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Private Client MAGAZINE

ISSUE 15

WEALTH WITHOUT BORDERS: EXPLORING PRIVATE CLIENT OFFSHORE

INTRODUCTION

"The secret of getting ahead is getting started. The secret of getting started is breaking your complex overwhelming tasks into small manageable tasks, and starting on the first one"

Mark Twain

We are delighted to present the Private Client Magazine. In Issue 15, we unveil an in-depth exploration of the intricacies and opportunities within the private client offshore sector. This edition delves into the strategic advantages and potential pitfalls of offshore investments, providing a comprehensive guide for high-net-worth individuals seeking to optimize their wealth management strategies We would like to thank our community partners and contributors for their ongoing support. Your support and collaboration have been instrumental in shaping our Private Client community. We look forward to seeing you at our upcoming Private Client Summer School on the 21st August 2024.

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CONTENTS

ABOUT ThoughtLeaders4 Private Client

Through our members' focused community, both physical and digital, we assist in personal and firm wide growth.

Working in close partnership with the industry rather than as a seller to it, we focus on delivering technical knowledge and practical insights. We are proud of our deep industry knowledge and the quality of work demonstrated in all our events and services.

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GENERATIONAL SHIFTS IN WEALTH

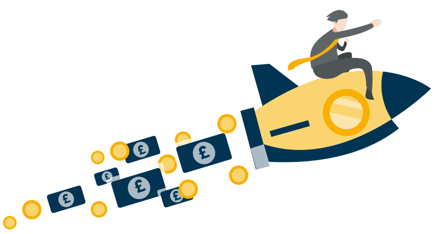
WHAT DOES THE GENERATIONAL WEALTH TRANSFER MEAN FOR WEALTH MANAGERS AND THEIR CLIENTS?

Authored by: Jonathan Gold (Executive Director) - London & Capital

Change is not always a constant in wealth management.

Ours is an industry that prides itself on the preservation and steady growth of family wealth, with a focus on building long-term client relationships.

There are proven practices around financial planning, investment management, estate planning and tax. When it comes to wealth management, following the tried and tested principles of the industry has been a prudent strategy.



As 2024 continues to unfold, change is feeling like the big global theme.

It's election year in the United States, the United Kingdom and the European Union, markets pivotal to our business and many others. The tectonic plates are shifting fast in geopolitics and firms are paying close attention to how those shifts feed into the world of wealth management.

Perhaps the most seismic change on the horizon for our industry is the much-discussed generational transfer of wealth.

Cerulli Associates, a Boston-based research and consulting firm, has estimated that in the US alone, $84.4 trillion of wealth will be transferred down the generations by 2045 – with 42% of that total expected to come from high-net-worth and ultra-high-net-worth households.

And the expected recipients of this monumental wealth transfer are already seemingly anticipating their change in circumstances.

Knight Frank's 2024 Wealth Report showed that, for HNWIs, 69% of Millennials and 75% of Gen-Z respondents expected a wealth increase in 2024 – figures that outstripped the confidence of 'Boomer' respondents by some margin.

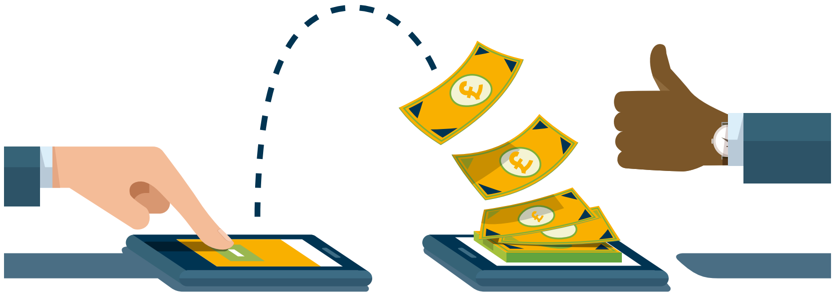
Generational Shift and Changing Attitudes To Wealth

The advantage of a steady and well-anticipated change like this one is that you have plenty of time to prepare for it. Wealth management companies across the board should already be thinking about what this generational shift will mean for the industry. What will change and what will stay the same?

Are we talking about tweaks here and there or big shifts in business practices?

It sounds obvious, but one of the best ways to work out the answers to these questions is to ask the next generation.

Along with being helpful to a family



wealth manager, these conversations can be seen as part of an overall succession planning. A strong succession strategy is vital for any family when it comes to preserving and growing wealth down the generations. Families that foster a certain level of transparency around financial affairs can ensure that children have realistic expectations and build up the required knowledge to manage wealth effectively. An experienced wealth manager can play a key role in this process whilst gaining vital understanding of the priorities of future clients. Wealth management is a two-way relationship with a client and understanding client priorities is fundamental.

The obvious place to start when attempting to pinpoint how the generational wealth transfer will affect the industry is the potential changes in investment priorities.

Sustainable investing has rocketed up the agenda in recent years, partly due to demands from younger people that their investments reflect their values. This purpose-driven investing has the potential to reshape a family investment portfolio. Stocks and bonds that older members of the family were comfortable with may not sit well with the younger generation. The market for sustainable investments is now deep and sophisticated and having the investment capabilities to enable younger clients to navigate these options will be key.

Rise Of The Digital Natives

Wealth management firms also need to think carefully about their technology offering. The wealth management client of the future will require a seamless and easy digital experience to manage their finances across their global portfolios. However, it could be hard to predict exactly how technology, such as AI, will be utilised and how far it will take over from face-to-face human contact. It may well be that the industry settles on some kind of hybrid model, where in-person advice and client relationship is complemented and enhanced through technology.

Next generation wealth owners will no doubt bring changes to the wealth management industry. They will have different and more varied mindsets, occupations, interests and expectations.

The key to success in the future will be marrying these changes with the fundamentals of the industry.

