Private Wealth Newsletter

Fourth Quarter Issue

Editor's note

Editor's note

Dear Friends, Clients, and Colleagues,

In this issue you will find not only a recap of the key developments, interesting cases and legislative updates for the second half of 2021 but also examples of the very diverse and fascinating ideas and views of our Global Wealth Management Practice. 2021 like 2020 found organizations and businesses all over the world in a very similar setting as when the pandemic began but perhaps better equipped to handle some of the trials and tribulations most often thanks to the adaptability of colleagues pulling together and embracing new ways of working. From the day-to-day, to interactions, and even socializing, we overcame the challenges and also endured the losses that the pandemic brought. While the world remains vigilant with the emergence of the Omicron variant, we remain hopeful for the new year ahead.

We thank our clients, colleagues (current and former), and readers for supporting the newsletter and our practice and without whom the newsletter would not be possible. We also take the opportunity to give special thanks to our editorial and publication staff for another year's worth of an excellent work. As always, this edition is a testament to how far-reaching both geographically and substantively our group is. In particular, don't miss our feature article, a recap of the UK's largest ever divorce case or our take on ESG considerations for trustees.

We wish you all a happy and healthy new year!

Elliot Murray
Partner
Geneva
Tel: +41 22 707 98 39
elliot.murray@bakermckenzie.com

Feature

(Money to burn: Dishonest schemes go up in flames in UK's largest divorce case)

> "All happy families are alike, each unhappy family is unhappy in its own way. With apologies to Tolstoy, the Akhmedov family is one of the unhappiest ever to have appeared in my courtroom."
> – Mrs. Justice Knowles
>
> The tortuous divorce proceedings between Tatiana Akhmedova and her ex-husband Farkhad Akhmedov finally culminated earlier this year in a judgment in favor of Ms. Akhmedova. The decision of Judge Knowles of the Family Division of the High Court of England and Wales was unwavering in finding that Mr. Akhmedov, with the assistance of his son Temur Akhmedov, put into effect 'dishonest schemes' to place assets out of the reach of his former wife."

Comments

This case has run for several years, with Mr. Akhmedov having been ordered by the English court to pay over GBP 450 million in financial remedies to Ms. Akhmedova in 2016 following their divorce. Mr. Akhmedov then engaged in what the Judge referred to as "a series of schemes designed to put every penny of [his] wealth beyond her reach", through the use of complex trust structures, shell companies and transfers of large sums of money to Temur. The evidence left the court in no doubt that Mr. Akhmedov "would rather have seen the money burnt than for [his wife] to receive a penny of it".

Shortly after the judgment was published, the UK media reported that the feuding former spouses have agreed on a settlement, avoiding the need for Ms. Akhmedova to seek to enforce the recent judgment. The amount of the settlement has not been definitively reported, but some sources put it in the region of GBP 150 million.

The applications

As mentioned above and in our December 2020 article, in 2016 the English court ordered Mr. Akhmedov to pay Ms. Akhmedova approximately GBP 450 million by way of financial remedies following their divorce. Mr. Akhmedov's assets include a superyacht, which he purchased from Roman Abramovich in 2014 for over EUR 250 million, modern art valued at around USD 145 million, and cash and securities worth around USD 650 million. Essentially, all of these assets were hidden away through the use of trust structures and shell companies, such that Ms. Akhmedova had recovered just GBP 5 million by late 2020.

Following the original 2016 judgment, Ms. Akhmedova joined her son Temur in the proceedings, alleging that he had acted as her former husband's 'lieutenant' in devising and executing schemes to frustrate that judgment, including the transfer of substantial cash sums from father to son by way of unspecified "generalized financial provision" and the transfer of beneficial ownership in valuable Moscow properties to Temur in 2018. Ms.

Akhmedova therefore sought relief directly against her son in respect of certain of these assets, which she said she was entitled to recover under the 2016 judgment.

Ms. Akhmedova also claimed that certain transactions made by Mr. Akhmedov and connected companies (including the disposal of assets or the settling of assets into trusts) were undertaken to stop her enforcing the court's money orders against him. She sought to have the transactions set aside on the basis of either section 423 of the UK Insolvency Act 1986 (Transactions defrauding creditors) or section 37 of the UK Matrimonial Causes Act 1973 (Avoidance of transactions intended to prevent or reduce financial relief).

The court's decisions

The circumstances of all of the transactions at issue in the case were, in the Judge's view, clearly intended to thwart Ms. Akhmedova's enforcement of the 2016 judgment. However, the respondents put forward a number of technical arguments in the hopes of defeating Ms. Akhmedova's claims, some of which are summarized below.

The 'gateway' condition

The respondents argued that both s.423 IA and s.37 MCA contained a "gateway" condition before any transaction could be set aside: if the debtor making the impugned transaction still had enough assets post-transaction to satisfy the debt in question, then the impugned transaction could not be set aside (put another way, they argued that the effect of the impugned transaction must be to leave the debtor unable to satisfy the debt).

The court dismissed this argument primarily because this 'gateway' condition was absent from the plain wording of the statute. Furthermore, the Judge stated that the 'gateway' condition would have the effect of prejudicing creditors' interests in circumstances where the debtor's purpose was clearly consistent with an intention to put assets beyond a claimant's reach or to otherwise prejudice their interests, notwithstanding that it did not in fact leave the debtor insolvent.

The Judge also rejected the 'gateway' argument in relation to s.37 MCA on the basis that the statute used the language of "frustrating or impeding the enforcement of any order", which captures dispositions intended to make enforcement slower or more difficult (not just impossible).

The Judge also considered that s.37 MCA was clearly more generous to applicants than s.423 IA in some ways; specifically the presumption of illegitimate purpose in certain circumstances, with no need to prove the transaction was at an undervalue: "In the context of family relationships, it seems clear that the court has been provided with a broad power to remove any obstacle which could delay or hinder a spouse receiving the financial relief which the court considered to be appropriate."

Jurisdictional arguments

The two trustee companies included in the list of respondents, both incorporated and registered in Liechtenstein, and the trustees of several Liechtenstein trusts, denied that there was sufficient connection with the English jurisdiction to justify the court exercising its powers. They also argued that any such order under s.423 IA or s.37 MCA would have exorbitant extraterritorial effect, and that they would be subject to real risk of prosecution in Liechtenstein if they complied.

They relied upon SAS Institute v World Programming [2020] EWCA Civ 599, where the Court of Appeal emphasized the importance of not making orders with exorbitant extraterritorial effect in respect of property located abroad. Again this was rejected by Knowles J. The transfers made to the trusts by or at the direction of Mr. Akhmedov were effected in order to evade an English claim brought by an English resident, so there was evidently a sufficient connection. SAS Institute was concerned with enforcement, not adjudication, and it recognized a clear distinction between the two. The trustee respondents had been unable to identify a single case where a court had declined to grant a money judgment because the respondent's assets were located abroad.

Claimant's standing as a victim

The trustees also submitted that Ms. Akhmedova had no standing as a “victim” for the purposes of s.423 IA, as she had not been able to enforce the order made against the relevant monetary assets while they were still in Switzerland, and therefore did not and could not suffer any prejudice when those assets were transferred from Switzerland to Liechtenstein.

The Judge found that the claimant was a "victim" within the meaning of the legislation as she was capable of being prejudiced by the transaction in question. The transfers converted the respondent from an entity that was at least capable of paying its liabilities (leaving aside whatever the directors had chosen to do) into "an empty shell which was hopelessly insolvent".

Commentary

The story of the Akhmedovs' divorce and subsequent legal battles has attracted widespread tabloid interest in England and elsewhere due to the intoxicating cocktail of money, high-profile individuals, and family dynamics.

But the legal principles arising out of the case are just as interesting, and in particular the judgment provides useful clarifications of the court's interpretation of both s.423 IA and s.37 MCA, with a claimant-friendly decision that the impugned transfers need not leave the debtor with insufficient assets to meet the liability they owe the victim in order to be set aside. This common sense approach, along with the court's findings on the scope of its jurisdiction for the purposes of exercising its powers under s.423 IA, will be of great interest to litigation, private wealth, and insolvency practitioners in England and elsewhere.

Authors

Gemma Willingham
Partner
London
Gemma.Willingham@bakermckenzie.com

Jack Secunda
Associate
London
Jack.Secunda@bakermckenzie.com

Rosie Sells
Associate
London
Rosie.Sells@bakermckenzie.com

Ella Thackray
Trainee Solicitor
London
Ella.Thackray@bakermckenzie.com

ESG considerations for trustees

ESG is an acronym for environment, social and (corporate) governance - factors considered originally (and separately) to be a measure of an organization's corporate social responsibility, and which are becoming increasingly important in determining its financial and general success.

ESG encapsulates a broad range of issues including (but by no means limited to) sustainability, corporate ethics, human rights, social good, climate change and corporate culture.

Why is ESG important?

The broadness of the term can lead to difficulty, particularly for those seeking to grapple with it for the first time and who may find themselves overwhelmed by the various issues they have to consider. Additionally, over recent years, ESG obligations have become enshrined into a mixture of soft and hard law, with reporting requirements being proposed and/or implemented in numerous jurisdictions. As a result, it is increasingly crucial for organizations to understand ESG opportunities and risks and to be aw are of their obligations in every market in which they operate. The risks associated with ignoring these issues means that corporate social responsibility is no longer a 'nice to have' but rather a business imperative; whether that is manifested in investment decisions, supply chain management, geographic footprint or simply in the w ay an organization treats its employees and w whether it is considered a good place to work.

Why is this relevant to trustees?

The common myth used to be that trustees' fiduciary duties restricted them from favoring ESG investments over traditional investments. However, this myth has well and truly exploded over recent years. Whilst it remains the case that trustees ' primary duties are to act in their beneficiaries' best financial interests[5], there is now indisputable evidence that many ESG factors (most notably good corporate governance and climate risk) have a material financial impact on investments. As such, it is now being viewed as essential for trustees of discretionary trusts to factor ESG principles into their investment decisions (including in appointing investment managers, making decisions as to investment

5. Cowan v Scargill [1985] Ch. 270

objectives and asset allocation, and in voting on company and shareholder resolutions). For the uninitiated, the implications of a misstep in respect of ESG could be significant and as this article explains, the potential for legal risk for trustees is increasing.

Global developments

There are a number of global examples of rules and legislation that have been introduced to codify certain ESG principles and obligations.

