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## NEWSLETTER



### What will the offshore world be like in 2009?

One thing is certain: it won't be like many of us would like it to be. Just about every year for the last 15 years someone has come to me at the start of the year and tried to predict that this would be the last year for LAVECO Ltd., as offshore companies were being closed everywhere and that the USA, the EU, the OECD, or all of them together were clamping down on the use of offshore companies.

If we listen to the news regarding the economic situation and recession, then maybe we really could take the above threats seriously. We can hear more and more statements on this topic from the politicians responsible, declaring war on the tax havens, harmful tax competition and the exodus of capital. However, this is by no means a new turn of events; we have been hearing these statements for decades, but the vast majority is totally unworkable.

The reasons that it is unworkable are as follows:

1. The majority of the small countries and island republics offering offshore company formation are now independent states who independently administer their own legislation. Although their bargaining power with the international organisations is particularly weak, it is still not possible to dictate the terms to them without restriction.

2. If we examine today's "offshore reality", it becomes clear that it is the "big" countries, such as the USA and the United Kingdom, or their

former dependencies, who offer the best tax-free solutions to all those who are not resident in the given country or territory. Just think about the Limited Liability Company (LLC) in the USA which is so popular, or the Limited Liability Partnership (LLP) in the United Kingdom.

3. Let's just assume that heaven and earth are moved, and everybody decides to revolt against the offshore world. But how? It is actually not that easy to put these actions into effect. And what will happen to the couple of MILLION offshore companies which already exist? Will they be closed down immediately? But these companies are the legal owners of other companies, real estate and other valuable assets. I read some amazing figures at the end of December in relation to the crash of the Moscow stock exchange: more than 90% of the stocks were owned, bought and sold by foreign, and in particular offshore, companies. In London, this figure is only around 60%. And if we look at the daily derivative transactions, which involve several thousand billion dollars each day, a significant part of these are performed by offshore companies and investment funds.

Based on the above, the total liquidation of offshore companies is simply unimaginable; even if they wanted to bring this about, responsible politicians would have to face up to the fact that they would be causing even greater economic instability: capital is on the one hand discreet, and on the other hand careful. This is particularly true where political risk is concerned.



At the same time, however, there will be restrictions and the tightening of regulations this year too. The continual war on "offshore" will become more intense, and will be on several levels:

1. It will probably not be possible to further tighten the international regulations. The legislation in place in the countries of western Europe and north America to prevent the exodus of taxes is already so strict that the introduction of further legislation would be pointless. The countries of eastern Europe will probably follow the same route, adopting certain practices from their western neighbours. Even here, however, there will be some counter-effect, as the liberal legislation attracts a certain section of international investors, and under the current recession, a ferocious battle is going on to win over these investors.

2. Anti-money laundering legislation has already led to the banks taking on some sort of serious "policing" role. This will only spread, and fewer and fewer banks will be prepared to accept account-opening applications from offshore companies. Additional conditions will also be introduced for transactions through existing accounts, with documentation to support the transaction, such as contracts and invoices, being requested more frequently. The banks not only have to identify the clients, and the individuals

behind the company and account, at the time of opening the account, but subsequently also have to monitor transactions, filtering out suspicious deals which could be linked to money laundering, and reporting them to the bodies stipulated by the law. The system is already operating today, and every day the staff of LAVECO Ltd. are faced with the findings of the compliance officers, and occasionally with mass bank account closures. And don't think that this is all just localised and only applies to the EU banks; if we go and open a bank account in Hong Kong, or any small bank in the Caribbean, we come up against the same requirements. The international banking world is becoming more and more uniform.

3. The role of countries which offer "all-in-one" solutions will continue to grow. What I mean by this is, in addition to company formation, the opening of bank accounts, local management, administrative services and agreements for the avoidance of double taxation. Cyprus is an example of such a jurisdiction, but the roles of Bulgaria in Europe and Hong Kong in Asia may also prosper and become more valuable. The latter has already been a popular choice for company formation in recent years because of the Chinese region.

4. Everyone will be forced to adapt to the changing circumstances. The romantic era of the offshore world has been lost forever. Those who want to remain successful in the long term will have to comply totally with the recommendations and expectations of the international organisations. This is equally true of both the clients and the banks, and naturally represents a completely new set of tasks for service providers such as LAVECO Ltd.







Many people are afraid of the changes and, particularly in the case of those who have been active in the business world for many years, would like to return to the days when they were successful and could operate more freely. Let's face it though, that simply

is not possible. Even after this recession, the world will never return to the way it was before. But what is it actually like now, and what was it really like then? To be honest, it really doesn't matter; we "simple minute atoms" can only do one thing: adapt to the ever-changing environment. The Chinese recognised this piece of wisdom thousands of years ago when they stated that only one thing in the universe is constant: change.

Kind regards

László Váradi  
Managing director  
LAVECO Ltd.

## Tax resident status in Cyprus



**of Tax Residence** – for one of our companies in which the directors were not resident in Cyprus for tax purposes.

We can conclude from this that this is likely to be the standard practice in the future, with rejected applications for all those companies in which the company management can not be seen to be carried out by directors resident in Cyprus. And without such a certificate, the company can not benefit from the advantageous conditions offered by the agreements signed by Cyprus for the avoidance of double taxation.

Unlike the majority of European Union members, who base the tax residence of a company on the place of registration, Cyprus employs the **"management and control"** system, focusing on the actual place of management. In this way, a company registered in Cyprus is only actually resident for tax purposes, if the company is also managed from Cyprus. The tax authorities do not have a fixed method of deciding on tax residency, but in the management and residency test to decide whether or not the company was managed from

Cyprus, the following factors are generally taken into consideration:

- the tax residency of the majority of the directors
- the place where the major decisions regarding the operation of the company are taken and where minutes recording such decisions are signed
- the place of signature of trading contracts



- the place where invoices in the company name are issued and by whom
- the location of the company's bank account
- the persons authorised to manage the bank account
- whether or not the company has issued a general power of attorney, allowing somebody outside Cyprus to act on behalf of the company
- whether the company directors have issued any specific powers of attorney, and with what rights
- the place where the company's original corporate documents and stamp are held
- whether or not the company has telephone and fax numbers and an email address in Cyprus
- whether or not the original documents relating to the administration of the company can be found in Cyprus

This list of conditions is particularly complex, and accordingly numerous factors should be considered before an accurate decision can be reached. In our experience, however, the tax office are not keen to go into too much detail in the decision-making process, and generally choose the simple route: if the majority of the directors are private individuals resident in Cyprus for tax purposes, then the company is also usually considered to be tax resident in Cyprus.

**As taking advantage of the agreement for the avoidance of double taxation is, after the "prestige of being registered within the European Union", one of the major reasons for the registration of companies in Cyprus, from now on LAVECO Ltd. only recommends to its clients the formation of companies in which the majority of directors are resident in Cyprus.**

For existing companies, and in particular those which have obtained an EU VAT number, we recommend that, if this is not already the case, changes be made in the board of directors, appointing a majority of Cyprus residents, in order to satisfy the requirements listed above. Another potential problem is that companies which have obtained an EU VAT number could have this number revoked by the VAT office, if the company is not being managed from Cyprus; if a company is not resident for tax purposes, then it does not have the right to have an EU VAT number.

If you would like to receive more information on the procedure for making changes in the board of directors, please contact one of our customer service representatives in the offices of LAVECO Ltd.

Despite this, in a recent survey by the international firm of consultants, KPMG, of the opinions of 400 European financial specialists, Cyprus came out in first place in the list of European countries based on the total tax environment.



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