Services such as financial, estate and tax planning are integral to holistic wealth advice. The new generation will need investment management, assistance with prime property, inheritance planning and routes into philanthropy.

All wealth management firms should have started to think about how their firm is preparing for this trend. The companies that embed thinking about the generational wealth transfer into strategic client aims are the ones that will be best placed to take advantage of the opportunities to come.

60-SECONDS WITH:

KATE SELWAY KC
BARRISTER
RADCLIFFE CHAMBERS

Q **Imagine you no longer have to work. How would you spend your weekdays?**

A Write novels; learn to paint; become proficient in Old English; volunteer at an animal sanctuary; join an archaeological dig.

Q **What do you see as the most rewarding thing about your job?**

A Getting to the bottom of a problem and fixing it for the client in as cost-effective a way as possible.

Q **What's the strangest, most exciting thing you have done in your career?**

A Trying to persuade a high court judge that my reference to the Norman Conquest was of relevance.

Q **What is one work related goal you would like to achieve in the next five years?**

A The same one I've always had: being a better lawyer tomorrow than I was yesterday.

Q **What is the most significant trend in your practice today?**

A Instructing solicitors are getting younger every day.

Q **What book do you think everyone should read, and why?**

A The past is only a hair's breadth away. For confirmation, read Adam Thorpe's episodic novel *Ulverton* set over several centuries in a fictional English village.

Q **Dead or alive, which famous person would you most like to have dinner with, and why?**

A So many to choose from. William Cecil, Lord Burghley, Elizabeth I's chief councillor for decades. I'd like to cross-examine him about his machinations in persuading Elizabeth to sign Mary Queen of Scots' death warrant. Now there's a story and a half.

Q **What is the best film of all time?**

A There will never be a right answer to this question, but for best courtroom drama I'll go with *Twelve Angry Men.*

Q **What legacy would you hope to leave behind?**

A No legacy is so rich as honesty. Shakespeare.

Q **Where has been your favorite holiday destination and why?**

A Italy: for the coffee and the Renaissance

Q **Do you have any hidden talents?**

A Only ones I can't tell you about.

Q **What piece of advice would you give to your younger self?**

A Never shy away from asking for advice from people you trust and respect.

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"This set is quality from top to bottom - the quality of work and personnel is just brilliant."

(Chancery: Traditional, Chambers High Net Worth 2022)

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We have extensive experience working with private clients and their advisers in the UK and internationally, and we pride ourselves on taking a collaborative approach to everything we do, supported by a deep understanding of the sectors and jurisdictions in which we operate.

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BALANCING ACT: NAVIGATING ENGLISH AND SHARIA SUCCESSION LAWS

Authored by: Yousafa Hazara (Senior Associate) and Katherine Wainman (Partner) - Irwin Mitchell

Introduction

The interplay between English and Sharia succession rules presents a complex legal landscape, particularly for British Muslims who are trying to balance their religious duties with English law. English succession law is characterised by testamentary freedom, allowing individuals to distribute their assets on death according to their wishes through a will. This contrasts with the prescriptive nature of Sharia or Islamic inheritance law, which is derived from the Quran and Hadith, and outlines fixed shares for heirs based on their relationship to the deceased, reflecting the Islamic principles of fairness and responsibility.

The interaction of these two systems occurs when individuals subject to English succession laws also want to comply with Sharia principles due to religious beliefs or cultural ties, leading to a need for sensitive integration of the two frameworks.

This dichotomy presents unique challenges and considerations for those navigating legal and religious obligations, and tax implications, in relation to the distribution of their estate on death.

Key Principles of Sharia Succession

Sources of Law

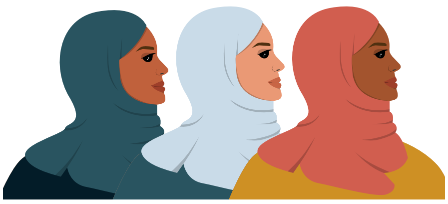
Succession laws across various Islamic countries are derived primarily from two sources: the Quran and the Sunnah. The Quran is what Muslims believe to be the revealed word of God. The Sunnah, which includes the Hadith, are the sayings, actions, and rulings of the Prophet Muhammed (peace be upon him).

Although the Quran is the primary source, the Sunnah is an essential tool in interpreting the rulings presented in the Quran and so one cannot be taken without the other. These sources collectively form the bedrock of Islamic jurisprudence, including the laws of inheritance.

While the core tenets are shared, there can be variations in the application of these laws across different Islamic countries, influenced by affiliations to the different schools of thought within Islam, local customs, judicial interpretations, and legislative modifications. However, the essence remains consistent, aiming to preserve family ties and provide for the deceased's dependants in a manner that aligns with Islamic teachings.

Common Principles

The principles of Islamic succession law, while diverse in application, are unified by certain core tenets.



Compulsory succession is a key aspect, where the distribution of an estate is predetermined by law, rather than left to the discretion of the deceased. This system ensures that the deceased's property is not wholly subject to their final wishes if such wishes contravene the prescribed shares for heirs as outlined under Sharia.

The limitation of testamentary freedom to one-third of the estate further underscores the importance of adhering to these legal prescriptions.

Heirs in Islamic law are protected from disinheritance, with their shares safeguarded unless they are deemed unworthy of inheritance due to specific legal reasons. This reflects the overarching aim of Islamic succession law: to maintain equity and protect the rights of all legal heirs. The basis for inheritance rights is primarily consanguinity and marital ties, emphasising the value placed on familial relationships and the marital bond.

