

PwC alternatives*

volume 3 no. 1

Insights for the private equity and hedge fund communities

In this issue:

Japan: Proposed 2008 Japanese tax reforms— independent agent exemption	1
Mexico: Mexican Congress approved the new Mexican Flat Tax	2
Germany: 2008 Tax Reform Bill enacted	8
United Kingdom: Revised version of Statement of Practice 1/01 released	10
China: Circular on double tax arrangement between Mainland China and Hong Kong	12
Singapore: New framework replaced the 80:20 rule	14
Netherlands: Recent tax developments.	16
India: Recent developments on Participatory Notes	18
Latin America: Alternative investment funds flourishing	21

Japan

by Ray Kahn and Oscar Teunissen

Proposed 2008 Japanese tax reforms— independent agent exemption

On December 13, 2007 the Liberal Democratic Party (LDP), the majority party in the Lower House of the Diet, released its proposal for tax reforms to be enacted as of April 1, 2008.

A particular item of interest to the fund industry is a proposal that an independent agent exception be created to allow Japan-based investment managers to manage client funds without exposing the clients to Japanese taxation from such management. The proposed change is to amend Japanese domestic law and introduce an “independent agent exemption” to the dependent agent permanent establishment (PE) rules. It is anticipated that this independent agent exemption may be broadly in line with established OECD Model Treaty precedents and is consistent with the Financial Service Agency’s stated objective over the past several months of providing some type of tax relief for funds managed by Japan-based fund managers. No further details with regard to this proposal have been released.

While the change applies generally, the proposal is very welcome news for Japan’s fund industry. For example, it may allow nonresident funds (and consequently their investors) to trade in Japan without creation of a PE, assuming the Japan-based fund advisor/service provider meets the independent agent exception. Unlike other fund management centers (UK, Singapore and Hong Kong, for example), which have been successful in attracting and nurturing advanced fund management centers, current Japanese tax rules do not have a safe harbor trading rule or otherwise allow nonresident funds to trade in Japan. Accordingly, fund managers have been required to restrict the range and scope of activities that could effectively be undertaken in Japan without unduly subjecting the offshore fund (and its investors) to Japanese taxation.

At this point, the scope of the independent agent exemption has not yet been clarified. Thus, it is unclear both as to the types of investment managers that can qualify as independent and as to the types of investments within its scope. The legislation is likely to take effect on or after April 1, 2008.

The LDP’s proposal contains several changes of interest to the financial services community, which will be described in a future issue of *PwC Alternatives*.

Mexico

by Fred J. Barrett, John A. Salerno
and Oscar Teunissen

A summary of Mexico's new "Flat Tax" regime

Mexico's new Flat Tax regime

On October 1, 2007, following approval by the Mexican Congress, the new "Single Rate Business Tax" (IETU, for its acronym in Spanish) was published in the Mexican Official Gazette. This article highlights some of the more salient aspects of the new IETU regime, including its potential impact on multinationals doing business in Mexico.

The IETU is often referred to as the "Flat Tax," although this term is something of a misnomer. In this article, we refer to this new tax as the Alternative Minimum Tax—AMT—or as the IETU. It is important to note that the existing Asset Tax has been repealed and replaced by the IETU.

Mexican resident taxpayers and permanent establishments generally will be required to pay the higher of the current income tax or the new AMT. The AMT is calculated independently from the regular income tax determination, and, if the AMT computation yields a higher amount, the difference between the two is considered to be the AMT for the taxable year. The AMT is added to the regular income tax to determine the total tax due.

IETU computation

The IETU base (or IETU taxable income or loss) is generally calculated by netting the following inflows and outflows:

Inflows:

- A. Cash collected from the sale of assets, including inventory and other assets;
- B. Cash collected from independent services;
- C. Cash collected from rental of property.

Outflows:

- A. Cash payments for purchases of assets;
- B. Cash payments for services;
- C. Cash payments for the rental of property.

If the IETU base resulting from this calculation is a positive number, it is multiplied by the IETU rate of 17.5 percent¹, and the result is the "initial IETU" amount.

Negative IETUs and carryforwards

On the other hand, if the IETU base is a negative number, then it is multiplied by the 17.5 percent rate and the result carried forward as a credit on IETU net operating losses to reduce the initial IETU amount in the next 10 succeeding taxable years. Alternatively, the taxpayer has the option of using the credit on IETU net operating losses to reduce the regular income tax for the same year in which the credit originated. In this case, the credit on IETU net operating losses may reduce the net regular income tax owed, and the taxpayer may carry forward any remaining unused credit amount for the same 10-year carryforward period, although the carryforward credit may offset only future IETU amounts.

The value of these carryforwards is limited, since they would offset the initial IETU amount in the carryforward year, without considering the amount of regular income tax paid in the carryforward year.

As an example, assume that, in year one, a taxpayer has an IETU credit of \$200 and regular income tax of \$100. The taxpayer may use \$100 of the IETU credit in year one to reduce the regular income tax to zero, and would still have a \$100 (\$200 minus \$100) IETU credit carryforward to year two. Assuming that, in year two, regular income tax is \$100 and the initial IETU is \$100, no net IETU would be owed in year two. In this case, the entire IETU credit

¹ Transitional rates of 16.5 percent and 17 percent apply in 2008 and 2009, respectively.

carryforward would be deemed to have been used to offset the initial IETU in year two, even though the IETU credit carryforward did not result in a net reduction of tax in year two.

Certain other tax credits can reduce the initial IETU amount and are covered below.

Special issues in IETU computation

Dividends, capital gains and losses from the sale or transfer of shares and interest inflows and outflows are excluded from the computation of the IETU taxable income or loss. However, special rules apply for interest income and financial institution expenses.

In addition, royalties received from, or paid to, related parties are excluded from the inclusion or reduction of the IETU taxable income or loss.

Moreover, the method of accounting for the recognition of inclusions in, or reductions from, the IETU base is the cash-basis method. Salaries, wages and employer Social Security contributions are not deductible in determining the IETU base. In addition, no depreciation or amortization is allowed to reduce the IETU base, except in limited amounts under a transitional rule discussed below.

While salaries and wages do not reduce the IETU base, another IETU credit (i.e., a reduction from the initial IETU amount) is permitted as a percentage of taxable salaries and wages, as long as the applicable payroll income tax withholding has been properly remitted to the government. The credit is determined by multiplying these salaries and wages by the IETU rate (i.e., 16.5 percent in 2008; 17 percent in 2009; and 17.5 percent after 2009). This salary and wage credit effectively results in a deduction of salaries and wages from the IETU base. Nontaxable salaries and wages do not provide a benefit for IETU, and this portion of compensation is usually significant in Mexico, especially when low-cost labor is used. It is not unusual for nontaxable salaries and wages to make up 20 percent of these employees' total compensation.

Similarly, Social Security contributions do not reduce the IETU base, but an IETU credit is permitted for employer Social Security contributions paid within the taxable year. The credit is determined by multiplying these Social Security contributions by the IETU rate (i.e., 16.5 percent in 2008; 17 percent in 2009; and 17.5 percent after 2009). This credit also effectively results in a deduction of Social Security contributions from the IETU base.

Regular income tax net operating loss carryforwards do not offset the IETU base in the income tax carryforward years. Additionally, the excess of IETU over the income

tax of a given year does not offset the income taxes in future periods. Once determined, the IETU should be viewed as a permanent additional cost.

While depreciation is not allowed, the entire purchase price of depreciable or amortizable assets would reduce the IETU base when paid. Similarly, the purchase price of inventories reduces the IETU base when paid rather than when the assets are sold.

Transitional rules

There are several notable transitional rules.

First, one-third of the cost of new depreciable assets acquired between September 1, 2007 and December 31, 2007 will be allowed as an effective reduction of the IETU base for the three years beginning in 2008 (i.e., 2008, 2009 and 2010).

Second, depreciable assets purchased between January 1, 1998 and December 31, 2007, other than assets given the treatment mentioned in the previous paragraph, will provide a limited benefit for IETU purposes. Five percent of the net adjusted income tax basis of these assets as of December 31, 2007, multiplied by the IETU rate, will serve as an IETU credit each year for a 10-year period beginning in 2008. This means that 50 percent of the depreciable basis of those assets is effectively lost for IETU purposes.

Because the Mexican Asset Tax was repealed with the enactment of the IETU, another transitional rule applies for companies having Asset Tax carryforwards from prior years as of January 1, 2008. The Asset Tax Law allowed a 10-year carryover of excess Asset Tax over the income tax. An income tax credit will be available in any given year after 2007 to the extent the income tax in that carryforward year exceeds the lowest unrecovered Asset Tax for calendar years 2005, 2006 and 2007. However, use of the Asset Tax carryforward is limited to no more than 10 percent of the cumulative unrecovered Asset Tax as of December 31, 2007. This limitation will significantly restrict the use of Asset Tax carryforwards in many cases, and a large portion of the Asset Tax credit carryforward may expire prior to its use.

No transitional rule has been provided for inventory on hand as of December 31, 2007, although the preamble to the IETU bill indicates that this issue is left for the Executive Branch to resolve, presumably through a modification of the bill, a Presidential Decree or some other mechanism.

Differences between the IETU and common taxation practices

Under the IETU, several existing subsidies, such as the income tax credit for maquiladoras, research and development tax credits and cinema income tax credits, would effectively be eliminated for many companies since these income tax credits are not included in IETU computations.

In any given year, IETU computation can result in significant deviations from regular income tax and accounting recognition. For example, income tax and accounting recognition of large plant expansions would normally be spread over a number of years. In the case of a sale of a division, this might generate a very large permanent IETU, since gross proceeds are taxed without deductions under the IETU law.

Another difference with common practice includes the requirement that the IETU be computed on a cash basis, although most corporations (except professional service corporations) report on an accrual basis for income tax purposes.

In addition, fluctuations in inventory levels may have an important impact on the difference between IETU computation and customary accounting and income tax treatment, since the income statement effect is recognized upon the sale of inventory for accounting and tax purposes. This can result in significant swings in taxes, and could result in a permanent cost if not properly anticipated.

Concerns for U.S. taxpayers

Not surprisingly, the IETU legislation generally may result in an increased tax burden for Mexican taxpayers. In spite of this, it is not clear that the IETU would be creditable for foreign tax credit purposes by foreign investors, including those based in the U.S.

