THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW

TENTH EDITION

Editor
John Riches

THE LAWREVIEWS

THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW

TENTH EDITION

Editor
John Riches

THE LAWREVIEWS

PUBLISHER
Clare Bolton

HEAD OF BUSINESS DEVELOPMENT
Nick Barette

TEAM LEADERS
Joel Woods, Jack Bagnall

BUSINESS DEVELOPMENT MANAGERS
Rebecca Mogridge, Katie Hodgetts, Joey Kwok

RESEARCH LEAD
Kieran Hansen

EDITORIAL COORDINATOR
Leke Williams

PRODUCTION AND OPERATIONS DIRECTOR
Adam Myers

PRODUCTION EDITOR
Anne Borthwick

SUBEDITOR
Janina.Godowska

CHIEF EXECUTIVE OFFICER
Nick Brailey

Published in the United Kingdom
by Law Business Research Ltd, London
Meridian House, 34–35 Farringdon Street, London, EC4A 4HL, UK

www.TheLawReviews.co.uk

ISBN 978-1-83862-813-0

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

BGP LITIGATION

CHARLES RUSSELL SPEECHLYS LLP

CONE MARSHALL LIMITED

CYRIL AMARCHAND MANGALDAS

ELIAS NEOCLEOUS & CO LLC

ESTUDIO BECCAR VARELA

HANNAFORD TURNER LLP

HANNES SNELLMAN ATTORNEYS LTD

HASSANS INTERNATIONAL LAW FIRM LIMITED

HAYNES AND BOONE, SC

HIGGS & JOHNSON

LEE HISHAMMUDDIN ALLEN & GLEDHILL

MAISTO E ASSOCIATI

MARXER & PARTNER RECHTSANWÄLTE

MAZARS PRIVATE CLIENTS

NIJSDRAYE | ATTORNEYS AT LAW

O'SULLIVAN ESTATE LAWYERS LLP

PERCHSTONE AND GRAEYS LP

PERSPECTA TRUST LLC

POELLATH

POTAMITISVEKRIS

PRAXISIFM GROUP LIMITED

RECABARREN & ASOCIADOS

RETTER SÀRL

RMW LAW LLP

SOŁTYSIŃSKI KAWECKI & SZLĘZAK

SRS ADVOGADOS

STEP

SULLIVAN & CROMWELL LLP

UGGC AVOCATS

WITHERS WORLDWIDE

WOLF THEISS

CONTENTS

PREFACE

After the past unprecedented 24 months, it is now time to look forward to the post-pandemic world and consider the developments that will likely affect high-net-worth individuals. While (at the time of writing) life begins to resume, the after-effects of the pandemic will reach into the next decade and possibly beyond. The main political question of the day is 'Who will pay for the costs of the pandemic?' As the retail and hospitality industries were forced to close, there was a severe reduction in capacity in construction and manufacturing and high unemployment rates threatened, and governments intervened to provide stimulus packages to all areas of the economy.

The latest reports indicate that the pandemic had cost the UK government £372 billion as at 31 March 2021. [1]To put this in perspective, the total tax revenue that the UK government collected for tax year 2019–2020 was £636.7 billion.[2] Therefore, the Covid-19 bill constitutes almost 60 per cent of total tax revenue, or almost 14 per cent of the UK's GDP for 2019, and there are likely to be more costs to come.

On the other side of the Atlantic, Harvard economists David Cutler and Lawrence Summers estimate the pandemic will cost the United States at least US$16 trillion if the pandemic is largely over by autumn 2021.[3] That would comprise roughly 75 per cent of the nation's 2019 GDP, which was £21.43 trillion. Over in Europe, Germany's government estimated, in December 2020, that the pandemic would cost the country €1.3 trillion, almost 33 per cent of the country's 2019 GDP.[4]

For the rest of the 2020s, the aim for governments will be to generate higher revenues to pay off this borrowing, while continuing to stimulate the economy through fiscal interventions such as keeping interest rates low and government spending. Generating higher revenues will pose a challenge, as the pandemic has worsened inequality and had the greatest impact on individuals with low incomes.[5] Meanwhile, many high-net-worth individuals have benefited financially from the pandemic.[6] Not since the end of the Second World War have the tongues of rumour wagged so much or so loudly on the subject of wealth taxes.

1 https://www.nao.org.uk/covid-19/cost-tracker/.

2 https://www.nao.org.uk/work-in-progress/the-management-of-debt-owed-to-hmrc/

3 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7604733/.

4 https://www.dw.com/en/coronavirus-germany-faces-13-trillion-covid-bill/a-56103251.

5 https://www.ft.com/content/cd075d91-fafa-47c8-a295-85bbd7a36b50.

6 https://www.ft.com/content/747a76dd-f018-4d0d-a9f3-4069bf2f5a93.

As the introduction to the UK's Wealth Tax Commission[7] Report[8] points out, the concept of a one-off levy during a time of financial crisis is not a novel one in many countries, including the UK. In 1981, during recession, Conservative Prime Minister Margaret Thatcher's government introduced a tax on banks, which raised about £400 million. In 1997, Labour Prime Minister Tony Blair's government imposed a tax on privatised utility companies, and raised £5 billion.

The OECD report on Wealth Taxes notes that in 1990, 12 countries had wealth taxes, but since then many countries have repealed the tax and now only four countries currently tax the net wealth of their residents annually.[9] Only three European countries currently have a general wealth tax, being Norway, Spain and Switzerland. The Norwegian tax is on net wealth where a resident owns more than 5 million kroner in worldwide assets. The Swiss tax is levied on worldwide assets, with the exception of immovable property abroad. The tax rates vary from canton to canton. The Spanish wealth tax progresses from 0.2 to 3.75 per cent where the individual holds assets above €700,000. Individuals living in Madrid are exempt from the tax.