Sunni and Shi'a

The differences in succession between Sunni and Shia thought can significantly impact the distribution of an estate. Sunni inheritance laws, followed by the majority of Muslims, are characterised by a detailed system of fixed shares, known as 'faraid'. These shares are explicitly outlined in the Quran and Hadith, and Sunni jurisprudence has developed a comprehensive methodology to apply these rules. For instance, Sunni law classifies heirs into three categories: sharers, residuaries, and distant kindred, with the latter often excluded from inheritance unless there are no closer relatives.

Shi'a inheritance laws, predominant in countries like Iran and Iraq, while also based on the Quran and Hadith, have a distinct approach. Shi'a jurists reject the Sunni categorisation of heirs and do not recognise the concept of distant kindred. Instead, they divide heirs into two main groups: those who have a fixed share, and those who are residuaries, leading to a different distribution of the estate. These distinctions underscore the importance of careful estate planning for Muslims who wish to adhere to their faith's inheritance principles.

Interaction With English Law

In England, while Muslims can express their Sharia-compliant wishes in their wills, the will must align with English legal requirements to be valid. This includes, very broadly, being over 18, having mental capacity, and creating a written will. The challenge arises in drafting a will that satisfies both English law and the specific requirements of Sharia, which, as stated above, can vary between Sunni and Shia interpretations. For example, a will that simply states 'Sharia applies' is ineffective under English law and could result in intestacy. Moreover, the variability in Sharia interpretations between Sunni and Shia communities can complicate the drafting of a clear and enforceable will.

While Muslims in the UK can incorporate their Sharia wishes into an English will, doing so requires meticulous planning and a deep understanding of both Sharia and English law.

Testators must also consider the implications of English laws that may allow certain family members to challenge the will (for example under the Inheritance (Provision for Family and Dependants) Act 1975) if they believe reasonable financial provision has not been made for them.

Moreover, the issue of tax efficiency cannot be overlooked. Sharia-compliant wills may not always align with the most tax-efficient strategies for estate planning. In the UK, inheritance tax is levied on estates exceeding a certain threshold (referred to as the nil rate band which is currently £325,000). The spousal exemption can apply in full to the estate of a testator which passes to their surviving spouse. When adhering to Sharia, however, a spouse may not inherit the entirety of the estate, which could potentially expose the estate to a higher inheritance tax liability. The use of trusts under the Will of a first spouse to die, in order to maximise reliefs relating to any business or agricultural property is also common practice under English law. However, this type of Will structure may equally not align with adherence to Sharia principles. This is a crucial consideration for individuals who also wish to minimise the inheritance tax burden on their heirs.

Conclusion

The interaction of English succession law with Sharia inheritance rules, particularly when considering the Sunni and Shi'a schools of thought, requires a delicate balance between religious adherence, legal compliance and tax efficiency. The differences in succession underscore the need for culturally sensitive legal solutions that respect the diverse interpretations of Sharia while operating within the framework of English legal principles. This balance is not only a matter of legal necessity, but also one of personal and religious significance for Muslims. The synthesis of these legal traditions represents a profound intersection of faith, culture, and law, highlighting the importance of understanding and respecting the complexities of inheritance across different legal and religious systems. The goal is to achieve a harmonious balance that respects religious beliefs and fulfils legal obligations, ensuring a smooth succession process for all involved.

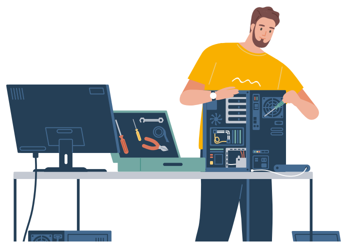
FROM THE FUND MANAGER'S DESK

Authored by: Chris Willis (Senior Global Equity Analyst) - Melville Douglas

We regularly explore an investment theme that we see playing out in the Melville Douglas Global Equity Fund. This quarter Chris Willis, senior global equity analyst, highlights Taiwan Semiconductor Manufacturing Company and its place in the Global Equity Fund.

Taiwan Semiconductor Manufacturing Company (TSMC) is one of the most important companies in the world.

Despite this, many of us have either never heard of it or don't fully understand just what it is that they do. Semiconductors are the critical hardware behind almost all technology. Without these tiny microchips we wouldn't have most of the conveniences and luxuries that make up our increasingly digitised lives.



Founded in 1987, TSMC pioneered the fabless foundry model. This means they don't design their own chips but focus solely on perfecting the complex manufacturing process. This singular pursuit has allowed them to become the world's leading contract chipmaker.

In producing the most advanced chips, known as leading edge, TSMC holds more than 90% market share and manufacturers for customers around the world.

Over the past two decades they have surpassed industry giants like Intel and today hold a significant technological lead over them.

The company has grown to become such a major role player in the global semiconductor industry, that it's often thought of as the most important company in the world. One that sits at the centre of a global supply chain producing microchips for everything from iPhones and autonomous vehicles to data centres and fighter jets.

The importance of this supply chain came to light during COVID when disruptions to it resulted in production lines being shut down, and shortages of appliances and electronic devices being felt across the world.

Increasingly, access to semiconductor supply has become a matter of national security and TSMC has found itself to be at the centre of all the interest.

Semiconductors exist mostly out of sight, quietly powering our increasingly digitised lives. Without these engineering marvels much of today's technology wouldn't be possible. The development of semiconductors has come a long way from 1979 when Gordon Moore, the co-founder of Intel, described what was to become known as Moore's Law:

"The number of transistors incorporated in a chip will exponentially double every 24 months.

This observation implies that the density of chips will double every two years, in effect doubling the computing power. This consistent improvement in semiconductor economics over the last 50 years has meant that computing costs have dramatically fallen.

This has allowed us to cram more power into devices and at a cost that would have been difficult to imagine in the past. Consider the smartphone which weighs only a few hundred grams but is handily capable of replacing your desktop PC for most uses.