For example:

Legislation	Obligations
UK Modern Slavery Act 2015	Organisations which fall within this legislation[6] are required to produce an annual statement setting out the steps they have taken to prevent modern slavery and human trafficking from occurring in any part of the business, including in the supply chains. The statement must be signed by a director and published on the organisation's website.
Australian Modern Slavery Act 2018	Requires large Australian entities and foreign entities carrying on business in Australia to report annually on the risks of modern slavery in their operations and supply chains and the actions taken to address those risks
EU Non-Financial Reporting Directive 2014	Required to be transposed into member states' rules by the end of 2016, this directive requires certain large companies to disclose non-financial information about social and environmental impact, (e.g., environmental matters, social matters, and treatment of employees) and diversity information (i.e., the age, gender, educational and professional background of board members)
EU Regulation sustainability	Imposes sustainability disclosure obligations on manufacturers of financial products and financial advisers and disclosure obligations in relation to adverse impacts on the environment and society.

Open full table in browser:

https://bakermckenzie.turtl.co/story/private-wealth-newsletter-q4-2021-issue/page/4/2

Factors for trustees to take into account

Unless the terms of a particular trust deed provide otherwise, a trustee's primary duty is to act in the best financial interests of the beneficiaries and to exercise a duty of prudence when investing.[7]

In acting in accordance with these duties when making investment decisions, a prudent trustee should therefore take ESG factors into account as it is now generally accepted that companies with poor ESG ratings are at considerably higher risk of financial losses. As Guy Opperman MP commented in his forward to a best practice guidance for pension trustees,[8] "It would take a brave trustee, though, to conclude that absolutely none of these issues are material, or that they are all solely matters of personal ethics". A negative ESG report or incident can have a significant adverse impact and can affect sales, customer loyalty, and brand value.

For example, Dr. Condoleeza Rice cites the low-budget 2013 documentary film about how SeaWorld treated its orcas as a particularly stark example of the potential financial impact on companies when ESG risks are not addressed. This USD $77,000 documentary led directly to Sea World's greatest asset - the killer whale, Shamu - becoming its greatest liability, with corporations cutting sponsorship ties, investors divesting themselves of shares, regulators opening investigations into the parks ' safety practices and SeaWorld's stock price plunging by 60 percent.[9] More recently, companies' responses at the start of the Coronavirus pandemic have been scrutinized closely, with one survey into attitudes across 12 jurisdictions highlighting the real impact of dissatisfied stakeholders (for example, a third of respondents stated that they had convinced other people to stop using a brand that they felt was not acting appropriately in response to the pandemic).[10]

It seems likely that we will see future litigation involving trustees who have invested in companies w ith poor ESG indices w here the value of these companies subsequently declines due to ESG failures. The clear message to trustees is that it is becoming increasingly important for them to

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6. Commercial organizations supplying goods or services in the UK and with a worldwide turnover of more than £36 million.

7. Cowan v Scargill [1985] Ch. 270

8. ESG and Strewardship: a practical guide to trustee duties (2019)

9. 'Political Risk, How businesses and organisations can anticipate global insecurity', Condoleeza Rice and Amy Zegart

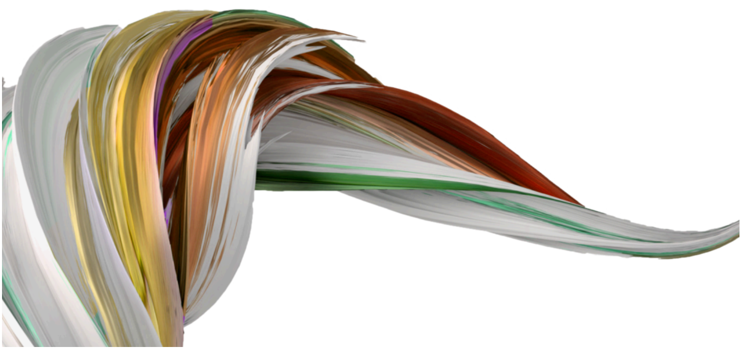
10. 2020 Edelman Trust Barometer, Brands and the Coronavirus: https://www.edelman.com/sites/g/files/aatuss191/files/202003/2020%20Edelman%20Trust%20Barometer%20Brands%20and%20the%20Cornovirus.pdf

factor ESG considerations into their investment decisions and that failing to do so will have adverse financial impacts on their investments.

The difficulty for trustees arises when an ESG factor is considered to be non-financial and/or detrimental from a financial perspective. Trustees may w ell be asked by some beneficiaries to invest in assets that are viewed as having a positive social or environmental impact, but which may have an adverse financial impact on the fund. For example, certain beneficiaries may be ethically opposed to trust assets being invested in certain sectors or asset classes, e.g., tobacco, fossil fuels or munitions, even if these sectors generate good financial returns. The current state of the law in the UK suggests that trustees of ordinary discretionary trusts should only take into account non-financial factors in their investment decisions if this would not involve a significant risk of financial detriment to the trust fund and if they consider that the beneficiaries would support their decision.[11] More guidance is likely soon, as the High Court has granted permission for charity trustees to bring proceedings to obtain declaratory relief and directions about their wish to adopt environmentally-friendly investment policies.[12] It is hoped that the substantive hearing will provide some new guidance as to trustees' investment duties and the relevance of ESG factors.

In the meantime, it is important to note that ESG investing is not the same as impact investing. Whilst ESG investment analyses the environmental, sustainability and governance factors to understand the financial effect on returns, impact investing goes further by investing in companies, organisations, and funds with the express purpose of creating a positive social or environmental impact, alongside achieving a financial return. In our view, pure impact investing currently gives rise to greater risks to trustees, as beneficiaries could bring claims against a trustee for its investment decisions if these lead to losses and a trustee is unable to demonstrate that its investment decisions w ere based upon financial considerations.

A cautious trustee will therefore ensure that all of its investment decisions are based on financially material considerations and will not rely only upon non-financial considerations. In practice, most ESG factors will be financially material on close analysis, given the potentially huge financial impact of an ESG failure. For example, a company's approach to diversity could be viewed as a non-financial factor but there is increasingly compelling evidence that diverse companies achieve greater financial performance.[13]



11. In R (on the application of Palestine Solidarity Campaign Ltd & Anor) v Secretary of State for Communities and Local Government) [2020] UKSC 16, it was said that: "Schemes... may also take purely non-financial considerations into account provided that doing so w ould not involve significant risk of financial detriment to the scheme and w here they have good reason to think that scheme members w ould support their decision",

12. Butler-Sloss v Charity Commission for England and Wales [2021] 4 WLUK 5

13. McKinsey & Company: Diversity w ins: How inclusion matters, 19 May 2020

For those trustees who control the shareholdings of 'family' businesses, there are potentially further considerations. Whilst 'anti-Bartlett' clauses will often narrow the scope of duties imposed on trustees to be involved in or to oversee the management of wholly owned or controlled trading companies, modern trustees may nonetheless wish to engage in high-level dialogue with those in control of management to better understand the management's state of understanding of ESG issues. Such a dialogue should reveal whether the business is sufficiently well-versed in the issues affecting its market sector in order to help trustees assess whether the response of the business to ESG pressures is likely to be adequate to protect the interests of the trust beneficiaries.

Ultimately, if a settlor wants their trustees to adopt focused impact investing (as opposed simply to making ESG investments in the best financial interests of the beneficiaries), the best approach would be to establish a settlor-directed trust rather than a standard discretionary trust. This w would greatly limit the risks to the trustees in adopting an impact investment strategy and w would thereby increase the likelihood of the trustees in fact undertaking impact investing.

ESG risk management: recommended best practice

In light of the considerations above, trustees should carefully consider their powers and duties and how ESG factors affect them. While legal advice should always be sought by a trustee if there is any uncertainty about its powers and duties, broadly speaking, trustees who have decided that they can and should make a commitment to ESG and/or factor it into their decision-making regularly, should consider implementing the following steps (either themselves or by their delegated investment managers):

- Creating an ESG policy and communicating this with their beneficiaries and investment managers;

- Conducting a periodic risk assessment of investments (including ESG risk factors);

- Implementing training and ensuring effective communication of ESG policies and practices; and/or

- Voluntary or mandatory reporting as required or appropriate.

Investment decisions made by trustees have always been ripe for scrutiny by dissatisfied beneficiaries. The advent of ESG and ESG investing will only increase this scrutiny - particularly once we reach a post-pandemic world. Therefore, the sooner trustees are able to navigate the decisions that ESG will throw up and the challenges it will present, the better.

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Authors

Gemma Willingham
Partner
London
Gemma.Willingham@bakermckenzie.com

Yindi Gesinde
Partner
London
Yindi.Gesinde@bakermckenzie.com

Costly decision:

Australian tax consequence of capital gains distributions to non-residents

The Federal Court decision in *N & M Martin Holdings Pty Ltd v Commissioner of Taxation*[1] **("Martin")** supports the imposition of CGT on trustees distributing capital gains to non-residents, even where the gains related to assets that were not taxable Australia property (TAP) and therefore not subjected to capital gains tax. The decision follows an earlier Federal Court decision of *Peter Greensill Family Co Pty Ltd (trustee) v Commissioner of Taxation*[2] ***("Greensil")***. It also affirms the ATO's views in draft Taxation Determination TD 2019/D6. Similarly to Greensill, the decision in Martin has major implications for non-resident beneficiaries of Australian discretionary trusts.

1. [2020] FCA 1186.

2. [2020] FCA 559.

Both Martin and Greensill were heard concurrently by the Full Federal Court in February 2021. The Full Federal Court is expected to hand down their decision later this year. It remains to be seen whether the Full Federal Court will overturn the findings in Martin and Greensill.

Facts.

The trustee of an Australian discretionary family trust (the Martin Family Trust) made capital gains on the sale of shares that were not TAP over two income years. The Martin Family Trust distributed a significant percentage of the capital gains to Mr. Martin, who was a foreign resident and beneficiary under the discretionary trust. Mr. Martin argued that he was not liable for CGT as he was a foreign resident at the relevant times and the shares were not TAP.

Findings

Mr. Martin's arguments were considered and rejected by the Federal Court in Greensill. Accordingly, the Federal Court in Martin would have to follow the decision in Greensill unless it was satisfied that Greensill was "plainly wrong."

