

being after all, with great experience, knowledge, excellent communication skills and, most important, he was very proud of being a managing partner of one of the "Big Four". I discussed the audit and accounting profession with him and asked him frankly what was it that made a "Big Four" firm one of the best in the audit and accounting profession.

He mentioned many things, some of which I do not even remember, and whilst I realise that this is not a good time to discuss "Big Four" issues, I would like to propose that we should feel pride in being members of Geneva Group International. This is not for the sake of words alone, but should also focus on a practical formula: (1) Quality of Networking: that is, how the GGI team go about selecting best quality members. (2) The Image: here I mean

how best to introduce our GGI member firms to our clients. (3) The Marketing Formula: the marketing formula should be implemented harmonically in the regions. (4) Enhancing Business Opportunities between members: here I mean GGI members' network as a part of GGI network. (5) Exchange of Information: between GGI and members, and also between members themselves.

It is my understanding that success in business always depends on "Media" and "Networking", and concerning our membership with GGI, we need to start with the image and also consider the best practical way to introduce ourselves as a GGI member. The marketing formula should be implemented through a standard policy for the GGI members per region, also focusing on "Media".

Finally, from my point of view this could lead to many ideas, but what we are principally looking for is to enhance business opportunities and increase our turnover. However, this can only take place when we find a way to cooperate in developing our image, also by exchanging information and then thinking big as a GGI member.

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- 1 **Quality of Networking** – Principally depends on the quality of members selected by the GGI team based on careful due diligence.
- 2 **The Image** – Choosing the best way to introduce ourselves as GGI members to our clients.
- 3 **Marketing Formula** – To be implemented harmonically based on the region.
- 4 **Enhancing Business Opportunities Between Members** – To be achieved by focusing on members within the GGI network.
- 5 **Exchange of Information** – To be achieved through the sharing of ideas and knowledge between GGI members.

Thinking big as GGI Member Formulator

New US disclosure rules for non-US entities

By Robert Simon

In March 2010, the US passed a new tax law which the IRS Commissioner stated was the most significant piece of legislation enacted in a generation with respect to US international tax compliance.

The Foreign Tax Compliance Act (FAC-TA) imposes a new withholding tax regime on payments made to non-US persons of

certain US source income after 31 December 2012. The US, like most countries, requires payers of its own sourced income to withhold a fixed percentage of the amounts paid to cover the domestic tax obligations of non-resident aliens who may not otherwise file US income tax returns. Today, 30% (or lower treaty rate) tax is required to be withheld from payments of US source income such as dividends, rents, royalties, wages,

etc. and, to a limited extent, interest. Absent from this list are payments of interest on bank deposits, registered corporate and government obligations, OID and capital gains that are not effectively connected with a US trade or business, since such income is not taxable to non-US persons. Withholding can be eliminated if the recipient can prove that it is exempt from such withholding.

Starting in 2013, the new provision not

only continues the present scheme but includes all US source interest payments (including OID) as well as a 30% withholding tax on the gross proceeds from the sale of stock or securities, without reduction for stock basis and irrespective of the fact that these receipts are not taxable to the recipient. While these new provisions appear to be onerous, in fact the most important

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element of the law from both the IRS's perspective, as well as the recipient's is how to avoid the imposition of this new regime.

Persons subject to these rules are Foreign Financial Institutions (FFI's) including non-US banks, brokerage houses, hedge funds, trust funds, private equity funds, family investment vehicles and similar entities receiving US source income on behalf of their customers. Also included are any other non-US entities not included in the above definition. While the IRS will eventually exempt those entities that they believe are not of a type that will be used to avoid US taxes, the main thrust of the new law is to exempt those entities that enter into a formal written agreement with the IRS to identify their customers that are US taxpayers and report their names, identification information and account balances annually to the IRS. These FFI's must establish procedures in which they will convert their records into electronic format and perform an annual search to determine the identities of the individuals, partners and beneficiaries of pass-through entity customers, as well as substantial (more than 10%) shareholders of corporate customers.

In essence, the new law is an effort on the part of the IRS to learn the identities of US persons having foreign accounts who may possibly be trying to avoid paying US taxes by forcing the FFI's to disclose their identities or be penalised with 30% withholding on all US source gross receipts for all customers. In the coming months, the treasury promises to issue regulations which will explain how these new rules will



Robert Simon

work prior to their final implementation in 2013.

Robert Simon: New chairperson of the International Taxation Practice Group North America. At the ITPG meeting in London from 21-23 January 2011 a new practice group "International Taxation" for the Northern American region has been established. The new chairperson for this region is Robert Simon who has been elected on 22 January 2011 during the meeting in London.

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The Ruchelman Law Firm and the Big Apple

By **Simon Prisk**

The Ruchelman Law Firm is closing its most successful year in the firm's history. This is highlighted by the growth of its corporate transaction practice, its voluntary disclosure practice for undisclosed foreign financial accounts, and its private client practice. The firm continues to diversify and grow.

Simon Prisk

Simon Prisk heads the firm's corporate transactions practice. Prior to joining The Ruchelman Law Firm, Mr. Prisk was on the legal team that represented Rupert Murdoch in many acquisitions and joint ventures. This year, Mr. Prisk applied the experience he gained in representing News Corporation in several transactions, including representation a non US venture with respect to substantial investments in two bio tech start ups involved in cancer research and representation of a Thai venture in connection with the purchase of a five star hotel in Colorado. In addition, Mr. Prisk continued his general cross border practice advising clients, in support of the firm's tax group, with structure and implemen-

tation of acquisition and operational corporate structures.

Janine Burman

Janine Burman is part of the team handling voluntary disclosure of undeclared foreign financial accounts. Ms. Burman is a Brazilian accountant and a New York lawyer. She is primarily responsible for analysing client transactions and account balances in offshore accounts so that unreported income can be reported and penalty exposure can be computed for U.S. clients making voluntary disclosures. These are invigorating assignments with much responsibility for a young lawyer. Ms. Burman confides that she now knows more about the subject than the senior member of the firm.

Ed Northwood

From his office in Toronto, Canada, Ed Northwood is responsible for the private client practice of the firm. Ed was a partner of a New York State law firm for over 20 years. He has a Canada-wide reputation for U.S. estates and trusts planning in the U.S. in circumstances where parents are non-U.S. citizens, but their children or