Argentina was the first country to implement a wealth tax in response to the pandemic at the end of 2020 in the Solidarity and Extraordinary Contribution of Great Fortunes Law. The levy is a one-off, payable by those whose assets total 200 million pesos. The rate of the tax is progressive, with Argentinian assets taxed up to 3.5 per cent and worldwide assets taxed up to 5.25 per cent. The tax has raised roughly 223 billion pesos. This amounts to about half a per cent of Argentina's GDP[10] and 75 per cent of the government's target amount of the tax to be raised.

All taxes are wealth taxes to some degree, be they income tax, capital gains tax, value added tax, inheritance tax or corporation tax. However, these taxes are taxes on transfers of wealth, on dispositions of wealth and on accumulations of wealth rather than a tax on all the assets an individual holds on a particular date.

So if governments are to bring in wealth taxes, what might they look like? The UK Wealth Tax Report advocates a one-off wealth tax as being more effective than an annual one.[11] A one-off wealth tax is much harder for taxpayers to avoid as the date of assessment of the individual's wealth can be announced at the same time as the tax itself. Furthermore, a one-off tax does not distort taxpayers' behaviour or disincentivise taxpayers from working, investing or even being resident in the country. The report recommends that it should be possible to pay the tax in instalments to assist those who hold mainly illiquid assets, such as residential property, from having to sell in order to pay the tax. It also recommends that the tax should be levied on individuals' net wealth, that is, after deduction of debts and liabilities, and that jointly held assets should be apportioned between owners. The report then goes on to estimate that such a tax on the net assets of UK residents above £500,000 could, at 1 per cent per annum for five years, raise £260 billion. If levied on net assets above £2 million, it could raise £80 billion.

---

7 Although the title makes the Commission sound official, it was not a government report but rather one in which the London School of Economics played a central role.

8 https://www.wealthandpolicy.com/wp/WealthTaxFinalReport.pdf.

9 https://www.oecd.org/tax/tax-policy/role-and-design-of-net-wealth-taxes-in-the-OECD-summary.pdf.

10 https://www.bloomberg.com/news/articles/2021-05-03/argentina-wealth-tax-fought-by-millionaires-raises-2-4-billion.

11 https://www.wealthandpolicy.com/wp/WealthTaxFinalReport.pdf.

Meanwhile, a European study developed in partnership with the Karl Renner Institute and the Austrian Federal Chamber of Labour advocates a pan-European wealth tax as well.[12] The argument for a pan-European tax is that it would be much harder for individuals to avoid, unless they became resident outside of Europe altogether. Within the 22 European countries, the richest 1 per cent of individuals hold 32 per cent of European wealth whereas the poorest 50 per cent of individuals hold 4.5 per cent between them. The report finds that a 2 per cent tax on individuals who hold net assets above €1 million would only tax 3 per cent of the population and would likely raise revenues in the region of €192 billion, accounting for some evasion. A very progressive tax rate with a rate of 10 per cent above assets of €500 million could raise in the region of €357 billion, which equates to 3 per cent of European GDP.

In the United States, there is a similar wealth disparity. The richest 10 per cent of Americans hold just under 70 per cent of US wealth.[13] The *Financial Times* reported in February 2021 that a one-off 5 per cent tax on the richest 10 per cent would raise US$4 trillion, amounting to 19 per cent of the US's GDP. Democrat Elizabeth Warren advocates for an 'ultra-millionaire tax' at 2 per cent above US$50 million and 6 per cent above US$1 billion. It is estimated that this would bring in revenues of US$3.75 trillion over 10 years.[14]

As well as introducing a new wealth tax, there are also calls for changes to existing taxes. The OECD recently published a study on inheritance taxation in OECD countries, which notes that the inheritance tax bases in many countries have been narrowed due to exemptions and reliefs.[15] Making estate and gift taxes more rigorous would not only raise revenue but also reduce wealth inequality through intra-generational transfers. The report also notes that, with many countries having ageing populations, there is a disparity between wealthy older generations and poorer younger generations. On average, inheritance tax revenues equate to only 0.5 per cent of the total tax revenues in most OECD countries, with only Belgium, France, Japan and South Korea collecting 1 per cent of total tax revenues from inheritance taxes.[16]

Within the 38 member countries of the OECD, 24 tax assets that are passed on the death of the owner. Interestingly, the majority of these countries tax on the basis of the value the recipient receives. Only four countries, being the US, the UK, South Korea and Denmark, tax on the basis of the value of the deceased's estate. US President Biden is attempting to push through a reduction in the lifetime gift and estate allowance from US$11.7 million to US $3.5 million, as well as to increase the top tax rate to 45 per cent up from 40 per cent.

The UK has no tax on outright lifetime gifts between individuals, but the threshold for gifts the deceased makes in the last seven years of life and through his or her estate is £325,000. However, many individuals can circumvent this through making lifetime gifts outside the seven-year window with no tax implications. However, the OECD report suggests that capturing lifetime gifts in the tax base, as well as reducing exemptions and reliefs, would make inheritance taxes more effective as well.

12 https://www.feps-europe.eu/attachments/publications/a%20european%20wealth%20tax_policy%20study.pdf.

13 https://www.ft.com/content/0952761a-f565-46be-a515-12659551169a.

14 https://elizabethwarren.com/plans/ultra-millionaire-tax,

15 OECD (2021), Inheritance Taxation in OECD Countries, OECD Tax Policy Studies, OECD Publishing, Paris, https://doi.org/10.1787/e2879a7d-en.

16 ibid, p. 5.

