
VANUATU

***Business and
Taxation Guide***

Preface

This guide has been prepared by the Vanuatu member of MOORES ROWLAND INTERNATIONAL:

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This guide is intended as a general guide and should not be acted on without further advice.

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1. *General information*

Attractions for the foreign investor

Vanuatu is an offshore, Financial Centre and commercial activities in the country have been greatly influenced by this status. Extremely active it is engaged in the administration and management of offshore companies, trusts and banks. The Financial Centre Association encompasses the extensive business and financial facilities available in Vanuatu resulting from its "pure" tax free status; pure, because for both residents and non-residents there are no personal or corporate income taxes, no estate or gift duties, no capital gains taxes, no exchange controls, and extensive secrecy provisions.

The absence of these taxes, duties and controls, coupled with state of the art communications and highly-developed professional services, makes Vanuatu an ideal centre for foreign investors to base their surplus funds for investment or to base offshore companies forming part of a wider international or financial network. The Vanuatu Government is extremely active in its support of the Financial Centre Association because of its importance to the Vanuatu economy, and is committed to making the country the Pacific's foremost offshore centre. See also Part 6.

Area, population and climate

Vanuatu is a chain of about 80 islands situated between the latitudes of 13° and 21° South and about 1,750 km north east of Sydney, Australia. Vanuatu covers 12,189 square kilometres of land and 450,000 square kilometres of sea within its 200-mile exclusive economic zone. Ten islands account for 90 per cent of the total land area. Port Vila, on Efate Island, is Vanuatu's capital, and home for the country's international Financial Centre. The population (predominantly Melanesian) is about 150,000, with 25,000 resident in Port Vila. The climate varies from tropical in the north to sub-tropical in the south. Average maximum temperatures are 29°C in the summer months of November to April, and 25° in the winter months of May to October.

Constitution and political structure

The Republic of Vanuatu is a parliamentary democracy. Independence was attained in 1980 after some 74 years of joint rule by Britain and France. The Constitution provides for executive and legislative arms of government, and the judiciary. The President is Vanuatu's Head of State. The judiciary consists of the Supreme Court with a Chief Justice and a Magistrates Court.

The legislature consists of a 52-member Parliament elected for a term of four years. The executive consists of a Council of Ministers headed by the Prime Minister who is elected by Parliament from among its members. The President is elected by Parliament and the National Council of Chiefs for a period of five years. The Central government consists of ten ministries with 40 departments. Local Councils have also been set up in various areas of the country.

Vanuatu is a full member of the British Commonwealth, the French League of Nations, the United Nations, *Agence de Co-operation Culturelle et Technique*, the South Pacific Bureau for Economic Co-operation (SPEC), the South Pacific Commission, the World Bank and the Asian Development Bank, which has its regional headquarters in Port Vila.

Economic situation

The country has a dualistic economy, with a large smallholder subsistence agricultural sector and a small monetised sector. The monetised sector is based on established plantations, ranches and associated trading, manufacturing, banking and shipping services, as well as the country's tourism industry. In Vanuatu, copra is the most important cash economic activity in the rural sector. At present, about 69,000 hectares of land are under coconut plantation, producing 50,000 tons of copra a year. Nearly all domestic exports are primary goods, the principal ones being coconut products, beef, cocoa, coffee and timber.

The introduction of commercial laws in the early 1970s added a new dimension to the economy; it led to the development of an offshore finance and banking centre, and a rapid expansion in the number of support organizations and professionals in Port Vila. The Finance Centre contributes considerably to Government revenue through the payment of business licence fees, insurance, banking and trust company licences, annual registration fees for all companies, stamp duties and other smaller fees. It is also a significant earner of foreign exchange through capital transfers, professional fees, interest etc.

The Government places a high priority on tourism development within the country and several new resorts and hotels have been built over the past two years. A new 5 Star Hotel and Casino is scheduled to open on the harbour front in early 2003. Port Vila already has one Casino at le Meridian Resort.

The Government earns substantial revenue from turnover taxes on interactive gaming and on-line casinos and a VAT of 12.5% on all local goods and services. All offshore companies are exempt from VAT.

Currency

The local currency is the Vatu (VT) which is tied to a regional basket of currencies. As there are no exchange control regulations in Vanuatu, bank accounts can be held in Vatu or any of the major international currencies, and funds in any currency can be readily transferred anywhere in the world without the need for approvals.

Banking and finance

The banking structure consists of a Reserve Bank, the National Bank of Vanuatu, numerous internationally recognized commercial banks, merchant banks, and the State-owned Development Bank. In addition, a substantial offshore banking centre exists. Many international commercial banks have licences to conduct business locally as well as with non-residents. These banks provide international services through a worldwide network of branches and correspondents.