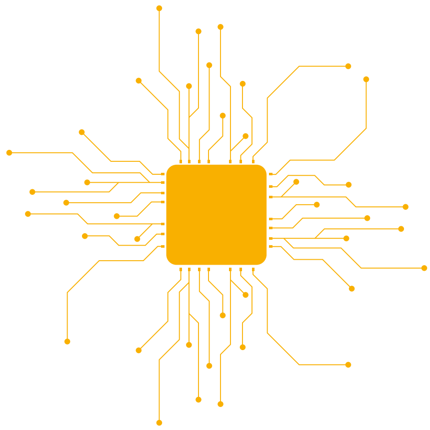
When Science and Industry Collide

A microchip that is about as big as your thumb will consist of tens of billions of transistors.

The most advanced chips now have up to 100 billion transistors.

These nanoscale conductors, acting as electrical switches, are layered onto a semiconductive material like silicon, hence the name semiconductor. TSMC has mastered the art of manufacturing these chips. Doing so requires pushing the boundaries of science and advances take years of experimentation and require staggering levels of research and development spending.

The fabless foundry model that TSMC operates has allowed them to focus their R&D on perfecting the manufacturing process and scaling it to industrial levels. This is markedly different from the traditional business model of integrated design and manufacture (IDM), one pioneered by Intel and which served them well for more than 50 years.

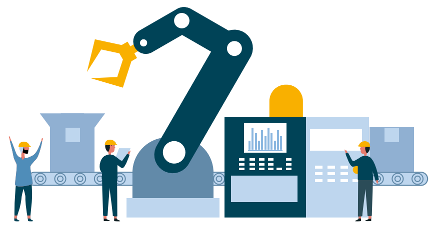


By being independent and not competing directly with its chip design customers, TSMC has been able to partner with them to advance manufacturing at a faster rate. TSMC has used its neutral but indispensable position to streamline the industry supply chain by collaborating more and bringing it to act as if it were a single entity. This partnership model has ensured a steady pace of progress in developing new nodes and allowed TSMC to become the dominant leading edge manufacturer that it is today.

To continue to innovate and move Moore's Law forward requires legions of people. To do this well, experience matters most. TSMC is among a handful of dedicated foundries that possess the scientific and engineering knowhow to develop advanced manufacturing techniques and which today no other company has achieved at scale.

A modern fab cost between $10bn to $20bn to construct, an amount that grows proportionately with the complexity of the chips it produces.

As this capital intensity has grown the table stakes to enter the industry have put chip manufacturing out of reach to new entrants. The smallest deficiencies in production can result in poor manufacturing yields and massive losses to customers and the foundry. TSMC has demonstrated that it is able to advance in chip manufacturing, moving into nanoscale and producing hundreds of millions of chips a year at industry leading yields.

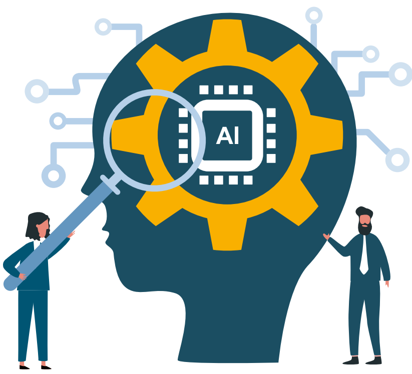


The Future of Semiconductors

The density of chips is constantly increasing. McKinsey expects the global semiconductor industry to grow by 7% per year until 2030 with cloud computing, wireless communication and automotive electronics being responsible for 70% of the growth.

Demand for automotive chips is expected to triple by 2030, rising by about $29bn per year. Motor vehicle IT systems are becoming more complex through the introduction of autonomous driving, connected cars, electric vehicles, and shared mobility. These technologies turn modern cars into rolling computers with an increasing density of chips and the need for high performance computing. At 80mph, the tolerance for chip failure or a system malfunction is near zero.

As the world moves into an era of Artificial Intelligence (AI), the demand for computing resources to train and run AI applications is expected to explode. AI and automation will touch every industry and TSMC will be the primary manufacturer of chips for the fourth industrial revolution.



In the developed world, where smartphone penetration is almost universal, these devices have become indispensable to us. As we do even more with our mobiles the need for faster and more power efficient chips will grow. In developing markets, mobile connectivity remains a growth opportunity and the adoption of smartphones an even greater one.

Many of the people in these low-income countries will never own a personal computer and so a smartphone will be their primary connection to the internet and the world.

The ongoing roll out 5G and ultimately the adoption 6G will require hundreds of billions of dollars of new investment. TSMC will play a major role in producing the next generation of chips to connect the world and its citizens.

A Geopolitical Force

The shortages of chips in 2021 and 2022, brought to the fore the complicated and concentrated nature of the semiconductor supply chain. At the same time, geopolitical tensions have been rising and the strategic importance of semiconductor supply has been made clear by governments the world over. TSMC, being a neutral player and the key to security of supply, has been at the centre of a global expansion of production capacity.

The company is undertaking a steady but meaningful diversification of production to new territories including the United States, Japan, and the European Union. At the same time, it continues to partner with Chinese semiconductor manufacturers.

The Accelerated Computing Era

Better performing chips power new technologies which in turn enable growth. The demand for advanced chips will not cool for the foreseeable future as they drive productivity in their applications. By achieving industry leading production yields and maintaining their plants at optimal utilisation rates, TSMC earns a superior return on its large investments. Their manufacturing prowess and constant reinvestment in R&D shields them from would be competitors. As we enter an era of accelerated computing, TSMC will lead in producing the tools for it. The potential to benefit from this tectonic shift is why we hold it in the Melville Douglas Global Equity Fund.