One separate non-pandemic rationale that has been advanced in the UK to support estate and gift tax reform is the theme of 'inter-generational fairness'. A report published by the All – Parliamentary Group in early 2020[17] advocated replacing the current UK donor-based tax regime with one based on a donee-based tax where every donee was given a lifetime exemption. Gifts in excess of that exemption would attract a 10 per cent flat tax rate. The preference for a donor-based system was in part fuelled by a desire to encourage donors to make gifts to their grandchildren as well as their children. It is unclear whether this approach will find favour with the government.

Meanwhile, despite the pandemic, transparency and automatic information exchange initiatives, which formed the main subject of my forewords in earlier years, have been progressing apace. Where high-net-worth individuals are taking advantage of technological advancements and easier remote working, and spending more time in different countries, they may become tax resident in multiple jurisdictions and, if not, at least reportable under measures such as those of the Financial Action Task Force, the Common Reporting Standard (CRS) and the sixth version of the EU Directive on administrative cooperation (DAC6). Indeed, the CRS FAQs were updated to advise financial institutions that where an individual's interests are split between multiple jurisdictions, the account can be 'reported to all Reportable jurisdictions where there is a residence address'.[18] In this case, the individual will be reported to more tax authorities and perhaps subject to a higher degree of scrutiny than before.

Individuals are already facing enquiries from tax authorities as a result of the information exchanged between different countries. Currently, many enquiries are merely requesting further information, but it may be that in the near future countries will begin to adapt and modulate taxation regimes on the strength of this information. The introduction of the DAC6 legislation across the European Union will also provide a plethora of information to tax authorities and governments about arrangements that are not currently caught by the CRS.

Finally, the US is currently pursuing a global minimum corporation tax rate, which was pitched at 21 per cent before dropping to 15 per cent. Given high budget deficits and the need for increased revenue, governments are going to be even more reluctant to allow multinational corporations to avoid paying taxes in the countries in which they achieved their revenue. The oft-maligned Amazon, for example, made a record €44 billion in Europe in 2020, and yet paid no tax as the Luxembourg headquarters made a €1.2 billion loss.[19]

However governments end up dealing with the large debts that have been created, the rate of change, be it to tax rules or to disclosure obligations, continues to increase exponentially. What is clear is the need to keep a clear view of the road ahead so that our high-net-worth individual clients and their structures can adapt to the changing landscape.

John Riches
RMW Law LLP
London
August 2021

17 https://www.step.org/system/files/media/files/2020-05/STEPReform_of_inheritance_tax_report_012020.pdf.

18 https://www.oecd.org/tax/exchange-of-tax-information/CRS-related-FAQs.pdf, Sections II-VII: Due Diligence Requirements, FAQ 3.

19 https://www.theguardian.com/technology/2021/may/04/amazon-sales-income-europe-corporation-tax-luxembourg.

Chapter 9

CYPRUS

Elias Neocleous and Elina Kollatou[1]

I INTRODUCTION

Despite being among the smallest countries in terms of area and population, Cyprus has developed into one of the world's most important financial and business centres. It has numerous advantages, including a strategic location, membership of the EU and the eurozone, a mature and transparent legal system, world-class professional and financial services and a modern, business-friendly tax regime that offers attractive planning opportunities.

During the years following perestroika, Cyprus developed into the portal of choice for investment from the West into the rapidly developing economies of Russia and central and eastern Europe.

Even the largest Russian and eastern European companies have a substantial degree of owner involvement, and high-net-worth individuals from the region have found Cyprus an excellent location for their personal financial affairs. In 1992, Cyprus enacted the International Trusts Law, which gave investors from overseas formidable asset protection and tax mitigation opportunities, and allowed individuals from jurisdictions with forced heirship regimes to effectively regain testamentary freedom.

The links between eastern Europe and Cyprus extend beyond finance. Both share a common orthodox religious culture, and Cyprus is home to tens of thousands of Russians and eastern Europeans.

Today, Cyprus is a low-tax jurisdiction with a modern tax regime and an extensive network of double taxation treaties, allowing effective tax planning. All forms of succession taxes were abolished in 2000. It has world-class professional and financial services and a robust legal infrastructure founded on common law. It enjoys an excellent climate and a high standard of living, and its strategic location at the crossroads of Europe, Asia and Africa gives it a cosmopolitan atmosphere. While Russia and central and eastern Europe remain the key markets for Cyprus, China, India and the Middle East are also significant. The island is home to a large number of extremely wealthy individuals and the financial base for many thousands of non-residents.

1 Elias Neocleous is managing partner and Elina Kollatou is a senior associate at Elias Neocleous & Co LLC.

II TAX

i Introduction

Cyprus offers a benign personal tax system, with generous allowances and a top rate of 35 per cent on taxable income in excess of €60,000. Passive interest and dividends are exempt from income tax. A special defence contribution (SDC) tax is payable on interest, dividends and rents received by individuals if they are both resident and domiciled in Cyprus (see below); individuals who are resident but not domiciled in Cyprus are not liable to SDC. There are no succession taxes, and all capital gains, apart from those deriving from the disposal of real estate located in Cyprus, are exempt from taxation.

ii Personal income tax

The tax year is the calendar year and individuals are considered resident if they are present in Cyprus for more than 183 days in the relevant year. In addition, with effect from 1 January 2017, individuals who meet all the following conditions in respect of a given tax year will also be deemed to be tax-resident in Cyprus if:

a they are physically present in Cyprus for one or more periods amounting to at least 60 days;
b they are not tax-resident in another country;
c they undertake business in Cyprus, have employment in Cyprus or hold a post in a Cyprus-resident company that continues to the end of the tax year; and
d they maintain a permanent residence at their disposal for their use in Cyprus.

Individuals who satisfy the criteria may obtain a tax residence certificate by completing the prescribed form (T.126 (2017)) and submitting it to the Tax Department together with evidence of arrival and departure in Cyprus, property title deeds or lease contract, and evidence of employment.