It may be recalled that, under Section 855-10, foreign residents are to disregard capital gains or losses from a CGT event if the CGT event happens in relation to a CGT asset that is not TAP. The court in Greensill had found that this did not apply and the capital gain made in this case could not be disregarded as the word "from" required a direct connection between the capital gain and the CGT event. A capital gain that is received by a beneficiary because of a CGT event in relation to a CGT asset that is owned by a trust does not form the requisite nexus and is not a capital gain "from a CGT event" (instead, it was "from" a construct of the trust capital gain provisions). As a result, the beneficiary was liable for CGT on the capital gain on the sale of shares.

The court in Martin found that the Greensill judgment should be followed "as a matter of precedent, comity and good sense."

As a consequence, had the capital gains been made by the beneficiary directly (i.e. if Mr. Martin had held the shares that were disposed of and made a gain), or through a fixed trust, Mr. Martin would have been exempt from taxation.

The key takeaways

- CGT can be imposed on capital gains distributed to non-resident beneficiaries of Australian discretionary trusts even where the gains relate to assets that are not taxable Australian property.

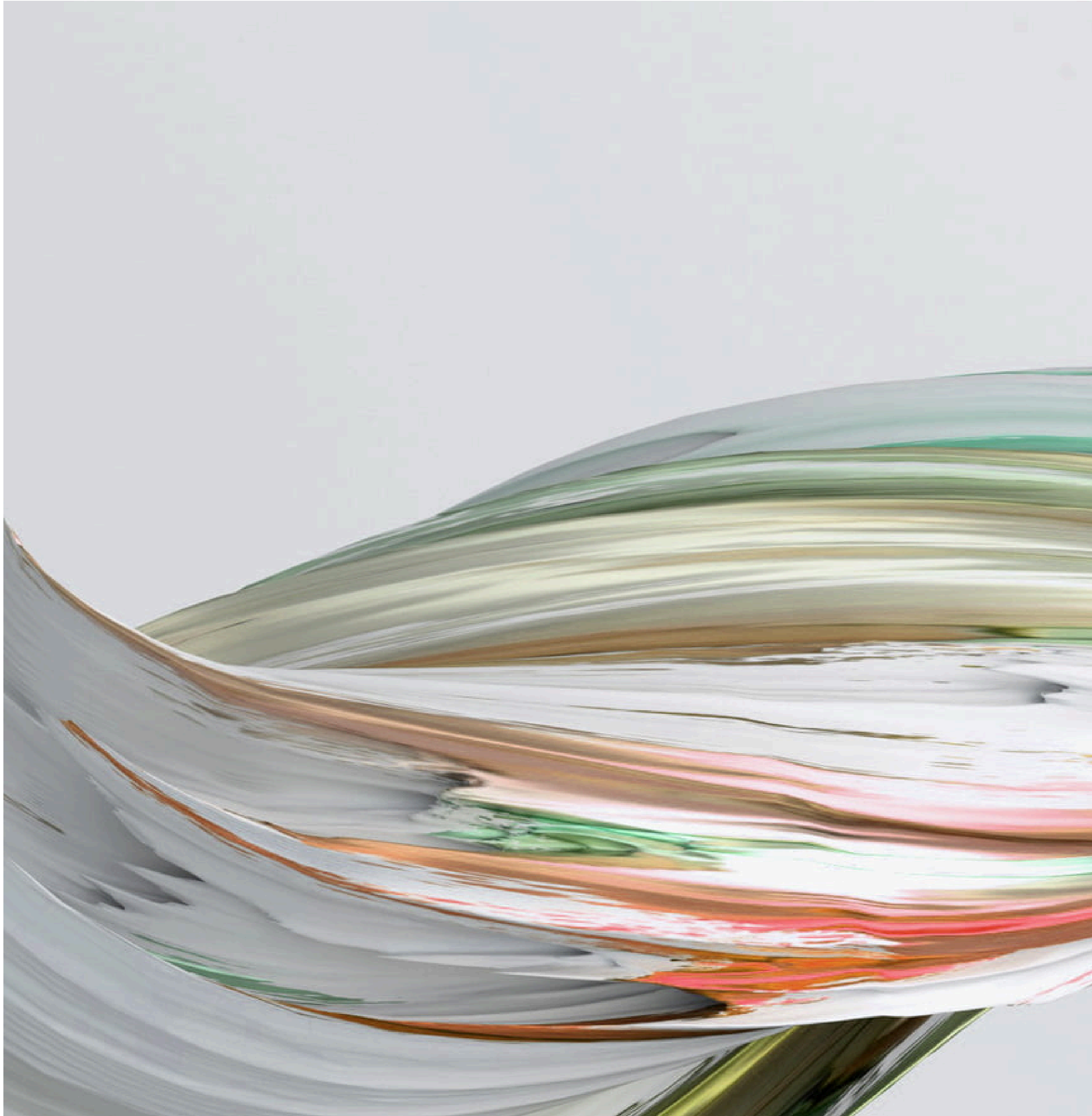
- ♣ The case dispels the notion that a beneficiary's tax position is to be determined as if they had been the one to make the capital gain. Had a non-resident beneficiary made the capital gain in their own right, no CGT would be applicable.

Individuals should carefully consider the use of discretionary trusts with non-resident beneficiaries in the context of asset management and estate planning due to the uncertainty raised by this case, TD 2019/D6, and Greensill.

Author

John Walker
Partner
Sydney
John.Walker@bakermckenzie.com

PRC Supreme Court invalidates will against public order and good morals



On 26 March 2021, the PRC Supreme People's Court's China Judgments Online website published a case[3], in which a will was ruled invalid by the Shenzhen Intermediate People's Court (SIPC) because it contradicted public order and good morals.

Mr. Liu, the owner of three properties located in Shenzhen, had separated from his wife and had lived with Ms. Yang for 17 years. After the death of Mr. Liu on 27 August 2017, Ms. Yang filed a lawsuit claiming entitlement to three properties pursuant to two wills of Mr. Liu. The court of first instance considered the following additional key facts:

- In 2010, as demolition compensation, Mr. Liu obtained the three properties in question.

- Mr. Liu filed a divorce suit in 2015, but lost the suit. In 2016, Mr. Liu filed a second divorce suit and won the first trial, but his wife appealed. As Mr. Liu had died during the court proceedings, the court terminated the proceedings without permitting a divorce.

- On 4 August 2016, Mr. Liu made a holographic will under which he bequeathed the three properties to Ms. Yang upon his death. The will was witnessed by a law firm. On 19 June 2017, Mr. Liu signed a printed will with the same provision. The will was witnessed by two mutual friends of Mr. Liu and Ms. Yang.

Based on these facts, the court of first instance ruled that (i) the subject properties were the shared property of Mr. Liu and his wife and, due to Mr. Liu's long-term cohabitation with Ms. Yang, he was entitled to only one property; and (ii) the disposition of the portion of property legally owned by Mr. Liu in the wills was legally effective.

Both Mr. Liu's wife and Ms. Yang appealed the case to the SIPC, which ruled that the three properties were the spouses' shared property. Therefore, the bequest of the three properties to Ms. Yang contradicted public order and good morals. The SPIC ruled that Mr. Liu's wills were void.

3. Please refer to https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=6a6e2d41f5d3479d88a1acf7009ef46d for a full text of the court's judgement.

Observations

Both the legacy General Principles of Civil Law and the prevailing PRC Civil Code provide that civil conduct that contradicts public order and good morals is invalid. That said, the practical application of this legal principle is at the discretion of the court, and uncertainties may arise. In fact, the court of first instance expressly ruled that Mr. Liu's cohabitation with Ms. Yang contradicted public order and good morals and was illegal, but held that this did not necessarily result in the wills being invalid.

In addition to the public order and good morals issue, the wife raised other challenges concerning the validity of the wills, such as the authenticity of the testator's signature and the testator's capacity. These issues were not fully analyzed in the court proceedings.

An increasing number of Chinese HNWIs are realizing the importance of wills. With effect from 1 January 2021, testamentary successions are governed by the new PRC Civil Code.

The Civil Code provides for two new forms of wills: printed wills and wills in the form of video recordings. This offers more flexibility for testators

On the other hand, the validity of a will is subject to a series of substantial formality requirements.

We located 68 court cases relating to the validity of wills that were published on [Wolters Kluwer]() in the first half of 2021, and found that there were 20 cases where the relevant will was ruled invalid by the court (including 11 cases where the will was ruled invalid as it did not meet the prescribed formality requirements). It is important for testators to make sure all necessary formality requirements are met in order to ensure that a will has full legal effect.

Authors

Nancy Lai
Partner
Shanghai
Nancy.Lai@bakermckenzie.com

Tingting Guo
Associate
Shanghai
Tingting.Guo@bakermckenzie.com

Baker McKenzie.

Could Japanese transfer taxes play greater role in addressing inequality?

Inheritance taxation can be an important instrument to address inequality, particularly in the current context of persistently high wealth inequality and new pressures on public finances linked to the COVID-19 pandemic, according to a new OECD report.

Inheritance Taxation in OECD Countries provides a comparative assessment of inheritance, estate and gift taxes across the 37-member OECD, and explores the potential role these taxes could play in raising revenues, addressing inequalities, and improving the efficiency of tax systems in the future.

The report highlights the high degree of wealth concentration in OECD countries as well as the unequal distribution of wealth transfers, which further reinforces inequality. On average, the inheritances and gifts reported by the wealthiest households (top 20%) are close to 50 times higher than those reported by the poorest households (bottom 20%).

The report points out that inheritance taxes - particularly those that target relatively high levels of wealth transfers - can reduce wealth concentration and enhance equality of opportunity. It also notes that inheritance taxes have generally been found to generate lower efficiency costs than other taxes on the wealthy and to be easier to assess and collect than other forms of wealth taxation.

The majority of OECD countries currently levy inheritance or estate taxes – 24 in total. However, these taxes typically raise very little revenue. Today, only 0.5% of total tax revenues are sourced from inheritance, estate and gift taxes on average across the countries that levy them.

Generous tax exemptions and other forms of relief are a key factor limiting revenue from these taxes, according to the report. In addition to limiting revenue, relief provisions primarily benefit the wealthiest households, reducing the effective progressivity of inheritance and estate taxes.

Individuals are often able to pass on significant amounts of wealth tax-free to their close relatives thanks to high tax exemption thresholds. Tax relief is also common for transfers of specific assets (e.g. main residence, business and farm assets, pension assets, and life insurance policies). In a number of countries, inheritance and estate taxes can also largely be avoided through in-life gifts, due to their more favorable tax treatment.

