THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW

NINTH EDITION

Editor
John Riches

THE LAWREVIEWS

THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW

NINTH EDITION

Reproduced with permission from Law Business Research Ltd
This article was first published in September 2020
For further information please contact Nick.Barette@thelawreviews.co.uk

Editor
John Riches

THE LAWREVIEWS

PUBLISHER
Tom Barnes

SENIOR BUSINESS DEVELOPMENT MANAGER
Nick Barette

BUSINESS DEVELOPMENT MANAGER
Joel Woods

SENIOR ACCOUNT MANAGERS
Pere Aspinall, Jack Bagnall

ACCOUNT MANAGERS
Olivia Budd, Katie Hodgetts, Reece Whelan

PRODUCT MARKETING EXECUTIVE
Rebecca Mogridge

RESEARCH LEAD
Kieran Hansen

EDITORIAL COORDINATOR
Gavin Jordan

PRODUCTION AND OPERATIONS DIRECTOR
Adam Myers

PRODUCTION EDITOR
Louise Robb

SUBEDITOR
Carole McMurray

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 978-1-83862-488-0

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

CONE MARSHALL LIMITED

CONYERS DILL & PEARMAN

DORDA RECHTSANWÄLTE GMBH

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

IQ EQ (ISLE OF MAN) LIMITED

LEE HISHAMMUDDIN ALLEN & GLEDHILL

LENZ & STAEHELIN

MAISTO E ASSOCIATI

MARXER & PARTNER RECHTSANWÄLTE

NIJSDRAYE | ATTORNEYS AT LAW

O'SULLIVAN ESTATE LAWYERS LLP

P+P PÖLLATH + PARTNERS

PERCHSTONE AND GRAEYS LP

PERSPECTA TRUST LLC

POTAMITISVEKRIS

PRAXISIFM GROUP LIMITED

RECABARREN & ASOCIADOS

RETTER S.À.R.L.

RMW LAW LLP

RUSSELL-COOKE LLP

SOŁTYSIŃSKI KAWECKI & SZLĘZAK

SRS ADVOGADOS

STEP

STEPHENSON HARWOOD

SULLIVAN & CROMWELL LLP

UGGC AVOCATS

WITHERS LLP

WOLF THEISS

CONTENTS

PREFACE

I would like to focus my remarks on some of the key trends that might be expected to affect the world of high net worth individuals in the immediate aftermath of the covid-19 pandemic.

I ISSUES DURING THE PANDEMIC

During the pandemic, we have seen a relatively consistent pattern among OECD countries of measures that are mainly focused on delaying obligations to file tax returns and make tax payments to reflect the turmoil in some business and personal finances that these exceptional circumstances have wrought. Interestingly, at the beginning of April the OECD issued an analysis examining double tax treaties and the impact of the crisis on individuals' presence, which may have been constrained as a result of the pandemic. The following were notable conclusions.

i Permanent establishments

For individuals constrained to work in a different location and, in particular, for those working from home, provided the state of affairs is regarded as temporary and exceptional it would not generate the required degree of permanency to create a fixed place of business.

ii Corporate tax residence

The view from OECD is that the temporary relocation of board members to different locations will not generally impact a company's tax residence.

iii Personal tax residence generally

In considering where an individual's centre of vital interest may be, any exceptional circumstances generated by the covid-19 pandemic should not, by themselves, cause an individual's residence to change.

One specific area where countries have taken steps to introduce exceptional guidance is in the context of a day count test. Specifically, Australia, Ireland and the UK have given guidance in the context of disregarding days of presence where this is used as a factor in determining residence. Clearly in all these cases, significant care needs to be taken to ensure that a temporary, exceptional circumstance does not become a permanent state of affairs. Where any tax analysis is dependent upon an individual being constrained in their ability to travel, it is likely to be prudent to keep contemporaneous records of attempts to travel to show that an individual has not changed his or her behaviour or residence in consequence of

the crisis on a more permanent basis and taken the opportunity to leave the relevant country as soon as possible. Difficulties may arise if an individual in Country A is unable to travel to Country B but could have gone to other locations. Will it be possible to argue that all steps were taken to leave if the individual waited until it was possible to travel to Country B?