Cyprus residents are taxed on the basis of worldwide income irrespective of whether it is remitted to Cyprus. Husbands and wives are taxed separately. Persons who are not resident in Cyprus are subject to income tax on income accruing or arising from sources in Cyprus.

Personal income tax rates are as follows:

Income band	Tax rate (%)	Cumulative tax at top of band
€0–€19,500	Zero	Zero
€19,500–€28,000	20	€1,700
€28,000–€36,300	25	€3,775
€36,300–€60,000	30	€10,885
€60,000 and above	35	–

Relief is given for donations to approved charities, professional and trade union subscriptions, life insurance premiums and contributions to pension, social insurance and welfare funds. Relief may also be available under a double taxation treaty.

Resident expatriate employees or secondees are subject to income tax on their worldwide income at the rates shown in the table above.

For tax years up to and including 2012, individuals becoming tax-resident and taking up employment in Cyprus were entitled to an exemption of 20 per cent of their annual income from employment in Cyprus or €8,550 per annum for the first five years of their employment in Cyprus. With effect from the 2020 tax year, the exemption has been extended and will be available until 2025.

In 2012, another exemption was introduced for highly paid individuals, exempting 50 per cent of the first five years' income from employment in Cyprus of a person who was not previously resident in Cyprus, provided the income from employment in Cyprus exceeds €100,000 per annum. With effect from the 2015 tax year, the exemption period of five years was extended to 10 years. In respect of employments beginning on or after 1 January 2015, the exemption is not available to anyone who was resident in Cyprus in any three of the five tax years preceding the year in which the employment in Cyprus began, or to anyone who was resident in Cyprus in the year preceding the year in which the employment began.

The exemption is available in respect of any tax year in which income from employment exceeds €100,000, irrespective of whether the income falls below that amount in any intermediate year, provided that when the employment started the income exceeded €100,000 and the tax authorities are satisfied that the variations in the annual income are not made for the purpose of obtaining this tax benefit.

The two exemptions are mutually exclusive and each taxpayer may only claim one.

Exemptions and special cases

The following are exempt from income tax:

a passive interest and dividends receivable by individuals (these are subject to SDC tax unless the individual is not domiciled in Cyprus: see below);
b lump sums received on retirement;
c profit from the sale of shares;
d capital sums from approved life assurance policies and provident or pension funds;
e income from employment services provided abroad to a non-resident employer or an overseas permanent establishment of a resident employer for a period exceeding 90 days but less than 183 days in the tax year;
f salaries of officers and crew of ships owned by a Cyprus shipping company that sail under the Cyprus flag and operate in international waters; and
g income from a qualifying scholarship, exhibition, bursary or similar educational endowment.

For income tax purposes, a 20 per cent deduction is allowed from rental income received. The individual is also entitled to claim capital allowances on the cost of acquisition of the asset (provided that the asset is not more than 33 years old) and interest expense on loans undertaken to finance specifically the acquisition of the relevant property.

The first €3,420 per annum of any foreign pension is free of tax, and the excess over that amount is taxed at 5 per cent, assuming that it is taxable under the special manner of taxation. The individual has the option to be taxed under normal income tax rates for a pension received from abroad.

Special defence contribution tax

Special defence contribution (SDC) tax is payable by individuals who are both resident and domiciled in Cyprus on interest, dividends and rentals received at the rates set out below. Individuals who are resident but not domiciled in Cyprus enjoy a full exemption from SDC on all investment income generated on a worldwide basis. Residence is determined in the same way as for income tax purposes.

The principles set out in the Wills and Succession Law, Cap 195 (WSL), which follow the principles of English common law, are used to determine domicile. In summary, an individual acquires a domicile of origin at birth. It is generally the same as the domicile of the father at the time of birth, and in exceptional cases that of the mother. A domicile of origin may be replaced by a domicile of choice if in actual fact an individual permanently establishes himself or herself in another country with the intention of living there permanently and dying there. However, an individual will be deemed to be domiciled in Cyprus if he or she has been a tax resident for 17 or more of the 20 tax years immediately preceding the year of assessment.

Taken together with the income tax exemption, this means that an individual who is not domiciled in Cyprus is exempted from all Cyprus taxation on passive interest and dividends from all sources and a special defence contribution on rental income.

Relief or credit for tax paid abroad may be available either under the terms of a double tax treaty or by way of unilateral relief.

Type of income	Rate
Dividends	17%*
Interest	30%
Rents	3% of 75% of the rent
*3% on dividends paid by collective investment schemes	

iii Capital gains tax

There is no taxation of capital gains in Cyprus apart from gains made on the disposal of real estate located in Cyprus or on the shares of companies directly or indirectly holding real estate in Cyprus (in which case the taxable gain is the gain attributable to the real estate holding). To stimulate the real estate market, an exemption was introduced for immovable property acquired between 16 July 2015 and the end of 2016, provided that the property was acquired on an arm's-length basis and not under the foreclosure provisions of the Transfer and Mortgage of Immovable Properties Law of 1965 (L 9/1965). Any gain on the disposal of the property will be exempt from capital gains tax, irrespective of the date of disposal.

As an added incentive, the normal transfer fees payable to the Department of Lands and Surveys on acquisitions of immovable property were discounted to 50 per cent of the standard rate until the end of 2016, provided that the property was acquired on an arm's-length basis and not under the foreclosure provisions of the Transfer and Mortgage of Immovable Properties Law of 1965.[2] Alternatively, if value added tax (VAT) is payable on the purchase of the property, no transfer fee is payable at all, provided that the sale agreement was deposited with the Land Registry by 31 December 2016. In July 2016, the reduction in transfer fees was made permanent by the Lands and Surveys Department (Fees and Rights) (Amendment) (No. 2) Law (81(l)/2016).

iv Succession taxes

There are no succession taxes in Cyprus.