Legal system

The International Companies Act (1993), the Companies Act (1986), the Banking Regulation and other Regulations are based on English law. The Supreme Court of Vanuatu has jurisdiction to determine all matters. Commercial law is based on English law. The doctrines of common law and equity apply.

2. Regulation of foreign investment

Vanuatu has no exchange control regulations or authorities. Funds accrued in or remitted to Port Vila in any currency can be held in any currency and readily transferred anywhere in the world. This applies to all types of transactions whether capital, loans, dividends, interest, royalties, service fees or profits. Any major world currency can be invested, earn interest and be repatriated in that currency or freely converted into other currencies. Companies may be incorporated with capital in any recognised world currency. Strict Money Laundering Laws exist and a strong Financial Transactions Reporting Act/Unit controls the flow of incoming funds.

3. Government incentives

The Government has created conditions in Vanuatu that have widespread appeal to investors. The general policy toward all forms of foreign investment is to welcome it, provided that the proposed investment contributes to the economy. There is no percentage limit on foreign ownership of a Vanuatu business; indeed, most businesses are foreign owned. There is an active Investment Promotion Authority to guide investors through the process.

Tax incentives

In Vanuatu, there are no:

- income taxes
- corporate taxes
- estate duties
- succession duties
- gift duties
- capital gains tax
- double taxation agreements, or
- withholding taxes.

Customs duties exemptions

The Government has defined areas for development in agriculture, industry and tourism. Within these priorities the following types of projects receive favourable consideration:

- foreign exchange earning projects
- projects planned for rural development
- projects that generate employment
- projects that will increase tourist accommodation.

These projects are eligible for full exemption from customs duties both on capital goods and construction materials imported during start-up and on raw materials or manufactured goods not locally available that will be re-exported after production.

4. **Business entities available to foreigners**

At the outset, a clear distinction must be drawn between doing business *within* Vanuatu and doing business *from* Vanuatu. In the former case, the operations are conducted by local entities dealing with residents of Vanuatu. In the latter case, the business operations are conducted *from* Vanuatu in every way except that there are restrictions on the extent of any transactions which may be conducted *within* the country.

The foreign investor has the following basic alternatives for conducting business in Vanuatu:

- international companies
- exempted or local companies
- branches of foreign corporations ("overseas companies")
- partnerships, including limited partnerships
- sole proprietorships
- discretionary or unit trusts.

Companies

Under Vanuatu law, all companies are incorporated under either:

- a) The International Companies Act 1993, or
- b) The Vanuatu Companies Act 1986, which has two major features:
 - the distinction between "local" and "exempted" companies
 - the ability of Vanuatu companies to move their place of incorporation to another jurisdiction, and companies incorporated in other jurisdictions to transfer their domicile to Vanuatu.

The Vanuatu Companies Act provides for the incorporation of companies limited by shares or by guarantee, unlimited companies and public companies.

International companies

The International Companies Act 1993 was enacted after strong lobbying by the members of the professional community in Port Vila over a number of years. The International Companies Act provides the offshore investor with a very valuable and flexible investment tool, the international company (IC); Part 5 deals with the highlights of this progressive legislation and summarizes its attributes. This Act has stood the test of time and companies incorporated thereunder are growing at a rapid rate each year.

Exempted companies

An exempted company can be incorporated if it is intended that its business activity is to be conducted outside Vanuatu.

An exempted company is prohibited from trading within Vanuatu except with another exempted company. The business of an exempted company, while conducted off-shore, can be administered in Vanuatu. It can also hold funds in Vanuatu banks. Exempted companies are not required to lodge their accounts and other details with the Registrar of Companies.

The secrecy provisions of the Companies Act impose penal sanctions on any government official who discloses information in respect to the registers, documents and affairs of exempted companies. Any legal proceedings which relate to the affairs of an exempted company are held in private. There is no legal requirement to disclose the beneficial ownership of an exempted company to any local authority even on incorporation. Exempted companies are not required to lodge an annual return.

Local companies

Local companies are formed to carry on normal trading business in Vanuatu. The provisions applicable to exempted companies do not apply and the company's file at the Registrar of Companies is available for public inspection. Audited accounts must be filed with the company's annual return if the annual turnover of the local company exceeds the equivalent of US\$200,000.

Overseas companies

An overseas company is one which is incorporated outside Vanuatu but which carries on business in Vanuatu. The company must register under the Companies Act and nominate two persons resident in Vanuatu authorised to accept notices on behalf of the company. It must also lodge an annual return together with audited accounts.

Particular activities

Further legislation controls banks, financial institutions, insurance companies, shipping companies, trust companies and on-line business.