> While a majority of OECD countries levy inheritance and estate taxes, they play a more limited role than they could in raising revenue and addressing inequalities, because of the way they have been designed," said Pascal Saint-Amans, director of the OECD Centre for Tax Policy and Administration. "There are strong arguments for making greater use of inheritance taxes, but better design will be needed if these taxes are to achieve their objectives."

These provisions reduce the number of wealth transfers that are subject to taxation, sometimes significantly so. For instance, across eight countries with available data, the share of estates subject to inheritance taxes was lowest in the United States (0.2%) and the United Kingdom (3.9%) and was highest in Switzerland (12.7%) (Canton of Zurich) and Belgium (48%) (Brussels-Capital region).

The report underlines the wide variation in inheritance tax design across countries. The level of wealth that parents can transfer to their children tax-free ranges from close to USD 17 000 in Belgium (Brussels-Capital region) to more than USD 11 million in the United States. Tax rates also differ. While a majority of countries apply progressive tax rates, one-third apply flat rates, and tax rate levels vary widely.

The report proposes a range of reform options to enhance the revenue potential, efficiency and fairness of inheritance, estate and gift taxes, while noting that reforms will depend on country-specific circumstances.

It finds strong fairness arguments in favor of an inheritance tax levied on the value of the assets that beneficiaries receive, with an exemption for low-value inheritances. Levying an inheritance tax on a lifetime basis - on the overall amount of wealth received by beneficiaries over their lifetime through both gifts and inheritances - would be particularly equitable and reduce avoidance opportunities, but could increase administrative and compliance costs. Scaling back regressive tax reliefs, better aligning the tax treatment of gifts and inheritances and preventing avoidance and evasion are also identified as policy priorities.

To make these taxes more acceptable by the public at large, the report underlines the need to provide citizens with information on inequality and the way inheritance and estate taxes work, as these tend to be misunderstood.

> Inheritance taxation is not a silver bullet, however, Other reforms, particularly in relation to the taxation of personal capital income and capital gains, are key to ensuring that tax systems help reduce inequality. The OECD will be undertaking new work in that area, in particular as the progress made on international tax transparency and the exchange of information is giving countries a unique opportunity to revisit personal capital taxation."
>
> Mr. Saint-Amans

Reform of Inheritance Law

To solve issues related to inheritance, the Civil Code stipulates basic rules, including on who will be the heir, what will be the legacy, and how the rights and obligations of the decedent will be succeeded. The part in the Civil Code that contains these provisions is referred to as the "Inheritance Law (or Sozoku Ho)."

There has been no major reform to the Inheritance Law since 1980. Recently, the law was amended for the first time in order to address issues related to the aging population in Japan and other changes in social circumstances.

The main elements of this amendment to the Inheritance Law are as follows:

- the new spousal residence right
- relaxation of the requirement to handwrite the assets lists attached to a holographic will
- retention of holograph wills by the Legal Affairs Bureau
- compensation for family members who contributed to the care or nursing of the decedent

1.1 Spousal residence right (effective from 1 April 2020).

The spousal residence right allows the spouse of the deceased to use a house owned by the deceased free of charge for the spouse's entire life or for a certain period of time, if the spouse was living in the house at the time of the death of the deceased.

Where there is more than one heir with regard to a house, the regime enables a spouse to acquire the spousal residence right and an heir other than the spouse to acquire onerous ownership rights at the time of division of the estate. The spousal residence right does not give rise to full ownership rights; the spouse will not have a right to dispose the house or lend the house to others at their discretion. As the value of a spousal residence right is lower than that of a full ownership right, the spouse may be entitled to more assets at the time of division of the estate, ensuring their subsequent financial stability.

1.2 Relaxation of the requirement to write by hand the assets lists for holograph wills (effective from 13 January 2019).

Previously, for a holographic will, it was necessary for the testator to prepare the assets list in handwriting. The assets list may now be prepared in other ways (e.g., using a personal computer or attaching a copy of a bankbook).

1.3 Retention of holographic wills at the Legal Affairs Bureau (effective from 10 July 2020).

Holographic wills are often kept at home, where they may be lost, abandoned, or rewritten. In order to prevent inheritance disputes arising from these problems and make it easier to use holographic wills, the Legal Affairs Bureau will be retaining holographic wills.

1.4 Compensation for family members who contributed to the care or nursing of the decedent (effective from 1 July 2019).

In some cases, non-heir relatives (e.g., a spouse of a child) may have been involved in taking care of or nursing the decedent. Before the reform of the Inheritance Law, it was not possible to distribute inherited property to such non-heir relatives.

In order to eliminate such inequities, non-heir relatives can now claim compensation from the heirs if the non-heir relatives contributed to the care and nursing of the decedent free of charge or made a special contribution to the maintenance or increase in value of the decedent's property.

Authors

Edwin T. Whatley
Partner
Tokyo
edwin.whatley@bakermckenzie.com

Akihiro Kawasaki
Senior Associate
Tokyo
akihiro.kawasaki@bakermckenzie.com

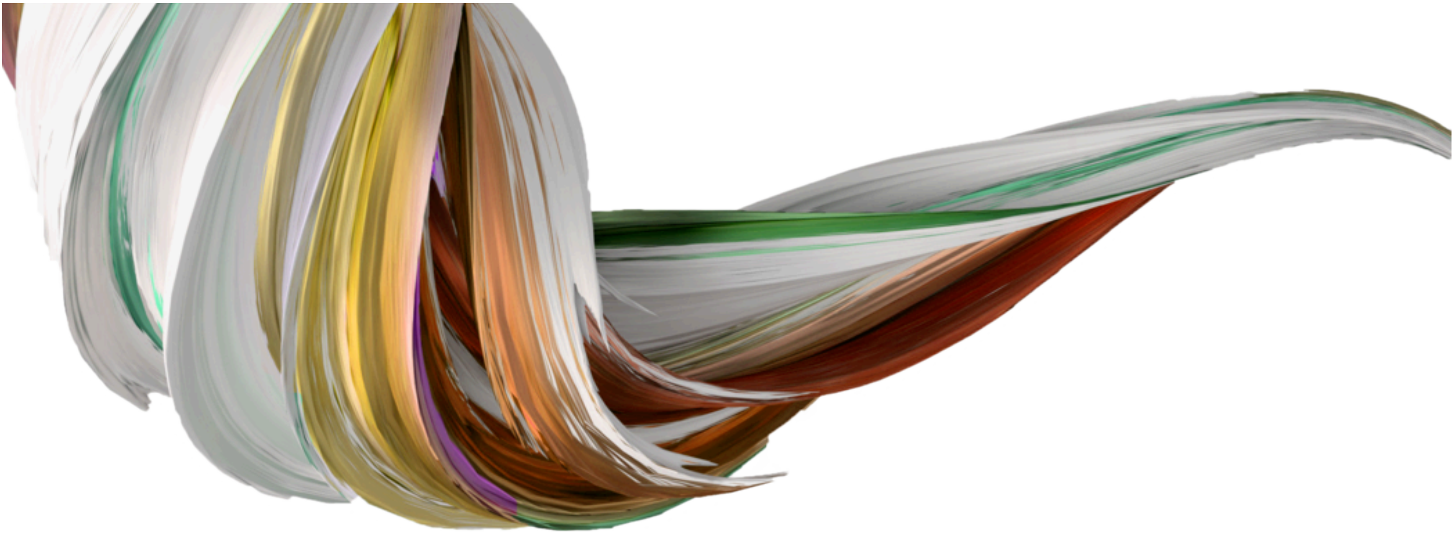
No relief in Wilson for settlor-beneficiary on trust reporting penalties

On 28 July 2021, the U.S. Court of Appeals for the Second Circuit overturned the district court to hold that the Internal Revenue Service (IRS) could impose the 35% penalty for the taxpayer's untimely filing of his Form 3520. The court noted that application of a reporting requirement for trust owners to the taxpayer did not eradicate the owner's concurrent reporting obligation as a beneficiary of such trust. While the decision in the Wilson case addressed the specific issue of whether the government has the authority under the Internal Revenue Code ("Code") to impose a 35% penalty when the taxpayer is both the sole owner and beneficiary of a foreign trust and fails to report distributions received from the trust, the case arises in a time of heightened difficulties for taxpayers when they are regularizing international information returns.

In 2003, Joseph Wilson established a foreign trust with a value of approximately USD 9 million. Wilson was the sole owner and beneficiary of such foreign trust. Then, in 2007, Wilson liquidated the trust and distributed all of its assets, approximately USD 9.2 million, to himself.

Under the relevant statutes, 26 U.S.C. 6048(b),(c), the foreign trust and Wilson needed to file Forms 3520-A and 3520, the "Annual Information Return of Foreign Trust with a U.S. Owner" and the "Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts" respectively. 26 U.S.C. 6677(a),(b) imposes penalties for the late filing of these returns: a 35% penalty applies to beneficiaries who fail to timely report their distributions and a 5% penalty applies to owners who fail to ensure that their trust timely files an annual return. Wilson filed both returns for the 2007 tax year late and the IRS assessed a 35% penalty against Wilson for failing to disclose the distribution he received from his foreign trust. Wilson initially paid the 35% penalty and then filed for a refund, arguing he should have solely been charged the 5% penalty applying to trust owners.

Wilson passed away while his claim for a refund was pending. Wilson's estate sued for a refund arguing that only the 5% penalty should have applied and alleging in the alternative that reasonable cause excused Wilson's untimely filing. Wilson's estate moved for partial summary judgment on their 5% penalty argument, which the district court granted. The government appealed and the Second Circuit reviewed de novo.
The Second Circuit determined that the plain language of the relevant disclosure and penalty provisions unambiguously demonstrate that when an owner of a foreign trust fails to timely disclose a distribution received as a beneficiary of that trust, he violates both of the reporting requirements and triggers the 35% penalty provision. The Second Circuit also found that the statute dealing with the disclosure requirements is concerned with the actual disclosure requirements and not the forms on which such requirements are satisfied.



The Second Circuit found that nothing in the Code: (i) exempts a beneficiary who is also the owner of a foreign trust from timely reporting the distribution received from such trust; (ii) eliminates the applicability of the 35% penalty to Wilson as a beneficiary of the trust; or (iii) indicates that the government may impose only a single penalty even if the taxpayer violates multiple filing requirements.

