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Private Wealth Newsletter 2022

THIRD EDITION

Editors' note

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On behalf of Baker McKenzie's Global Wealth Management Practice Group, it is our pleasure to share with our clients, friends, colleagues and readers across the globe the third edition of the Private Wealth Newsletter 2022.

This edition features articles on a variety of relevant recent developments in the private wealth sphere.

Our key feature is from Marnin Michaels, Wealth Management Partner and Head of EMEA Tax, which explores the key questions that individuals (and their advisers) should ask themselves on planning in light of growing political instability. The article includes a personal account and advice for planning in a new world order. It reminds individuals, amongst other things, to reflect on their options for relocation and the benefits of jurisdictional risk diversification, particularly in an unstable political environment where assets could be frozen or lose their value. These planning considerations may have been part of many global families' calculus during prior periods or in specific jurisdictions, but now would appear to be more relevant for all families with international connections.

Since our last edition, we have also published an update on *Wong v Grand View & others*, which is contained in this edition of the Private Wealth Newsletter. The article discusses the key takeaways to be drawn from the arguments raised during the litigation that serve as a warning to settlors wishing to preserve their family's legacy in perpetuity and focusses on interesting observations arising from the first instance ruling delivered in June 2022.

Sanctions remain in the front of our minds as the war in Ukraine continues and so we also provide an update on recent EU and Swiss guidance pertaining to restrictions that should be borne in mind when dealing with trusts connected to Russian persons.

Please do reach out to us, Elliott Murray and Phyllis Townsend, as well as any of the authors mentioned through this newsletter, with any questions or comments.

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ARTICLE

The new world order: Is planning back to 1989 thinking?

In October 1991, I was living in Israel and studying at The Hebrew University. Eduard Shevardnadze, then the Minister of Foreign Affairs for the USSR, had just visited Israel and restored diplomatic relations after a 24-year hiatus following the Six-Day War. Two weeks later, the Madrid Conference, which was the first summit between Israel and the Arab States, including Jordan, Lebanon and Syria, was held in Spain in an attempt to revive the Israeli-Palestinian peace process. Several days after the summit, I remember attending a conference at the university, where a well-known, highly regarded academic made a statement to the effect that "the world order has been reversed, time to throw out the playbook." Less than two months later, on 25 December 1991, the USSR collapsed in the aftermath of the revolutions in Eastern Europe.

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A relative period of peace followed between 1991 and 2001. During this time, there appeared to be the beginning of a "new world order" that was based on the set of global principles that were included in the United Nations Charter following the end of World War II (commonly referred to as the "rules-based international system"). This system is predicated on a set of principles that pertain to global security, the economy and governance. It consists of a set of rules encouraging peaceful, predictable and cooperative behavior among states, institutional bodies, such as NATO and the United Nations, that serve to uphold these rules, and the role of powerful democratic states that serve to defend the system.[1] While this system has always been subject to great criticism, especially in light of many regional disturbances through the years, it also is credited for contributing to the absence of a third "great-power war" for over 70 years and a drastic reduction in wartime casualties.[2]

Thirty years of relative peace and prosperity, coupled with various transparency initiatives, seem to have resulted in many people adopting new worldly viewpoints and abandoning this traditional thought process. Many people settled into a sense of global security. Yet this was not the case for all population groups, such as South Asia, where people have always worried about the stability in their region. Nonetheless, the perception of peace and this false sense of security that followed led many others to stop thinking about such issues and planning for the unexpected.

Now, when people think about current geopolitical instability, they quickly think of Ukraine/Russia and Taiwan/China. However, those are not the only politically unstable regions in the world. For example, parts of Latin American and South Asia remain unstable, and one could argue that, given the vitriolic language used in the US, the US is equally unstable. It also appears that

As a result, this period of peace has seemingly lulled global families into thinking differently than they had done in the past. Previously, the following planning points generally were at the forefront of a family's thinking in the context of preparing for the unexpected during times of political instability:

a. Do I have an exit plan if things go wrong?

b. What other residency and nationality options do I have?

c. Do I maintain assets in a few jurisdictions just in case assets are frozen in another jurisdiction?

d. Are my children sufficiently educated so that they can rebuild their lives?

e. Do my children have sufficient skills to work in another environment?

f. What if I am sanctioned?