Local and exempted banks

The Banking Regulation provides that no banking business shall be carried on in or from Vanuatu except with a valid licence granted by the Minister of Finance. There are two types of licence: a banking licence and a financial institution licence. In addition a company must be licensed as either a local bank or an exempted bank or financial institution. An exempted bank must carry on its banking business outside Vanuatu. An exempted bank must use the word "Bank" as part of its name and is subject to the powers of inspection granted to the Minister by the Regulation (under conditions of secrecy). Local banks conducting banking business in Vanuatu are subject to more stringent provisions including:

- minimum capital requirements

- minimum holding of liquid assets
- maintenance of a reserve fund with annual profit transfers of not less than 25 per cent
- quarterly returns of customers' liabilities
- publication of annual accounts in Vanuatu, and
- restrictions on certain business activities and profit distribution.

Insurance companies

The Insurance Regulation (1973) regulates the incorporation and operation of insurers, underwriters, agents or brokers and exempted insurers. Local insurers are required to comply with various registration requirements under headings:

- insurers other than associations of underwriters
- associations of underwriters
- agents, brokers and salesmen, or
- exempted insurers.

Requirements for the registration of local insurers include:

- minimum paid-up capital requirement
- excess of assets over liabilities in accordance with simple formulas
- established experience requirements
- maintenance of an office in Vanuatu
- accounting and lodgement requirements, and
- investigation by a qualified actuary every three years.

An exempted insurance company must be precluded by the objects of its memorandum of association:

- from insuring any risks within Vanuatu, and
- from soliciting business from the public within or outside Vanuatu.

Exempted insurers are not subject to the stringent registration conditions of local insurers but are required to obtain a licence, maintain an office in Vanuatu and appoint representatives. Captive insurance companies are therefore usually exempted insurance companies using nominees to satisfy the office and representative requirements.

Partnerships

The Partnership Regulation 1975 is substantially the same as the English Partnership Act 1890. A partnership may consist of general and limited partners. Limited partnerships must consist of no more than 20 persons, one or more being general partners who are liable for all debts and obligations. A limited partner cannot withdraw his contribution during the life of the partnership or take part in the management of the partnership business. A body corporate may be a limited partner. Limited partnerships must be registered with the Registrar of Companies.

On-Line Business

Over the last few years the Internet has become the focus for business everywhere in the world. You can now buy almost any product, conduct any business transaction, and find any information that you would like to have using a small computer anywhere in the world where there is a telephone line.

Banks in Vanuatu now offer our offshore clients internet access to their accounts.

The revolution in communications is critical for the economic future of Vanuatu because:

- A computer using the Internet in Vanuatu has the same potential for making money, selling or buying products as a computer in the middle of Sydney – this is the first time Vanuatu is not disadvantaged by distance from markets.
- Businesses are using the Internet everywhere in the world because it saves them time and money – huge amounts of money.
- Organizations use the Internet to cut down on communication costs and are now organizing meetings that take place on the Internet.

To make the Internet a useful business tool, people have to be able to have legally binding contracts that can be made over the Internet. In this respect Vanuatu has enacted the **Electronic Transactions Act** which sets out the rules for conducting legally binding contracts over the Internet. It describes how people will settle business transactions, and what is and is not legally binding.

One important feature of the Act is that it defines where a business transaction is made. If a business person in Australia uses his computer to reach an agreement with someone using a computer in Vanuatu, where is the transaction actually done? This is important for tax reasons, because if the agreement is in Australia there would be high taxes on the deal, and if it is done in Vanuatu there would be low (or no) taxes on the deal. Business people using the Internet would prefer to do business in Vanuatu if the transactions are legally defined as happening there.

The Electronic Transactions Act states that if the web page that closes the deal is on a computer located in Vanuatu, the transaction legally is defined as taking place in Vanuatu. This gives businesses who conduct their operations from Vanuatu a competitive advantage over businesses in higher tax regimes, and that means more commerce and business deals – and more funds – will come to Vanuatu.

Anyone, local or international, who wants to conduct business over the Internet from Vanuatu will benefit from the Electronic Transaction Act. Other countries that have enacted similar acts, like Bermuda, have seen an enormous increase in business activities.

The Electronic Transaction Act sets out rules for conducting business over the Internet and the E-Business Act set out the rules for how people can set up web site businesses here in Vanuatu.

Enacted at the same time, **the E-Business Act** allows people from anywhere in the world to actually set up an Internet business based in Vanuatu. This opens the door to even greater investments, business activities, and money transfers with Vanuatu acting as a kind of International Free-Zone on the internet.

The good thing about doing business over the Internet is that it is legitimate business, with people making business deals and buying and selling products in the public domain. Anyone can see what's going on and that it is not involved with drugs or crime.