II POSSIBLE RESHAPING OF TAX POLICY POST COVID-19

There have been many pronouncements and speculations appearing in the media about how national governments will look to finance the deficits they have incurred during the crisis. A significant degree of speculation has focused on the extent to which high net worth individuals will be targeted with an increased tax burden as one of the mechanisms for financing government deficits. Speculation varies between the possible introduction of some form of annual wealth tax to increased estate taxes.

One interesting example is a proposal in Argentina for a one-off tax levy on ultra-high net worth individuals (UHNWI). The bill being promoted in Argentina proposes a one-time tax on wealth calculated on personal assets of Argentine residents as at 31 March 2020. For individuals with a personal asset base of US$3 million, the proposed rate of tax would fall in the range of 2 per cent to 5.5 per cent. This would be in addition to the current annual wealth tax burden of 2.25 per cent for individuals on wealth that is held outside of Argentina. An article published by an Argentine think tank in April 2020[1] sets out an interesting array of proposals that have been advanced, principally by opposition parties, in South America and Europe. One additional strand that has emerged in Europe is the exclusion from state aid programmes for companies that are headquartered in 'tax havens'. This has been promoted in countries including the United Kingdom, Denmark and France.

A pan-European tax for UHNWIs in the EU has been suggested by economists, Gabriel Zucman and Emmanuel Saez (University of California at Berkeley) and Camille Landais (London School of Economics).[2] The suggested parameters they advance would be to tax those holding assets of more than €2 million (the top 1 per cent) at 1 per cent, those holding assets of more than €8 million (the top 0.1 per cent) at 2 per cent above that threshold and those holding more than €1 billion at 3 per cent above that threshold. They also argue that by making the tax EU-wide, there will be no incentive for individuals to relocate within the EU to avoid the tax.

Historically, one of the objections that has been raised, certainly in Europe, to wealth taxes is the relative inefficiency in the collectability of wealth tax because of the significant degree of compliance work required in checking an individual's filings and valuing their net worth to calculate the levy.

Clearly there is a paradox for tax authorities in considering any form of one-off, or permanent, tax measures that are targeted on high net worth individuals, namely the concern that such measures do not detract from the efforts of business entrepreneurs to create employment and prosperity for others. Furthermore, there will clearly be concern about measures that could be seen as targeting wealthy individuals from other jurisdictions who are looking to locate in the relevant country where increased tax measures could both discourage

1 https://centrocepa.com.ar/files/informes/20200502-wealth-tax.pdf.

2 https://voxeu.org/article/progressive-european-wealth-tax-fund-european-covid-response.

high net worth migrants from relocating to the jurisdiction or, in some cases, might create an incentive for such individuals to give up their residence.

If new measures of this character are proposed, it will be very interesting to see, in countries such as the UK or Italy that have special regimes for non-domiciliaries, how those regimes will be impacted, if at all, by tax-raising measures targeted at wealthy individuals.

Turning to estate taxes, one recent proposal that is worthy of note in the UK is a report published in January 2020 by a cross-parliamentary group of politicians that considered the UK's inheritance tax policy in the context of intergenerational fairness.[3] Notable conclusions from the report were to highlight the extent to which the UK's rule exempting gifts between individuals that occurred more than seven years before the death of the donor as allowing the very wealthy to mitigate their estate tax burden in a way that is not open to those of more modest means who do not have significant surplus to donate to future generations. The central proposal from the report was to scrap a 40 per cent inheritance tax burden levied on gifts occurring on death or within seven years with a flat rate 10 per cent tax that would apply to all gifts giving each individual a lifetime allowance for gifts that were exempt. Part of the thinking behind switching to a donee-based tax system is to encourage senior generations to make wealth transfers to younger generations (potentially from grandparents to grandchildren) in a manner that rebalances the distribution of wealth towards the young. While such measures are unlikely to be central in financing any deficits arising from the covid-19 pandemic in the short term, it will be interesting to see whether a flat rate tax, at a lower level, will find favour with policy makers in the UK. The thinking of the group issuing the report was that the overall unpopularity of the current regime, where taxes are levied on death could be overcome by one that is levied at a much lower rate and is applied uniformly to gifts during the lifetime as well as on death.