The main concern for U.S. taxpayers is that several items used in the determination of taxable income for U.S. federal income tax purposes are excluded from the IETU base. For example, interest and related-party royalty payments are not included in IETU calculations, yet they are important elements in the determination of taxable income in the U.S. In addition, salaries and wages are not deducted from the IETU base, although they are deducted for purposes of determining U.S. federal income tax liability. It may be possible to overcome the salary and wage deductibility issue since there is an equivalent credit against the IETU, although the proportion of nontaxable salaries and wages is significant in Mexico, and no equivalent deduction is available under the IETU.

The differences pertaining to nontaxable employee benefits may influence the determination in the U.S. The use of cash-basis computation also may affect the foreign tax credit determination, although this may be merely a timing issue that by itself may not affect U.S. creditability. In addition, the fact that both taxes may be paid in the same year does not help a potential argument that the IETU would be eligible for credit “in lieu of an income tax” under U.S. law. The U.S. Treasury reportedly is actively evaluating this issue and expects to address it, perhaps through a mutual agreement procedure. At present, there is optimism that the IETU may eventually be viewed as creditable for U.S. foreign tax credit purposes, although a final determination is unclear.

Even if the IETU were to be deemed creditable for foreign tax credit purposes in other countries, an effective tax rate in Mexico which exceeds the foreign income tax limitation may become a permanent additional cost for foreign investors and, therefore, a review of the estimated effects is merited in light of these new provisions.

The tax accounting recognition of the new legislation also should be reviewed. For example, companies with net operating loss and Asset Tax carryforwards that previously had recognized a deferred-tax asset on the balance sheet accounts may need to make valuation adjustments to recognize additional uncertainties about their realization. Other issues may arise if the new IETU is considered an income tax for purposes of the authoritative accounting literature (e.g., FAS 109 for U.S. purposes). If taxpayers will consistently be in an IETU position, all deferred accounts may need to be reviewed and revised on enactment date to replace deferred income tax accounting balance with deferred AMT accounting balances. This could affect current-year income statements. Moreover, IETU credits (salary, Social Security, etc.) require analysis to determine whether relevant balance sheet amounts (e.g., accrued salaries and bonuses) should be accounted for as temporary differences or whether they should be reflected as special deductions in the year such credits are generated for IETU purposes.

Many financial accounting advisors believe that this AMT should be considered an income tax for purposes of FAS 109 under U.S. generally accepted accounting principles, notwithstanding the treatment for U.S. foreign tax credit purposes.

(See additional article on U.S. tax creditability, below.)

Relationship to the Value-Added Tax

The foreign tax concerns beg the question: “What is the nature of the tax from a Mexican perspective?” The IETU has some attributes of an income tax in that certain

items are included in or deducted from both taxable income and IETU income or loss, albeit in different reporting periods. On the other hand, the Mexican system also has a Value-Added Tax (VAT), which has many of the same attributes of the IETU, although the tax is imposed differently.

The VAT is imposed on taxpayers who carry out any of several activities in Mexico, including selling of goods and property; rendering independent services; granting temporary use of goods (e.g., leasing) or importing goods or services.

The general VAT rate is 15 percent; however, a 10 percent rate is generally applicable if the taxable transaction takes place in certain areas along international borders. In these transactions, the VAT is “transferred” to the other party. Typically, a seller of goods will collect from the buyer an amount covering the price of the goods plus the VAT on the purchase price. The seller normally files VAT returns and remits the tax collected on a monthly basis, after making credits allowable under Article 4 of the VAT law.

VAT taxpayers are normally responsible for the VAT they charge to customers, less the VAT they paid for their own purchases of goods or materials. The VAT on revenues over the expenses at each stage, or value-added, should result in a net VAT that is remitted. In Mexico, the VAT is triggered on a cash basis and is charged to customers based on the gross sales price. Depreciation is not part of the VAT system, nor does the VAT typically apply to interest and wages.

As a result, the VAT base and triggering events are practically identical to the IETU. In addition, the VAT taxes imports in a way that is designed to tax inputs when the seller or supplier is not in Mexico. One of the main differences between the IETU and the VAT is that the latter is transferred to the ultimate consumer, and this is why it is considered an indirect tax. The taxpayer collects the VAT from the customer and remits the VAT on its collected revenues over the VAT it pays on expenses (either to suppliers or the customs authority upon import) to the government, while the IETU is paid completely by the taxpayer directly to the government on a net basis. Generally, the AMT will be passed along to the ultimate consumer, as taxpayers will need to charge a higher price to cover the IETU.

The similarities between the IETU and the VAT do not by themselves affect the determination of the U.S. foreign tax credit determination and the accounting determination. However, it provides clues as to how the IETU originated, and is clearly oriented toward collecting taxes based on consumption, presumably to widen the tax base.

Conclusion

This new tax brings new challenges and opportunities, and will make the tax system much more complex. At this stage, it is important to understand the technical provisions and to determine how the tax may affect taxpayers in their specific circumstances, thereby enabling them to establish mechanisms to mitigate any potentially negative effects.

Presidential Decree addressing new Mexican Flat Tax may benefit certain taxpayers

The new Mexican Flat Tax has triggered some concern due to its expected impact on Mexican business.

In an effort to address some of these concerns, the Mexican Executive Branch issued a Presidential Decree on November 5, 2007. The Decree, which is effective January 1, 2008, grants relief to specific categories of taxpayers, such as those that operate in the Maquiladora industry, those with significant inventory on hand and real estate developers.

The following is a summary of the more salient aspects of the Decree.

Maquiladora industry

In principle, the Flat Tax should yield an effective tax rate of 17.5 percent (16.5 percent in 2008 and 17 percent in 2009) on taxable income as determined under any of the existing transfer pricing methodologies of the Mexican Income Tax Law relative to Maquiladoras (i.e., the safe harbor or self-assessment options for determining taxable income). However, the Decree provides Maquiladoras with an additional credit against the Flat Tax.

Taxpayers desiring to use the “cost plus” self-assessment option to determine the taxable income floor for purposes of calculating the credit would need to adjust the return on foreign-owned assets to 1.5 percent (in lieu of the regular income tax rule of 1 percent) in order to compute the credit they are due.

This Maquiladora tax credit will be available from 2008 to 2011.

Inventory as of December 31, 2007

Taxpayers with inventory on hand at December 31, 2007 will be entitled to an additional credit against the Flat Tax. This credit will equal 6 percent of the inventory balance on that date, multiplied by the Flat Tax rate. This credit will be available over a 10-year period starting in 2008, with inflationary adjustments permitted in the credit's computation.

The inventory balance at December 31, 2007 must be determined in accordance with inventory valuation methods allowed for Mexican income tax purposes, and will include land if it is held as inventory in the ordinary course of the taxpayer's business (e.g., land held by real estate developers).

Net operating losses triggered as a consequence of accelerated depreciation and/or deduction of land

There will be an additional Flat Tax credit for unamortized net operating losses (for regular income tax purposes) generated in calendar years 2005, 2006 and 2007 and available at December 31, 2007. This credit will be available to the extent that the net operating losses are made up of accelerated depreciation (lump-sum deductions) and/or deductions of land, in the case of real estate developers.

The credit will be allowed for a 10-year period, starting in 2008, calculated each year by multiplying 5 percent of the following amounts by the Flat Tax rate:

1. The excess of the accelerated depreciation claimed on assets acquired during 2005, 2006 and 2007, over the regular depreciation, computed in accordance with the provisions of the Mexican Income Tax Law.
2. The income tax deduction attributable to land acquisitions (where the land is developed for sale by real estate developers) made in 2005, 2006 and 2007.

The resulting credit will be spread over a 10-year period starting in 2008.

This rule will not apply to any new assets acquired between September 1, 2007 and December 31, 2007 for which the election has been made to amortize the cost of those purchases on a straight-line basis over three years.

Installment sales

Taxpayers who entered into installment sale agreements (which defer taxable income for regular income tax purposes) prior to 2008 will not be subject to the Flat Tax on installment income collected after 2008 to the extent that the regular income tax calculation (for purposes of comparing this amount to the Flat Tax) is determined without including the installment sale income.

Additional deduction for taxpayers who transact primarily with the general public

A transitional rule currently disallows a Flat Tax deduction in 2008 for payments relating to inventories acquired prior to 2008. However, for those taxpayers that derive at least 80 percent of their income from transactions with the general public, the Decree allows a deduction for accounts payable that arise between November 1, 2007 and December 31, 2007 on the acquisition of finished goods (excluding fixed assets). However, the finished goods should not be in the balance on December 31, 2007 (i.e., the goods must have been sold prior to that date).

Update on the creditability of the Mexican Flat Tax

The new Mexican Flat Tax has triggered concern regarding its creditability for foreign tax credit purposes in a number of jurisdictions. Below are some recent developments.

United States

In December 2007, the U.S. Internal Revenue Service (IRS) announced in Notice 2008-3 that it is investigating whether the IETU is a creditable income tax under the U.S.-Mexico income tax treaty. The IRS will examine whether the provisions, design and full operation of the IETU, including its interaction with Mexico's regular income tax, make it a creditable income tax. Pending the completion of this study, the IRS will not challenge a taxpayer's position that the IETU is an income tax that is eligible for a credit under the treaty.

Notice 2008-3 is effective for the IETU paid or accrued on or after January 1, 2008. Any change in the foreign tax credit treatment of the IETU as a result of the study will be prospective, and apply solely to the IETU paid or accrued in taxable years beginning after the date on which any further guidance is issued.

It appears that the IRS incorporated the language in the notice so that taxpayers may claim foreign tax credits for IETU taxes paid for financial statement reporting purposes. Any such determination would need to be made by a company's independent auditors.

On a related note, the Mexican Ministry of Finance and Public Credit (known as SHCP, the acronym of its name in Spanish, *Secretaría de Hacienda y Crédito Público*) issued a press release on December 10, 2007 stating that it will work with U.S. officials to provide any information needed to complete the IRS study.

Other countries

In the same December 10, 2007 press release, SHCP announced that Australia, Austria, Barbados, Belgium, Canada, the Czech Republic, Denmark, Ecuador, Finland, France, Germany, Iceland, India, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, South Africa, Spain and the United Kingdom have accepted the IETU as an income tax under their respective tax treaties.