2 L 9/1965.

III SUCCESSION

Cyprus's succession law reflects the cosmopolitan nature of the island and gives an interesting insight into its history. The current succession law dates back to when Cyprus was a British colony, and the wording of the law and many of its provisions are unmistakably English, but Cyprus succession law also enshrines the concept of forced heirship, usually associated with civil law and Islamic countries, and recognises the rights of widows of polygamous marriages.

It was modified in 2015 by the entry into force of the European Succession Regulation, which applies a single national law of succession to a person's movable and immovable property on death, both for testate and intestate succession. The applicable law is that of the country of the deceased's habitual residence at the time of death, unless the deceased was manifestly more closely associated with another country, or the deceased elected in his or her will for its national law to apply, regardless of whether the European Succession Regulation applies in the state of their nationality.

Cyprus succession law is set out in a number of enactments, the most significant of which are the WSL and the Administration of Estates Regulation of 1955 (1/1955). The WSL deals with both wills and intestacy. The part dealing with wills is based on the English Wills Act of 1837, whereas the part dealing with intestacy is based on the Italian Civil Code and reflects continental law. Cyprus succession law, therefore, can be said to represent a mixture of common and civil law, in roughly equal proportions.

If an individual dies leaving certain categories of relatives, part of his or her estate, known as the statutory portion, is reserved for them and distributed according to the rules of intestacy. The actual proportion of the net estate taken up by the statutory portion varies according to which relatives survive the deceased person, and can be as much as three-quarters of the net estate.

Individuals who would otherwise be subject to the forced heirship provisions can easily regain the freedom to dispose of their property as they wish by using a domestic trust or a Cyprus international trust.

IV WEALTH STRUCTURING AND REGULATION

i Introduction

As with succession law, Cyprus offers wealth-holding structures typical of both common law jurisdictions (in the form of trusts) and civil law jurisdictions (in the form of foundations). Because of the high degree of bureaucracy under the Associations and Foundations Law of 1972 and trusts overwhelmingly predominate, foundations were rarely used in practice. For this reason a new law on foundations was enacted in 2017 known as the Law on Associations, Foundations and Other Related Matters, aiming to simplify procedures and lead to an increase in the use of foundations.

Cyprus's first law on trusts, the Trustee Law of 1955, dates back to when the island was a British colony and is a near replica of the English Trustee Act 1925. The English doctrines of equity were formally introduced into the post-independence legal order by Section 29 of the Courts of Justice Law, of 1960,[3] which requires the courts to follow English common law and equitable principles unless there are other provisions to the contrary under Cyprus law or such adherence would be inconsistent with the Constitution of Cyprus.

3 L 14/1960.

ii Cyprus international trusts

In 1992, Cyprus created a state-of-the-art international trusts regime with the enactment of the International Trusts Law of 1992 (1992 Law), which provides a framework for the establishment of trusts in Cyprus by non-residents.

The 1992 Law introduced a new type of trust, known as an international trust, with tax-planning advantages and robust asset protection features. Like similar laws in other jurisdictions, the 1992 Law was not a comprehensive codification, and the Trustee Law 1955 applies to international trusts except where the 1992 Law provides otherwise.

Cyprus international trusts proved extremely popular with high-net-worth individuals and professionals, and a number of other jurisdictions introduced similar regimes. Towards the end of the first decade of the current century it became apparent that the international trusts regime in Cyprus had fallen behind those of its competitors. The International Trusts Law of 2012 (2012 Law), which entered into force in March 2012, addressed the perceived deficiencies and brought Cyprus back to the forefront of leading trust jurisdictions. It clarified the eligibility provisions for Cyprus international trusts, strengthened their already formidable asset protection features, gave settlors far more flexibility than under the 1992 Law and widened trustees' investment powers. It also made several technical amendments and aligned the International Trusts Law with the EU *acquis communautaire*. The 2012 Law does not repeal and replace the 1992 Law but instead builds on it. Section 15 provides that it applies to trusts created before it came into effect.

The Cyprus international trust is the structure of choice for non-resident settlors, and in the following paragraphs the main features of the International Trusts Law, as amended, are described.

Definition of a Cyprus international trust

The 1992 Law restricted the availability of international trusts to prevent tax avoidance by Cyprus residents. It provided that neither the settlor nor any beneficiary could be a permanent resident of Cyprus, but this is inconsistent with the EU principle of free movement of persons. Under the International Trusts Law, as amended, the restrictions were relaxed, and a Cyprus international trust is now defined as a trust in respect of which:

a the settlor (whether a natural or legal person) is not a resident of Cyprus for the calendar year prior to the creation of the trust;

b at least one of the trustees for the time being is, during the whole duration of the trust, a resident of Cyprus; and

c no beneficiary (whether a natural or legal person) other than a charitable institution is a resident of Cyprus for the calendar year prior to the creation of the trust.

All references to the term resident of Cyprus in the amended law now have the same meaning as under the Income Tax Law,[4] as amended. Moreover, the removal of the prohibition against residence in Cyprus ensures full compliance with EU law regarding the free movement of persons and capital, and freedom of establishment. The removal of the prohibition on ownership of immovable property in Cyprus avoids any difficulties that might otherwise arise if the settlor or any beneficiary were subsequently to take up residence in Cyprus.