The E-Business Act provides a way for foreigners to legally conduct Internet based activities from web sites hosted here in Vanuatu. The Act defines a web site domain as if it were an office suite that business people can rent to conduct business from. **These office suites are called "Cybersuites"** which are Government Registered in Vanuatu have the same status as an offshore company and are set up on computers located in Vanuatu. International Companies can rent these Cybersuites to the proprietor of the website.

Under **the E-Business Act**, foreign people can "rent" a Cybersuite and conduct business from that site without going through the complications of setting up an International Company. This makes it reasonably easy, and financially interesting for someone from Australia or the United States or an Asian country to base web sites here in Vanuatu. This means that their transactions will be done from here and that they will be paying money into the Vanuatu economy for a variety of support services such as banking, accounting, web hosting and telecommunications.

Without the E-Business Act, these potential investors would go to other island countries that now offer these services such as Bermuda.

5. Setting up and running business organisations

International companies

This new form of company is regulated by the 1993 International Companies Act. A Vanuatu international company (IC) can be incorporated on the same day as instructions are received. Companies which offer their shares to the public, or which intend to hold banking, trust or insurance licences, cannot be registered as international companies.

The main principle upon which the International Companies Act 1993 is based is that of the solvency test. An IC can do what it wishes with its assets so long as it remains solvent. It may distribute its net assets to its owners or gift them to others, purchase its own shares, cancel shares etc. Specific characteristics of the International Companies Act 1993 include provision that a Vanuatu international company:

1. Has a constitution instead of a Memorandum and Articles of Association.
2. Must lodge with the Registrar its Constitution, the location of its registered office, the name of its registered agent and any charges against its assets, all of which are available for public inspection. No other returns are required.
3. May be limited by shares, guarantee or both.
4. Has incorporators rather than subscribers because they do not subscribe for shares. The first shares are allotted by the directors and thus there is no need for transfers of shares out of the names of the incorporators to the purchasers of companies (or their nominees).
5. Deems incorporators to be members until shares are allotted.
6. Allows a single incorporator as well as a single member.
7. Need not name its first directors in its Constitution. They will be subsequently appointed by the directors or by the incorporators who exercise the powers of directors until they appoint the first directors.
8. May have its official name in any language (with a translation into English or French).
9. Must have in its name a word or popular abbreviation thereof which connotes the existence of a body corporate with limited liability.
10. Need not appoint a company secretary or other officers.
11. Need not hold annual general meetings or file annual returns.
12. Has all the powers of a natural person.
13. Must have a registered agent in Vanuatu (who need not be an officer).
14. Must have one or more directors (natural persons or corporate) who may reside anywhere.
15. May transfer its assets to trustees acting on behalf of third parties.
16. May not carry on business or own land in Vanuatu except in furtherance of its international business.

17. May change its status to or from being limited by shares or guarantee.
18. May have shares that are in registered or bearer form, with full, conditional, partial or no voting rights, with preferential rights or rights of redemption, subject to forfeiture or not, and issued in any currency.
19. May purchase or redeem or hold its own shares without court approval, so long as it does not become the sole member of itself.
20. May convert from or to no par value shares, change currencies or convert from or to bearer shares.
21. May issue fractional shares.
22. May issue share warrants in registered or bearer form.
23. Need not issue share certificates.
24. May apply to the Vanuatu court to not recognize any acquirers of shares in the company if they were acquired by force, confiscation, imposition or any tax, assessment or other foreign government charge.
25. May by resolution of directors or members do anything that could be done by a meeting thereof.
26. May make loans to directors (subject to the solvency test).
27. Need not appoint any Vanuatu resident as a director or hold any meetings in Vanuatu.
28. May indemnify any person who has acted in good faith on behalf of the company.
29. May hold meetings anywhere in the world, which may be held in any manner so long as the members can hear and recognise each other's voice.
30. May keep its accounts, records, minutes or registers at any place in the world it wishes, although they must be brought into Vanuatu if the Registrar so directs.
31. May adopt a common or corporate seal which may be affixed anywhere in the world.
32. May execute contracts under seal or by a director's signature.
33. May ratify any pre-incorporation contract, whereupon that contract binds the company as if it were the party when the contract was made.
34. Does not have the concept of authorised capital.
35. May issue debentures or series of debentures which may, by their terms, suspend the votes of the members.
36. May not offer its shares or debentures to the public.
37. May merge with another company so that one of them survives, or consolidate with another company resulting in a new company.
38. May continue its existence under the laws of another jurisdiction or become an IC by continuing in Vanuatu so long as the previous jurisdiction does not specifically prohibit continuation outside that jurisdiction.
39. May delay for up to three years its continuation in Vanuatu or moving out of Vanuatu after approval has been granted.
40. May be struck off if it no longer qualifies as an IC.
41. May hold shares in Vanuatu local or exempted companies e.g. banks or insurance companies.
42. Is obliged to pay all government fees in US\$, the main ones of which are:
 - a) US\$150 upon registration
 - b) US\$300 each 30 June.
43. Need not disclose on its letterhead etc., its place of incorporation.