CONSIDERING MOVING TO SPAIN? CHECK OUT RECENT DEVELOPMENTS IN THE INPATRIATE REGIME

Authored by: Sonia Velasco (Partner) – Cuatrecasas

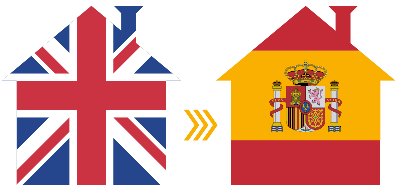
If your clients are thinking of moving to Spain, you should know that the country offers a very attractive tax regime for inpatriates. Whether your client is a worker, a professional, an investor, or an entrepreneur, they can benefit from lower tax rates, reduced reporting obligations, and easier immigration procedures. In this article, we will explain the main features and requirements of the inpatriate regime, also known as the "Beckham Law," and how it can help your clients achieve their personal and professional goals in Spain.

Net worth individuals and their family members have shown great interest in moving to other jurisdictions on a temporary or permanent basis. Many countries, realizing they have an opportunity to attract net worth individuals, have introduced attractive tax regimes.

The Spanish government identified this phenomenon at an early stage when it introduced the inpatriate regime in 2003.

The regime was aimed to attract qualified workers to Spain, and it was a great tool for Spanish companies in search of the best talent. The regime was modified slightly in 2014, but its aim continued to be attracting qualified workers to Spain.

As of January 31st, 2023, Spain has broadened the scope of its inpatriate regime, embracing not only workers but also professionals and investors. The new legislation is in the framework of the recently enacted Startup Act, provides an attractive legal and tax framework to startups settling in Spain and an attractive tax regime for founders, investors, advisors, and employees moving to Spain and becoming Spanish tax resident.



The regime allows individuals who become tax residents in Spain to pay non-resident income tax (NRIT) for the year they move to Spain and the following five years (This means one can enjoy a total of six years under this advantageous tax system). There are no reporting obligations of foreign assets.

Therefore, individuals benefiting from the regime will not be subject to NRIT on non-Spanish source income and capital gains and will only be subject to NRIT on Spanish source income and capital gains (e.g., dividends obtained from a Spanish entity or a gain from the transfer of a Spanish property).

Income from work, regardless of its source, and income from business activities is considered Spanish source income.

The tax rates that apply to individuals that benefit from the inpatriate regime range from a fixed rate of 24% up to €600,000 and a rate of 47% for amounts over €600,000 on employment or business income. As of January 1st, 2023, tax rates applicable on savings income (i.e., Spanish source dividends, interest and capital gains) range from 19% to 28%.

To benefit from the regime, he or she should not have been tax resident in Spain during the five tax years prior moving to Spain, and he or she must move to Spain because of one of the following circumstances:

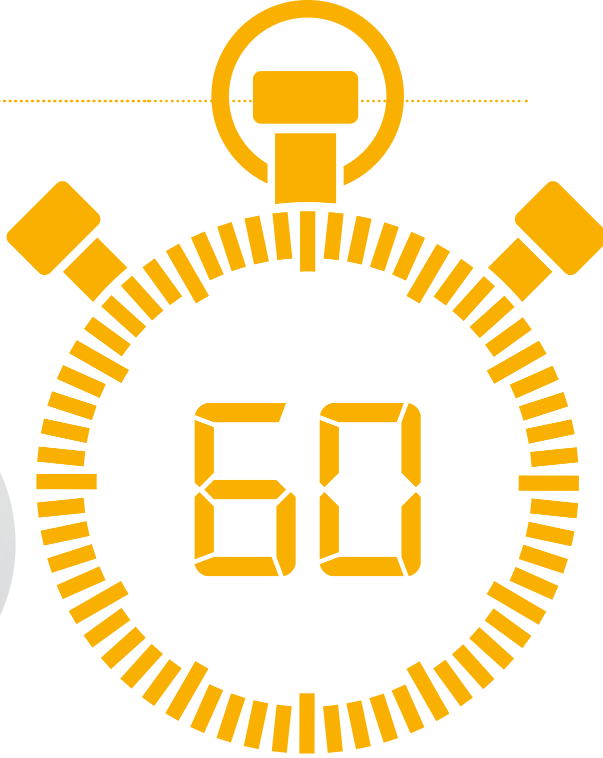
- As an employee, either working for a Spanish company, transferred to Spain by a foreign employer, or remote worker (digital nomad). In the latter case, the remote worker should work remotely through the exclusive use of computer and telecommunication systems and resources.
- Highly qualified professionals providing services to startups or carrying out training, research, development, and innovation activities, for which they receive remuneration that makes up over 40% of their income from work and economic activity.
- Investors who become directors of a Spanish company regardless of their stake in the company. However, if the company is considered a passive company, the investor should not qualify as a related party (in general, the investor should hold a shareholding below 25%).
- Individuals carrying out an entrepreneurial activity. Entrepreneurial activity is defined as any activity that is innovative or of special economic interest and obtains a favorable report issued by the public body ENISA.

The regime now also extends to individuals complying with the regime and, in line with regimes such as the Italian one, to their spouses and children up to the age of 25 years, or children of any age with disabilities.

Under the inpatriate regime, individuals are only subject to wealth tax (WT) on their Spanish assets and rights, unlike Spanish tax residents, who are taxed on their worldwide net wealth under the ordinary regime.

Individuals applying the inpatriate regime do not benefit though from any specific rule when it comes to inheritance and gift tax (IGT) and are taxed on a worldwide basis as heirs or beneficiaries since they are considered Spanish tax residents for IGT purposes. However, many regions within Spain boast exceptionally low IGT effective tax rates presenting a potential for significant tax efficiency in wealth transfer events.

On the immigration side, the Startup Act also includes a set of migration measures aimed at facilitating the entry and residence of highly qualified professionals, employees, or investors.



60-SECONDS WITH:

MARK ANDREWS
MANAGING DIRECTOR, PRIVATE CLIENT
FAIRWAY GROUP

Q Imagine you no longer have to work. How would you spend your weekdays?