4 L 118(I) 2002.

Asset protection features of Cyprus international trusts

Asset protection trusts ring-fence the settlor's assets from persons who may have a claim against him or her. They developed as a response to the substantial amounts of damages awarded by juries in civil liability cases in the United States, particularly in medical malpractice claims. Notwithstanding the availability of professional indemnity insurance, some professions still involve a high risk of being on the receiving end of a claim that could be financially disastrous. An asset protection trust adds another layer to the defences. They are also invaluable in a variety of other contexts. In personal life, in light of the substantial awards that courts in certain jurisdictions are making, an asset protection trust may be used to provide added reassurance against claims on the breakdown of marriage or a civil partnership, particularly for individuals from jurisdictions where prenuptial agreements are ineffective. Many countries have forced heirship provisions in their succession law, reserving a specified portion of the deceased's estate for relatives, and an asset protection trust may provide a means of regaining freedom of testation.

By their nature, all trusts provide an element of asset protection by segregating the assets held in trust from the settlor's general assets, which would be available to satisfy his or her debts or, in the worst-case scenario, would pass to his or her trustee in bankruptcy; however, Cyprus international trusts have several further advantages.

The first is that the 2012 Law contains a very strong presumption against avoidance of a Cyprus international trust. Unless the court is satisfied that the trust was made with intent to defraud persons who were creditors of the settlor at the time when the payment or transfer of assets was made to the trust, the trust will not be void or voidable, notwithstanding the provisions of any bankruptcy or liquidation laws of Cyprus or any other country and notwithstanding the fact that the trust is voluntary and without consideration, or that it is for the benefit of the settlor or his or her family members. The burden of proof of the settlor's intent to defraud lies with the person seeking to set aside the transfer. Furthermore, any action for avoidance of the trust or setting aside of the transfer must commence no later than two years after the assets were transferred to the trust.

These provisions, particularly the requirement to prove intent to defraud on the part of the settlor, set the bar very high for a claimant trying to set aside a transfer to a Cyprus international trust. Even though the standard of proof is the balance of probabilities, rather than the criminal standard, the claimant must still establish that the trust was more likely than not a fraud. This is a difficult standard to meet in practice, and the burden of proving fraud is higher than is usual for civil cases. In practice, the claimant would need very strong evidence to show that the settlor intended to defraud his or her creditors. A claimant domiciled outside the EU without assets in Cyprus would be required to provide security for costs under Order 60 of the Civil Procedure Rules.

Protection against forced heirship and similar claims is provided by Section 3(i) of the 1992 Law, which stipulates that the laws of Cyprus or of any other country relating to inheritance or succession will not in any way affect any disposition of assets to a Cyprus international trust.

The 2012 Law strengthened these defences by explicitly providing that any question relating to the validity or administration of an international trust or a disposition to an international trust will be determined by the laws of Cyprus without reference to the law of any other jurisdiction. It also makes it clear that the fiduciary powers and duties of trustees, and the powers and duties of any protectors of the trusts, are governed exclusively by Cyprus law. Furthermore, it provides that dispositions to a trust may not be challenged on the grounds that they are inconsistent with the laws of another jurisdiction – for example, regarding family and succession issues – or on the grounds that the other jurisdiction does not recognise the concept of trusts.

Finally, the 2012 Law entrenches jurisdictional protection by providing that an international trust containing a choice-of-law clause in favour of Cyprus law is fully protected from unfounded foreign judicial claims as a matter of public policy.

These provisions further reinforce the already formidable asset protection features of the Cyprus international trust.

In another area, Cyprus has a distinct advantage over many other Commonwealth countries, in particular the Caribbean islands and Bermuda, in that it is not a party to the arrangements set out in Section 426(4) and (5) of the Insolvency Act 1986, in terms of which British courts and the courts of certain other jurisdictions are required to assist each other in insolvency cases.

Furthermore, the Charitable Uses Act 1601 (also known as the Statute of Elizabeth), which invalidates arrangements made to hide assets from future creditors, is expressly negated in Cyprus.

Reserved powers and interests

The 2012 Law allows the settlor of a trust to reserve powers to himself or herself, to retain a beneficial interest in trust property, or to act as the protector or enforcer of the trust, all without affecting the validity of the trust. The powers that may be reserved are extensive, and include the power:

a to revoke, vary or amend the terms of the trust;
b to apply any income or capital of the trust property;
c to act as a director or officer of any corporation wholly or partly owned by the trust;
d to give binding directions to the trustee in connection with the trust property; and
e to appoint or remove any trustee, enforcer, protector or beneficiary.

The settlor may impose a general stipulation that the trustees' powers are exercisable only with the consent of the settlor or any other person specified in the terms of the trust. The settlor may also reserve the power to change the governing law of the trust.

These provisions, which are similar to the corresponding provisions of Jersey and Guernsey law, give settlors great flexibility to adapt to changes in circumstances or objectives.

Duration of trusts

As was usual at the time, the 1992 Law restricted the maximum life of international trusts to 100 years from the date on which the trust came into existence. Only charitable trusts and non-charitable purpose trusts were allowed to exist in perpetuity. In the intervening period, this restriction on the maximum life of trusts came to be seen as a disadvantage of trusts compared with foundations, and several jurisdictions have removed any restriction on the duration of trusts.

The 2012 Law removed the restriction by providing that from the date the amendment takes effect and subject to the terms of the trust, there will be no limit on the period for which a trust may continue to be valid and enforceable, and no rule against perpetuities or remoteness of vesting or any analogous rule will apply to a trust or to any advancement, appointment, payment or application of property from a trust. Except where the terms of a trust expressly provide to the contrary, no advancement, appointment, payment or application of income or capital from the trust to another trust is invalidated solely by reason of that other trust continuing to be valid and enforceable beyond the date on which the first trust must terminate.

Cyprus international trusts may, therefore, now be established with unlimited duration.

Trustees' investment powers

The 1992 Law gave trustees freedom in terms of investment powers, merely requiring them to be exercised in accordance with the trust instrument and with the diligence and the prudence that a reasonable person would be expected to exercise when he or she makes investments. The 2012 Law extended trustees' investment powers, giving them the same investment powers as those of an absolute owner, allowing them to invest in a broader range of investments for the best interests of the beneficiaries. This brings trustees' investment powers into line with those of a trustee in England and Wales, and other trust jurisdictions that have followed the English Trustee Act 2000.