Germany

by Stefan Brunsbach, Hans-Martin Eckstein
and Oscar Teunissen

2008 tax reform passed

The 2008 Tax Reform Bill was enacted on August 18, 2007. The bill seeks to spur investment in German businesses by reducing the country's corporate tax rates, currently among the highest in Europe. The tax cuts are to be paid for partly by reducing certain tax deductions and establishing incentives for businesses to file their taxes in Germany rather than abroad.

Among the most noteworthy measures in the bill are the reduction of corporate tax rates, a new interest-capping rule, an amended change-of-control rule and new transfer-pricing legislation.

The following is a summary of key elements that are particularly important to businesses operating or investing in Germany.

Reduction of tax rates

The corporation tax rate will be reduced from 25 percent to 15 percent. The solidarity surcharge of 5.5 percent would still be levied on the corporation tax.

The trade tax base rate would be reduced, since the taxable income for trade tax purposes will now be multiplied by 3.5 percent instead of 5 percent. Depending on the local rate as determined by the municipality, the effective trade tax rate will amount to between 7 percent and 17.5 percent, with a national average of about 14 percent.

The average effective overall tax rate for a German corporation is expected to be approximately 29.8 percent.

Introduction of interest-capping rule

A new interest-capping rule will replace the current German thin capitalization rule, including the anti-debt push-down legislation.

The interest-capping rule will limit tax relief for net interest expense to 30 percent of the taxable income before (net) interest expense, taxes, depreciation and amortization. Interest disallowed under the interest capping rule can be carried forward indefinitely and increases the interest expense in the subsequent years (which is subject to the 30 percent limit).

The interest-capping rule will not be applicable if one of the following three alternative escape clauses is met:

- Net interest expense is less than EUR 1 million, or;
- The German business is not part of a consolidated group of companies, or;
- The German business is part of a consolidated group and the equity ratio (i.e., adjusted equity in relation to the adjusted balance sheet total) of the German business is not lower than the equity ratio of the group (the "equity test"). The relevant accounting standard for the equity test is generally the International Financial Reporting Standards (IFRS). Alternatively, the generally-accepted accounting principles (GAAP) of a European Union member state or U.S. GAAP accounts could be used where no IFRS accounts are available. In addition, the equity test requires that no harmful financing, as defined in the code, is in place in the consolidated group.

Change-of-control rule

The German change-of-control rule will be tightened. For transfers after December 31, 2007, the restriction of the tax loss carryforwards will depend only on a direct or indirect change of control in a corporation.

The direct or indirect transfer of more than 25 percent but no more than 50 percent of the shares or voting rights in a corporation to one acquirer or person(s) related to the acquirer or a group of acquirers with a common interest

within five years would result in a *pro rata* forfeiture of the tax loss carryforwards. The transfer of more than 50 percent of the shares or voting rights will result in a forfeiture of 100 percent of the tax loss carryforwards.

The rule also applies in the same manner to carryforwards of capped interest expense.

The State Council expressed its concern, and stated its expectation, that the German government would adjust the rule in a separate tax bill. This will be true for innovative start-up companies as they would lose all of their (start-up) losses when more than 50 percent of the shares are transferred to a new equity investor.

Trade tax changes

Trade tax no longer will be recognized as a tax-deductible expense, which is a change from current tax law.

Unless already denied under the interest-capping rule, 25 percent of certain financing costs (e.g., all interest on short- and long-term debt that relates to the business) will not be tax-deductible for trade tax purposes.

Transfer-pricing legislation

The new transfer-pricing legislation includes regulations on the method of determination of the transfer price. According to the law, transfer prices shall be determined primarily using the comparable uncontrolled-pricing method, resale price method and cost-plus method.

Furthermore, the bill introduces regulations on the transfer of functions. For the transfer of functions (including opportunities and risks), a valuation needs to be performed for the whole “Transfer Package” based on its profit potential. The valuation may need to take into account the expected synergies for the recipient of the function.

The transfer pricing documentation for significant transactions will have to be provided within 30 days (instead of 60 days, as under current law) upon the request of the German tax authorities.

Withholding tax on dividends

The withholding tax rate on dividends generally will be increased from 20 percent to 25 percent starting January 1, 2009, with a 5.5 percent solidarity surcharge. However, companies subject to German tax as nonresidents are entitled to a refund of 40 percent of the withholding tax (i.e., 40 percent of 25 percent equals 10 percent, resulting in an effective withholding tax rate of 15 percent, again plus the solidarity surcharge). The withholding tax could be further reduced or eliminated under a respective double-tax treaty or the EU Parent Subsidiary Directive.

Miscellaneous changes

Further changes include:

- Changes in the taxation of partnerships and their individual partners;
- Repeal of the declining-balance method of depreciation.

Entry into force

In general, the proposed rules would become applicable for the first time in financial years *ending* in 2008, i.e., for companies with a nonfiscal year, the rules will apply already for the first fiscal year ending in 2008. The new change-of-control rule will apply to transfers after December 31, 2007. The interest-capping rule will become applicable for the first time for financial years starting after May 25, 2007 (the date of the final vote of the parliament) but not ending before January 1, 2008.

United Kingdom

by Robert Mellor and
Oscar Teunissen

Investment management revised Statement of Practice 1/01

In July 2007, United Kingdom HM Revenue and Customs (HMRC) released a revised version of Statement of Practice 1/01 (SP1/01). This revision addresses many concerns raised by the rapid development of the alternatives fund industry and gives UK managers greater certainty in key areas related to the investment manager exemption (IME).

Clarification of the IME's applicability is important because of its role in improving the competitiveness of UK fund managers. Under the IME, offshore funds may use UK-based firms to trade in select investments within the UK without being subject to UK taxation.

Overview

Following an industry-initiated consultation process, HMRC has affirmed its commitment to supporting the UK investment management industry's continued growth. PricewaterhouseCoopers has played an active part in this process via the Alternative Investment Management Association's tax committee.

The updated guidance is meant to ensure that:

- Nonresident investment funds can be managed from the UK without the risk of the fund being subject to UK tax on its profits; and,
- The profits earned by UK resident investment managers are brought into charge to UK taxation.

Despite many successes, the industry did not obtain all the changes it was seeking, such as a complete redefinition of "investment transaction." However, HMRC has made it clear that this is an ongoing process and that the revised statement of practice provides an interim solution to a number of issues, pending changes to primary legislation.

These necessary legislative changes have very recently been highlighted in the Pre-Budget Report (PBR), announced by the Chancellor on October 9, 2007. The

PBR notes two specific amendments to the IME which are in the government's pipeline:

- Alignment of the definition of investment transaction with the FSA definition of regulated activities; and,
- Removal of what is referred to as the "cliff edge" application of the IME and hence a transition to a deal-by-deal focused test.

We will need to wait and see what the draft legislation brings in regard to these proposed PBR changes.

The changes in relation to SP1/01 are already active and the key points of the revised guidance are summarized below.

Trading vs. investment

The guidance and case law on what constitutes trading versus investment has historically had little or no relevance to the financial services industry; therefore, comparisons within the industry typically have been sought. Hence short-selling, which historically has been associated with banks and market makers, has been taken as indicative of trading activity. Given that a large number of alternative funds use short-selling, the prudent assumption has been that the funds were trading. The statement of practice makes it clear that the active management of an investment portfolio does not constitute a trade, that HMRC views short positions as conceptually the same as long positions and that neither short-selling nor taking synthetic positions are in themselves indicative of trading. This suggests that funds which to date have relied on the IME to provide protection from UK taxation may not need to do so. Further, there is a clear policy decision that remuneration in any form received by a fund for the provision of services must be taxed in the UK if the services are provided from the UK. This can be taxed in the fund, a subsidiary of the fund or the UK investment manager.

Investment transactions

The changes to the interpretation of investment transactions will make it significantly easier for some funds, especially those employing debt-related strategies, to be advised from London. This was an area which was specifically raised by PricewaterhouseCoopers and where we have led the discussions with HMRC.

HMRC also has reconfirmed that inadvertent or minor breaches of this requirement will not cause a fund to fail the IME, provided the profit is taxed in the UK. However, HMRC also made it clear that it will review breaches of the investment transaction requirement, including factors such as the intentions of the parties and the reason for the breach. Consequently, HMRC may not, for example, view sympathetically a series of failures due to the lack of an effective internal control system.

Independent agent test

Under the revised guidance, the independent agent test will be satisfied provided a fund becomes a widely held collective fund within 18 months of launch or is genuinely being marketed to third-party investors. In this respect, HMRC has listened to the comments made by the industry during the consultation period so that the guidance now provides the certainty which the industry sought in this test.

Customary rate test

Another key change is to the customary rate test. HMRC has made it clear that this is a transfer pricing test to be governed by the OECD Transfer Pricing Guidelines. HMRC has also said that all fund managers seeking to rely on the IME will require transfer pricing documentation to support their pricing methodology.

HMRC has further confirmed that, where the appropriate documentation is in place, an adjustment to a fund manager's tax return should not result in the customary rate test being failed. No such assurances have been given where fund managers fail to properly document their pricing policies.

Another area which will be relevant to U.S.-owned groups is that HMRC has clarified that fees/allocation should be recognized for UK tax purposes when earned. This means that any deferral of fees will have to be ignored when assessing the remuneration due to the UK entity. Further, the deferral could be either a loan to or an investment in the fund which may need to be taken into account when considering the 20 percent test. HMRC has confirmed that profit or incentive allocations are fees for services and can be treated as such for the purposes of the 20 percent test, provided they are treated as income for the purposes of the customary rate test.

Effective date

The revised statement of practice is effective immediately, with a grace period until December 31, 2009 to allow managers time to review their current structures.

China

by Michael Ho, Todd Landau and Oscar Teunissen

Interpretation and implementation notice for double tax arrangement between Mainland China and Hong Kong

On April 4, 2007, the State Administration of Taxation of China released a Circular, entitled Guo Shui Han (2007) 403 (Circular 403), to provide interpretation and implementation guidelines, from a Chinese tax perspective, on the August 2006 comprehensive tax arrangement for the avoidance of double taxation (New DTA) between Mainland China and the Hong Kong Special Administrative Region (Hong Kong). Circular 403 also provides helpful guidance regarding China's interpretation of similar provisions in other treaties.