Another notable initiative from the EU that is likely to, potentially, impact private clients are the proposals incorporated within the sixth version of the EU Directive on administrative cooperation (DAC6). DAC6 aims to provide the tax authorities of EU Member States with additional information to enable them to close potential loopholes in tax legislation and harmful tax practices. Intermediaries advising on cross-border arrangements involving EU jurisdictions are obliged to report details of the arrangements and the relevant tax payers involved to their Member States who will share the information with other Member States' tax authorities. If there is no intermediary with an obligation to report, the relevant taxpayer will be obliged to do so. For the purposes of DAC6, an arrangement is interpreted very broadly and a cross-border arrangement is reportable if it concerns at least one EU member state and satisfies at least one of the hallmarks described in the Directive.

The hallmarks are very broadly worded and describe certain characteristics which, if satisfied, make the arrangement reportable. The majority of the hallmarks cover arrangements with some form of tax 'benefit' but there are specific hallmarks relating to arrangements that undermine the application of automatic exchange of information agreements such as the Common Reporting Standard and attempts to conceal beneficial ownership. A key concern with this particular hallmark is that the test appears to be wholly objective and the intentions of the parties are arguably not relevant. Intermediaries acting for high net worth individuals

3 www.step.org/sites/default/files/media/files/2020-05/STEPReform_of_inheritance_tax_report_012020.pdf.

and their structures will need to consider the impact of these rules on any arrangements entered into that may concern one or more EU Member States.

Turning away from the tax arena, many jurisdictions have introduced measures during lockdown to facilitate the digital execution of documents, including wills. It will be interesting to see to what extent policymakers will be happy to allow such measures to prevail on a long-term basis. Historically, the very strict measures that prevail on the execution of wills are clearly designed as a protective measure to mitigate the impact of undue influence. It seems likely that such measures will become a permanent part of the overall landscape for the execution of wills going forward. In circumstances where wills are drawn up by professional advisers who have direct contact with a testator or testatrix without the intervention of family members, such measures could well be a welcome relaxation that will make it easier for individuals to make wills in the years ahead in circumstances where it is likely to be less easy to travel to meet, in person, with one's professional advisers for a significant period of time. Given that, in many circumstances, there is a significant degree of 'inertia' that stops individuals from engaging with estate planning, this can only be a welcome development.

In conclusion, we can expect a significantly changed paradigm to prevail to the planning arena for wealthy families in the months and years ahead once the primary crisis generated by the pandemic concludes. A key area of uncertainty at present is the extent to which enhanced tax measures will be targeted at the wealthy. The wider changes in business practice and greater use of video meetings could, however, provide something of a 'silver lining' in terms of making it easier for individuals to access reliable estate planning and succession advice and measures on digital execution could facilitate the easier execution of documents once that process is concluded. What is certain is that a combination of these various measures is likely to significantly impact the planning environment for wealthy families in the years ahead. It seems likely in this context in particular that the EU will become more assertive in its approach to wealthy individuals and their tax affairs as DAC6 is implemented.

John Riches
RMW Law LLP
London
July 2020

Chapter 12

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, which 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 an 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 do not remain in another country for one or more periods exceeding 183 days;
c they are not tax-resident in another country;
d 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
e 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	0%	0
€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 2014, 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 for the first three years of residence. The exemption was limited to €8,550 per annum. With effect from the 2015 tax year, the exemption was extended to five years, but it will be available only until the year 2020.

In 2012, an alternative 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 in the tax year;

f certain pensions, such as a widow's pension;

g 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

h 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 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.

Special defence contribution tax

Special defence contribution (SDC) tax is payable by individuals who are both resident and domiciled in Cyprus on interest, dividend 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 exempt from all Cyprus taxation on interest and dividends from all sources.

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 acquisition 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 (L. 9/1965). 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.

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 their national law to apply, regardless of whether the European Succession Regulation applies in the state of their nationality or not.

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). Foundations are rarely used in practice because of the high degree of bureaucracy under the Associations and Foundations Law of 1972 and trusts overwhelmingly predominate. However, a new law on foundations was enacted in 2017, which simplifies procedures and which should 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 (L. 14/1960), 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.

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 (the 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 (the 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 Laws, 118(I) 2002 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.