1 See Jeffrey Cimmino and Matthew Kroenig, "Global Strategy 2021: An Allied Strategy for China," available at https://www.atlanticcouncil.org/wp-content/uploads/2021/07/Global-Strategy-2021-An-Allied-Strategy-for-China.pdf.

2 Id.

many governments have moved away from adhering to the global principles that were developed after World War II. For instance, on 8 May 2022, the G7 leaders released a statement commemorating the end of World War II in Europe and the liberation from fascism and the National Socialist reign of terror. In that statement, these world leaders inasmuch acknowledged that the rules-based international system failed the Ukrainian people and violated the guiding principles upon which the post Second World War system had been constructed. Moreover, just days after Ukraine was invaded, Olaf Scholz, chancellor of Germany, described the invasion as a "Zeitenwende," which represents a historical turning point in the rules-based international system.[3]

Given the growing sense of international political instability and constant threats of using nuclear weaponry, it may be time to reconsider utilizing these survival thought processes present during the Cold War era. Preparing for the unknown and the unexpected is key to survival. As such, asking yourself the following questions and exploring possible solutions could prove beneficial if such instability continues to evolve around the world.

(1) Do I have an exit plan if things go wrong?

If we learned anything from the events that unfolded with Russian and Ukraine between February and March 2022, it should be obvious that if you do not have a plan, you can get stuck. For instance, 11 million people tried to cross the Ukrainian border over a 72-hour period, and this just did not work. In fact, some people, like my sister-in-law, spent 72 hours in their car trying to cross the border. In contrast, some people, such as my mother-in-law, walked across the border in just 45 minutes. I learned of other situations where people did not have the full resources to manage the 72-hour timeframe to cross the border.

There are a couple of takeaways here: (1) if someone threatens to shoot, assume they mean it; and, (2) if you have to leave in a hurry, so do millions of others — waiting to develop a plan does not work. It is then too late. One must think about possible exit strategies without stress and develop flexible plans that allow for variance when millions of others are trying to leave at the same time. Thus, in addition to a primary plan, there should always be a backup plan if the first option proves unsuccessful. A simple backup plan could have resulted in more people fleeing Ukraine being prepared for the unexpected and without having to scrounge for necessities as they waited to cross the border.

(2) What other residency and nationality options do I have?

As the Ukraine/Russia crisis unfolded, many countries quickly began creating visa options to accommodate those fleeing, but even this expedited process takes time. What was driving me was my experiences in Europe with the Yugoslavia crisis, where there were limited visas and options. A very dear friend told me that I was using the wrong analogy. Rather, the correct analogy would be the Hungarian Revolution in 1956, where all countries found a visa option to accommodate those fleeing.

Once one manages to exit, they should already have in place a plan of where to go and not have to think under pressure of where to go. Communicating this plan among family members is key, because it may be that not everyone is able to leave at the same time or from the same place. Maintaining an up-to-date passport is essential to enable one to enter another country in a hurry. Once there, the focus can turn to obtaining a visa to allow one to remain for an extended period of time.

3 See Dr. Bola Adediran, "The end of the rules-based international order?," available at https://thenationonlineng.net/the-end-of-the-rules-based-international-order/.

(3) Do I maintain assets in a few jurisdictions just in case assets are frozen in another jurisdiction?

One should always plan for the possibility that their assets located in an unstable political environment might become frozen or even worthless. Yet, in a world of currency controls, if one needs to run, one may not need to move funds quickly to restart. One must have a few locations with money on hand to allow them to sustain for an indefinite period of time. In a world where there is increased scrutiny of offshore structures, making sure there is simple access to funds in a few different locations that are a part of the common plan is critical to enabling one to start fresh and be successful. The locations of these funds should be coordinated with potential residency options as part of the overall plan. Another option for added flexibility might include maintaining funds in some form of digital currency.

(4) Are my children sufficiently skilled/educated so that they can rebuild their lives?

I personally have observed that if one does not have the personal skills to start again, it is nearly impossible to restart from scratch, especially in another country where one lacks sufficient language skills. Preparations for children should include learning sufficient language skills and seeking an education that is portable to other jurisdictions to enable them to rebuild anew. Again, this should be coordinated with the objectives of the overall plan, such that family members learn the languages of possible safe-haven destinations where money is on hand. One should also consider what ways they can prepare to earn a living in the safe-haven destination should their stay last longer than anticipated.