The Second Circuit focused on whether the actual statutory disclosure requirements were satisfied rather than the form on which such disclosures are made. The Second Circuit noted that whether the taxpayer files Form 3520, Form 3520-A, or both, they must disclose any distributions received from a foreign trust even if they are the sole owner and sole beneficiary. Further, the Second Circuit indicated that even if the forms generate some ambiguity, forms can only be used to clear up ambiguity within a statute not to create it.

The IRS has been regularly assessing penalties on taxpayers filing late international information returns, particularly the Form 3520, which was at issue in the Wilson case. The result is that taxpayers who owe no taxes and who may be eligible for relief from penalties for late filing of information returns because of reasonable cause are forced into a lengthy appeals process when they realize they missed a filing. For taxpayers who have both unreported foreign-source income and delinquent Forms 3520 both due to non-willful non-compliance, the streamlined filing compliance procedure may provide the best option for coming into compliance.

Authors

Paul DePasquale
Partner
New York
Paul.DePasquale@bakermckenzie.com

Jacqueline Titus
Associate
Dallas
Jacqueline.Titus@bakermckenzie.com

Baker McKenzie.

US tax reform, the sequel:

Potential impact for families and family offices

On October 28, 2021, President Biden announced a new, slimmed-down framework for the Build Back Better Agenda. Following this revised framework, the House Democrats released an updated version of the reconciliation bill through the House Rules Committee. This latest draft of the bill has superseded the earlier iteration issued by the House Budget Committee.

Background

In last month's client alert, Tax Reform or No Tax Reform - The Potential Impact on Private Clients and Family Offices, we discussed many changes proposed by the House Ways and Means Committee in its prior draft legislation. In particular, we called special attention to the proposed transfer taxes on grantor trusts, income taxes on sales or exchanges between grantor trusts and the deemed owner, increased valuation and taxation of transfers of nonbusiness assets, and an accelerated timeline for reducing the transfer tax exclusion amount. These changes would have a significant impact on high-net-worth individuals' estate planning should the then-proposed legislation become law. Nevertheless, none of these proposals have made their way into the House Rules Committee's most recent draft (though the increased estate and gift tax exclusion amount is still set to sunset on 31 December 2025 and revert to $5 million, as adjusted for inflation). Furthermore, there is no reference to increasing individual income or capital gains tax rates.

Provisions of Interest

Below, we highlight several proposed changes included in the latest draft legislation that are particularly relevant for high net worth individuals, family offices, and financial institutions:

- The proposed legislation enacts a surcharge on high income individuals, trusts, and estates beginning January 1, 2022. The new surcharge has two brackets: (i) any modified adjusted gross income over $10 million is subject to a 5% tax (applied to income in excess of $5 million for a married individual filing separately), and (ii) any modified adjusted gross income over $25 million is subject to an 8% tax (applied to income in excess of $12.5 million for a married individual filing separately). For purposes of this surtax, "modified adjusted gross income" is defined as adjusted gross income reduced by any deduction allowed for investment interest (as defined in section 163(d). The thresholds are lower for trusts and estates: a 5% surtax is assessed on income over $200,000 and an 8% surtax applies to income over $500,000, each applied after taking into account any current distributions made to the beneficiaries. This new surcharge would not apply to charitable trusts.

- The proposed legislation also expands the net investment income tax (NIIT) for high-income individual taxpayers. Beginning in 2022, for individuals with income over $400,000, joint filers with income over $500,000, and married individuals filing separate returns with income over $250,000, the 3.8% NIIT would not only apply to traditional investment income (interest, dividends, passive rents, etc.), but also to investment income derived in the ordinary course of a trade or business, such as those held through S corporations. The NIIT would begin to phase in at the $400,000 and $500,000 thresholds: for the first $100,000 above the relevant threshold, only a fraction of the 3.8% tax rate will apply based on how much income a taxpayer earns in excess of the threshold. Once an individual reaches $500,000 or joint filers reach $600,000, the full 3.8% NIIT rate would apply to all net investment income and trade or business income. This tax does not apply to wages on which payroll taxes (i.e., FICA) are already imposed, as this amendment is designed to target income that escapes both employment taxes and the NIIT. For trusts and estates, the NIIT would now apply to undistributed business income with no threshold limitation.

- The proposed legislation reinstates section 958(b)(4), which had been repealed under The Tax Cuts and Jobs Act of 2017 (TCJA) to allow “downward” attribution of stock ownership from a foreign person to a US person in the context of the controlled foreign corporation (CFC) provisions. The section 958(b)(4) limitation historically meant that a corporation would not be classified as a CFC solely on the basis of stock attribution from foreign persons to US persons. Prior to the repeal of section 958(b)(4), if, for example, a foreign parent company owned a foreign subsidiary and a US subsidiary as brother-sister entities, the foreign parent’s interest in the foreign subsidiary would not be attributed to the US subsidiary. Post-TCJA, the foreign parent’s interest in the foreign subsidiary is downwardly attributed to the US subsidiary, such that the foreign subsidiary is deemed owned by the US company and is therefore deemed a CFC. This repeal has had far-reaching consequences well beyond its original intent, creating thousands of unintended constructive CFCs. Notably, the repeal of Section 958(b)(4) also had the unintended effect of causing many inbound loans otherwise qualifying as portfolio debt (discussed below) to no longer qualify since one of the requirements of portfolio debt is that the loan cannot be from a related party CFC. While the IRS and Treasury have since used regulations to provide limited relief, they have been reluctant to act to significantly narrow the scope of downward attribution, believing they lack the authority to do so. The proposed legislation demonstrates congressional intent to rectify this and reinstate section 958(b)(4). Importantly, the

House Rules Committee text would make reinstatement prospective only, for tax years beginning after December 31, 2021. Furthermore, while this proposal would solve the "related party CFC" issue for inbound portfolio debt lending, the proposal described next would effectively kill most future inbound portfolio debt planning through a US C corporation blocker structure.

- The proposed legislation modifies the definition of “10% shareholder,” whose interest is exempt from tax under the portfolio debt rules. Generally, interest from a US-obligor paid to a foreign person is exempt from US tax if it qualifies under the “portfolio interest” exemption. Under the current section 871(h)(3)(B), if the obligor is a corporation, interest does not qualify under this exemption if it is received by a foreign lender that directly or indirectly owns 10% or more of the total combined voting power of all classes of the obligor's voting stock. For this reason, inbound portfolio debt structures with corporate borrowers have often employed a so-called "park-the-vote" structure whereby an independent, minority shareholder holds greater than 90% of the vote in the borrower corporation. Under the proposed legislation, the definition of "10% shareholder" is revised to also include foreign lenders that own 10% or more of the total value of the obligor's stock. Therefore, pursuant to this change, any foreign lender that owns 10% or more of the total vote or value of the stock of the corporate borrower would not be eligible for the portfolio interest exemption. If enacted, this change would mean park-thevote structures no longer work as a planning tool for portfolio debt. This amendment would apply to obligations issued after the date of enactment, so there remains (limited) time to implement park-the-vote structures.
- There is no mention of any changes to the portfolio debt rules involving individual or trust obligors. Under current law, there is no "10% shareholder" rule for an individual or trust, which makes an individual or trust borrower an attractive structuring alternative if the individual or trust is prepared file US federal income tax returns and report and pay tax on underlying investments.

- The proposed legislation limits the application of the participation exemption to CFCs, i.e., foreign corporations that are more than 50% owned (by vote or value) by US shareholders who each own at least 10%. Under the current participation exemption regime, any US corporation that owns 10% or more of a specified foreign corporation can benefit from a 100% dividends received deduction (DRD) for the foreign source portion of dividends it receives from such foreign corporation. This 100% participation exemption currently applies even in cases where the foreign corporation is not a CFC and is therefore not subject to the subpart F and GILTI regimes, allowing certain dividends that qualify under the foreignsource DRD to avoid US tax altogether. The proposed legislation amends section 245A so that the exemption applies to foreign portions of dividends received only from CFCs. This provision would also allow certain foreign corporations with US shareholders to elect to be treated as a CFC, if desired. The changes to the participation exemption regime would apply after the date the legislation is enacted.

- The proposed legislation would make permanent the section 461(l) limitation on deduction of excess business losses, which under current law is scheduled to sunset after December 31, 2025. The TCJA added section 461(l) to disallow business losses of non-corporate taxpayers exceeding $250,000 ($500,000 for joint filers), as adjusted for inflation. Under current law, the disallowed amount is carried forward to the next year as a net operating loss (NOL). Under the proposed legislation, the disallowed amount becomes a deduction attributable to a trade or business which would be subject to the 461(l) limitation in the subsequent year.

- Consistent with prior proposals, the proposed legislation includes increased funding of the IRS, specifically to target taxpayers whose income exceeds $400,000. In addition to appropriating funds, the provision allows the IRS to modernize outdated IRS technology, invest in taxpayer services for average Americans, and hire enforcement agents who are trained to pursue "wealthy evaders." President Biden's press release announcing his framework focuses on IRS enforcement in the context of wealthy individuals and partnerships, and curiously does not reference high-income corporate taxpayers.

The above is a non-exhaustive list of key changes in the latest tax reform proposals. While many of the significant amendments that were previously under consideration have been omitted, the legislation has not been finalized and may undergo further change before enactment.