44. Is exempt for 20 years from tax on profits, capital gains, or distributions, stamp duty and exchange control restrictions.

Local and exempted companies

A Vanuatu company can be incorporated in one day, particularly if it is an exempted company; offshore (exempted) banks, financial institutions and captive insurance companies usually take up to 10 days to incorporate. Application for a permit to form a company must be made in the prescribed form to the Registrar of Companies. This service can be arranged by the legal firms, accountants and trust companies resident in Vanuatu. Company names can be reserved for up to three months.

Legal requirements

The following information is required to enable a permit application to be processed:

- the proposed name; it is prudent to provide alternatives
- the type of company (limited by shares, guarantee etc.)
- whether the company is to be a local or exempted company
- full name, address, occupation and nationality of each person for whom the applicants (normally service companies acting in a nominee capacity) may be acting and who has or intends to have an interest, whether beneficial or otherwise, in the company; disclosure of beneficial ownership is not made to the Government in the case of exempted companies
- the precise nature and fields of operation of the business to be carried on by the company
- the situation of the registered office
- the situation of the registers and books of account
- full name and address etc. of the applicants*
- names of other companies of which each applicant is a director
- full name and address etc. of the first directors of the company*
- authorized capital details, currency, number of shares and par value per share.

(*Normally service companies acting in a nominee capacity)

Exempted companies are normally incorporated using nominees, with declarations of trust executed in favour of beneficial owners. Companies may be incorporated with capital in any currency, if desired, with no minimum requirement.

Private companies must have not less than two and no more than 50 shareholders. Only one director is required for a private company; the director must be a person or company resident in Vanuatu.

An annual general meeting must be held at least once in every calendar year and not more than 18 months after incorporation or 15 months after the preceding annual general meeting. A Vanuatu company is required to maintain in Vanuatu:

- a register of shareholders, directors and secretaries

- a register of charges
- books of account
- minute books
- a register of debenture holders, and
- a register of directors' shareholdings.

A local company is required to appoint auditors if its turnover exceeds the equivalent of US\$200,000. Exempted companies do not require an audit.

Business licences

It is obligatory for a person or local company to obtain a business licence from the Government before taking up any commercial activity. The licence is not transferable and the licence-holder is required to pay an annual fee which varies according to the business activity. A permit to incorporate a *local* company will not be processed until approval for the issue of a business licence has been granted. Exempted companies do not require a business licence.

Registration of business names

Registration of a business name is required by every firm, person and company having a place of business in Vanuatu if that name differs from the name of the firm, person or company.

Residency and work permits

Residency permits are required for non-citizen residents of Vanuatu; applications must be made in the prescribed form from outside the country. They are renewable every year for salaried employees, although long term permits for up to 15 years are issued to retired investors and business investors depending on the level of investment.

It is an offence for any non-citizen to take up or continue in paid employment of a private individual or company in Vanuatu without first having obtained a work permit. It is therefore necessary for every employer who wishes to employ any non-citizen to make an application in the prescribed form. Payment of the work permit fee is the employer's responsibility; work permits are renewable every year.

Exempted banks

Under Vanuatu law a bank can obtain an offshore or exempted banking licence but the bank is not permitted to carry on business in Vanuatu. Most exempted banking licences are held by exempted companies.

The incorporation and licensing of an exempted bank is controlled by the Vanuatu Banking Act. The guidelines for the issue of offshore bank licences can be summarised as follows:

1. When the beneficial owner of the offshore bank is a recognised and reputable international bank or financial institution, the paid-up capital can be minimal, say US\$10,000, and a licence would be issued if the management is shown to be responsible.
2. In other circumstances the Government's policy is more conservative and the following must normally be provided:

- (a) a minimum paid-up capital of US\$150,000 or its equivalent;
- (b) evidence that the day-to-day managers of the bank have full banking knowledge and experience;
- (c) local directors of the bank and an undertaking that such directors will be kept fully informed as to the ongoing management and affairs of the offshore bank;
- (d) a written undertaking from the promoters of the offshore bank that its activities will be strictly of an in-house nature and that the bank will not solicit monies from the general public for withdrawal by cheque; this undertaking may be modified to the particular circumstances of the applicant;
- (e) details of the beneficial owners of the proposed offshore bank, including details of beneficial shareholders of corporations which will have a beneficial interest in the bank; copies of annual reports of such corporations should be submitted with the licence application;
- (f) independent references as to the character and bona fides of the beneficial owners of the bank together with evidence of their financial substance; references from solicitors, accountants, bankers or persons of standing are acceptable; an independent certified statement of net worth, while not essential, should also be provided;
- (g) an undertaking to obtain prior approval from the Minister for any change in the beneficial ownership of the bank.

