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Vistra News

Edition 10 - October 2009

Vistra continues with Global expansion



We are now approaching the third anniversary of the launch of the Vistra brand on the 6th of November. During this time, Vistra has grown into a truly Global trust and corporate services provider. It is part of Vistra's strategy to continuously enlarge the network and further upgrade its service

offering, we therefore welcome **IK Investment Partners** as a shareholder of Vistra. IK is the ideal partner to take Vistra onto the next stage of its ongoing development.

In the previous edition of our Newsletter we discussed the future of **Swiss banking secrecy**. As Switzerland was formally removed from the grey list on Friday 25th September, we are pleased to provide you with an update.

Vistra Fund Services is our fund administration and fund formation division. Vistra Fund Services focuses on the administration of alternative funds specialising in private equity, property and hedge funds with complex or unusual investment policies or complex structures. In this newsletter we debate the **changing face of fund administration**.

We are proud to announce that Vistra has now opened an **office in Dublin**, which is able to provide a full range of corporate services.

Having a presence in Ireland is the result of identifying this jurisdiction as a major European inward investment location. The combination of no Irish transfer pricing legislation and an attractive low rate of tax at 12.5% has made Ireland a key location in international tax planning.

Finally we have a closer look at the **Private Trust Company** as a vehicle for estate planning. This structure is appealing to wealthy individuals who are eager to maintain an element of control over wealth and business interests across generations.

Bart Deconinck
Chief Executive Officer

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Vistra teams up with IK Investment Partners



We are proud to announce that IK Investment Partners has signed an agreement with a group of investors including Reggeborgh Groep to acquire a majority stake in Vistra. This transaction marks the next stage of Vistra's ongoing development.

As an investor with an active ownership strategy, IK is the ideal partner to take Vistra onto the next stage of its ongoing development. IK intends to fully support Vistra with both funds and hands-on assistance ensuring further growth, maintaining the high level of service which our clients are accustomed to. Importantly, the current management team remains in place and is still a significant shareholder. Our long-lasting client relationships will not undergo any changes and the whole team will continue to provide the same services as in the past, benefiting from the support and international reach of IK.

IK Investment Partners (formerly known as Industri Kapital) is a European private equity firm, having raised a total of EUR 5.7 billion, including EUR 1.7 billion in the latest fund IK2007. Since 1989, IK has invested in 68 European companies. The current portfolio encompasses 18 companies with a total turnover close to EUR 7 billion. IK invests mainly in mid-sized companies with strong cash flow and profit potential, operating in mature industries with fundamental underlying growth.

For more information on IK visit: www.ikininvest.com

Please download the complete Vistra / IK press release [here](#).

Swiss banking secrecy...update



On September 24, 2009 Switzerland and Qatar signed a new double taxation agreement (DTA) to include a provision on the exchange of information in accordance with the OECD standard. Following the Swiss Federal Council decision on 13 March 2009,

to adopt such standards, Qatar became the twelfth country with which Switzerland has signed a DTA containing the extended administrative assistance clause, following Denmark, Luxembourg, France, Norway, Austria, the United Kingdom, Mexico, Finland, the Faeroe Islands and the United States. Spain is considered to be part of this group, due to a special most favoured nation clause of the current treaty. Switzerland will very shortly sign such agreements with Japan, the Netherlands, Poland, and Singapore.

“Switzerland was removed from OECD “grey list” on September 25, 2009.”

As a result, Switzerland was removed from the OECD “grey list” on September 25, 2009. It is expected that Swiss voters will get the opportunity to approve or reject the new DTA formats in a referendum. Depending on the ratification process, the new agreements will enter into force on January 1, 2010 or January 1, 2011.

The adoption of the OECD standard on administrative assistance in tax matters, according to Article 26 of the OECD's Model Tax Convention, means that Switzerland shall in the future no longer distinguish between tax fraud and tax evasion.

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In this context it is important to note that this new practice will only apply to future double taxation agreements. As no Swiss laws will change, only the provisions of the relevant double taxation agreement are authoritative.

Therefore, any future administrative assistance by Switzerland for tax evasion may only take place according to the future provisions of new (re-)negotiated tax treaties. International standard practice forbids new double taxation agreements from taking retroactive effect.