(5) What if I am sanctioned?

Sanction means many things. It can mean one ends up on the sanctions lists. Alternatively, it can mean you can never go home again. This question requires one to weigh the risks associated with potential sanctions imposed for fleeing an unstable environment with the risks of staying, which might include a lack of necessities, such as food and shelter, injuries and quite possibly the loss of life stemming from civilian casualties or being forced into combat. As such, the risk of losing one's life, or the life of a family member, should always outweigh any potential sanctions.

Conclusion

In conclusion, we must be mindful that the geopolitical system is constantly evolving and, in some instances, it is revolving, as evidenced by peaceful times that come and go in many regions around the world. A sense of security that is present one day could be gone the next. Many government leaders and foreign policy experts have acknowledged that the rules-based international system developed following the last world war is faltering. Consequently, there is no time better than the present to plan and prepare for the unexpected. As we observed earlier this year, when Russia invaded Ukraine, waiting until a crisis begins to develop an exit strategy is too late. So, ask yourself, why not take a page out of the 1989 playbook and develop an exit strategy and have a backup plan in preparation for the unexpected?

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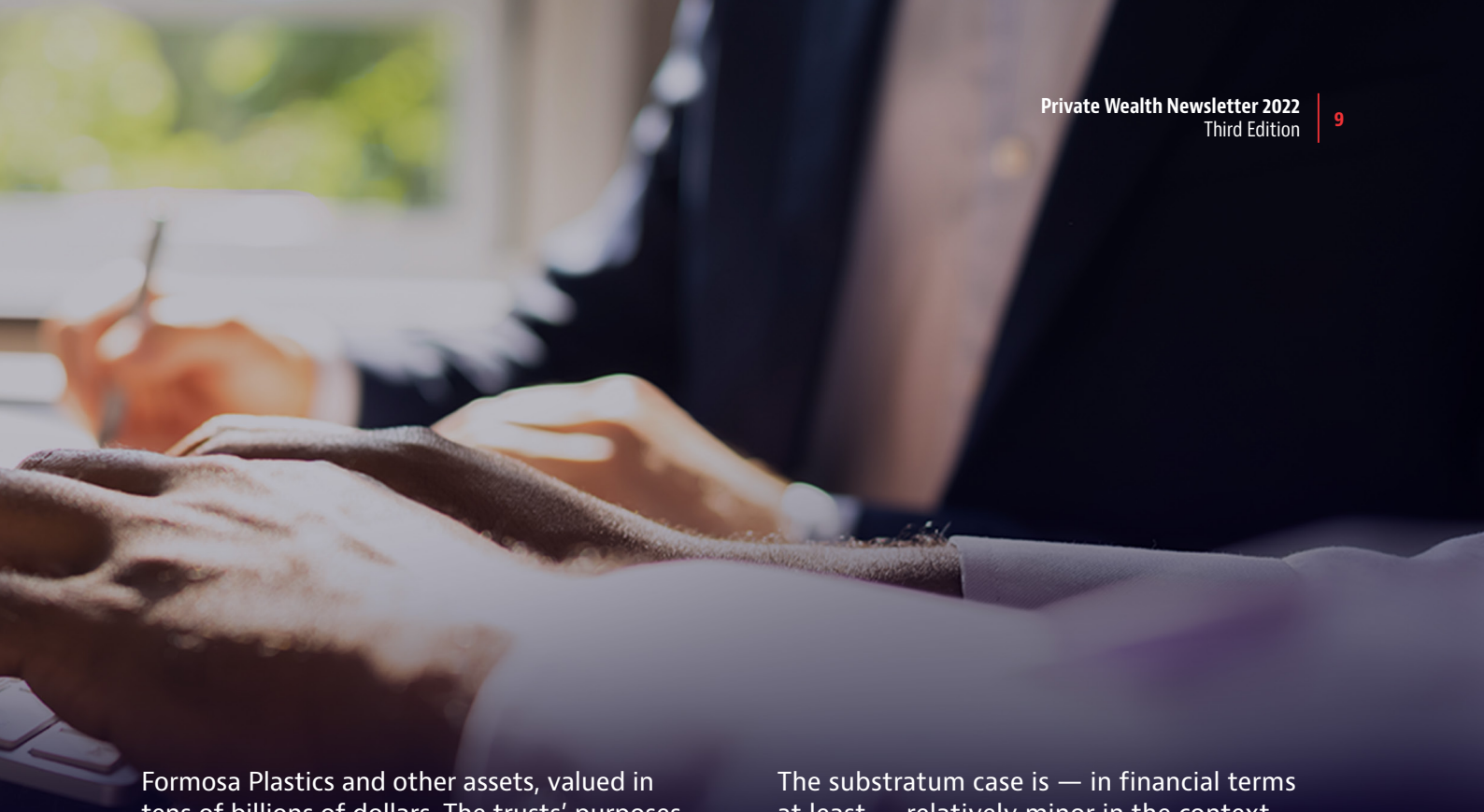
ARTICLE