Authors

Simon Beck
Principal
New York
Simon.Beck@bakermckenzie.com

Lyubomir Georgiev
Partner
London
Lyubomir.Georgiev@bakermckenzie.com

Nathan Benyamin
Associate
San Francisco
Nathan.Benyamin@bakermckenzie.com

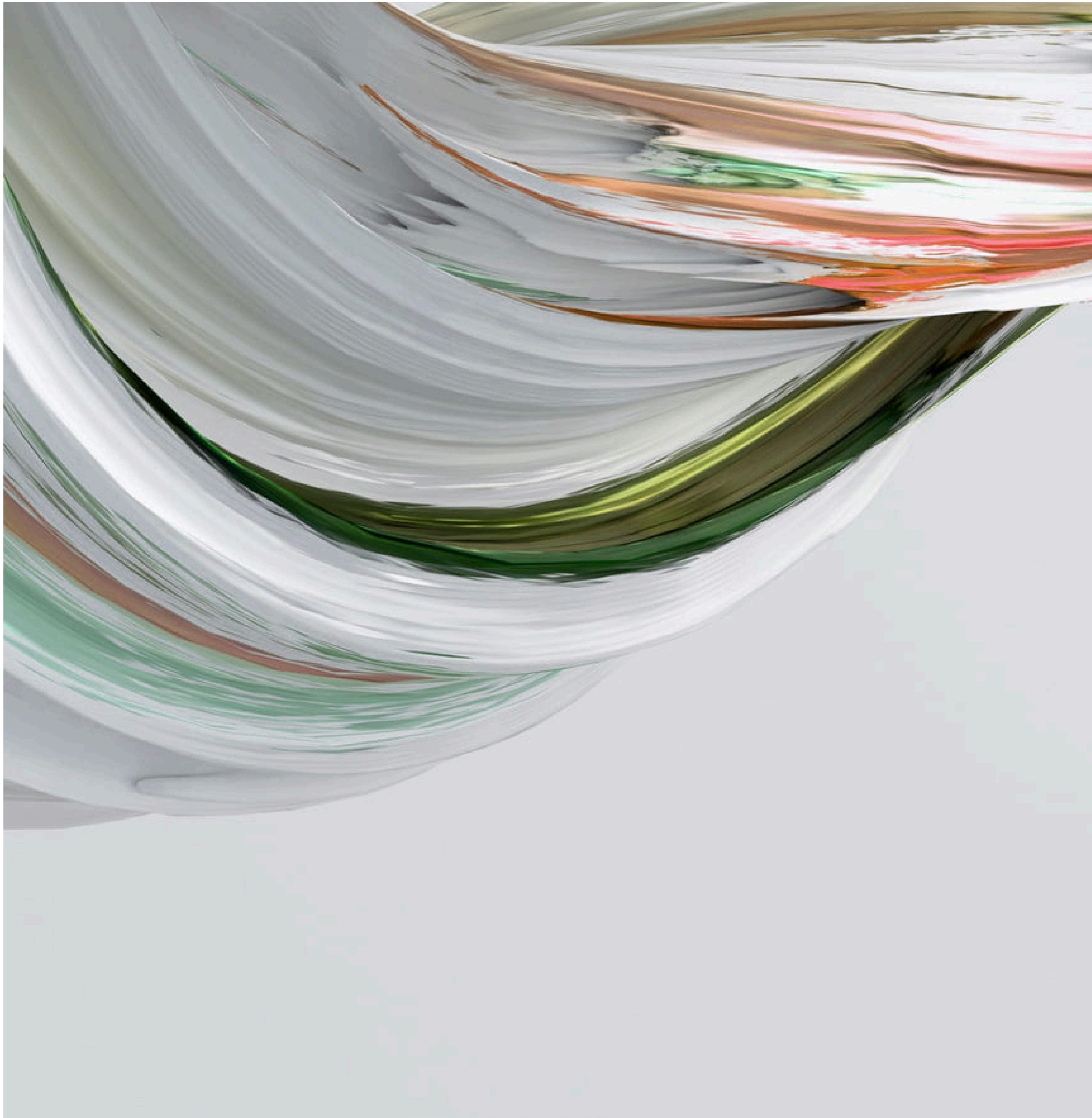
Glenn Fox
Principal
New York
Glenn.Fox@bakermckenzie.com

Rebecca Lasky
Associate
New York
Rebecca.Lasky@bakermckenzie.com

Robert Moore
Principal
Miami
Robert.Moore@bakermckenzie.com

Yuyao Leng
Associate
New York
Yuyao.Leng@bakermckenzie.com

Russia introduces alternative to foreign trusts and foundations



Starting from 1 March 2022, Russian business owners will be able to transfer business and personal assets worth at least RUB 100 million to new private foundations established under Russian law.[4]

Background

Russian business owners have traditionally resorted to flexible foreign law vehicles for succession planning and asset protection purposes, such as the popular Privatstiftung in Liechtenstein and similar structures in civil law jurisdictions and some common law countries. They have also used various international trusts (e.g., in Cyprus, Jersey, Cayman Islands and many other popular common law countries), life insurance and other instruments.

Although these are all well respected and reliable options, many Russian business owners were hesitant to use them due to their complicated legal structure, high costs and language requirements. Such instruments also do not always work well with pure domestic assets in Russia that require day-to-day management, such as Russian commercial organizations.

In order to provide a domestic alternative, Russia introduced in 2018 the concept of inheritance foundations, which, similar to will trusts, can only be established after the death of a founder. Due to this reason and their relative novelty, inheritance foundations have not caught on yet in Russia.

Still, with many Russian business owners now in their 50s, 60s and 70s, there has been demand for a more flexible domestic instrument for transitioning a business to governance by professional management and for protecting the interests of heirs without resorting to foreign law instruments and laws of foreign jurisdictions.

In order to satisfy this growing demand, Russia has introduced the new concept of private foundations, which will supplement inheritance foundations as of 1 March 2022. But, unlike existing inheritance foundations, can be established and tested during the lifetime of their founders.

Key features

Russian and foreign assets with a value of at least RUB 100 million can be transferred to a foundation; this includes cash, investment portfolios, real estate, business assets (shares and interests in commercial organizations) and other property. When financing a foundation, it is necessary to observe the limitations on foreign currency operations between Russian residents. For example, being a Russian currency control

4. Federal Law No. 287-FZ, dated 1 July 2021 "On the Introduction of Amendments into Parts One and Three of the Civil Code of the Russian Federation".

resident, a Russian law private foundation cannot accept as a contribution foreign shares and similar assets from Russian resident founders.

Property transferred to a foundation is not included in the estate of the founder; it does not constitute marital property and cannot be divided in the event of a divorce. The founder bears subsidiary liability for the financial obligations of the foundation, and the foundation for the obligations of the founder, for a three-year period after the establishment of the foundation (five years in exceptional cases, for example, if creditors have valid excuses for not submitting their claims on time). However, the foundation is not responsible for the liabilities of the beneficiaries, and they are not liable for those of the foundation.

There is no requirement to publish reports on the use of a foundation's property. Information on the terms of management and other internal documents of the foundation is confidential and should not be disclosed to any third parties, with only a few exceptions: a private foundation's details will be made known to the creditors of the founder and to the state authorities in Russia. The Russian authorities will also be aware of the names of the beneficiaries and payments made to them.

Governance

Maximum flexibility is envisaged for structuring the management of a foundation. The law does not establish any requirements for managers such as licenses or other qualifications; therefore, a foundation can be managed by a wide range of persons such as trusted advisers and/or legal entities of the founder, but not the founder themselves or the beneficiaries. The equivalent of a private trust company may be set up in Russia or abroad for the management of a private foundation.

The founder can be included in the supreme collegial body and supervisory board of the foundation; if so, their approval can be required for concluding certain transactions specified by the founder in the charter documents of the foundation. The founder can also change the charter, terms and internal documents of the private foundation during their lifetime. For additional control it is also possible to create an oversight body -- the equivalent of a protector (enforcer) in a trust. The beneficiaries of a foundation can be members of a family or another group of persons, but not commercial organizations. Such persons may receive regular or single distributions upon the occurrence of conditions set by the founder, but cannot participate in the management of a business transferred into the private foundation. The beneficiaries have the right to demand information on the activity of the private foundation in those cases set out in the charter, as well as the right to demand an audit of the foundation. Foundations are not subject to mandatory state audits. The founder can also be a beneficiary and receive regular payments during their lifetime from the foundation they established.

Taxation

No special tax and currency control benefits have been introduced yet for the new private foundations. Thus, a private foundation, being a non-commercial organization under Russian law, is a fully taxable entity that can be subject to the Russian 20% corporate profit tax (including on investment income), VAT, property and other applicable taxes, and is subject to CFC rules in relation to its foreign assets. It can enjoy the usual tax benefits, for example, 0% participation exemption for qualifying dividends. But there is currently no special exemption for capital distributions such as the one available to foreign law trusts.

The foundation acts as a withholding agent for individual income tax purposes. Payments to the beneficiaries are subject to the individual income tax at the rate of 13% or 15% for residents, and 30% for non-residents. The beneficiaries will not have to submit tax returns or pay tax on payments from the foundation on their own.

Future outlook

The use of new private foundations could reduce the number of inheritance disputes in Russia over business assets, and provide continuity and professional management for Russian businesses. It could also prevent the misuse of funds and ensure long-term financial support for family members.

However, for them to become a popular wealth management and succession-planning tool for wealthy individuals in Russia, it is necessary to fix some of the initial drawbacks of the legal and tax regime applicable to new private foundations, as well as to develop Russian laws and reliable court practice on the protection of assets.

Authors

Sergei Zhestkov
Partner
Moscow
Sergei.Zhestkov@bakermckenzie.com

Artem Toropov
Associate
Moscow
Artem.Toropov@bakermckenzie.com

Around the World

APAC

Australia:

The ATO may use its access powers to challenge claims of privilege: The recent Federal Court decision in CUB Australia Holding Pty Ltd v Commissioner of Taxation ("CUB Australia") confirmed that the ATO may use its access powers under section 353-10 of Schedule 1 to the TAA 1953 claims of legal professional privilege (LPP).
Read more

Author:
John Walker

Updates on property taxes in NSW and Victoria: The NSW Government is considering levying a new annual property tax, which would consist of a fixed amount plus a rate applied to the unimproved land value of an individual property. Under the proposed reforms, buyers can choose to pay the property tax at the time of purchase instead of stamp duty and the current land tax. Once a property is subject to the property tax, subsequent owners must pay the property tax.
Read more

Author:
John Walker

Japan:

Implementation of CRS and information exchange in Japan: Japan passed legislation giving effect to Common Reporting Standards ("CRS") in 2015, under which certain financial institutions operating in Japan are obliged to report certain financial account information regarding account holders to the Japanese tax authorities. The CRS system came into effect in Japan on January 1, 2017, and the first reports were submitted by financial institutions by 20 April 2018.
Read more

Author(s):
Edwin Whatley;
Akihiro Kawasaki

Malaysia:

Updates on tax residency issues arising from the travel restrictions due to COVID-19: In view of extended travel restrictions as a result of the ongoing COVID-19 pandemic, the IRB released an updated FAQ on International Tax Issues due to COVID-19 Travel Restrictions . Under the FAQ, the IRB has maintained that the presence in or absence from Malaysia due to COVID-19 travel restrictions will generally not affect an individual's tax residence status in Malaysia.
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Author(s):
Istee Cheah;
Lisa Yeoh