No licence will be granted by the Government until the Banking Unit of the Financial Services Commission has conducted full due diligence including Interpol checks.

6. Business taxation and offshore structures

Direct taxation

There are no corporate income taxes, capital gains taxes or withholding taxes.

Indirect taxation

Government revenue is provided by indirect taxation in the form of import and export duties, port and airport dues, registration and business licence fees, tourist turnover tax, cheque tax, stamp duties and land transfer fees. VAT was introduced in August 1998 to replace most of the indirect taxes referred to. Gaming taxes still exist.

International tax planning

The absence of taxation coupled with excellent communications and highly developed professional services makes Vanuatu an ideal centre for non-resident individuals or companies to base their surplus investment funds in trusts or to establish offshore holding companies, investment companies or trading companies.

The most common vehicles used to take advantage of basing funds or operations in Vanuatu are:

- trusts in which assets are effectively handed over to a trustee who holds and manages those assets in trust or on behalf of others.
- exempted companies or international companies which are usually designed to earn tax-free income by entering into transactions with other companies or individuals overseas, and which are most commonly managed by local professional representatives.

On the other hand, many non-residents use the Financial Centre simply by having bank accounts with Port Vila banks.

The special features of Vanuatu's legislation are the Banking Regulation, the Insurance Regulation and the Maritime Law which respectively encourage the use of Vanuatu as a base for banking operations, captive insurance operations and low-cost shipping registration.

Holding companies

A holding company in Vanuatu can be used to advantage in international operations. Group companies in various countries can be funded by loans from the Vanuatu holding company so that the subsidiary obtains the benefit of tax deductions for interest paid. Profits accumulated in the Vanuatu company can be then used elsewhere to generate further tax-free income through direct investment.

An investment-holding company can be established to purchase investments held by an overseas portfolio manager. The holding company would establish a loan as consideration equal to the value of the investments. Tax is not payable on income generated from the investment, thereby increasing funds available for reinvestment.

Back-to-back loans

Such loan agreements make it possible to make loans anonymously through a Vanuatu third party, say, from a parent to a subsidiary company. The parent company lends to the Vanuatu company at a low interest rate, and a subsidiary borrows from the Vanuatu company at a higher interest rate; this leaves tax-free income in the Vanuatu company for reinvestment, and may obtain tax deductions for the interest paid by the subsidiary.

Exempted banks and finance companies

As noted in Part 4, the Banking Regulation provides for the establishment of exempted banks or exempted financial institutions which may carry out banking transactions or money-lending operations outside Vanuatu. Such transactions are readily facilitated because there are no exchange control regulations and currencies are easily interchanged, accumulated and reinvested tax free. Parent banks are thus provided with greater flexibility than if they operate directly in the major financial centres where monetary policies are more rigidly regulated.

A Vanuatu exempted bank can also provide a large international company that has many subsidiaries with a means of providing tax-free banking facilities and cash management.

Captive insurance companies

Captive insurance or the concept of insuring risks within a group is a profitable way in which a multi-national corporation may insure the risks of subsidiaries and associates. The Vanuatu captive, properly organized, can produce lower insurance costs and a lower cost of reinsuring the risk. There is a greater cash flow through the use of a captive insurance company. There is the ability to obtain coverage for certain risks that are not presently available through commercial insurance companies e.g. such exposures as loss of profits, strikes, floods, pollution, storage of explosives, products liability, extended warranty. The captives can be used to insure low-risk assets against normal or expected losses and reinsure high-risk assets through commercial insurance. Premiums accumulated are therefore freely available for tax-free investment in other areas. Premiums may also be deductible for tax purposes in the "home" country.

A Vanuatu captive insurance company can therefore be established in many forms to insure the risks of either its parent or a wide range of associated or group companies. Overseas companies are therefore able to build up "within group" provisions against possible losses and at the same time generate tax deductions on a progressive basis rather than when the loss occurs.

The Vanuatu legislation permits exempted insurance companies to be formed easily, allowing for complete flexibility and with no restriction on the captive's investment policy. The ease of operation of the captive is also enhanced by the complete freedom of funds movement in and out of the country. Insurance cover through a Vanuatu captive for specific requirements will generate immediate

premium savings through carefully structured reinsurance. The cost savings are accumulated in the captive insurance company.