Circular 403 provides interpretation and implementation guidelines for the New DTA between Mainland China and Hong Kong. Circular 403 also states that it shall be applicable to other tax treaties that Mainland China has concluded with other countries or regions if the contents of the relevant articles are the same and if no other interpretation and implementation guidelines have previously been provided. Therefore, Circular 403 should be of great interest to Hong Kong tax residents and also to those of other tax treaty countries or regions.

The following appear to be among the most important points raised by Circular 403.

Permanent establishment

Under the New DTA, a Hong Kong enterprise shall be regarded as having a permanent establishment in China if it has provided services in China for more than six consecutive months or six cumulative months in any 12-month period.

Circular 403 provides that when evaluating if services have been performed in China for "six consecutive or cumulative months in any 12-month period," the entire period starting from the first month when the first employee arrives in China until the last month when the last employee leaves China should be counted. For these purposes, it is permissible to exclude a period or

periods in which the relevant employees are absent from China (e.g., any period of 30 consecutive days in which an employee is not performing services in China can be excluded as "a month").

Circular 403 provides similar treatment on a rolling 12-month basis for projects lasting longer than 12 months. For example, if the first employee provides services on April 16, 2007 and the last employee leaves China on November 15, 2007, services would be considered performed in China for more than six consecutive or cumulative months in a 12-month period, even if some employees are present in China for only one day in a particular month.

If there is no employee of a Hong Kong enterprise working in China during the periods from June 16 to July 15, 2007 (30 days consecutively) and from October 1 to October 31, 2007 (31 days consecutively), "two months" can be excluded for the purpose of determining the six-month consecutive or cumulative months in any 12-month period. In such cases, the Hong Kong enterprise should not be regarded as having a permanent establishment in China.

Capital gain

Circular 403 provides that China tax exemption from capital gains will not be granted in a case in which the Hong Kong seller of the shares in a Chinese enterprise has held 25 percent or more of the total shares in that Chinese enterprise (whose assets are not primarily comprised of immovable property) during a prescribed period of time, even if the shares in the particular disposal are less than 25 percent of the total shares.

Circular 403 does not define the "prescribed period of time" of ownership of the shares before disposal, but merely defers it to further discussion with the Hong Kong Inland Revenue Department.

Anti-treaty abuse provision

Circular 403 briefly addresses the issue of anti-treaty abuse measures, but does not provide any detailed guidelines. Therefore, it will be important to closely monitor continuing developments in this area, and to ensure that there is appropriate business substance for qualifying for treaty benefits.

Circular 403 clarifies various tax issues arising from the practical application of the New DTA. However, it does not eliminate all uncertainty. There are still some areas in which consensus between the State Administration of Taxation and Hong Kong Inland Revenue Department remains to be reached.

Singapore

by Anuj Kagalwala and
Oscar Teunissen

Recent corporate taxation developments in Singapore

Singapore has long been a key regional financial center, and the investment management industry has recently been one of its main growth areas. This is a direct result of the Singaporean government's continuing effort to promote the industry through various means, including tax incentives.

The Singaporean Government presented its 2007 Budget in February 2007. Considerable excitement was generated in the Singaporean investment management industry by announcements such as the removal of the infamous "80:20 rule" under the tax exemption scheme for offshore funds managed in Singapore. Details of the much-awaited framework to replace the 80:20 rule were provided by the government in a circular dated August 31, 2007 (the circular).

New framework replacing the 80:20 rule

The 80:20 rule, adopted in 2005, required that at least 80 percent of the assets of Singaporean fund managers come from foreign-domiciled investors in order to benefit from tax exemption. This resulted in compliance issues for fund managers managing offshore funds in Singapore and created uncertainty about the taxability of those funds.

The new framework replacing the 80:20 rule applies to funds existing before September 1, 2007 as well as those set up thereafter. For the former, there is an option of applying the new framework from September 1, 2007 or from the next financial year beginning on or after September 1, 2007.

The new framework should help to alleviate some of the compliance issues and uncertainty previously faced by Singaporean fund managers. It also will facilitate access for local fund managers to funds of Singaporean investors. However, some areas of the new framework need to be clarified in order to facilitate its implementation.

Broadly speaking, a qualifying fund will now be granted tax exemption at the fund level, regardless of the residency status of its investors. This is so provided

that the fund is not 100 percent-owned by Singaporean investors. Tax, if any, will be collected from the investor depending on his specific profile.

The key distinguishing features between the old and new regimes are as follows:

- A fund that is more than 20 percent held by Singaporean investors can now have access to the tax exemption scheme that previously was available only to funds that met the 80:20 rule.
- The new framework still carries conditions, but, unlike the situation under the 80:20 rule, the conditions under the new framework are more within the control of the fund manager. For example, under the new regime, a qualifying fund in the context of a company is defined as one that is not resident in Singapore, is not 100 percent-owned by Singaporean investors and does not have a Singaporean presence or business activity (other than a fund manager).
- The new framework separates investors of a qualifying fund into two categories: Qualifying and nonqualifying. If the fund has any nonqualifying investors, they will be required to account for a "quasi" tax (known as the "financial amount") on their share of the fund's profits, without affecting the tax-exempt status of the fund or the qualifying investors. In cases in which the fund is not resident in Singapore, a nonqualifying investor potentially could be "taxed" twice. This is because, according to the circular, he will pay the financial amount, but will also be subject to normal tax rules when he receives his distribution from the fund in Singapore. There is no basis for a credit for this financial amount against his actual tax. This gives the approved Singaporean resident fund a serious advantage as a result of its ability to pay exempt dividends (see below).
- To implement the collection of the financial amount, certain reporting requirements have been imposed on the fund manager and nonqualifying investors.

Finally, it has been clarified that the above changes will also apply to approved Singapore-resident fund companies. This is an enhancement from what was stated in the Budget speech in February 2007 and is welcome since it puts Singapore-domiciled funds on an equal (or even advantaged) footing with their offshore counterparts.

List of designated investments

This is a specific list of investments entitled to tax exemption under Singapore's offshore fund exemption regime. The 2007 Budget also announced the inclusion of qualifying loans and commodities in the list of investments. Subsequently, a circular issued by the government on June 11, 2007 (the June Circular) provided more detail.

The June Circular states that, effective February 15, 2007, the following will be included in the list of designated investments:

- I. Qualifying loans, i.e.:
 - a. Loans that are traded by the fund and are not originated by the fund, or
 - b. Loans that are originated by the fund but granted to non-Singapore-based companies where the deduction of interest expense is not taken against Singapore-sourced income.

- II. Commodity derivatives (both over-the-counter and exchange-traded) and physical commodities where:
 - a. The trade volume of physical commodities does not exceed 15 percent of the total trade volume of commodity derivatives and physical commodities, and
 - b. The trading of physical commodities is in connection with, and incidental to, any related commodity derivatives trading.

Clearly, the above should provide an impetus to Singapore's effort to position itself as Asia's preferred investment management center. In particular, the inclusion of loans that are originated by the fund in the list of designated investments should create significant opportunities; and the inclusion of loans has recognized the importance of the nonperforming loans as a separate asset class for funds.

Conclusion

We think the changes are positive and in line with industry expectations. There remain areas which require further clarification to facilitate smooth implementation of the new rules.

Netherlands

by Clark Noordhuis, Oscar Teunissen
and Martin Vink

Tax developments in the Netherlands

The fast-growing alternatives market in the Netherlands has seen investor interest and deal volumes increasing year after year. Recent tax developments have made the Netherlands increasingly attractive for locating fund management, investment platforms and tax exempt funds-of-funds, feeder funds and master funds.

Dutch-managed offshore funds

Dutch hedge fund activity has grown strongly in recent years, especially in increasingly popular offshore funds managed from the Netherlands.

One of the main reasons behind this growing number of Dutch-managed funds is the system around obtaining certainty on the tax treatment of an offshore fund in the Netherlands. This is a key element for funds and their investors.

Although the Netherlands does not have a formal tax exemption embedded in law, such as an investment manager exemption, favorable tax rulings can be obtained with the Dutch tax authorities on the tax treatment of the fund with regard to local management activities, excluding tax residency and/or permanent establishment risks for the fund in the Netherlands.

The Dutch tax authorities seem increasingly willing to cooperate in facilitating Dutch-managed offshore funds, as the Netherlands wishes to strengthen its position as a main jurisdiction for fund vehicles and fund managers. PricewaterhouseCoopers recently has obtained several favorable tax rulings for Dutch-managed offshore funds, both for Dutch financial institutions and for U.S.-based funds.

The management of funds brought together by qualifying collective investment funds is not subject to Dutch value-added tax (VAT), and the same applies to fund administration services.

New tax exempt onshore fund vehicle

As of August 1, 2007, the Netherlands has a new fund vehicle, the Tax-Exempt Investment Institution (*Vrijgestelde Beleggingsinstelling* or VBI). It is fully exempt from Dutch corporate income tax and withholding tax. The VBI was introduced in the Netherlands to compete with existing attractive tax regimes, such as the Luxembourg SICAV.

The VBI is a (semi) open-end fund that can invest in “qualifying financial instruments” as outlined in the Markets in Financial Instruments Directive. As such, the VBI can be used for a broad range of alternative investment types such as funds-of-funds, feeder funds, money-market instruments, swaps, carbon emission rights, etc. Investments should fulfill the principle of risk-spreading. The VBI can be set up as a Dutch public limited company suitable for listing on the stock exchange.

Since the VBI is not subject to tax, the VBI itself is not considered resident for Dutch treaty purposes and therefore cannot benefit from the Dutch tax treaty network. However, the VBI can establish special-purpose vehicles (SPV) which can obtain tax treaty protection.

Dutch platform structures for foreign funds

The Netherlands is increasingly popular among hedge funds as a jurisdiction for locating their worldwide investment platforms.

The extensive tax treaty network, the participation exemption for equity investments, the absence of capital tax and cooperative tax authorities are key advantages for foreign funds that choose to locate their investment platforms in the Netherlands. Another advantage is the availability of numerous skilled investment management professionals who can perform local duties for investment platforms.

The Dutch Advance Tax Ruling practice for holding and finance activities with specific local substance requirements has become efficient again. Today, the Advance Tax Ruling process, including a pre-filing meeting, can be completed in a couple of weeks.

Any fees charged to the Dutch platform for discretionary management and collateral administration services should be exempt from Dutch VAT.