Wong v. Grand view & others: the first-instance judgment

In the last edition of our newsletter, we discussed the Firm's representation of Dr. Winston Wong, a Taiwanese businessman, scientist and philanthropist, in an 80-day virtual trial in 2021.

As readers will recall, Dr. Wong is the eldest son of the late Taiwanese tycoon Wang Yung Ching, a.k.a. Y.C. Wang, who founded Formosa Plastics Group with his brother, Wang Yung-Tsai, in the 1950s. Since Y.C.'s death in 2008, and his brother's in 2014, there has been a considerable amount of litigation and infighting between their numerous heirs over their complex, international estates. The most recent litigation has taken place on the island of Bermuda, concerning a number of trusts that were set up there in the final years of the brothers' lives, into which billions of dollars' worth of assets were placed.

Most of these structures are non-charitable purpose trusts incorporated under Bermudian statute, namely the Trusts (Special Provisions) Act 1989. They have certain charitable and non-charitable purposes as the objects of their trusts, but no human beneficiaries. The trustee in each case is a private trust company (PTC) incorporated in Bermuda, managed by a small faction of (but, crucially, not all) family members, who sit on the boards. These same family members also act as enforcers and protectors, in a somewhat circular arrangement; no professional trust administrator is involved in running the structure. The trust property comprises a web of British Virgin Islands (BVI) companies that in turn hold large amounts of stock in



Formosa Plastics and other assets, valued in tens of billions of dollars. The trusts' purposes, as expressed in the trust instruments, include preserving and growing FPG, supporting the economic reforms of the Chinese government and solving all mankind's problems "from the root."

The Wong litigation has already generated a series of judicial decisions on the question of whether a discretionary trust with apparently unfettered powers regarding the addition and removal of beneficiaries still has a "substratum" or "beneficial core" that cannot be amended. The issue, litigated through a different set of proceedings from the main dispute, concerned a Bermudian, irrevocable, discretionary trust known as the Global Resource Trust that was settled to benefit the descendants of Y.C. and his brother. The issue in the substratum case arose because the trustee of the discretionary trust (another PTC controlled by the same small faction of favored heirs) decided to exclude all members of the Wang family as beneficiaries, appoint one of the Bermudian purpose trusts as a beneficiary and distribute all of the assets out to it, with the result that no family member could ever benefit from them. Dr. Wong successfully challenged that decision on summary judgment, a decision that was overturned in the Court of Appeal and that was then appealed to the Privy Council. The Privy Council's judgment is imminent.

The substratum case is — in financial terms at least — relatively minor in the context of the overall dispute. The much larger case concerning the validity of the purpose trusts themselves was the subject of the 80-day trial last year, reported on in the last newsletter.

As explained in the previous article, Dr. Wong attacked the purpose trusts and transfers of assets into them on, among others, the following grounds:

- He argued that the trusts should be set aside owing to a fundamental mistake, because, based on the facts, Y.C. did not understand that, once the purpose trusts had been created, they could not be changed to enable his family to benefit. Dr. Wong relied on the fact that his father personally received no independent legal advice (astonishing given the value of the transactions involved), the fact that the trust documents were in English (a language he could not read, speak or write) and the involvement of certain heirs and employees in whom he placed trust and confidence.
- Dr. Wong also argued that the Bermudian legislation does not permit a purpose trust for both charitable and non-charitable purposes: one has to choose between a non-charitable purpose trust and a charity, and the separate regimes that apply thereto.