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 breakdown of marriage or 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 International Trusts 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 the 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 to revoke, vary or amend the terms of the trust, to apply any income or capital of the trust property, to act as a director or officer of any corporation wholly or partly owned by the trust, to give binding directions to the trustee in connection with the trust property and 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, 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 (Law 196(I) of 2012) as amended (the 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 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 their 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;
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, 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 and the Unit for Combating Money Laundering and Terrorist Financing and the competent Supervisory Authorities (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.

V RESIDENCE AND CITIZENSHIP

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 offers individuals of good character investing through the Cyprus Investment Programme the option to acquire Cypriot citizenship and passport.

The Civil Registry Law, 141(I) of 2002 provides for non-Cypriots of full age and capacity to acquire citizenship by naturalisation. Applicants are generally required to have lived in Cyprus for seven years prior to submitting an application, and applications generally take years to process. However, in 2019, the Cyprus government introduced the revised Cyprus Investment Programme, through which a qualifying person invests substantial amounts in qualifying assets in Cyprus to obtain Cypriot citizenship by naturalisation on an accelerated basis, typically within six months. Applicants must own a permanent residence in Cyprus with a value of €500,000 or more excluding VAT, must be holders of a valid residence permit and have no criminal record and asset-freezing orders outstanding against them.

The Council of Ministers approved a number of changes to the programme that came into effect as from 15 May 2019, some of which are as follows:

a the parents of the applicant are also entitled to be granted citizenship, provided they purchase a home in Cyprus;

b purchase of undeveloped land is now an eligible form of investment provided that a master plan for the development of the land is submitted;

c a mandatory donation of €75,000 to the Foundation for Research and Innovation to promote the creation of an entrepreneurial innovation ecosystem. This is an obligation that can be waived under certain conditions, namely in cases where the applicant invests a minimum amount of €75,000 to a certified innovation company (which will be licensed by the Ministry of Finance) or to a certified social company. This is waived in the event that the applicant invests a minimum amount of €400,000 in a company

that has a main activity that falls under the primary or secondary sector (excluding the construction industry) of the economy or in the fields of research and development, education, health and renewable energy sources;

d a mandatory donation of €75,000 to the Cyprus Land Development Corporation, contributing to the integrated housing policy, specifically for the purpose of implementing affordable housing projects and the implementation of other housing plans or measures;

e the inclusion of investments in the shipping sector in the eligible investments, on the basis of specific measurable criteria;

f the inclusion of investment in registered alternative investment funds in the eligible investments, as well as the possibility for these organisations to invest up to €200,000 in Cyprus Stock Exchange's secondary market;

g in the event that a residential unit is purchased that has been used before by an applicant to apply through the Cyprus Investment Programme, the minimum investment required will be €2.5 million instead of €2 million;

h an obligation to maintain the required investments for a period of at least five years from the date of naturalisation, instead of three years;

i the applicant will have the right to replace the investment made initially during the lockup period of five years provided that consent was previously obtained by the Ministry of Finance;

j a complete abolition of investment in government bonds as an acceptable investment within the programme;

k where the investment relates to the purchase of real estate or property as well as in the case of a permanent residence, a planning permission, a completion certificate and a bank waiver will be required. For off-plan properties or those under development, at least 5 per cent of the value should either be deposited in a special account or be guaranteed via a bank guarantee. If the purchased property is mortgaged, then either the mortgage should be removed or a bank waiver should be obtained by the lender;

l the applicant must have a Schengen visa to be able to apply for naturalisation;

m an applicant who has applied for the acquisition of citizenship in any other EU Member State and has been rejected will not be entitled to acquire Cypriot citizenship within the framework of the Cyprus Investment Programme; and

n the applicant should be in possession of a residence permit in the Republic of Cyprus for at least six months prior to naturalisation as a Cypriot citizen.

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, though 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 accelerated citizenship programme has proved effective in attracting investment into Cyprus, and 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

ELINA KOLLATOU

Elias Neocleous & Co LLC

Elina is an 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 acquisition, holding and ultimate disposal of assets.

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'.

ELIAS NEOCLEOUS & CO LLC

Neocleous House
195 Makarios III Avenue
PO Box 50613
3608 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 978-1-83862-488-0