Lending platforms

An increasing number of securitization transactions have been set up for originators located in and outside the Netherlands using Dutch bankruptcy-remote SPVs and asset-backed securities that have been sold to investors in the Netherlands and abroad under private placements.

It is common in Dutch securitizations to establish the SPV in the Netherlands in a so-called “orphan structure” in which the SPV qualifies as a third party to the borrowers, note holders and managers. One of the key elements in securitization transactions is that the

Netherlands does not levy withholding taxes on interest. Moreover, the taxable profit that a Dutch SPV has to report is generally limited to the fee charged by the trust services provider which sets up the SPV. Based upon ruling practice for securitization vehicles, certainty can be provided in advance for key issues in the transactions, such as deductibility of interest on the notes, deductibility of other expenses, absence of withholding tax and obtaining a certificate of residence required under the tax treaties with the source countries involved.

For Dutch VAT purposes, the fees for discretionary investment management services and collateral administration services rendered to a Dutch limited liability company (*besloten vennootschap*, or BV) can be structured to qualify for a VAT exemption. This way lending platforms can be set up so that discretionary asset management and collateral administration services can be provided without attracting irrecoverable VAT.

Together with the extensive Dutch tax treaty network, absence of capital tax and robust legal infrastructure, these recent developments have helped to make the Netherlands a competitive European jurisdiction.

India

by Puneet Arora, Punit Shah
and Oscar Teunissen

Recent developments on Participatory Notes

Background

In India, generally stated, investments by nonresidents under the Portfolio Investment Scheme (i.e., through the stock exchange) are permitted only as foreign institutional investments. For purposes of eligibility for investment under this route, a nonresident has to register with the Securities & Exchange Board of India (SEBI) as a Foreign Institutional Investor (FII) or as a sub-account of an existing FII.

Registration as an FII requires fulfillment of various conditions prescribed by SEBI (the entity has to be regulated by an appropriate regulatory authority overseas; it should have a track record; it should fall within one of the prescribed categories, etc.). Further, SEBI requires that any sub-account can be registered under an FII only if the FII is the investment manager for such sub-account.

Indian stocks, like those of other emerging market economies, are in great demand by overseas investors. Some of these investors do not want to register themselves with SEBI or, due to the conditions prescribed for FII registration, are unable to register themselves as such.

It is in this context that the practice of FIIs issuing Participatory Notes, Equity Linked Notes, etc., to such overseas investors has become prevalent in the recent years. These instruments are termed Offshore Derivative Instruments (ODIs) since they derive their value from the underlying Indian security. The FII trades on behalf of such overseas investors and issues them ODIs such as Participatory Notes.

SEBI has been keeping watch on the issuance of ODIs and their impact on the Indian stock markets. In view of the growing popularity of such instruments, SEBI has recently issued a paper for discussion on ODIs proposing certain policy measures. SEBI has invited comments from the general public on the proposals in this paper.

Highlights of discussion paper on ODIs and subsequent developments

In light of the above, SEBI has proposed that the following measures be implemented immediately:

1. Effective immediately, FIIs and sub-accounts shall no longer issue or renew ODIs with underlying Indian securities as derivatives. They are required to wind up current positions over 18 months, during which period SEBI will periodically review the position.
2. Further issuance of ODIs by the sub-accounts of FIIs will be discontinued immediately. They will be required to wind up current positions over 18 months, during which period SEBI will periodically review the position.
3. The FIIs who are currently issuing ODIs with notional value of Participatory Notes outstanding (excluding derivatives) as a percentage of their assets in India of less than 40 percent shall be allowed to issue further ODIs only at an incremental rate of 5 percent of their Indian assets.
4. Those FIIs with notional value of Participatory Notes outstanding (excluding derivatives) as a percentage of their assets in India of more than 40 percent shall issue Participatory Notes only against cancellation, redemption or closing-out of existing Participatory Notes of at least equivalent amount.

Subsequent to the issue of this discussion paper by SEBI and an increase in stock market volatility, the Finance Minister clarified that SEBI's move was part of a series of steps to moderate capital inflows in India via Participatory Notes. The Finance Minister indicated that Participatory Note holders are welcome to invest in India after registration with SEBI as FIIs. SEBI also subsequently clarified that there is no proposed bar against the renewal of ODI contracts expiring this month or in the following

months, provided the renewal does not go beyond 18 months. SEBI further made it clear that this proposal does not in any manner seek to restrict renewal or rollover of Indian Exchange Trades Derivative Contracts by the FIIIs.

A recent news item also mentioned that the government is open to extending the 18-month period suggested in SEBI's draft discussion paper and also to soliciting the views of FIIIs and other potential investors on simplifying the registration norms for FIIIs.

Way forward

While market regulators are trying to slow down the issuance of Participatory Notes, they also are encouraging hedge funds (which are primary users of ODIs) to register themselves directly as FIIIs with SEBI. A recent news item indicates that SEBI has lifted the embargo on hedge funds, though there has been no formal communication from SEBI to this effect. Reports also indicate that there are close to six hedge funds which recently have been allowed to register with SEBI. However, these funds, which have been permitted to come in directly, are required to fulfill the following criteria:

1. They must be registered with or regulated by the financial regulator in their home country, and;
2. They must have at least a one-year track record. The funds also must fulfill all the conditions that apply to FIIIs.

As the Indian capital market environment rapidly changes, entities interested in investing in Indian capital markets should be aware of related tax and regulatory concerns, including:

1. Proper entry strategies for investments in Indian capital market
2. Structuring of investments through tax-favorable jurisdictions and suggested alternative structures to mitigate tax issues
3. Steps to be followed to avoid Permanent Establishment exposure in India
4. Identifying a suitable main or sub-account for the purpose of registering with SEBI
5. FII or sub-account licensing process and other registrations and compliance measures
6. Setting up formalities, local approvals and registrations, if any, required by tax-favorable jurisdictions
7. India tax registration and ongoing tax compliance requirements

Recent Circular— characterization of income on sale of securities

Background

Under the provisions of the 1961 Income-tax Act (the Act), “business income” and “capital gains” are subject to different tax rates. The Act does not identify clear criteria for determining the characterization of income, but certain generic principles have evolved out of judicial precedents and administrative dispensation.

Certain tests have been laid down by the Central Board of Direct Taxes to distinguish between shares held as stock-in-trade and shares held for investment purposes. The Central Board issued draft supplementary instructions on May 16, 2006 to provide further guidance for determining whether a person is a trader in stocks or an investor in stocks, included 15 indicative criteria and invited public comment. After deliberation, the Central Board issued Circular no. 4/2007, dated June 15, 2007 (the Circular).

Highlights of the Circular

The Circular, released as a supplement to instructions originally issued in 1989, reiterates the principles laid down in judicial decisions and, more specifically, reflects certain observations made in two decisions of the Supreme Court.

The observations address whether transactions of sale and purchase of shares are trading transactions or whether they are investment-related. This is a question of both law and fact. The taxpayer who holds the shares normally should be able to show whether it has maintained any distinction between shares which are its stock-in-trade and those which are held by way of investment. The Circular states that the Supreme Court decisions mentioned above afford adequate guidance to the assessing officers.

The Circular further refers to the decision of the Authority for Advance Rulings in the case of Fidelity Northstar Fund and others in 288 ITR 641 [2007]. In that case, the Authority ruled that the shares were held by the Applicant, a foreign institutional investor, as capital assets and not as business assets. The Circular referred to the following principles:

- When a company purchases and sells shares, it must be shown that they were held as stock-in-trade and that the power to purchase and sell shares in the memorandum of association alone does not decide the nature of the transaction;

- The substantial nature of any transactions, the manner of maintaining books of accounts, the magnitude of purchases and sales and the ratio between purchases and sales and the holding furnish a good guide to determining the nature of the transactions;
- Ordinarily, the purchase and sale of shares with the motive of earning a profit would result in a transaction being in the nature of trade/adventure; but, where the object of the investment in the shares of a company is to derive income by way of dividends, etc., then the profits accruing by change in such investment (by sale of shares) will yield a capital gain and not revenue receipt.

Foreign Institutional Investors are governed by special provisions in the Act dealing with taxation of their income. Typically, most such investors characterize their gains on sale of the securities as capital gains. However, some have characterized their income as business income and not as capital gains. In terms of the provisions of the Double Tax Avoidance Agreement between India and various other countries, business income earned by a tax resident of these countries can be subject to tax in India only if the tax resident has a permanent establishment in India.

Importantly, the Circular recognizes that a taxpayer could have two portfolios: An investment portfolio, comprising securities which are to be treated as capital assets; and a trading portfolio, comprising stock-in-trade which is to be treated as a trading asset.

The Central Board has advised assessing officers to consider the total effect of all of the principles outlined in the above judicial decisions in determining whether the shares are held by taxpayers as investments (giving rise to capital gains) or as stock-in-trade (giving rise to business profits).

The Circular is generic and has repercussions for determinations of the characterization of income from sale of shares covering all assets.

Conclusion

The Circular does not appear to have set forth any new principles for determining the characterization of income in the hands of taxpayers, but instead has reiterated certain observations and principles brought out by earlier judicial decisions.

Latin America

by John Salerno, Oscar Teunissen and Julian Vasquez

Growth in the Latin American alternative investment funds industry

Introduction

The Latin American alternative investment funds industry (which includes hedge funds, private equity funds and real estate funds) has begun to flourish. Many new funds are being formed in the region, particularly with Brazil and Argentina serving as hosts. While emerging market funds around the world are, on average, four times larger than Latin American funds, the growth of the alternative fund industry in Latin America has been outstanding.

The overall economic landscape in Latin America has improved dramatically in recent years. Most countries are running current account surpluses; inflation has been under control, for the most part; and the region's players have accounted for a much larger share of global trade than in the past. In the political arena, elections held during 2006 proved to have little impact on markets, demonstrating that, despite the political climates in Bolivia, Nicaragua and Venezuela, there is relative political stability in the region.

Today's alternative funds generally experience solid liquidity when trading in Latin American assets, including, for example, currencies, futures, external debt receivables, corporate debt, equities and derivatives (e.g., credit default swaps or over-the-counter options). Assets from Brazil and Mexico comprise a large share of the overall pool of instruments available in Latin America. Additionally, more and more investment opportunities are arising in other countries in the region, including Argentina, Chile, Colombia, Ecuador, Peru, Venezuela and several Central American countries.

