Beilstein AG, Switzerland
T: +41 44 267 63 00
E: juerg.altorfer@adbtax.ch
W: www.adbtax.ch

Gearing up for a changing tax landscape

Bolstering your company's international tax-planning toolkit can be a smart move in the face of change and uncertainty.

International tax professionals and business owners often feel apprehensive about how to proceed in a climate in which change is certain, but the details have not yet come into focus. In the US, a proposed significant decrease in corporate tax, a mandatory repatriation tax and an end to interest deductibility could mean sweeping changes to how multinational companies conduct their business.

To be prepared in the face of such uncertainty it is important to incorporate concepts that, regardless of the outcome of proposed legislation, will remain relevant in your tax-planning repertoire.

Earnings, profits and tax pool studies

Being as familiar as possible with earnings and profits (E&P) and tax pools may be very important for a couple of reasons ahead of anticipated tax reform. Repatriation planning for both inbound and outbound companies may turn out to be a high priority, and knowing E&P is necessary in order to characterize cash repatriation as dividends or return of capital.

Tax pools are important for understanding the foreign tax credit impact of dividends coming from controlled foreign corporations (CFCs). Additionally, if tax reform replaces the current foreign tax credit system in the US with a territorial system, it is likely that offshore E&P will be deemed to be repatriated either immediately, or over some transition period yet to be determined.

Corporate financial structure

Reviewing your corporate finance structure will be important ahead of tax reform. It is likely that – with anticipated changes to corporate income tax rates and the possible change to a territorial taxing system – cross-border movements of cash will be necessary or desired. Ahead of cash movements, US multinational companies will need to know their cash position and intercompany debt structure if they are to be economically and tax efficient.

Basis studies

In addition to the above-mentioned E&P and tax pool attributes, knowing the basis of CFCs and US inbound companies will be necessary when repatriating cash to either US or foreign parent companies. Ordering rules generally provide that distributions with respect to shares owned will be treated as dividends to the extent of E&P. Distributions in excess of the E&P amount will be a return of basis. Therefore, the amount of basis is important to avoid eroding the basis amount too much. Additionally, the tax basis of CFCs is necessary to complete proper interest expense apportionments for foreign tax credit planning.

Business health check

Rather than allowing the uncertainties around proposed tax reform to stifle your international activities, use the possibility of change as an opportunity to perform a health check for your business. It will give you a set of stronger, more comprehensive tax-planning tools to help you deal with the vast array of outcomes future tax reform could bring.

For more information, contact:

Michael Patterson
Rehmann, US
T: +1 734 302 4190
E: michael.patterson@rehmann.com
W: www.rehmann.com

UK subsidiaries of overseas groups – commercial and transfer pricing warning on audit exemption

Care should be taken before a European parent guarantee exemption is considered for a UK subsidiary.

All UK companies, including UK subsidiaries of overseas groups, require a statutory UK audit unless they can take advantage of one of the specific UK audit exemptions available, which primarily relate to size or to obtaining a guarantee from a relevant parent company.

Size must be measured with reference to the worldwide group, not just the UK subsidiary, leaving many UK subsidiaries of even modestly-sized international groups unable to take this exemption. Consequently many UK subsidiaries have explored the latter exemption, which is relatively new under UK company law.

Under UK company law a European Economic Area (EEA) parent company of a UK subsidiary can provide a guarantee, exempting the UK subsidiary from having to embark on its own UK statutory audit. However, the potential commercial and transfer pricing effects of taking this exemption should be carefully considered.

Equivalent to any commercial guarantee

A lesser known fact is that under current rules for claiming the subsidiary audit exemption, the parent company guarantees a subsidiary's debts including all liabilities, contingent liabilities and future claims, whether recognised at the year-end or not. This guarantee remains in force until those liabilities are settled and importantly, electing to have a local UK statutory audit in the following year does not extinguish the guarantee previously given by the parent company.

Therefore legal advice, both in the UK and in the parent country, should be considered before committing to the guarantee.

Transfer pricing consequences

Depending on the transfer pricing design applied to the UK subsidiary, including risks borne from a transfer pricing perspective, the commercial risk of a fully underwritten UK subsidiary could be significantly reduced.

When completing the transfer pricing analysis and documentation for groups involving UK companies that take advantage of the audit exemption, the risk analysis should consider the effect of the exemption on both the UK subsidiary and the group entity assuming the guarantee. This could affect the transfer pricing outcome leading to lower profits for the UK subsidiary (and higher profits for the guarantor). Alternatively, a separate arm's length valuation of the guarantee might be necessary by the guarantor.

Summary

Advice should be sought on both the commercial aspects and transfer pricing impacts before an EEA parent guarantee exemption is considered for any UK subsidiary. Note that even if audit exemptions are taken, filing of the (unaudited) UK subsidiary accounts on the UK public register is still normally required.

For more information, contact:

Richard Collis or Robert Langston
Saffery Champness, UK
T: + 44 (0)20 7841 4257
E: richard.collis@saffery.com
T: + 44 (0)20 7841 4129
E: robert.langston@saffery.com
W : www.saffery.com

India and GST – one nation, one market, one tax

In July 2017 the Indian Government finally rolled out its long-awaited Goods and Services Tax (GST) regime, replacing the plethora of indirect taxes levied on goods and services in the country.