Shipping companies

The Vanuatu Maritime Law and the Vanuatu Maritime Regulation, which closely resemble those of Liberia, have firmly established the Vanuatu shipping flag. The underlying law is the non-statutory maritime law of the U.S.A. The laws and regulations establishing Vanuatu as an open-registry nation were passed in 1981. The policy behind this action was to establish an efficient and convenient open-registry system operated out of central New York, and based on established procedures which give protection to owners and banks. The shipping registry is independent of that of the U.K. and is open to owners of any nationality. Officers and crew also may be of any nationality. Vessels flying the Vanuatu flag receive friendly treatment in various world ports. Vanuatu is concerned that its fleet maintains high standards of safety and the government has adopted the following IMCO conventions: Safety of Life at Sea 1974 with the 1978 protocol, Loadline 1966, Collision Regulations 1972, Marpol 1954 and Prevention of Pollution of the Sea by Oil 1969.

Central Registry Offices in New York and Hong Kong handle all details of ship registry and preserve control and continuity over documentation, licensing standards and recordability requirements for mortgages.

Initial registration fees for vessels up to 5,000 net tons are US\$1.50 per net ton, 5,001 to 25,000 net tons US\$1.25 per net ton, from 25,001 net tons and upwards US\$1.00 per net ton. Annual tonnage tax is US\$0.25 a net ton.

Vanuatu companies are widely used as holding companies, owning ships flying the Vanuatu flag.

Other uses

Exempted companies or international companies are also established to:

- Earn fees and commissions through agency agreements, royalty agreements and distributorships.
- Accumulate re-invoicing margins, either directly or through ownership of companies in other jurisdictions.
- Enter into offshore contracts for specific purposes with third parties, and "sub-contracting" to associated companies at higher rates.
- Provide management or consultancy services to entities abroad, thus generating and accumulating tax-free income and creating tax deductions in other countries.
- Acquire patent rights, copyrights or licence agreements from privately-owned manufacturing companies and license these throughout the world to various users, including associate companies.
- Acquire exclusive rights to the professional services of skilled or famous people performed outside their countries of residence.

6. *Personal taxation*

There are no personal income taxes, capital gains taxes, withholding taxes, estate duties or death duties.

7. Double taxation agreements

No double taxation agreements have been made between Vanuatu and any other country.

8. Other taxes

Rent tax

Landlords pay 12.5 tax on gross commercial rentals received.

Property tax

Registration fees are payable for the first registration of a land lease and on each transfer thereafter.

Gaming tax

The Gaming Control Act provides for a flat 30% tax on the gross profit of casino operations. The Interactive Gaming Act imposes a flat 2% tax on Gross Winnings.

Value Added Tax

A VAT of 12.5% on all local goods and services applies.

9. Portfolio investment for foreigners

There are no restrictions on the ability of foreigners to maintain a portfolio of investments in Vanuatu. Vanuatu banks and trust companies are actively involved in portfolio management for non-residents.

Foreigners can also invest in leasehold real estate without restrictions.

10. Trusts

Discretionary trusts

Trust law in Vanuatu follows English statute law together with the doctrines of common law and equity as modified by local regulations. Generally, the law does not come into play where the provisions of the trust document itself deal with a matter; the law does set forth the duties of trustees and allows beneficiaries to seek the assistance of the court when necessary. Additionally, as would be expected, secrecy is maintained in compliance with the specific laws of Vanuatu.

In the context of the Vanuatu tax haven, a trust is created by a deed entered into between the settlor and the trustee. It is quite normal for settlements to give the trustees wide discretionary powers over administration, investment and distribution of the trust assets. Discretionary trusts are the most common in Vanuatu.

Contents of trust deed

The usual standard trust deed contains:

- An acknowledgment of the transfer of trust property from the settlor to the trustee subject to the terms of the trust deed.
- A provision whereby the trustee can accept further property as part of the trust fund; the initial transfer need only be a nominal amount.
- A statement as to duration of the trust. The usual period is the maximum of 80 years.
- A statement identifying the beneficiaries by name or class.
- A statement as to the circumstances under which the income and the capital of the trust fund are to be disbursed to beneficiaries.
- The powers and duties of the trustee.
- A statement as to the removal of the trustee and the appointment of a new one.
- A statement of the law to which the trust deed is subject.

Appointor or protector

The trust deed may contain provision for designating an appointor, who may be able to remove the trustee and thereby exercise a series of checks and balances over the trustee's conduct. In fact, where an ostensible settlor is employed, the client, by being designated appointor, retains a degree of control quite unusual in trust administration.

Memorandum of wishes

An additional way to achieve flexibility is for the promoter to give the trustee a "memorandum of wishes" to supplement the trust deed, at the time the trust is established or subsequently. Though not a legal document, it may reasonably be

expected that the Vanuatu trustees will observe the guidance if it is not contrary to the actual terms of the trust deed.