A With so many hobbies and interests, filling my day would be easy, I have a fully kitted out wood workshop at home for rainy days, or I would head up to the Clay Target Range for some training as I have represented the Island in Clay Target Shooting for over 30 years. I am also a keen photographer and love a spot of fishing. Lastly, I'm sure my wife would find plenty of jobs for me around the house!

Q What do you see as the most rewarding thing about your job?

A The opportunity to build meaningful rapport with clients and establishing strong relationships is a rewarding part of my job. Additionally, there is something special about witnessing the transformation of the younger generation from education into the professional world. Watching them develop the necessary skills to pass their exams and succeed in their careers is profoundly rewarding. It is inspiring to see them grow, overcome challenges, and turn into accomplished individuals who make significant contributions within their chosen field.

Q What's the strangest, most exciting thing you have done in your career?

A I took part in the Europa round the world yacht race in 1992 representing the firm I worked for at the time, sailing from Djibouti to Cairo. Taking part in a once in a lifetime opportunity alongside colleagues was a thrilling and unforgettable experience. The companionship, the challenges of navigating through diverse and often unpredictable conditions, and the sense of accomplishment upon completing such a demanding journey were immensely rewarding.

Q What is one work related goal you would like to achieve in the next five years?

A Having been at Fairway for the last six years, watching the company grow and expand into further jurisdictions has been incredibly fulfilling. In the next five years, I am keen to continue our upward trajectory of growth and success, before handing over the reins to the next senior leadership team.

Q What is the most significant trend in your practice today?

A The adoption of technology incorporating AI into Reg Tech and how it can be utilised in our industry. Platforms such as PowerBI are revolutionising client experience and empowering our client teams by providing real-time insights at the push of a button. This technological evolution is setting the stage for the future of the trust industry, and we are committed to being at the forefront of this exciting transformation.

Q Dead or alive, which famous person would you most like to have dinner with, and why?

A Sir Alex Ferguson - has to be one of the greatest leaders of his time. His story is one of continuous growth and evolution, despite facing setbacks and challenges throughout this career. Sir Alex's impact extends far beyond the realm of football, as his remarkable career as manager of Manchester United is a testament to his exceptional leadership qualities and unparalleled success. I would also love a night out with George Best in his prime!

Q What is the best film of all time?

A Not sure if it is the best film of all time but will sit down and watch the Shawshank Redemption whenever it is on.

Q Where has been your favorite holiday destination and why?

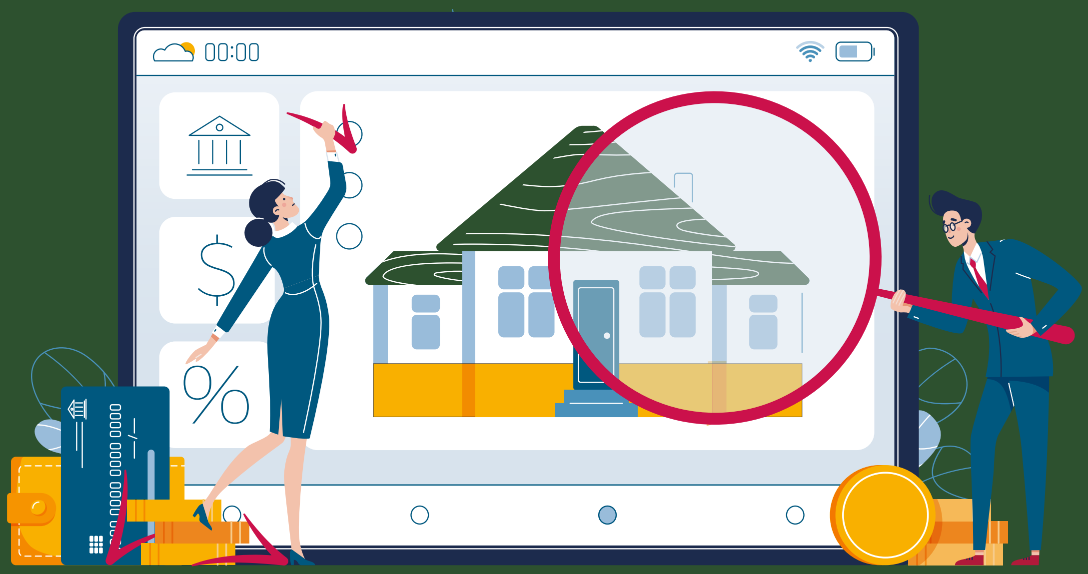
A That's a difficult question as I have fortunately been to many beautiful places in the world. I have dived in the Maldives a couple of times and that takes some beating, fantastic diving and full of marine life, great food, and wine, what's not to love. Then again, I do enjoy a trip to Las Vegas or skiing in Canada!

Q Do you have any hidden talents?

A Not exactly a hidden talent, but I have competed at the Commonwealth Games, several World Championships and numerous Island Games for Clay Target Shooting.

Q What piece of advice would you give to your younger self?

A Buy a bungalow - having recently fallen down the stairs at home, breaking numerous bones! I would also take on board something my father always said to me, don't worry about tomorrow until tomorrow.



ESTABLISHING AN OFFSHORE TRUST: PRACTICALITIES AND CONSIDERATIONS

Authored by: Chadwick Phillips (Senior Business Development Manager) - Standard Bank International Fiduciary Services

Families choose to establish trusts for many different reasons. It may be to ensure that wealth is passed between generations in a controlled manner; to provide some form of jurisdictional and asset diversification; to ensure that assets are protected from political or economic volatility, or simply to ensure that wealth passes between generations without the delays and stress of the probate process.

Whatever the reason may be, the processes and documentary requirements when establishing any structure offshore will always be consistent and include the information and documentation that a trustee needs to properly establish a trust, the information required to correctly carry out its duties and the regulatory environment in which the trustee operates.