- He further argued that the stated purposes of the trusts were verbose and unclear. Therefore, they failed the statutory test for certainty, which is that purposes must be sufficiently clear for trust to be carried out.
- He further argued — in a fascinating foray into the history of the settlement of the BVI — that the transfers into the trusts of shares in the BVI companies should be set aside for failure to comply with the Statute of Frauds 1677, which, according to Section IX, requires transfers of equitable interest to be in writing.

The judgment of Assistant Justice Kawaley was delivered in June 2022. It is 471 pages long and 191,407 words in length. By contrast, J.R.R. Tolkien's Fellowship of the Ring is a mere 187,790 words; and if the judgment were a Harry Potter book, it would be the third longest in series. This article is therefore necessarily confined to a few interesting observations on the first-instance ruling.

First, the judge dismissed the "mixed purposes" argument in short order. He found that it was perfectly possible in Bermuda to have a trust for both charitable and non-charitable purposes trusts. He observed that Bermuda's legislation was intended to be welcoming to and easily accessible by foreign investors; it was not intended to set traps for the unwary draftsperson.

Secondly, on the uncertainty case, the judge agreed that some of the purposes in the trust instruments were, on their own, uncertain, but he applied a liberal test to whether or not that invalidated the trusts. He asked whether it is possible to tell whether a proposed application of funds is within the purposes or not, and, if it is not, does that uncertainty make it impossible to implement the entire trust? It is difficult to identify the justification for such a low bar in the statutory scheme, or to draw support for it by through an analogy with case law on traditional beneficiary trusts, because (as it was argued) it is surely fundamental to a trust's validity to know whether a particular person (or proposed purpose) is within the beneficial class or not. However, the judge again linked his reasoning back to his view of Bermuda as an open and investor-friendly jurisdiction, uninterested in creating vehicles of merely limited use by wealthy, international families.

Thirdly, the Statute of Frauds argument raised the question on whether or not the legislation from the year 1677 formed part of BVI law or not. The parties agreed that this could be at least partly answered by identifying when in history the BVI could be said to have been established as a British

colony, because as a matter of law it would have been taken to have inherited English law as it then stood. Therefore, if the BVI were settled after 1677, the Statute of Frauds would have been absorbed into their legal system, but if they were settled before this law was passed by the parliament in London, then the statute would apply in Britain only. At trial, the question was explored via expert evidence from two Caribbean historians about the complicated and convoluted history of the Leeward Islands, of which the BVI forms part. In his written ruling, the judge found that the BVI were established after 1677, so the statute applies and Section IX requires transfers of equitable interest in BVI shares to be in writing. This should have rendered the impugned transfers in this case as invalid for want of written authority from the equitable owners of the shares (i.e., Y.C. and his brother), but the judge's application of the statute to the facts is more than a little obscure – it is expected to be clarified by an appellate court.

The end result was that most of the trusts were upheld. One of them, set up secretly after Y.C.'s death, was unsurprisingly set aside on the basis that Y.C.'s estate administrator did not consent to the transfer (none having been appointed). Appeals have now been filed, so this story is not yet over. Whatever the final chapter says, the Wong saga will stand as a cautionary tale for settlors who wish to preserve their family's legacy in perpetuity but decide, for whatever reason, to be less than forthright with their living relatives about their grand plans.

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ARTICLE

Update: EU and Swiss guidance pertaining to restrictions on trusts connected to Russian persons — major impact on wealth management industry and clients

Key takeaway: On 24 June 2022, the EU published updated guidance to clarify prohibitions pertaining to the provision of trust services in prior EU regulations. In certain circumstances, EU-connected service providers would be required to dissolve trusts with settlors or beneficiaries connected to Russia.

Specifically, where the restructuring of a trust or a similar legal arrangement was initiated after 11 May 2022, and the EU service provider's services are necessary to the operation of the trust, such trust would need to be dissolved to comply with the regulations. A national competent authority can grant exceptions for operations strictly necessary for the termination of certain contracts until 5 September 2022.

On 5 July 2022, the Swiss State Secretariat for Economic Affairs (SECO) published similar guidance (see **here**) concerning the interpretation of prohibitions on trusts in Article 28d of the Ordinance on Measures in Connection with the Situation in Ukraine.