Use and benefits

Foreign investors resident anywhere in the world may, subject to the exchange control regulations and tax clearance requirements of the country in which their assets are situated, arrange to establish trusts in Vanuatu to:

- Hold shares in exempted or international companies in Vanuatu or elsewhere.
- Hold investment and other portfolios.
- Collect dividends from exempted or international companies in Vanuatu or elsewhere.
- Hold surplus cash funds.
- Old personal family assets.

Many benefits are obtained:

- Anonymity, particularly in relation to shareholdings in offshore entities.
- In certain circumstances distribution of trust income as capital.
- Reduction of tax liabilities.
- Use of the flexibility provided by a discretionary trust, in that the beneficial owner does not have a vested interest in the assets of the trust.
- Avoidance of death duties or succession duties.
- Avoidance of reporting requirements.
- A more liberal choice of investment because of the absence of exchange controls.

Unit trusts

Both private and public unit trusts are available in Vanuatu. The Prevention of Fraud (Investments) Regulation provides for the establishment of authorised unit trust schemes. The Regulation sets out various matters for which trust deeds pursuant to authorised unit trust schemes must provide, including:

- The manner in which unit prices are calculated.
- The mode of execution and issue of unit certificates.
- Restriction on the issue, by the manager, of advertisements or circulars in respect of the sale price of units.
- The establishment of a fund for trust administration expenses.
- The audit and circulation of trust accounts.

Any prospectus under an authorised unit trust scheme must be approved by the Minister of Finance.

12. Practical information

Communications

>From the international airport at Port Vila there are daily direct flights to Sydney, Brisbane, Auckland, Fiji, New Caledonia, and Solomon Islands with convenient connections to all major international destinations.

Vanuatu has two deep sea ports; a number of lines provide regular cargo services from Australia, Europe, New Zealand, United States and Japan. Passenger cruise liners call on average once a week.

Language

English and French are the official languages of the country, while Bislama ("pidgin English") is the national language. Members of the Finance Centre Association conduct business in English, but translators are available if required.

Time relative to Greenwich Mean Time

Vanuatu is 11 hours ahead of GMT.

Business hours

Monday to Friday 7.40 am to 11.30 am
1.30 pm to 5.00 pm

Public holidays

| | |
|--------------------|--------------|
| New Year's Day | 1 January |
| Dr.W.H. Lini Day | 21 February |
| Custom Chiefs' Day | 5 March |
| Good Friday | |
| Easter Monday | |
| Labour Day | 1 May |
| Ascension Day | |
| Children's Day | 24 July |
| Independence Day | 30 July |
| Assumption Day | 15 August |
| Constitution Day | 5 October |
| Unity Day | 29 November |
| Christmas Day | 25 December |
| Boxing Day | 26 December. |

Appendix

Schedule of costs

| | | |
|------|---|-------------|
| 1.a) | International company | US\$ |
| | Incorporation fee (includes registered agent fee for first partial year to 30 June) if incorporated in the first half | 1,100 |
| | Government registration fee: | |
| | - 30 June | 300 |
| | Annual registered agent fee (30 June) | 550 |
| | Per nominee : Director (30 th June) | 350 |
| | : Shareholder (30 th June) | 200 |
| | Disbursements | 150 |
| 1.b) | Exempted company | |
| | Incorporation fee | 800 |
| | Government registration fee | 500 |
| | Disbursements (common seal, etc) | 100 |
| 2. | Local company | |
| | Incorporation fee | 800 |
| | Government registration fee | 300 |
| | Disbursements (common seal, etc) | 50 |
| 3. | Annual Corporate Administration Fee | |
| | Including registered office, nominee directors/shareholders, company secretary and annual return - for each exempted or local company | 800 |
| 4. | Exempted bank | |
| | Incorporation fee | 3,000 |
| | Government registration fee | 500 |
| | Licence application fee - minimum | 5,000 |
| | Bank licence fee | 5,000 |
| | Disbursements | 100 |
| 5. | Exempted insurance company | |
| | Incorporation fee | 2,000 |
| | Government registration fee | 500 |
| | Licence Application Fee - minimum | 2,000 |
| | Insurance licence fee | 1,000 |
| | Disbursements | 100 |
| 6. | Annual exempted bank administration fee | |
| | Including registered office, nominee directors/shareholders, company secretary and annual return | 5,000 |
| 7. | Annual insurance company administration fee | 2,000 |

| | | |
|-----|---|-------|
| 8. | Registration of overseas company | 1,000 |
| 9. | Discretionary trust | |
| | Settlement | 600 |
| | Annual trustee fee | 650 |
| | Stamp Duty | 75 |
| 10. | Bank Account | 350 |
| | Bank Account Signatories | 350 |
| 11. | Power of Attorney | 350 |
| 12. | Credit Card | 500 |
| 13. | Debit Card | 250 |