In accordance with the provisions of said Article 26, the new treaties will not need to provide for any automatic exchange of information, which Switzerland and other financial centres (including the USA) formally reject. Administrative assistance will only be provided upon formal written request of a contracting state and only if there is justified suspicion that tax evasion or tax fraud has actually occurred. Fishing expeditions will not be allowed and the information requesting state will need to mention detailed evidence, such as the name of a specific bank and its location. Furthermore, it should be emphasised that a fundamental principle underlying Article 26 of the OECD Model Conventions is that "in formulating their requests, the requested state should demonstrate the foreseeable relevance of the requested information. In addition, the requesting state should also have pursued all domestic means to access the requested information except those that would give rise to disproportionate difficulties."

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The changing face of fund administration

The economic downturn has turned into a landslide for fund administrators. Gone are the days of minimal regulation, cross selling of banking products and the imposition of minimum fund sizes guaranteeing chunky fees for mediocre service. In short: Big is no longer beautiful.

After years of begging to be squeezed onto fund administration platforms handling only a select number of asset classes and enduring a service model that had not been designed with their interests in mind, fund sponsors are now looking for nimble and independent administrators with a firm focus on investor interests and flexible services able to run truly bespoke funds. Investors have changed too: disclosure and transparency, previously deliberately neglected, have become a focal point when designing funds and choosing managers and administrators.

But many administrators work from a standardised, transactional based, high-volume business model requiring their clients to operate their funds in similar ways. They specifically seek clients who are easily adapted to their existing systems and processes so as not to require any special services or treatment. The result is that fund managers with non-standard investment ideas or setups are either refused as potential clients or forced to change or adapt to what is available.

"Big is no longer beautiful."

Emerging funds and their managers have no infrastructure and, outside of their investment experience, operate in unknown fields such as law, accounting and regulations. Getting the right advice and the right price to navigate risks in these areas is therefore important to be able to get the fund off the ground. Most institutional administrators will also not consider providing services to smaller funds and with small credit lines having disappeared, the running of new or smaller funds cost-efficiently becomes a real challenge.

Overall it seems that a growing number of fund managers are unhappy with the services provided by larger fund administrators and are actively seeking smaller providers with better service levels. Going forward administrators will have to adapt their service model to provide a higher quality and more individual service. This involves more than just a systems platform.

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Experienced staff, well trained and committed to their clients; awareness of corporate governance issues and service ethic are equally important.

This will become more prevalent as the industry looks at solutions to avoid the mistakes of the past and safeguard investors' assets in the future. Managed account platforms for individual clients using multiple managers and combining fund administration techniques with a high degree of flexibility are only the first step to what will become a much extended service offering from fund administrators.

In memory of Jackie Goodwin.

For more information please contact Carola Breusch on +44 (0)1534 504 746.

Vistra opens an office in Dublin



We are pleased to announce that Vistra now has a presence in Dublin, which is able to provide a full range of corporate services.

Having a presence in Ireland is an important step in Vistra's sales and marketing plans and results from the identification of Ireland as a major European inward investment location. The combination of no Irish transfer pricing legislation and an historical low rate of tax at 12.5% have made Ireland a key location in international tax planning.

The recent commitments given by the Irish Government to maintain the 12.5% corporation tax rate, along with the recent measures announced in the Budget and enacted through the Finance Act 2009 (which was published on 3rd June 2009) have further increased this attractiveness.

Intellectual Property Tax Regime

For the first time Ireland has a broad tax relief that applies for the acquisition of intellectual property (IP).

“Ireland, a major European inward investment location.”

The new regime grants a tax deduction for capital expenditure incurred after the 7th May 2009 on the acquisition of qualifying IP assets. A company can write off the cost of capital expenditure incurred after the publication date on either:

- (i) specifically matching the tax deduction with the amortisation or depreciation charge included in the accounts, or
- (ii) over a 15 year period (at 7% per annum and 2% for year 15). This will allow companies the flexibility to elect the most favourable treatment relevant to their circumstances.