Swiss and EU-connected service providers risk sanctions infringement in relation to trusts that were previously modified to comply with the prohibitions. Such service providers should also be careful to make only the appropriate modifications to the structure of their trusts before the effective dates of the relevant legislation, such as assigning a trustee role to a trustee outside the EU/EEA/Switzerland or removing in-scope beneficiaries.

Under Swiss law, a trust or similar legal arrangement falls within the exception if only one beneficiary holds a temporary or permanent residence permit for, or is a national of, Switzerland, the EEA or Monaco. The Swiss guidance refers expressly only to beneficiaries, and not settlors."

It remains unclear to what extent such service providers are required to comply with the guidance retroactively. For example, trusts that were restructured between the time of publication of the regulations and the guidance may need to be terminated, and the assets of a settlor or beneficiary of an in-scope person subject to an asset freeze under EU sanctions may need to be frozen. Consequently, Swiss and EU-connected service providers of a trustee or other fiduciary and related services should consider these developments so they know how to react.

The two jurisdictions have mostly converging interpretations of their restrictions, with a few exceptions. In the EU, for a trust with multiple beneficiaries and/or trustors (i.e., settlors) to be exempt from the prohibitions, all such beneficiaries and settlors would need to be exempt (e.g., be an EU national or have a temporary or permanent residence permit in the EU) for the arrangement to be exempt from the prohibitions.

Under Swiss law, a trust or similar legal arrangement falls within the exception if only one beneficiary holds a temporary or permanent residence permit for, or is a national of, Switzerland, the EEA or Monaco. The Swiss guidance refers expressly only to beneficiaries, and not settlors.

That said, it may be possible in either jurisdiction to obtain authorization from the relevant competent authority where assets are not accepted from or distributed to a person who falls within the scope of the prohibition.

Background

Since 8 April 2022, the EU has published two regulations that amend Council Regulation (EU) No. 833/2014 (**"Regulation"**), concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine, as already amended by other recent EU regulations on Russia-related sanctions.

On 9 April 2022, the EU adopted Council Regulation (EU) 2022/576 (**"First Regulation"**), which prohibits many transactions between trusts connected to Russian persons and service providers connected to the EU. See our alert **here**. On 3 June 2022, the EU adopted Council Regulation (EU) 2022/879 (**"Second Regulation"**) as part of a sixth sanctions package against Russia. This regulation extended certain deadlines laid down in the First Regulation and expanded certain prohibitions pertaining to trusts connected to Russia, while also providing for additional exemptions. See our alert **here**.

On 24 June 2022, the EU published updated guidance pertaining to the prohibitions on transactions between trusts connected to Russian persons and service providers connected to the EU.

On 29 June 2022, the Swiss Federal Council adopted the EU's sixth sanctions package under the Second Regulation and amended the Swiss Ordinance on Measures in Connection with the Situation in Ukraine (**"Ordinance"**). As is typical, the Ordinance mirrors the EU

restrictions, but provides different effective dates and interpretations of similar, or even identical, terms.

On 5 July 2022, the SECO published similar guidance (see **here**) pertaining to the prohibitions on trusts as laid out in Article 28d of the Ordinance.

For more information regarding the Swiss implementation of such measures, see our posts **here** and **here**.

EU and Swiss guidance

1. Defining "Trust or any Similar Legal Arrangement"

The EU guidance now expressly states that foundations are the civil law equivalent of a common law trust, and thus are in the scope of a "similar legal arrangement."

In contrast, the SECO has not yet clarified whether foundations and Treuhand are considered in the scope of "similar legal arrangements."

In general, the EU guidance states that there is no single definition of a trust and it is necessary to compare each arrangement's structure with that of a common law trust. The hallmarks of a common law trust include a fiduciary bond between parties and a separation or disconnection of legal and beneficial ownership of assets.

In addition, the EU guidance encourages reliance on a report from the European Commission to the EU Parliament and the EU Council assessing whether EU member states have duly identified "all trusts and similar legal arrangements" for the purposes of a separate EU regulation, concerning the use of the financial system for money laundering or terrorist financing. Foundations are treated as equivalent to a common law trust, as they are a civil law vehicle that may be used for similar purposes. This rule is supported by Directive (EU) 2015/849, which imposes on foundations the same beneficial ownership requirements as trusts and similar legal arrangements. Accordingly, persons holding equivalent positions in foundations as settlors and beneficiaries in trusts should be construed as being subject to the same restrictions under Article 5m.