GST is the most comprehensive tax reform ever to take place in India. The primary aim is to streamline indirect taxation and remove the barriers hindering the smooth passage of trade – both within the country and overseas.

The authorities believe that GST offers a win-win solution for everyone: taxpayers benefit from centralised taxation, robust IT infrastructure and transparent legislation; while the Government gets to plug the leaks that were endemic in the old system and increase its revenues.

Early teething troubles

GST has received a mixed reception, with the average taxpayer struggling to get a grip on basic compliance and tax exposure. In an attempt to aid a smooth transition to the new system, the Government has proactively provided assistance to taxpayers and has relaxed the compliance deadlines of various parallel fiscal laws. However, as a significant proportion of the economy is driven by small and medium-sized enterprises, the Government has admitted that merging the taxpayer base of more than one billion citizens will take some time.

GST has already had a positive impact on some key industry sectors such as automotive, retail trade and start-ups, while others such as real estate, telecoms, FMCG, banking and financial services have seen some negative effects due to an increase in their tax rates.

GST in the long term

India's lawmakers believe that GST will have a very positive outcome on macroeconomic indicators over the long run. Inflation is expected to decrease as the cascading (tax-on-tax) effect is eliminated. Government revenues are likely to increase as a result of the extended tax net, and and the fiscal deficit is expected to be kept in check. Both exports and foreign direct investment are expected to grow, and industry leaders believe the country will climb several places in the 'ease of doing business' league as the previous compliance hurdles faced by taxpayers under the old system are eradicated.

For more information, contact:

Rutuja Deshmukh
Chaturvedi & Shah, India
T: +91 22 3021 8500
E: rutuja.d@cas.ind.in
W: www.cas.ind.in

News round-up

Malta's new platform for raising capital

Prospects is a new capital market introduced in Malta in 2016 that gives SMEs the opportunity to raise up to €5m in finance.

Prospects market gives SMEs the opportunity to raise up to €5m in finance in a simple and efficient manner through the issue of new bonds and shares.

Prospects is directly managed and regulated by the Malta Stock Exchange (MSE), which provides guidance and support to both local and international SMEs looking for admission. SMEs are assisted by an MSE-approved corporate adviser who will help provide the appropriate structures for admission to the market while ensuring compliance with transparency and corporate governance rules.

Prospects provides cost-efficient access to capital for international companies, even those without a presence in Malta. Companies must satisfy certain eligibility criteria before embarking on the admission process and submitting the necessary documentation. The admission process usually takes between 4 and 12 weeks.

Prospects offers benefits to both investors and SMEs, as company capital can be generated against a low admission fee while increasing brand value and improving visibility in the market. Investors can be confident that investee companies are following transparency and good governance principles, and they get to participate in the huge growth potential of SMEs with an easy exit route through the trading of securities on a regulated platform.

For more information, contact:

Mr Luke Cann
Nexia BT, Malta
T: +356 2163 7778
E: luke.cann@nexiabt.com
W: www.nexiabt.com

Ukraine relaxes temporary residence permit rules to attract foreign investors

Ukraine is removing barriers that block foreign investment with the aim of making it easier to do business in the country.

Over the past few years, Ukraine has passed a number of reforms aimed at improving the business environment and making the country more attractive for foreign investors. In the World Bank's Ease of Doing Business rankings, Ukraine has risen from 112th place, in 2014, to 80th place in 2017.

In June 2016, the Government abolished the mandatory state registration of foreign investments, and in June 2017, foreign investors can now obtain temporary resident permits.

Previously, foreign investors were only allowed to stay in Ukraine for more than 90 days during a 180-day period if they were employed by the company. Now, foreign investors that hold substantial interest (at least €100,000) in a Ukrainian company but who are not employed by it can temporarily reside in the country on the grounds of having made an investment in the economy. A temporary residence permit should allow the founder or beneficial owner to spend enough time in Ukraine to help control the economic activity of his or her company.

To extend a temporary residence permit, foreign investors must be able to prove one of the following.

- At least three Ukrainian citizens must have been employed by the company for at least six months prior to submitting the application. .
- The company must have paid income tax of at least UAH 160,000 (equivalent to 50 minimum wages) in the financial year that precedes the application.

Residence permits for the founders or beneficial owners of Ukrainian companies are issued for a two-year term.

For more information, contact:

Kristina Onyshchenko
Nexia DK Auditors & Consultants, Ukraine
T: +38 067 670 2606
E: khrystynaonyshchenko@dk.ua
W: www.dk.ua

If you have any queries or require further guidance please contact the Nexia marketing team.

Nexia marketing team
Nexia International
71 Kingsway
London
WC2B 6ST
E: marketing@nexia.com
T: +44 (0)20 7436 1114

Nexia International is a leading worldwide network of independent accounting and consulting firms, providing a comprehensive portfolio of audit, accountancy, tax and advisory services.