The 2012 Law also removed any doubt regarding trustees' ability to invest in Cyprus by including a new section specifically empowering trustees to invest in movable and immovable property both in Cyprus and overseas, including shares in companies incorporated in Cyprus.

Confidentiality

Section 11 of the International Trusts Law, as amended, sets out strict confidentiality obligations. It provides that, subject to the terms of the instrument creating the trust, the trustee, protector, enforcer or any other person may not provide any documents or information that disclose the name of the settlor or any of the beneficiaries, or that relate to the trustees' deliberations regarding the exercise or proposed exercise of their powers and discharge of their duties, or that relate to the financial position of the trust, except in accordance with a court order requiring disclosure. It gives the trustees power to provide a beneficiary with financial statements or any documents or information relating to their receipts and payments that form part of those accounts if the beneficiary has requested them and if, in the trustees' opinion, disclosure is necessary and in the best interests of the trust. Disclosure is limited to the accounts and the underlying documents and information concerning receipts and payments.

To remove any uncertainty over the consistency of these provisions with Cyprus's anti-money laundering legislation, the 2012 Law introduced a clause specifically requiring trustees to comply with and implement the relevant provisions of the Prevention and Suppression of Money Laundering Activities Law of 2007 as amended.

Taxation of Cyprus international trusts

Section 12 of the International Trusts Law as amended provides for a uniform tax regime applicable to all persons on the basis of a tax-residency test. In the case of a beneficiary who is resident in Cyprus, the worldwide income and profits of the trust are subject to Cyprus tax. In the case of a non-resident beneficiary, only income and profits earned from sources within Cyprus are subject to Cyprus tax.

Any beneficiaries who elect to become Cyprus tax residents will be subject to taxation on their worldwide income, like any other Cyprus tax resident. Non-resident beneficiaries will be subject to Cyprus taxation only on any Cyprus-source income.

For trusts that have only resident beneficiaries or only non-resident beneficiaries, the application of these principles is very straightforward. Where a trust has both resident and non-resident beneficiaries, the tax authorities will determine the tax treatment by reference to the scope of rights that the respective beneficiaries have in the trust, as set out in the trust instrument.

Regulation of fiduciary service providers

The Law Regulating Companies Providing Administrative Services and Related Matters of 2012,[5] as amended (ASP Law), provides a comprehensive framework for the regulation of fiduciaries, administration businesses and company directors. As well as implementing the Third EU Anti-Money Laundering Directive as it applies to trust and company service providers, it aims to protect users of trust and fiduciary services by putting in place a robust regulatory system and accounting and reporting requirements.

The ASP Law applies to persons and companies providing relevant fiduciary and other corporate services relating to the administration or management of trusts and companies in or from Cyprus, including directorship and secretarial services provided by a legal person, including acting as an alternate director or secretary, services such as the holding of shares of legal persons in a nominee or trustee capacity, provision of a registered office, services related to the opening and operation of bank accounts, and services for the ownership of financial assets on behalf of third parties. Providers of relevant services must comply with specified criteria regarding their professional and academic qualifications, experience and internal procedures. Private trustee companies belonging to the beneficiaries of the trust or their close relatives are outside the scope of the ASP Law provided that they have a representative in Cyprus who is accessible and accountable for anti-money laundering purposes.

The ASP Law provides that relevant services may be offered only by persons or legal entities that hold a licence from the Cyprus Securities and Exchange Commission (CySEC) or who are specifically exempted from the licensing requirement. Lawyers and accountants who are regulated by their respective regulatory bodies (the Cyprus Bar Association (CBA) and the Institution of Certified Public Accountants of Cyprus (ICPAC)) are exempt from the need to obtain a licence but must comply with the other requirements of the ASP Law.

Registration of trusts

When establishing trusts, service providers are required to obtain documentary evidence of the identity of the settlor, the trustees, the beneficiaries (or information on the class of beneficiaries, including the beneficiaries to whom any distributions have been made pursuant to the trust) and others associated with the trust, as well as information on the activities of the trust, and keep this information available for inspection by the relevant supervisory body on request. Service providers must put in place adequate arrangements to segregate and account for clients' funds and they must comply fully with all anti-money laundering legislation. They are subject to continuous monitoring in this regard, and CySEC may appoint inspectors to investigate their affairs.

Each of the supervisory bodies for the purposes of the ASP Law (CySEC, the CBA and ICPAC) is required to maintain a register of trusts established by the service providers they regulate containing the following information:

a the name of the trust;

b the name and full address of every trustee at all relevant times;

5 Law 196(I) of 2012.

c the date of establishment of the trust;
d the date of any change in the law governing the trust to or from Cyprus law; and
e the date of termination of the trust.

Any Cyprus-resident trustee of a trust governed by Cyprus law is obliged to notify the relevant supervisory body of the relevant information within 15 days of the creation of the trust or the adoption of Cyprus law as the law governing the trust, as applicable. Subsequent changes in any relevant information, including termination of the trust or a change in the governing law from Cyprus law, must similarly be notified within 15 days. In the event of termination of the trust or a change in the governing law from Cyprus law, the register will indicate that the trust has been terminated and the information on the trust will be kept for five years.

The Prevention and Suppression of Money Laundering Activities Amendment Law of 2018 (AML Law), which implements the provisions of the Fourth EU Anti-Money Laundering Directive, introduces a requirement for trustees of any express trust governed by Cyprus law or any other analogous legal arrangement to obtain and hold adequate, accurate and up-to-date information on beneficial ownership of the trust or arrangement, including the identity of the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries and any other natural person exercising effective control over the trust.