The Swiss guidance on this topic is minimal. Further, Switzerland does not have its own trust laws. As such, it is currently unclear whether certain arrangements, such as foundations and Treuhand, may be understood to be sufficiently similar to a trust to fall within the scope of the Swiss prohibitions.

2. Prohibited activities and practical implementation

The guidance clarifies that no EU person should register a trust (or similar legal arrangement), even where required by national law.

The guidance contemplates the dissolution of trusts already in legal existence to the extent that prohibited services are necessary for their operation.

In this context, any assets to be returned or distributed to a settlor or beneficiary subject to an asset freeze under EU sanctions would need to be immediately frozen.

In addition, the guidance clarifies that the prohibitions on the provision of services apply to trusts that came into existence before and after the effective date of the relevant legislation.

3. Trusts that include both Russian and non-Russian nationals

The prohibition to register a new trust or provide trustee services only applies when a settlor or beneficiary falls under the definition of a Russian person (defined **here**). If such Russian person(s) are removed, the services may be provided.

The EU guidance states that the prohibitions would not apply if the trust has only one trustor or one beneficiary who is a national of a member state or a natural person with a temporary or permanent residence permit in a member state. This is understood to mean that the trust is only exempt from the prohibitions

if all the beneficiaries and settlors of the trust are exempt from holding EU nationality or an appropriate residence permit.

In addition, the EU guidance states that, with authorization from the relevant member state, trusts may continue to operate under the condition that the trustee does not accept from or distribute assets to a trustor or beneficiary that is an in-scope Russian person.

The guidance adds that exemptions for the provisions of prohibited services to trusts should be applied for on an individual basis.

Relevant Swiss interpretation

The Swiss interpretation of their Ordinance largely parallels the EU guidance, but provides for different effective dates and a few notable differences.

For trusts that include both Russian and non-Russian nationals, the Swiss interpretation indicates that if a trust has only one Russia-connected beneficiary among five, the prohibitions would apply.

However, the prohibitions would not apply if one of the in-scope beneficiaries is a citizen or holds a permanent or temporary residence permit of an exempt state. The exemption under Swiss law is broader than under EU law in that it includes not only EU member states, but also the EEA, Switzerland and Monaco. The exception would come into play where, for example, among five beneficiaries of a trust there are four Russian nationals and one person who is a citizen of both Russia and an EEA member state.

The Swiss guidance does not specifically address whether the exemption applies in the case of a trustor who is a national or holds a permanent or temporary residence permit in Switzerland, the EEA or Monaco.

Finally, Switzerland has not yet clarified whether foundations and Treuhand are considered in the scope of "similar legal arrangements."

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Around the world

France

Taxation in France of the sale of Brazilian predominantly real estate company shares and application of double tax treaties to social surtaxes (French Tax Supreme Court, 14 April 2022, No. 455943)

The French Tax Supreme Court confirms the analysis according to which capital gains derived from the sale of Brazilian predominantly real estate company shares are not only taxable in the state where the real estate properties are located, but also in the taxpayer's state of residence. It also clarifies the application of double tax treaties to social surtaxes paid by French tax residents.

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Authors: Agnès Charpenet, Philippe Fernandes, Julie Rueda, Pauline Thiault

Spain

Personal Income Tax — Supreme Court allows application of the exemption for work abroad to directors' income

The Supreme Court was asked to determine whether the refusal to apply the exemption set out in Article 7p of the Spanish Personal Income Tax (PIT) Law to an individual for work carried out abroad, based on their status as director, is in accordance with the law. The Supreme Court decided that directors can benefit from this exemption in respect of the salary they receive as a director because the law only provides that the "work" must be performed abroad for the exemption to apply. There is no requirement that the work is performed under an employment or statute-based relationship.

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Authors: Divinia Rogel, Mario Navarro

Around the world

Hungary and the United States

Treasury terminates tax treaty with Hungary

The US Treasury Department gave Hungary a six-month advance notice that the United States would terminate the US-Hungary tax treaty. The treaty, enforced in 1979, aims to avoid double taxation and minimize fiscal evasion. At that time, Hungary's corporate tax rate was as high as 50%. Hungary now offers a 9% corporate tax rate, the lowest across the European Union. The treasury concluded that the treaty no longer provided reciprocal benefits and left the United States with a significant loss of potential tax revenues.