> ***Setting up an offshore trust can be a strategic way to manage and protect your assets, but the process involves careful planning and a thorough understanding of various legal and regulatory requirements.***

To navigate the complexities of establishing an offshore trust, the following important points should be discussed and considered beforehand. These are vital to ensure the longevity of the structure, and allow it to pass between generations.

Selecting the Right Trustee and Jurisdiction

Choosing the right trustee is critical. The trustee is responsible for managing the trust's assets according to your wishes and the trust deed. We would encourage anyone seeking to establish a fiduciary structure offshore to look for trustees with a solid track record, financial stability, and a reputation for reliability and professionalism.

It is also very important to ensure that the trustee operates in a well-regulated jurisdiction and adheres to international standards of trust administration. It is equally important to ensure the Trustees are in tune with the current regulations and always one step ahead in terms of implementing any changes that may be required to ensure that the structure remains robust and compliant.

The jurisdiction you select for your offshore trust can significantly impact its effectiveness. The following key factors should therefore be taken into consideration:

- Regulatory Environment: Choose jurisdictions with robust legal frameworks and regulatory oversight, such as Jersey, which is known for its well-established trust laws and adherence to international compliance standards.
- Reputation: The jurisdiction's reputation for stability, transparency, and cooperation with international regulatory bodies is paramount. A reputable jurisdiction can enhance the credibility of your trust and provide peace of mind.
- Tax Efficiency: Some jurisdictions offer favourable tax regimes for trusts, potentially providing tax benefits for the settlor and beneficiaries. However, it is crucial to seek professional tax advice to understand the implications fully and not rely on advice that only covers a small portion of the bigger picture, which can only cause issues and additional costs later down the line.

It is also important to note that when family dynamics change, or when one's circumstances change, for example when an individual decides to change their domicile of choice, it is crucial that the relevant tax/legal discussions take place beforehand to identify one's obligations and considerations. Quite often individuals act before they receive guidance, and this almost always results in issues and problems – two words that will always come at a cost.

Information Requirements and Due Diligence

When establishing an offshore trust, expect to provide comprehensive information as part of the due diligence process. This may include:

- Personal Identification: Trustees will often require detailed personal information, including proof of identity (e.g. passport or ID) and proof of address (e.g. utility bills or bank statements) appropriately certified.
- Source of Wealth: Providing evidence of the source of wealth and funds is crucial. This information helps trustees ensure that the assets are legitimate and comply with anti-money laundering (AML) regulations. Documentation might include financial statements, sale agreements, inheritance documents, or business ownership records.
- Tax Advice: Engaging professional tax/legal advisors is often necessary to navigate the complex tax implications of an offshore trust. Tax/legal advisors can provide guidance on tax liabilities in your home country and the trust's jurisdiction, helping to avoid potential pitfalls and ensuring compliance with relevant tax laws.
- Due Diligence on Investments: Trustees will conduct due diligence on any underlying investments to ensure that they align with the trust's objectives and legal requirements. This may involve assessing the risk profile, legality, and compliance of the proposed investments.

Other Important Considerations

In addition to the above, the following considerations should also be taken into account:

- Compliance and Transparency: The rigorous documentation requirements and due diligence processes are designed to ensure compliance with international standards and prevent illegal activities such as money laundering and tax evasion. Transparency in providing required information is essential.
- Time and Costs: The process of setting up an offshore trust correctly, with the appropriate advice can be time-consuming.The establishment process and ongoing administration will involve costs, which may include legal fees, trustee fees, and ongoing administration expenses. Understanding these aspects upfront can help in planning and budgeting effectively.

When evaluating competing proposals, we recommend that you seek similar summaries that enable you to compare like for like. A transparent fee structure will not only help you to avoid hidden costs, it will also enable a better working relationship with your trustee.

In summary, establishing an offshore trust requires careful consideration and professional guidance. Selecting a reputable trustee and jurisdiction, providing thorough documentation, and understanding the compliance landscape are all key to a successful setup that will ensure the preservation of family wealth. By seeking expert advice, you can navigate the complexities of offshore trusts and achieve your asset protection and wealth management goals.

NON-DOMS: SHOULD "FAIRNESS" TRUMP TAX RAISING?

Authored by: Sam Carver and David Whitworth - Payne Hicks Beach

The Sunday Times Rich List this year has reported the largest fall in the UK's billionaire count in the guide's 36-year history (down to 165 from a peak of 177). This is because, its authors reveal, "the world's wealthy are starting to leave".

Considering it is only very recently that the Government announced the abolition of the once attractive tax regime for UK resident non-domiciled individuals (non doms), you might conclude that announcement was not a significant factor behind this exodus. However, none of this has happened in a vacuum and, when one considers the backdrop of political events, it is clear this is not the case.

The Political Backdrop

In their 2015 election manifesto, Labour included a pledge to scrap the existing non dom regime. However, Labour under Ed Miliband was less of a serious electoral threat as compared to under Sir Keir Starmer and a change to the regime at that time was not very probable.

A more credible threat to the regime emerged in 2022, when the current shadow Labour cabinet began signalling that they would abolish it in the increasingly likely scenario that they would have the opportunity to do so.

Therefore, those set to be impacted by such a change have had time to make alternative arrangements. Consequently, the Rich List confirms what many now suspect: the changes announced in March by Jeremy Hunt and broadly endorsed by Labour do not guarantee an increase in tax revenue from internationally mobile high-net-worth individuals, because it is quite possible many of them will simply leave. Some already have.

The Historical Backdrop

Before considering what the possible consequences of these changes are, it is first worth noting that, although recently the taxation of non doms has frequently divided the Left and the Right, the regime has a relatively neutral political history.