Philippines:

The BIR issues special tax residency rules: Due to the continuous implementation of varying types of quarantine in the Philippines and travel restrictions imposed by the Philippines and other foreign governments, the BIR issued Revenue Memorandum Circular No. 83-2020 (RMC) to address tax issues relating to cross-border workers who are stranded or forced to quarantine in a country that is not their country of residence, thereby creating unintended permanent establishment risks to employers as a consequence of the continued presence of employees in the Philippines.
Read more

Author(s):
Kristine Anne Mercado-Tamayo

Rules of procedure in relation to the Anti-Money Laundering Act (AMLA): On 15 May 2021, the Court of Appeals issued A.M. No. 21-03-05-CA or the Rules of Procedure in Cases of Bank Inquiry into or Examination of Deposit and Investment Accounts Relating to an Unlawful Activity or a Money Laundering Offense under Republic Act No. 9160, as amended. Under these rules, the Anti-Money Laundering Council (AMLC), through the Office of the Solicitor General (OSG), may file with the court an ex parte application for an inquiry into a particular deposit or investment accounts, including related accounts, when it has been established that there is a probable cause that these accounts are related to an unlawful activity or a money laundering offense.
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Author(s):
Kristine Anne Mercado-Tamayo

Singapore:

Updated COVID-19 administrative guidance on tax residency for individuals and companies: The COVID-19 pandemic has continued to disrupt cross-border movements. The Inland Revenue Authority of Singapore (IRAS) published administrative guidance with respect to the determination of tax residency in April 2020. To provide continued clarity during the ongoing pandemic, IRAS updated its guidance on 29 January 2021.
Read more

Author(s):
Enoch Wan;
Dawn Quek

Taiwan:

Hold real estate in a trust or insurance policy and treat a wrapper as a CFC solution: The amended Income Tax Act, which stipulates new "see-through" rules on the taxation of Taiwan real estate, came into effect on 1 July 2021 and is retrospectively applied on real estate acquired after 1 January 2016.
Read more.

Author(s):
Michael Wong;
Scott Chang;
Peggy Chiu

Charitable trusts are to be used solely for charitable purposes, not as family trusts: The Foundations Act was announced in 2018 to prevent a foundation from being used as a family shareholding vehicle while appearing to have been designed for charitable purposes. After the Foundations Act was implemented, the public spotlight shifted to charitable trusts, which have long been playing a role similar to that of foundations. Charitable trusts were regarded as a loophole for owning family assets after the Foundations Act became effective.
Read more

Author(s): Peggy Chiu;
Daniel Chou

CRS impact and related Taiwanese developments: The Regulations Governing the Implementation of the Common Standard on Reporting and Due Diligence for Financial Institutions (CRS) have been in effect since 2019. These authorize the Ministry of Finance (MOF) to request financial institutions to conduct due diligence on their clients and collect relevant information for tax purposes. Pursuant to existing tax treaties and agreements with other foreign governments, the MOF can exchange such tax information with foreign governments.
Read more

Author(s): Peggy Chiu;
Daniel Chou

Thailand:

Exchange control law updates: Effective from 5 December 2020, the Bank of Thailand (BOT) relaxed the Thai exchange control regulations, as summarized below. Read more

Author(s): Panya Sittisakonsin;
Chanisara Thaisanguanvorakul

Updates on international exchange of information: allowing the signing of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC) last year, Thailand has been preparing to join the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information (CRS MCAA) to facilitate the automatic exchange of information regarding financial account information among participating jurisdictions.
Read more

Author(s): Panya Sittisakonsin;
Chanisara Thaisanguanvorakul;
Nitikan Ramanat

Americas

Brazil:

Government presents the Bill of Law of the second phase of the tax reform, which relates to the income tax of individuals and legal entities: On 25 June, the Brazilian federal government presented to the National Congress the second phase of the tax reform, which focuses on the income tax of individuals and legal entities and on the social contribution on net profit.
Read more.

Author(s):
Clarissa Machado;
Reinaldo Ravelli Neto;
Luciana Nobrega

United States:

To Trust or Not to Trust — Florida's new statutes pave the way for expansion of individual's succession planning opportunities: The Sunshine State has become an even more attractive option for establishing trusts and transferring wealth after the recent enactment of the Florida Uniform Directed Trust Act (FUDTA), and the Community Property Trust Act (CPTA). The Acts were enacted on 29 June 2021 and became effective on 01 July 2021.
Read more

Author(s):
Karina Vasquez;
Pratiksha Patel

EMEA

France:

Management packages: Sequencing for 'better' taxation: In three decisions handed down on 13 July 2021, the Conseil d'Etat ruled in a rather radical manner on the tax treatment applicable to gains realized by the beneficiaries of certain Management Packages that took the form, in these particular cases, of share subscription warrants (Bon de Souscription d'Actions (BSA)) and share option plans (Contrats d'option d'achat d'actions).
Read more.

Author(s):
Agnes Charpenet;
Philippe Fernandes;
Geoffrey Poras;
Pauline Thiault

South Africa:

OECD paper outlines ways to address wealth inequality through inheritance tax: In May, the OECD issued a report on the role of inheritance taxes in addressing wealth inequality, which has important implications for South Africa. Alongside the rest of the world, the country is actively looking at ways to recover from the economic devastation of the pandemic.
Read more

Author(s):
Virusha Subban;
Prenisha Govender

Ukraine:

Ukraine offers tax amnesty: On 15 June 2021, the Parliament of Ukraine adopted a law commonly referred to as the Tax Amnesty Law, which introduces voluntary disclosure program with respect to unreported taxable income and assets. On 21 July 2021, the Law entered into force. By its terms, the tax amnesty will be available from 1 September 2021.
Read more.

Author(s):
Hennadiy Voytsitskyi;
Roman Koren

Wealth management regional contacts

Asia Pacific

Bangkok
25th Floor
Abdulrahim Place
990 Rama IV Road
Bangkok 10500
Thailand
Tel: +66 2636 2000
Fax: +66 2636 2111
Kitipong Urapeepatanapong

Beijing
Suite 3401, China World Office 2,
China World Trade Center
1 Jianmguomenwai Dajie
Beijing 100004,
People's Republic of China
Tel: +86 10 6535 3800
Fax: +86 10 6505 2309
Jinghua Liu

Hong Kong
14th Floor, One Taikoo Place,
979 King's Road, Quarry Bay,
Hong Kong SAR
Tel: +852 2846 1888
Fax: +852 2845 0476;
2845 0487; 2845 0490
Richard Weisman
Steven Sieker
Pierre Chan
Michael Olesnicky
Noam Noked
Lisa Ma

Kuala Lumpur
Level 21, The Gardens South
Tower
Mid Valley City
Lingkaran Syed Putra
59200 Kuala Lumpur
Tel: +60 3 2298 7888
Fax: +60 3 2282 2669
Adeline Wong
Yvonne Beh
Lim Tien Sim

Manama
18th Floor, West Tower
Bahrain Financial Harbor
PO Box 11981, Manama
Kingdom of Bahrain
Tel: +973 1710 2000
Fax: +973 1710 2020
Ian Siddell
Julie Alexander

Manila
12th Floor, Net One Center
26th Street Corner 3rd Avenue
Crescent Park West,
Bonifacio Global City, Taguig,
Metro Manila 1634 Philippines
Postal Address: MCPO Boc 1578
Tel: +63 2 819 4700
Fax: +63 2 816 0080
Dennis Dimagiba

Melbourne

Level 19 CBW
181 William Street
Melbourne Victoria 3000 Australia
Tel: +61 3 9617 4200
Fax: +61 3 9614 2103
John Walker

Singapore
8 Marina Boulevard #05-01
Marina Bay Financial Centre
Tower 1 Singapore 018981
Tel: +65 6338 1888
Fax: +65 6337 5100
Dawn Quek
Enoch Wan

Sydney
Tower One - International Towers Syndey,
Level 46
100 Barrangaroo Avenue
Sydney NSW 2000 Australia
Tel: +61 2 9225 0200
Fax: +61 2 9225 1595
John Walker

Taipei

15th Floor, Hung Tai Center
No. 168 Dunhua North Road
Taipei 105
Taiwan
Tel: +886 2 2712 6151
Fax: +886 2 2716 9250
Michael Wong
Dennis Lee
Peggy Chiu

Tokyo

The Prudential Tower, 13-10
Nagatacho 2-Chrome,
Chiyoda-Ku, Tokyo 100-0014
Japan
Tel: +81 3 5157 2700
Fax: +81 3 5157 2900
Edwin Whatley

Europe, Middle East & Africa

Abu Dhabi

Level 8, Al Sila Tower
Sowwah Square, Al Maryah Island
Abu Dhabi, United Arab Emirates
Tel: +971 2 612 3700
Fax: +971 2 658 1811
Borys Dackiw

Amsterdam

Claude Debussylaan 54
1082 MD Amsterdam
P.O. Box 2720
1000 CS Amsterdam
The Netherlands
Tel: +31 20 551 7555
Fax: +31 20 626 7949
Maarten Hoelen
Isabelle Bronzwaer

Barcelona

Avda. Diagonal, 652, Edif. D, 8th Floor
08034 Barcelona, Spain
Tel: +34 93 206 08 20
Fax: +34 93 205 49 59
Bruno Dominguez
Esteban Raventos
Davinia Rogel
Meritxell Sanchez

Berlin

Friedrichstrasse 779-80
10117 Berlin, Germany
Tel: +49 30 22 002 810
Fax: +49 30 22 002 811 99
Wilhelm Hebing

Brussels

Avenue Louise 149 Louizalaan
11th Floor
1050 Brussels, Belgium
Tel: +32 2 639 36 11
Fax: +32 2 639 36 99
Alain Huyghe
Julie Permeke

Budapest

Dorottya utca 6.
1051 Budapest
Hungary
Tel: +36 1 302 3330
Fax: +36 1 302 3331
Gergely Riszter
Timea Bodrogi

Casablanca

Ghandi Mall - Immeuble 9
Boulevard Ghandi
20380 Casablanca
Morocco
Tel: +212 522 77 95 95
Fax: +212 522 77 95 96
Kamal Nasrollah

Doha

Al Fardan Office Tower
8th Floor, Al Funduq 61
Doha, Qatar
Tel: +974 4410 1817
Fax: +974 4410 1500
Ian Siddell