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Authors: Ida Varshavsky, Lily Kang

European Union

Update: sixth EU sanctions package and trusts connected to Russian persons — major impact on the wealth management industry and clients

A further EU regulation on sanctions adopted on 3 June reflects the inherent difficulty in EU-connected service providers' withdrawal of servicing relationships with trusts and similar legal arrangements with settlors or beneficiaries connected to Russia. Generally, the new regulation extends the period to exit such transactions and provides for a number of new exemptions. In addition, it introduces new restrictions on the provision of consulting services that mirror the recent US sanctions against persons located in Russia.

Read more

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Around the world

Argentina

Income tax deduction of losses deriving from trading public bonds purchased in Argentine pesos and sold in US dollars

In Exterran Argentina SRL, dated 12 April 2022, the tax court accepted that losses deriving from trading public bonds purchased in Argentine pesos and sold in US dollars are deductible for income tax purposes. In effect, the difference between the value at which the public bonds were purchased and the value at which they were subsequently sold, at the official exchange rate, triggered a loss that is deductible for income tax purposes. Whether this decision will be ratified by the Chamber of Appeals remains to be seen.

Read more

Authors: Martin Barreiro, Juan Pablo Menna

Tax on online gambling

The Executive Branch ruled the tax on online gambling by means of Decree 293/2022 published in the Official Gazette on 2 June 2022.

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Authors: Martin Barreiro, Juan Pablo Menna

Income Tax Law — list of low or null taxation jurisdictions

The Federal Tax Administration (FTA) published the list of low or null taxation jurisdictions (LNTJ). Keep in mind that the Income Tax Law sets forth adverse tax implications for LNTJs, for example, (i) transactions with LNTJs are not deemed arm's length for transfer pricing purposes, (ii) amounts due to LNTJs in consideration for transactions that trigger Argentine-source income are deductible by the Argentine payor when the amounts are paid, (iii) transactions with LNTJs must be reported under the Tax Planning Information Regime, etc.

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Authors: Martin Barreiro, Juan Pablo Menna

Amendment to the Income Tax Law — additional tax rate on unexpected income obtained by companies

The Executive Branch presented a bill, which will soon be sent to Congress, that taxes companies' "unexpected income." This bill establishes an additional tax rate of 15% on income tax applicable to companies and the permanent establishments of foreign companies that meet certain requirements provided by this bill.

Read more

Authors: Martin Barreiro, Juan Pablo Menna

Increase from 35% to 45% the collection regime on certain operations reached by the Tax on the Acquisition of Foreign Currency

Resolution No. 5232/2022 was published in the Official Gazette, whereby the Federal Tax Authority (FTA) increased, from 35% to 45%, the collection regime applicable to the acquisition of goods or services abroad reached by the Tax on the Acquisition of Foreign Currency.

Read more

Authors: Martin Barreiro, Juan Pablo Menna

Around the world

Malaysia

Enhanced transparency in Labuan

Following the developments to the Labuan tax regime through the introduction of economic substance requirements in 2019, the Labuan Companies (Amendment) Act 2022 came into effect on 10 June 2022 to amend the Labuan Companies Act 1990 (LCA) ("Amendments"). These further developments to the Labuan corporate and regulatory regime clearly highlight Malaysia's commitment towards adhering to international legal standards of corporate governance and transparency. In this client alert, we focus on some of the key Amendments introduced, such as the introduction of the beneficial ownership reporting regime and the prohibition on issuance of bearer shares.

Read more

Authors: Adeline Wong, Istee Cheah

Around the world

United States

Congress passes tax provisions in CHIPS Bill; Inflation Reduction Act

Congress engaged in a flurry of legislative activity, enacting two bills that contain important tax provisions. The CHIPS Act, intended to boost American semiconductor research, development, and production, includes an investment tax credit for manufacturing semiconductors and related equipment in new Code Section 48D, while the Inflation Reduction Act is a significantly slimmed-down version of the Build Back Better Act and contains a much more limited number of tax provisions. Notably, nothing in the Inflation Reduction Act implements Pillars One or Two in the US.

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