The definition of intangible assets is widely drafted and includes the acquisition of, or the licence to use:

- any patent, registered design, design right or inventions;
- any trade mark, trade name, trade address, brand, brand name, domain name, service mark or publishing title;
- copyright and know-how;

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- authorisation to sell medicines or product and rights derived from research undertaken (into the effect of the medicine or product carried out) prior to such authorisation;
- any licences in respect of an intangible asset referred to above;
- any “non-Irish” rights similar to those outlined above; and
- goodwill to the extent that it is directly attributable to the items set out above.

The existing tax reliefs available for patent rights and know-how acquisitions will remain available for another two years for new acquisitions. After this two year period, any acquisitions of patent rights and know-how will fall within the new IP tax regime.

Capital allowances are available against taxable income from managing, developing or exploiting the IP or from the sale of goods or services that derive the greater part of their value from the IP (and not against the income of any other activities). In addition, capital allowances cannot be used to completely shelter the relevant taxable income of a company. The maximum deduction allowable in any year is restricted to 80% of the relevant taxable income (excess capital allowances may be carried forward).

The acquisition of IP may be from third parties or connected parties. Where IP is acquired from an Irish group company, in order for the purchaser to claim capital allowances, capital gains tax group relief on the transfer must not be claimed. Certain anti-avoidance provisions have been included in relation to connected party transactions.

The legislation provides that there will be no recapture of the relief granted where disposal of the IP asset occurred after the 15 years, unless the disposal results in a connected company claiming capital allowances in respect of the IP. This relief is also subject to certain other anti-avoidance provisions.

Stamp Duty Intellectual Property Exemption

The Finance Act also provided a welcome announcement in relation to Stamp Duty on Intellectual property. The legislation exempts transfers and other disposals of certain intellectual property from the charge to stamp duty.

The changes to the stamp duty definition of intellectual property are being introduced to broadly align with the extended definition in the new intellectual property regime which we outlined above.

VAT Changes

A number of VAT consultation papers are currently being finalised, and will be legislated for in the near future with the measures taking effect by the 1st January 2010 in line with EU requirements. Among these items are:

- Changes in relation to who must account for VAT in relation to certain cross-border services
- Changes in relation to the place of supply of cross-border services
- As part of any anti-fraud measures VIES reporting requirements will be extended to include intra-EU cross border services
- To streamline recovery of VAT incurred by businesses in other EU member states certain administrative practices will change, as will filing deadlines.

Tax Treaties

Ireland has signed comprehensive double taxation agreements with 51 countries, of which 46 are in effect. The agreements cover direct taxes, which in the case of Ireland are income tax, corporation tax and capital gains tax.

The following is a summary of existing treaties and treaties currently being negotiated or re-negotiated:

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- A new agreement with Vietnam, which was signed on 10 March 2008, came into force on 24 December 2008 and is effective from 1 January 2009.
- New agreements with Macedonia and Malta, which were signed on 14 April 2008 and 14 November 2008 respectively, came into force on 12 January 2009 and 15 January 2009, respectively. Both treaties will come into effect on 1 January 2010.
- New agreements with Turkey, Georgia and Moldova were signed on 24 October 2008, 20 November 2008 and 28 May 2009, respectively. Legal procedures to bring the new agreement with Turkey into force were completed by Ireland in December 2008: if as is expected legal procedures are completed by Turkey in 2009, this agreement will come into effect in 2010.

The legal procedures to bring the new agreement with Georgia and Moldova into force are currently being followed.

- Negotiations for new agreements with Albania, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia Herzegovina, Kuwait, Morocco, Saudi Arabia, Serbia, Thailand, United Arab Emirates and for a Protocol to the existing treaty with South Africa have been concluded and are expected to be signed shortly.
- Negotiations for new agreements with the following countries are at various stages: Argentina, Egypt, Montenegro, Singapore, Tunisia and Ukraine.
- Negotiations are at various stages for the revision of existing agreements with Cyprus, France, Germany, Italy, Korea and Pakistan.

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Spotlight on...Private Trust Companies in Jersey



A private trust company ("PTC") is a privately owned incorporated Jersey or non-Jersey company that operates as a trust company. It does not, however, offer public trustee services but instead acts as the appointed trustee of a specific trust or a related group of trusts - usually for a particular family, for specific philanthropic objectives or for a common settlor.