Alternative funds expanding into or operating in the Latin American region have tended to invest in the following asset classes.

Private equity

Traditionally, alternative fund investors looking for exposure to Latin American markets have focused on private equity, and the context for private equity investing has improved with higher volumes of trade.

Private equity investments in the Latin American region increased from \$1.07 billion USD in 2005 to more than \$1.54 billion USD during the first half of 2006 alone – with Argentina, Brazil and Mexico accounting for the largest share of these investments.¹

Loan portfolios

Latin America offers good financing opportunities for alternative funds since these funds typically do not have the lending constraints that regulated lenders have. These opportunities arise primarily when traditional funding alternatives are not available. Latin American banks and credit providers often concentrate on the largest companies operating in specific sectors and, therefore, do not address credit needs in all segments of the market.

U.S. alternative funds have engaged in asset-based lending for some time, in some cases investing directly in cash flow-producing projects linked to critical assets that can also comprise an adequate collateral package as additional security for the loan. Alternative funds are now identifying diverse opportunities of this kind in Latin America. Sectors such as energy, transformation industries and transportation offer healthy profit margins that allow companies to pay very attractive rates.²

Derivatives

Derivative contracts include local interest rate and foreign exchange futures and options, soft commodities in Brazil and local debt and Peso futures in Mexico.

Real estate

Alternative funds are increasingly seizing on opportunities to acquire, hold and improve real estate in the Latin American region, particularly in countries such as Argentina, Brazil, Chile, Colombia, Costa Rica, Mexico and Uruguay.

1 Emerging Markets Private Equity Association. *Re-emergence of Latin America Private Equity*. EM PE Quarterly Review, Volume II, Issue 4, Q4 2006. Page 5.

2 Guerra, Javier. *Asset-Based Lending Opportunities*. *Latin American Hedge Funds 2006*. Hedgeweek Special Report. October 2006. Page 10.

Typical alternative fund structure

Alternative funds are organized as private investment pools that differ from other types of funds on the basis of market risks (the use of hedging techniques to reduce market risk³), number of investors, fee structure, portfolio diversification, degree of leverage and level of regulatory constraints. The fund's sponsor usually serves as the general partner in partnership structures and as the principal shareholder in corporate structures. The general partner holds the carried interest in the fund, and, like the fund itself, is normally a passthrough entity for tax purposes, thereby allowing the character of fund-level gains to pass through to its partners.

The investment pool is managed by a management company, which is controlled by the sponsors. The fund manager receives two types of fees for the rendering of its managerial services: (1) An asset management fee, which is calculated based on a percentage of the fund's assets under management—typically 1 or 2 percent per year; and (2) an incentive fee, which represents a share of the fund's profit.

Alternative funds can assume many different organizational structures, including, for example: A single-entity fund; a master-feeder fund; a parallel fund; and a multi-manager fund. In selecting the appropriate structure, concerns to be considered include the structure of managerial compensation, the number of investors, the rights and responsibilities of investors and the implications of tax, legal and regulatory issues. The type of investors, the location of the funds and the management entity, the location and asset class of the investment and the degree of leverage needed are key tax considerations in determining how an alternative fund might be structured.

General tax considerations

At the fund level, many different types of structures may be implemented in order to minimize tax exposure in the cross-border arena. U.S. alternative funds generally are structured as onshore passthrough vehicles (e.g., limited partnerships), which can be favorable to U.S. taxable investors. This type of structure facilitates the preservation of the character of the underlying investment income earned at the fund level, and avoids additional layers of taxation.

Notwithstanding the benefits of a partnership structure for taxable investors, such a structure may not be desirable for tax-exempt investors. For example, non-U.S. investors may face U.S. income tax withholding on a fund's U.S.-sourced fixed and determinable, annual or periodic (FDAP) income (e.g., dividends, interest and interest equivalents). These investors also may face full net-basis

taxation on their U.S. effectively-connected income to the extent that a U.S. trade or business is triggered by the partnership. Tax-exempt investors, on the other hand, may need to report unrelated business taxable income, which is subject to full corporate income tax rates. Thus, for these types of investors, it is preferable to use an offshore platform, which may be a corporate entity located in a tax-favorable jurisdiction.⁴

Investments by alternative funds should be carefully structured to mitigate any potential tax leakage, such as the imposition of high rates of cross-border income tax withholding in the jurisdictions in which investments are made. Certain countries may impose high local taxes on income derived from investments, as well as high withholding taxes on the repatriation of such income. For alternative funds that are organized as corporations, any tax liabilities that may arise from taxable presence exposure in any jurisdiction could significantly erode the return on the investment, especially if those alternative funds are organized in countries that do not have an expansive network of income tax treaties, such as Bermuda and the Cayman Islands.

Fund managers often establish representative offices in the countries in which the investments are made in order to better monitor local market opportunities. Since the manager generally acts on behalf of the funds, there is a risk that, if its activities are not carefully defined, it may trigger a permanent establishment of the fund in the jurisdiction in which the relevant investments are made. In addition to increasing tax exposure in the country in which permanent establishment is triggered, the fund in such a case would have tax filing or compliance obligations in that jurisdiction. And, if the fund is structured as a limited partnership or similar passthrough entity, these filing obligations could extend to the fund's investors in certain cases. Consequently, the management of permanent establishment risk is high on the list of tax structuring priorities for alternative funds.

Several jurisdictions (e.g., the U.S., United Kingdom, Hong Kong and Singapore) have implemented favorable trading safe harbors that allow management entities to trade on behalf of nonresidents' funds without creating a permanent establishment. These countries allow management companies operating within their borders to provide discretionary advisory services to the funds.

Management entities located in jurisdictions that do not have trading safe harbors generally limit the scope of their services through sub-advisory agreements in order to avoid triggering local permanent establishment status. As a result, decisions regarding investments are typically made by an entity located in a country with a trading safe harbor. The local sub-advisor typically plays a supporting,

³ Although in practice, most hedge funds only use the tenancy of short- and long-term positions in a certain investment in order to reduce risk.

⁴ Teunissen, Taggart, Arora and Mugabi. *Recent Trends in Cross-Border Investments in Distressed Debt by U.S. Managed Hedge Fund*. Taxation of Financial Products. Volume 6, Issue 1. 2006 CCH Incorporated. Page 19.

non decision-making role by, for example, researching local investment opportunities and providing recommendations to the principal management company or advisor. Again, it is crucial that the scope of the activities performed be carefully planned with the goal of mitigating permanent establishment exposure, which could prove to be very costly to the fund and its investors.

Tax issues affecting alternative funds investments in Latin America

Alternative fund investments in Latin America may be structured as onshore investments with a local legal entity, or offshore investments, depending on the class of assets in which the fund will ultimately invest. Typical classes of assets can be distinguished based upon their relative liquidity, with shares of public or privately-held companies and debt securities representing greater liquidity than, for instance, nonperforming loans (NPLs) and real estate.

Alternative funds typically invest in Latin American shares and debt securities via offshore entities in order to mitigate any potential capital gains tax burden on exit from the investments. However, the use of a local investment vehicle is more typical when investing in less-liquid asset types (e.g., nonperforming loans and real estate). In this regard, while the holding of real estate or nonperforming loans by a nonresident entity does not, when viewed in isolation, necessarily trigger a permanent establishment, the holding of these types of assets may require some degree of “on the ground” activities, which may increase the permanent establishment risk profile in certain jurisdictions. Consequently, onshore entities are often set up for the purpose of investing in these asset classes.

When investments are made through onshore entities, local income tax and other tax liabilities must be considered in connection with returns generated. In addition to considering the local income tax rate applicable to such returns and, correspondingly, the “tax capacity” generated (i.e., the local income tax available for mitigation), it is also important to consider cross-border withholding tax rates and the availability of a broad tax treaty network. This is especially critical in Latin America, since domestic law rates of withholding tax on interest (and, in some cases, dividends) can be quite high.

Permanent establishment risk

For alternative funds which have significant sums of their investors’ money deployed across numerous borders, it is crucial to have a solid plan for permanent establishment risk management. This is especially crucial in Latin American countries when investing in asset classes which require “on the ground” activities, for instance when dealing with real estate or nonperforming loans. In the case of real estate, leasing activities might require some

level of local negotiation and signing the agreements. As for nonperforming loans, it may be necessary at certain points to negotiate with debtors or to conduct collection activities. Latin American countries, as a general rule, do not have trading safe harbor provisions permitting local investment decision-making activities to be performed onshore without triggering a taxable presence. Additionally, many countries have limited domestic legal guidance about what constitutes a permanent establishment. Therefore, the risk is often difficult to estimate with any degree of precision.

When a tax treaty applies, its provisions need to be considered in performing a permanent establishment risk assessment. Most of the more recent treaties in the region follow the Organization for Economic Cooperation and Development model, which provides a fairly comprehensive view of which activities may trigger a permanent establishment. Nonetheless, the local interpretation of those provisions is not always consistent with internationally-accepted views, and the lack of consistency among and/or precedent within countries can make risk assessment difficult.

When an alternative fund invests in immovable assets in a country through a foreign entity, the nonresident is likely to be deemed to have a permanent establishment in the local jurisdiction. Thus, local entities are generally recommended for real estate deals. Permanent establishment risks similarly may exist if a nonresident entity conducts business through an agent located in a local jurisdiction. Typically, the local agent would need to have the ability to negotiate and/or conclude contracts on behalf of the nonresident, or to otherwise bind the nonresident locally. This might occur, for example, if the fund were to hold a nonperforming loan portfolio offshore and an employee from the local management company were to have the authority to bind the nonresident entity.

Choice of entity considerations

Alternative fund structures normally rely on passthrough entities to minimize the overall tax burden facing investors. In addition to entities which are fiscally transparent under the domestic laws of a local jurisdiction (e.g., a general partnership such as a *Sociedad Colectiva* or a *Sociedad en Comandita*), there are companies which are considered to be eligible entities for U.S. entity classification (check-the-box) purposes. The local equivalents of U.S. limited liability companies (*Sociedad de Responsabilidad Limitada* or SRLs; *limitada* in Brazil) are eligible entities for this purpose, while stock corporations (*Sociedad Anonima* or SA) are not.

Limited liability companies are, relatively speaking, simpler to manage than stock corporations from the standpoint of local commercial law. In this regard, there generally are flexible (if any) board or shareholder meeting requirements. While most countries require a minimum of two members or owners, some jurisdictions do not have

a minimum capital contribution requirement applicable to the minority interest-holder.