Dubai

Address 1:
O14 Tower, Level 14
Business Bay, Al Khail Road
Dubai, United Arab Emirates
Tel: +971 4 423 0000
Fax: +971 4 423 9777
Mazen Boustany
Reggie Mezu

Address 2:
Level 3, Tower 1
Al Fattan Currency House, DIFC
Dubai, United Arab Emirates
Mazen Boustany
Reggie Mezu

Frankfurt
Bethmannstrasse 50-54
60311 Frankfurt/Main, Germany
Tel: +49 69 29 90 8 0
Fax: +49 69 29 90 8 108
Sonja Klein
Ludmilla Maurer

Geneva
Esplanade Pont-Rouge 2
1212 Grand-Lancy
Geneva, Switzerland
Tel: +41 22 707 98 00
Fax: +41 22 707 98 01
Elliott Murray
Jacopo Crivellaro
Michael Jaffe
Farhaan Anjum

Istanbul
Esin Attorney Partnership
Ebulula Mardin Cad.,
Gül Sok. No.2, Maya Park
Tower 2, Akatlar-Beşiktaş
Istanbul 34335, Turkey
Tel: +90 212 339 8100
Fax: +90 212 339 8181
Erdal Ekinci
Gunes Helvaci

Jeddah
Legal Advisers (Abdulaziz I. AlAjlan & Partners
in association
with Baker & McKenzie Limited)
Bin Sulaiman Center, 6th Floor, Office No. 606
Al Khalidiyah District,
P.O. Box 40187
Prince Sultan St. and Rawdah St. Intersection
Tel: +966 12 606 6200
Fax: +966 12 692 8001
Julie Alexander
Basel Barakat

Johannesburg
1 Commerce Square
39 Rivonia Road
Sanhurst
Sandton
Johannesburg, South Africa
Tel: +27 11 911 4300
Fax: +27 11 784 2855
Denny Da Silva

Kyiv
Renaissance Business Center
24 Bulvarno-Kudriavska (Vorovskoho) St.
Kyiv 01601
Ukraine
Tel: +380 44 590 0101
Fax: +380 44 590 0110
Hennadiy Voytsitskyi
Roman Koren

London
100 New Bridge Street
London EC4V 6JA, United Kingdom
Tel: +44 20 7919 1000
Fax: +44 20 7919 1999
Ashley Crossley
Anthony Poulton
Gemma Willingham
Yindi Gesinde
Phyllis Townsend
Meghna Deo
Christopher Cook
Oliver Crosby
Vadim Romanoff
Rachael Cederwall

Luxembourg
10-12 Boulevard Roosevelt
L-2450 Luxembourg
Tel: +352 26 18 44 1
Fax: +352 26 18 44 99
Diogo Duarte de Oliveira
Amar Hamouche
Elodie Duchene
Olivier Dal Farra
Miguel Pinto de Almeida
Lionel Ancion
Tiphanie Grzeszezak

Madrid
Paseo de la Castellana 92
28046 Madrid, Spain
Tel: +34 91 230 45 00
Fax: +34 91 391 5145; 391 5149
Luis Briones
Antonio Zurera
Jaime Martínez-Íñiguez
Esther Hidalgo
Bruno Keusses
Elena Galán
María López Fernández
Jaime Canovas
María Concepcíon

Milan
3 Piazza Meda
20121 Milan, Italy
Tel: +39 02 76231 1
Fax: +39 02 76231 620
Francesco Florenzano
Barbara Faini

Moscow
White Gardens, 10th Floor
9 Lesnaya Street
Moscow 125047, Russia
Tel: +7 495 787 2700
Fax: +7 495 787 2701
Sergei Zhestkov
Kirill Vikulov
Artem Toropov
Philipp Cherepanov
Dina Aydaeva
Dmitry Skvortsov

Paris
1 rue Paul Baudry
75008 Paris, France
Tel: +33 1 44 17 53 00
Fax: +33 1 44 17 45 75
Agnès Charpenet
Philippe Fernandes
Emilie Suryasumirat
Julie Rueda

Prague
Praha City Center, Klimentská
46
110 02 Prague 1,
Czech Republic
Tel: +420 236 045 001
Fax: +420 236 045 055
Eliska Kominkova

Riyadh
Legal Advisers (Abdulaziz I. AlAjlan & Partners
in association
with Baker & McKenzie Limited)
Olayan Centre – Tower II
Al-Ahsa Street, Malaz
P.O. Box 4288
Riyadh 11491
Tel: +966 11 291 5561
Fax: +966 11 291 5571
Karim Nassar

Rome

Viale di Villa Massimo, 57

00161 Rome, Italy

Tel: +39 06 44 06 31

Fax: +39 06 44 06 33 06

Aurelio Giovannelli

Stockholm

P.O. Box 180

SE-101 23 Stockholm

Sweden

Visiting address:

Vasagatan 7, Floor 8

SE-111 20 Stockholm

Sweden

Tel: +46 8 566 177 00

Fax: +46 8 566 177 99

Linnea Back

Vienna

Schottenring 25

1010 Vienna, Austria

Tel: +43 1 24 250

Fax: +43 1 24 250 600

Christoph Urtz

Warsaw

Rondo ONZ 100-124

Warsaw, Poland

Tel: +48 22 445 31 00

Fax: +48 22 445 32 00

Piotr Wysocki

Zurich

Holbeinstrasse 30

8034 Zurich, Switzerland

Tel: +41 44 384 14 14

Fax: +41 44 384 12 84

Marnin Michaels

Lyubomir Georgiev

Tobias Rohner

Gregory Walsh

Richard Gassmann

Thomas Salmon

Andrea Bolliger

Caleb Sainsbury

Christopher Murrer

Bruna Barbosa

Chelsea Hunter

Ida Varshavsky

Nathan Bouvier

Matti Koivusalo

Alexandra Garg

Latin America

Bogota

Avenida 82 No. 10-62, piso 6

Apartado Aereo No. 3746

Bogota, D.C., Colombia

Tel: +57 1 634 1500; 644 9595

Fax: +57 1 376 2211

Ciro Meza

Ana María Lopez

Bueno Aires

Avenida Leandro N. Alem 110,

Piso 13, C1001AAT

Argentina

Tel: +54 11 4310 2200; 5776

Fax: +54 11 4310 2299; 5776 2598

Martin Barreiro

Gabriel Gomez-Giglio

Alejandro Olivera

Caracas

Centro Bancaribe, Interseccion
Av. Principal de Las Mercedes
Con inicio de Calle Paris
Urbanizacion Las Mercedes
Caracas 1060, Venezuela
Postal Address: P.O. Box 1286
Caracas 1010-A, Venezuela
Tel: +58 212 276 5111
Fax: +58 212 264 1532
Ronald Evans

US Mailing Address:
Baker & McKenzie M-287
c/o Jet International
P.O. Box 2200
Greer, SC 29652
USA
Tel: +58 212 276 5111
Fax: +58 212 264 1532
Ronald Evans

Lima

Estudio Echecopar
Av. De La Floresta 497
Piso 5 San Borja
Lima, Peru
Tel: +51 1 618 8500
Fax: +51 1 372 7171/ 372 7374
Rolando Ramirez Gaston

Mexico City

Edificio Virreyes
Pedregal 24, piso 12
Lomas Virreyes /
Col. Molino del Rey
11040 Mexico, D.F.
Tel: +52 55 5279 2900
Fax: +52 55 5279 2999
Jorge Narvaez-Hasfura
Javier Ordonez-Namihira
Lizette Tellez-De la Vega

Sao Paulo

Trench Rossia Watanabe
Rua Arquiteto Olavo Redig de Campos, 105-31
Floor (Ed. EZ Towers - Torre A), Sao Paulo
SP Brazil, CEP 04711-904
Tel: +55 11 3048 6800
Fax: +55 11 5506 3455
Alessandra S. Machado
Simone Musa
Adriana Stamato
Clarissa Machado
Flavia Gerola
Marcelle Silbiger

Santiago

Nueva Tajamar 481
Torre Norte, Piso 21
Las Condes, Santiago, Chile
Tel: +56 2 367 7000
Fax: +56 2 362 9876; 362 9877; 362 9878
Alberto Maturana

North America

Chicago

300 East Randolph Street
Suite 5000
Chicago, Illinois 60601
United States
Tel: +1 312 861 8800
Fax: +1 312 861 2899
Richard Lipton
Pat McDonald

Dallas

1900 North Pearl Street
Suite 1500
Dallas, Texas 75201
United States
Tel: +1 214 978 3000
Fax: +1 214 978 3099
Bobby Albaral
Jacqueline Titus

Houston

700 Louisiana
Suite 3000
Houston, Texas 77002
United States
Tel: +1 713 427 5000
Fax: +1 713 427 5099
Rodney Read

Miami

1111 Brickell Avenue
Suite 1700
Miami, Florida 33131
United States
Tel: +1 305 789 8900
Fax: +1 305 789 8953
James Barrett
Bobby Moore
Pratiksha Patel

New York

452 Fifth Avenue
New York, New York 10018
United States
Tel: +1 212 626 4100
Fax: +1 212 310 1600
Simon Beck
Paul DePasquale
Glenn Fox
Rebecca Lasky
Olga Sanders

Palo Alto

600 Hansen Way
Palo Alto, California 94304
United States
Tel: +1 650 856 2400
Fax: +1 650 856 9299
Scott Frewing

Toronto

181 Bay Street
Suite 2100
Toronto, Ontario M5J 2T3
Canada
Tel: +1 416 863 1221
Fax: +1 416 863 6275
Peter Clark

Washington, DC

815 Connecticut Avenue, N.W.
Washington, District of Columbia 20006
United States
Tel: +1 202 452 7000
Fax: +1 202 452 7074
George Clarke

Editorial contacts

Editorial contacts

Elliot Murray
Partner
Geneva
Tel: +41 22 707 98 39
elliot.murray@bakermckenzie.com

For further information regarding the newsletter, please contact:

Alfredo Escandon
Tampa
Publication Coordinator
Tel: +1 813 462 2216
alfredo.escandon@bakermckenzie.com

Paolo Marco Restituto
Manila
Publication Coordinator
Tel: +63 2 8558 9337
paolo.restituto@bakermckenzie.com

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Thank you for reading

Private Wealth Newsletter

October 2021