This information must be held in a central register when the trust generates tax consequences in Cyprus. The police, the Customs Department, the Tax Department, the Unit for Combating Money Laundering and Terrorist Financing and the competent supervisory authorities (the Cyprus Bar Association, the Central Bank, the Cyprus Securities and Exchange Commission, the Institute of Certified Public Accountants, the Real Estate Registration Council, the National Betting Authority and the National Gambling and Casino Supervisory Authority) will have direct access to the information kept in the register. Obliged entities will also have access for the purposes of customer anti-money laundering due diligence. There is no provision for access by others. Detailed provisions regarding the register are to be set out in secondary legislation.

On 8 February 2021, an amendment to the AML Law was adopted by the Cyprus Parliament. The 2021 amendment implements the provisions of the Fifth EU Anti-Money Laundering Directive requiring the creation of a register of ultimate beneficial owners. The register of ultimate beneficial owners in relation to trusts will be kept by CySEC and it will not be available to the public.

V PERMANENT RESIDENCE BY INVESTMENT

High-net-worth individuals are attracted to Cyprus because it gives them the best of all worlds, combining a benign tax and trusts regime without having to sacrifice quality of life or convenience. Cyprus is a highly developed EU Member State offering a high standard of living, excellent physical and institutional infrastructure and communications, and a very low incidence of crime, all in a Mediterranean climate. Furthermore, it allows citizens of third countries (non-EU members) and their families to obtain permanent residence through a well-established fast-track procedure.

An immigration permit under Section 6 (2) of the Aliens Immigration Regulations of 1972, as amended, provides permanent resident status to individuals who fulfil the criteria of one of the four different qualifying investment categories.

Effective from 24 March 2021, this represents a notable amendment to the permanent residence programme from the previous sole category of first-sale residential units. To apply for the permit, the applicant may complete an investment of at least €300,000 in any one of the following investment categories:

a investment in a residential property from a land-developing company, which must have a minimum price of €300,000 excluding VAT and it must be the first-time sale of the property rather than a resale;

b investment in property (excluding residential houses and apartments) such as shops, offices, hotels or similar developments, or a combination of these, which must have a total amount of at least €300,000. These property assets may be first-time sales or resale;

c investment in the share capital of a Cypriot registered company with activities and staff located in Cyprus. The investment in the company's share capital must be at least €300,000 and the company must have a minimum of five employees with a physical presence in Cyprus; or

d investment in the shares of a Cyprus collective investment organisation (AIF, AIFLNP, RAIF) of at least €300,000.

In addition to the above investment criteria, the applicant must also be able to demonstrate a secured annual income of at least €30,000, which may derive out of, inter alia, income, shares, pensions or rents, and in the case of an investment under category (a), the annual income must strictly originate from abroad. In the case of an investment under categories (b), (c) and (d), the income or part of it may derive from related activities in Cyprus.

The amount of annual income is increased according to the number and type of dependents (such as spouse, children or parents) that a main applicant may wish to include in his or her application.

VI OUTLOOK AND CONCLUSIONS

The International Trusts Law of 1992 gave Cyprus a state-of-the-art international trusts regime, with excellent tax mitigation and asset protection features. It was very well received, as evidenced by the large number of trust service providers established in Cyprus, and Cyprus's continuing popularity with settlors from the former Soviet Union. Over the ensuing 20 years, as other jurisdictions modernised their trusts legislation, Cyprus lost some of its competitive edge, although the basic structure provided by the International Trusts Law remained sound. The 2012 Law brought the Cyprus international trust regime back to the cutting edge internationally, giving Cyprus the most modern and favourable trust regime in Europe, and providing settlors and beneficiaries with the highest possible degree of protection, confidentiality, flexibility and assurance. This protection has been reinforced by the implementation of an effective, but unobtrusive, regulatory regime, which preserves confidentiality. The non-domiciled regime, which exempts investment income from all forms of Cyprus tax, together with income tax exemptions for higher earners and capital gains tax exemptions, is a further incentive. The new law on foundations has made available an alternative structure for those who may prefer that option.

Appendix 1

ABOUT THE AUTHORS

ELIAS NEOCLEOUS

Elias Neocleous & Co LLC

Elias Neocleous is managing partner of Elias Neocleous & Co LLC, Cyprus's largest law firm. Elias graduated in law from the University of Oxford and is a barrister of the Inner Temple. He was admitted to the Cyprus Bar in 1993. He is fluent in English and Spanish in addition to his native Greek. Elias specialises in taxation, international tax planning, estate planning and trusts, M&A and corporate law. He is frequently invited to speak on Cyprus law at international events and has numerous publications on Cyprus corporate and tax law to his credit. *The Legal 500* ranks Elias as a 'Leading Individual'.

ELINA KOLLATOU

Elias Neocleous & Co LLC

Elina is a senior associate in the corporate and commercial department of Elias Neocleous & Co LLC. She graduated in law from the University of Leicester in 2008, and also holds an LLM in international commercial law and an MA in international relations and world order from the same university. Elina was admitted to the Cyprus Bar in 2012, and has since gained extensive experience in corporate law, trusts and estate planning. She also has experience in cross-border transactions including acquisitions, joint ventures, restructurings and refinancing. She advises international companies on advanced business structuring issues and trustees of Cyprus trusts on tax-effective structures for the acquisition, holding and ultimate disposal of assets.

ELIAS NEOCLEOUS & CO LLC

Neocleous House
195 Makarios III Avenue 1-5th floor
3030 Limassol
Cyprus
Tel: +357 25 110 110
Fax: +357 25 110 001
elias.neocleous@neo.law
elina.kollatou@neo.law
www.neo.law

an LBR business

ISBN 978-1-83862-813-0