As a general rule, limited liability companies are subject to the same tax rules as stock corporations. Therefore, apart from any commercial law distinctions, the key differentiator tends to be the “checkable” nature of local limited liability companies for U.S. tax purposes.

In this regard it is relevant to consider certain U.S. tax issues that might arise in connection to the type of entity used to invest. Some of the key U.S. tax issues are:

- **Foreign tax credits.** The potential for double taxation exists because the U.S. imposes income tax on its citizens and residents based on their income wherever it is earned in the world. Subject to many limitations, the U.S. foreign tax credit regime mitigates double taxation by allowing a U.S. taxpayer to claim a credit against his U.S. tax liability for any foreign taxes paid on foreign-source income. Alternative investment funds and management companies often structure their investments through entities that are treated as fiscally transparent (under the check-the-box rules) for U.S. tax purposes. Therefore, any taxes paid by fiscally transparent entities generally should be available as foreign tax credits at the level of their ultimate U.S. owners, subject to the applicable limitations.
- **U.S. anti-deferral rules.** This becomes relevant when investments are not structured through entities that are treated as fiscally transparent for U.S. tax purposes. These rules are generally designed to prevent deferral of certain passive income (e.g., interest, dividends) earned by foreign corporations. The anti-deferral rules apply mainly to controlled foreign corporations (CFCs) and passive foreign investment companies (PFICs).
 - **CFC.** U.S. shareholders that own directly, indirectly, or through attribution more than 50 percent of the stock or value of a CFC, for at least 30 days in any particular year, may be required to include in their income for U.S. federal income tax purposes their *pro rata* share of the Subpart F income of the CFC for every year that it qualifies as a CFC. These U.S. shareholders are also required to include in their income the amounts determined under Section 956 for every year in which any of their companies are CFCs (but only to the extent not previously included).
 - **PFIC.** The PFIC regime is designed to tax shareholders of certain companies that generate primarily passive income or own primarily passive assets, or both. Unlike the CFC regime, there is no threshold ownership requirement necessary to invoke

the application of the PFIC rules. The test is whether the company meets either the income test (75 percent or more of gross income is passive) or the asset test (more than 50 percent of assets are held for production of passive income).

The use of financial trusts and investment funds

With respect to investments in nonperforming loans and similar asset classes (other than real estate investments), it may be beneficial to have a local financial trust or investment fund acquire the local portfolio. In addition to certain tax benefits that may be available as highlighted below, there also may be legal and regulatory advantages. The following is a brief summary of some of the more common trust-like vehicles that have been considered and/or used by alternative funds investing in the region.

Argentine financial trusts

In Argentina, the use of a Financial Trust (*Fideicomiso Financiero*) may be considered for investments in financial assets, such as nonperforming loans. Private financial trusts are subject to regular Argentine corporate income tax, which is imposed at a 35 percent rate on net taxable income. Deductions are generally permitted for all ordinary and necessary expenses incurred at the trust level including, for example, management fees. Additionally, provincial gross revenues taxes apply to the trust’s gross income.

Remittances on equity interests in the trust are not subject to Argentine income tax withholding to the extent that previously-taxed profits are distributed. Excess distributions (attributable, for example, to excess distributable income resulting from book/tax differences) are subject to a 35 percent withholding tax, or at a lower tax treaty rate.

Debt participations are generally permitted in financial trusts. Interest accruing on such participations is generally deductible at the trust level, assuming Argentine transfer pricing requirements are satisfied (“arm’s-length” standard). Withholding tax generally applies on interest payments at domestic law rate of 35 percent (15.05 percent on payments made to certain financial institutions) or a lower treaty rate. Argentine thin capitalization rules should not apply to private financial trusts—however, an arm’s-length debt/equity ratio is generally advisable.

In certain limited cases it may be possible to use a public financial trust. This requires a bona fide public offering of the trust’s participations, which is normally not feasible in a related-party context. The primary benefit of a public financial trust is that trust distributions to beneficiaries are deductible from the trust’s taxable income.

Brazilian FIDCs

A Credit Rights Investment Fund (the Portuguese acronym for which is FIDC) is a special investment fund vehicle that is highly regulated with regard to the profile of the investors, the investment portfolio and certain other factors. Even though FIDCs are not formed as a distinct legal entity under Brazilian commercial law, they may enter into agreements and conduct business activities (including the ownership of assets) in their own name.

The earnings of a FIDC are not subject to Brazilian taxation at the fund level. Foreign investors that own FIDC quotas are subject to the following Brazilian tax treatment to the extent that (a) they are not residents of a tax haven jurisdiction, and (b) their investments are made in accordance with Central Bank regulations (Resolution no. 2689):

- 15 percent income tax withholding on FIDC distributions.
- 15 percent capital gains tax on the sale or other transfer of FIDC quotas (note that, under certain circumstances, there may be grounds to sustain that gains realized by “nontax haven” investors on the sale of their FIDC quotas through the Brazilian Exchange may be tax-exempt).

If a “master” FIDC were to decide to acquire the quotas of existing small FIDCs or to incorporate new FIDCs, the distribution of income from the lower-tier FIDCs to the master FIDC—and gains realized by Master FIDC on the sale of the quotas of the lower-tier FIDCs—should be tax-exempt.

Assets acquired by a FIDC—including nonperforming loans acquired from certain Brazilian lenders—may be subject to Brazilian Central Bank restrictions and/or registration requirements. While this is a legal and regulatory matter and not a tax issue, it ultimately may affect the structuring of a local investment.

Brazil levies a CPMF tax at a 0.38 percent rate on every withdrawal of funds from Brazilian bank accounts. This would apply, for example, when the FIDC withdraws funds from its local bank account to acquire assets.

Chilean FIPs

In Chile, the use of a Private Investment Fund (*Fondo de Inversion Privado*, or FIP) may be considered. A FIP is a special type of nonpublicly traded fund which can be used to make investments in Chilean financial assets. A FIP is created via private contract, but must be managed by a Chilean stock corporation (SA).

While FIPs are not legal entities, they are not subject to Chilean Corporate Income Tax (CIT). Therefore, any income generated or received by a FIP is not subject to 17 percent CIT at the fund level. Nevertheless, FIPs must

comply with tax formalities applicable to other Chilean taxpayers, such as registration with the tax authorities, application for a taxpayer ID, maintenance of full accounting records, etc.

Cross-border distributions from Chilean FIPs are subject to a 35 percent nonresident withholding tax. Therefore, the primary tax benefit of FIPs is the deferral of Chilean taxation until profits are distributed.

Uruguayan financial trust

Uruguay also has a financial trust structure that may be considered by hedge funds. These trusts are generally subject to a 25 percent income tax on net income. Ordinary and necessary expenses are generally deductible, including expenses related to portfolio management and the write-off of investment assets.

To the extent that the trust has debt participations held by Uruguayan residents, interest accrued is ordinarily fully deductible on local financing. If there are nonresident holders of the debt participations, the interest deduction is capped at 48 percent of the interest accrued. However, if the debt holder were domiciled in a low-tax jurisdiction, interest would be nondeductible.

Financial trusts are also subject to an annual equity tax of 1.5 percent of the net book value of their assets (i.e., gross book value less debt financing to acquire those assets).

Payments made to the holders of equity participations in a Uruguayan financial trust are subject to 7 percent income tax withholding. Equity certificates holders are subject to a 1.5 percent equity tax upon the trust equity. Since there is local financing which is deductible for equity tax at the level of the trust, there is no double taxation.

The use of a financial trust to hold certain classes of assets—such as distressed debt—is generally recommended for Uruguayan commercial law purposes.

Assets acquired by a Uruguayan financial trust—including nonperforming loans—may be subject to Central Bank registration requirements (although approvals are not required).

Financing

The characterization of an investment instrument as debt or equity can be crucial to an alternative fund investing in Latin America. In addition to legal, treasury and business-related issues, there are a number of tax drivers that may play a role in debt versus equity decision-making. While arm’s-length payments of interest on debt are generally deductible for local income tax purposes, payments of dividends generally are not. On the other hand, interest payments may be subject to income tax withholding at domestic law rates as high as 40 percent, while

dividends are often exempt from withholding taxes. In addition, a company's capital may be reduced on a tax-free basis in most jurisdictions, assuming certain formalities are followed.

Dividends

Certain Latin American jurisdictions do not impose withholding taxes on any dividend payments, while others exempt amounts distributed out of previously-taxed earnings from withholding taxes. These exemptions from withholding taxes are intended to promote integrated tax systems in accordance with which there is a single level of income taxation on company income. Such integrated tax systems tend to inject some degree of neutrality into debt versus equity decision-making by not subjecting dividends to withholding taxes while at the same time permitting a deduction for interest payments.

Capital reductions

Capital reductions normally are not subject to local income tax because they are not viewed as distributions of earnings. Unlike the U.S. federal income tax rule that deems distributions with respect to equity—whether or not formally declared as dividends—to come first out of current or accumulated earnings and profits and then out of capital/tax basis, most Latin American jurisdictions respect the formal characterization of the payment type, such as dividends, capital reductions, etc. (Chile is an exception to this rule.)

Returns on debt

Domestic law withholding tax rates on interest payments from Latin American companies can be quite high, with rates between 30 percent and 35 percent being typical. Lower withholding tax rates—between zero and 4.95 percent—may be available for payments of interest to qualified banks or financial institutions. In addition, tax treaties often reduce applicable withholding tax rates quite significantly, to rates generally between 5 percent and 15 percent.

Back-to-back loans using banks or financial institutions sometimes may be used to obtain lower withholding tax rates. In addition to any withholding tax rate reduction, borrowings from a registered financial institution may also avoid exchange controls on repayments of loan principal in certain jurisdictions.

Interest is generally deductible by the Latin American borrowing entity, assuming it complies with applicable arm's-length standards and thin capitalization rules. In this regard, it is important to mention that several Latin American countries currently have fully-developed thin capitalization provisions (e.g., Argentina, Chile, Mexico and Venezuela). In addition, the domestic tax laws in certain jurisdictions provide specific categories of interest that are nondeductible (e.g., interest relating to back-to-back loans and interest that varies based on profits in Mexico).