“ An attractive planning alternative to traditional trust services. ”

Under Jersey law, a company that functions as a PTC in Jersey will be entitled to an exemption from the normal regulatory requirements, subject to the company meeting three criteria:

1. its purpose is solely to provide trust company business services in respect of a specific trust or trusts;
2. it does not solicit from or provide trust company business services to the public;
3. its administration is carried out by a registered person registered to carry out trust company business.

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When establishing a PTC, the only formality that needs to be followed is to notify its name to the Jersey Financial Services Commission (JFSC). Reliance upon the exemption does not require any additional consent or enquiry and a PTC can be established on a fast-track basis in Jersey within 24 hours. Furthermore, there is no requirement for a PTC's memorandum and articles of association to reflect the fact that the company is acting as a corporate trustee or to stipulate details of the trusts that it will act as trustee of. In addition there is no requirement to file accounts or any other information, thus making it a discreet, private structure.

If a Jersey company is utilised as a PTC it will of course be necessary to divulge details of the ultimate beneficial owners of the company, plus details of the trusts that it will act as trustee of, to the JFSC.

Ownership Structure

When establishing a PTC structure, particular thought must be given to the ownership arrangement, administration and board composition of the PTC. Whilst the ownership of a PTC is flexible, it is likely that it will be primarily influenced by tax considerations. Other factors, such as confidentiality issues, personal circumstances, family disputes or succession planning may also require consideration.

Since direct personal ownership of a PTC is often not feasible, private foundations or purpose trusts (either charitable or non-charitable) are frequently preferred alternative ownership vehicles.

It is significant to note that pursuant the new Foundations (Jersey) Law 2009 it is now possible for a Jersey foundation to own a PTC. As an alternative ownership method, purpose trusts can be created without any formality and allow the PTC to be owned by a distinct "orphan" structure.

As ownership vehicles for PTCs, purpose trusts do pose some risk, particularly where the trust's

purpose and asset are identical, i.e. to hold and own shares in a PTC. If the purpose of a purpose trust is not distinct from the asset it could be invalid and therefore likely to be challenged. By contrast however, foundations do not have any such requirement which may mean that they could provide a more robust ownership structure for a PTC.

Advantages

The possible uses of PTCs are considerable, making them a highly flexible and appealing alternative for high net worth families to the more traditional trust structures. PTCs may simultaneously have both commercial and charitable objectives which gives added advantages.

“ It is now possible for a Jersey foundation to own a PTC. ”

Since they are generally more costly to establish it is arguable that PTCs are really only a feasible alternative in circumstances where higher assets values are concerned. Such families can utilise a PTC to consolidate the administration of multiple trusts, each for distinct purposes, thereby conveniently managing and preserving family wealth over generations and planning effectively for the future ownership of family business interests. A PTC will ensure greater family control over the family trusts and, often most importantly, the management of the trusts' underlying investments. In addition, PTCs can provide an ideal framework in which to introduce younger family members into the family business and to the disciplines of wealth administration. By controlling all or part of the management of the family trusts, ongoing trustee fees can also be managed to some extent and confidentiality improved. Furthermore, the trustee's decision making process will generally be more rapid than in a traditional trust arrangement.

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The PTC structure is not only advantageous to the family for whom it is established. From the perspective of a Jersey person registered to carry out trust company business, PTCs offer flexibility and alternatives not normally found within more conventional trust structures. This is particularly evident when the board of the PTC determines how to invest and utilise the trust assets.

It is evident that a PTC structure may perhaps allow trust investments to be of a more risky nature or to be less diversified given the family's decision making abilities in this regard. The PTC board may elect not to take investment advice or may occasionally favour one beneficiary over another depending upon the family circumstances or requirements from time to time.

Conclusions

In summary therefore, PTCs offer high net worth families an attractive planning alternative to traditional trust structures for both their private wealth management needs and philanthropic objectives. They are generally appealing to wealthy clients who are eager to maintain an element of control over wealth and business interests across generations.

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