Inflationary impact

In certain jurisdictions, annual inflationary adjustments are required for monetary assets and liabilities. When the balance of the monetary assets is lower than the balance of the monetary liabilities, the company may have an inflationary gain, which normally represents an addition to taxable income. When the balance of the monetary assets is higher than the balance of the monetary liabilities, the company may have an inflationary loss, which normally is deductible for income tax purposes.

In addition to the inflationary adjustment mechanism, debt instruments denominated in nonlocal currency may be subject to annual foreign exchange adjustments. The resulting exchange gains or losses may be recognized for local tax purposes on an accrual basis. A devaluation of the local currency would normally trigger the recognition of an annual foreign exchange loss, which should be deductible, while an appreciating local currency would trigger the recognition of an annual foreign exchange gain, which should be includable in taxable income.

The impact that inflationary adjustments and foreign exchange gains or losses may have on an interest deduction should be carefully considered in determining the appropriate debt versus equity capitalization of a Latin American affiliate. In this regard, it is possible in certain years to have an inflationary gain amount that is larger than the sum of the nominal interest deduction and the foreign exchange adjustment – creating so-called “phantom income.”

Hybrid instruments

In certain jurisdictions, it may be possible to finance local operations through the use of a hybrid instrument. If structured properly, these instruments may be treated as debt from a local country perspective and equity from a lending country perspective. As such, payments on the instrument may be treated as deductible interest in the borrowing Latin American jurisdiction (subject to applicable thin capitalization and withholding tax provisions), and as dividends in the recipient country—effectively creating a deductible dividend of sorts.

Mandatory deposit requirements (*Encaje*)

In some jurisdictions there is a regulatory rule which requires that a certain percentage of funds advanced by a nonresident to a local resident in the form of a loan must be deposited with the Central Bank for a specified period. Argentina and Colombia currently have such mandatory deposit rules, and neither country offers interest on the mandatory deposits. While these are legal or regulatory rules, they can affect tax structuring exercises and, in certain cases, can prevent deals. Thus, it is crucial to consider the impact that *encaje* may have on leveraged deals.

Concluding thoughts

The alternative fund industry most definitely has set its sights on Latin America. While the tax rules in many jurisdictions have become increasingly complex, some countries still retain rules which are unlike those in other regions. Although the trend is towards a maturing tax and regulatory landscape, the path is strewn with varying degrees of uncertainty.

While Europe has been successful in regionalizing its approach in numerous tax matters, assessments in Latin America must still be made on a country-by-country basis. Nevertheless, there are numerous regional themes and takeaways, and these become more relevant as a particular fund expands its footprint in the region.

In the meantime, the structuring of deals in Latin America can be quite complex, at least at the outset. There are numerous technical and practical considerations that may require input from multiple sources beyond the deal team, including tax, legal and treasury and finance disciplines. From a local-country tax perspective, the deductibility of payments, the application of withholding taxes and the imposition of limitations on leveraging all must be addressed. Alternative funds which are considering financing their Latin American investments should be aware of the potentially high tax costs associated with cross-border financing transactions as well as the planning opportunities that exist to mitigate such costs.

PricewaterhouseCoopers Alternative Investment Funds Group

United States

Boston, MA

Greg Collins	617 530 7012	greg.collins@us.pwc.com
Dave Foss	617 530 7878	david.foss@us.pwc.com
Kristin Francisco	617 530 7507	kristin.francisco@us.pwc.com
Timothy Grady	617 530 7162	timothy.grady@us.pwc.com
Patricia Jabar	617 530 7387	patricia.jabar@us.pwc.com
Mark Rosenblatt	617 530 7240	mark.rosenblatt@us.pwc.com
Paula Smith	617 530 7906	paula.e.smith@us.pwc.com

Chicago, IL

Chris Cornwall	312 298 4816	chris.cornwall@us.pwc.com
James Lelko	312 298 5768	james.s.lelko@us.pwc.com

Dallas, TX

Mike Bohling	214 756 1734	mike.bohling@us.pwc.com
Robert Collins	713 356 6851	robert.c.collins@us.pwc.com

Denver, CO

Hugh Armstrong	720 931 7207	hugh.armstrong@us.pwc.com
----------------	--------------	---------------------------

Houston, TX

Robert Collins	713 356 6851	robert.c.collins@us.pwc.com
Hadassah Wagner	713 356 4124	hadassah.wagner@us.pwc.com

Los Angeles, CA

David Chrencik	213 356 6130	david.g.chrencik@us.pwc.com
Alison Monahan	213 217 3374	alison.monahan@us.pwc.com
Andy Nolan	213 217 3830	andrew.nolan@us.pwc.com

Minneapolis, MN

Jennifer Ward	612 596 6382	jennifer.l.ward@us.pwc.com
---------------	--------------	----------------------------

New York, NY

Murray Alter	646 471 0556	murray.alter@us.pwc.com
Tony Artabane	646 471 7830	anthony.artabane@us.pwc.com
Virginia Benson	646 471 7940	virginia.benson@us.pwc.com
Gina Biondo	646 471 2770	gina.biondo@us.pwc.com
Barrett Brown	646 471 3024	barrett.c.brown@us.pwc.com
Frank Calabro	646 471 7842	frank.m.calabro@us.pwc.com
Mark Casella	646 471 2500	mark.j.casella@us.pwc.com
Gregory Culloo	646 471 7504	gregory.culloo@us.pwc.com
Judith Daly	646 471 5292	judith.daly@us.pwc.com
Lyn Desantis	646 471 2084	lyn.desantis@us.pwc.com
Cindy Price Gavin	646 471 2148	cindy.gavin@us.pwc.com
Bruce Graber	646 471 1447	bruce.graber@us.pwc.com
Mike Greenstein	646 471 3070	michael.s.greenstein@us.pwc.com
Michael Guarnuccio	646 471 2949	michael.guarnuccio@us.pwc.com
Michael Hayes	646 471 4429	michael.f.hayes@us.pwc.com
Robert Kelley	646 471 2066	robert.c.kelley@us.pwc.com
Barry Knee	646 471 5898	barry.m.knee@us.pwc.com
Marvin Nagler	646 471 8429	marvin.nagler@us.pwc.com
Gerard O'Callaghan	646 471 8833	gerard.m.ocallaghan@us.pwc.com
Michael O'Neill	646 471 5556	michael.j.oneill@us.pwc.com
Maureen Renick	646 471 3049	maureen.renick@us.pwc.com
John Reville	646 471 7845	john.reville@us.pwc.com
Thomas Romeo	646 471 8048	thomas.romeo@us.pwc.com
Michael Ruggeri	646 471 7588	michael.ruggeri@us.pwc.com
Michael Spiryda	646 471 7597	michael.spiryda@us.pwc.com
David Steiner	646 471 3836	david.a.steiner@us.pwc.com
Scott Sulzberger	646 471 7410	scott.r.sulzberger@us.pwc.com
William Taggart	646 471 2780	william.taggart@us.pwc.com
Oscar Teunissen	646 471 3223	oscar.teunissen@us.pwc.com
Belanne Ungarelli	646 471 5431	belanne.marie.ungarelli@us.pwc.com
Joe Wiggins	646 471 7378	joe.wiggins@us.pwc.com

Philadelphia, PA

Chris May	267 330 1398	christopher.r.may@us.pwc.com
Bill McGinley	267 330 3140	william.c.mcginley@us.pwc.com

United States (continued)

San Francisco, CA

Richard Carson	415 498 7359	richard.g.carson@us.pwc.com
Greg Eckert	415 498 7443	gregory.eckert@us.pwc.com
Laura Martinez	415 498 7656	laura.e.martinez@us.pwc.com
Cindy Powers	415 498 6210	lucinda.powers@us.pwc.com
Ted Wilm	415 498 8005	ted.wilm@us.pwc.com

Seattle, WA

Michele Godvin	206 398 3801	michele.l.godvin@us.pwc.com
Chris Hugo	206 398 3070	christopher.j.hugo@us.pwc.com

Asia

Hong Kong

Robert Grome	852 2289 1133	robert.grome@hk.pwc.com
--------------	---------------	-------------------------

Shanghai

Shirley Xie	86 21 6123 2855	shirley.xie@cn.pwc.com
-------------	-----------------	------------------------

Singapore

Justin Ong	65 6236 3708	justin.ong@sg.pwc.com
------------	--------------	-----------------------

Tokyo, Japan

Raymond Kahn	81 3 5251 2909	raymond.a.kahn@jp.pwc.com
--------------	----------------	---------------------------

Canada

Toronto

Chris Pitts	416 947 8964	chris.pitts@ca.pwc.com
-------------	--------------	------------------------

Europe

Channel Islands

Brendan McMahon	44 1534 838234	brendan.mcmahon@je.pwc.com
-----------------	----------------	----------------------------

Dublin, Ireland

Damian Neylin	353 1 792 6551	damian.neylin@ie.pwc.com
---------------	----------------	--------------------------

Frankfurt, Germany

Robert Welzel	49 0 69 9585 6758	robert.welzel@de.pwc.com
---------------	-------------------	--------------------------

Geneva, Switzerland

Thomas Huber	41 0 58792 2436	thomas.huber@ch.pwc.com
--------------	-----------------	-------------------------

London, England

Pars Purewal	44 20 721 24738	pars.s.purewal@uk.pwc.com
--------------	-----------------	---------------------------

Luxembourg

Kees Hage	352 49 4848 2059	kees.hage@lu.pwc.com
-----------	------------------	----------------------

The Netherlands

Frank van Groenestein	31 10 4076 444	frank.van.groenestein@nl.pwc.com
-----------------------	----------------	----------------------------------

Paris, France

Jean-Pierre Bouchart	33 15 657 1702	jean-pierre.bouchart@fr.pwc.com
----------------------	----------------	---------------------------------

Offshore

Bahamas

Clifford Johnson	242 302 5307	clifford.a.johnson@bs.pwc.com
------------------	--------------	-------------------------------

Bermuda

Andrew Brook	441 299 7126	andrew.brook@bm.pwc.com
--------------	--------------	-------------------------

Cayman Islands

Noel Reilly	345 914 8600	noel.t.reilly@ky.pwc.com
-------------	--------------	--------------------------

Curacao

Cees Rokx	599 9 430 0105	cees.f.rokx@an.pwc.com
-----------	----------------	------------------------

www.pwc.com/alternatives