Its origins date back to the introduction of income tax, which was announced in

1799 by Pitt the Younger to raise funds for the Napoleonic wars. At this time, the remittance basis was available to all British taxpayers. This remained the position until 1914, when tax was first imposed on some forms of foreign income on the arising basis. It was at this point, under a Liberal government, that non doms began to enjoy some advantages, as they were exempt from this rolling back of the remittance basis.

By 1974 the remittance basis was available exclusively for non doms.

Viewed within this context, one can see that for the best part of two centuries successive governments thought it was reasonable not to tax people on wealth generated abroad, especially where that wealth belonged to someone who had not yet acquired a UK domicile. Even the most recent Labour government, when considering reform of the regime, did not change it fundamentally but rather introduced the remittance basis charge, which was first proposed by the Conservatives.

These tax rules have therefore enjoyed much cross-party consensus over the years. However, latterly, they have become much more controversial. A fact that was reinforced by the media furore unleashed when a non dom was discovered to be living in 10 Downing Street.

The Current Regime: Pros and Cons

There can be little doubt that the availability of the remittance basis has played a significant part in encouraging many of the world's wealthiest people to take up residence in the UK. This has resulted in huge benefits for the UK.

Some of these are measurable, for example in 2022 (the most recent year for which records are available) 78,700 non doms paid £12.4 billion (over 3%) of the country's income tax, CGT and national insurance contributions.

Other benefits are less quantifiable, for example there does not appear to be any data publicly available regarding the amount of SDLT paid by non doms, or any estimates of VAT or the overall contributions they make to the economy through their work, businesses and employment of UK workers. However, judging by our clientele these are likely to be significant.

An argument against the regime has been that it is open to abuse. It is possible that an extremely small number of people will not have been as honest with themselves as they might have been about their plans and circumstances when providing information to their advisers and HMRC. It is also true that with effective planning, it is sometimes possible to protect a great deal of an individual's wealth from UK taxation. However, it is hard to argue that the negatives outweigh the advantages to the UK as a whole. Indeed, in view of the success of the non dom regime over decades it is time to question the judgment of the two main political parties in wanting to abolish it.

The UK Regime Present and Future, and Europe

The Current Regime

New arrivals to the UK can claim the remittance basis and not pay tax on their offshore income and gains until they are either domiciled here (a legal test which is only met once an individual has a clear intention to remain here permanently or indefinitely – note the burden of proof falls on HMRC if they wish to assert that a taxpayer has become domiciled here) or deemed-UK domiciled (which will be the case if they have been resident for 15 of the last 20 tax years). However, to benefit from this arrangement, they must pay an annual charge of £30,000 after seven years of residence, increasing to £60,000 after 12 years. In addition, until an individual is either domiciled or deemed-UK domiciled, they will only be liable for IHT on UK-situs assets. If they become UK-domiciled, they are able to protect assets from incurring UK tax liabilities if they have first placed them in an offshore trust.

This makes the UK attractive for long stays and even permanent living among the wealthy. They are encouraged to settle.

(Copycat) Europe

The UK's regime is very generous compared with other European countries. Until recently, few European countries other than Monaco and Switzerland had comparable arrangements. However, because of its many benefits, others have recently sought to emulate it.

In particular, Italy and Greece have introduced very similar regimes allowing new arrivals to pay an annual charge of €100,000 instead of paying any tax on their foreign income and assets for their first 15 years of residence.

The New UK Regime

From 6 April 2025, those who qualify for the new

regime will not pay any UK tax on their foreign income or gains for their first four years of residence here. After that, they will be subject to UK tax on their worldwide income and gains in the usual way.

They will no longer be able to protect their non-UK assets from UK income tax, capital gains tax and inheritance tax by placing them in trust.

Regarding IHT, the stated intention is that the worldwide estates of individuals who have been UK resident for ten tax years will be exposed to IHT. An individual would then need to be non-UK resident for at least 10 years to fall out of the IHT net.

There are limited transitional provisions for existing non doms living here and claiming the remittance basis. However, ultimately these changes represent a dramatic swing, from one extreme of the European spectrum of tax regimes for new residents, to the other.

To Conclude

Anecdotally, it appears that estimates from the well-publicised LSE/Warwick report – that as few as 100 high-net-worth individuals would leave the UK if the existing regime was abolished – will be proven wrong by a significant margin. Whether it is the latest Rich List or news from advisers in Italy, Greece, Switzerland and elsewhere that there is much interest from people thinking seriously of leaving the UK, the indications so far are that many will leave, not to be replaced, if the proposed regime is implemented.

The leavers will be replaced by some newcomers. The new four-year regime will attract those seeking a four-year holiday from all taxation, including while they sell a foreign business. However, they will not be here long enough to establish or move a business, buy a house or two or employ long term staff or UK advisers. Consequently, they may pay no UK tax all, unlike current non doms.

The government has not published its own methodology or forecasts, but it is hard not to conclude that both parties have a weak evidential basis to support their argument that the UK would not suffer economically after these changes.

The OBR's forecasts, referred to in the Budget, asserted that no more than 10-20% of non doms would leave. However, this was based on an assumption of no changes to IHT.

Prior to the Prime Minister's recent announcement of a general election on 4th July, there were rumours that the Government was already rethinking all aspects of this plan. However, even if it did want to proceed with the changes as announced, parliament is now prorogued and it will not be possible to pass any new legislation before the country goes to the polls. Based on current polling, it is therefore likely that it is Labour's position on this issue that will prove decisive.

In view of the longstanding success of the existing regime, which had evolved over two centuries into a successful and effective (if accidental) policy, it is hopeful that, beyond the election, there will be further pause for thought before changes such as those announced in March are implemented.

THE ROLE OF OUTSOURCING IN FAMILY OFFICES

Authored by: Richard Joynt (Head of Family Office) – HIGHVERN

The landscape of wealth management is constantly evolving, presenting families and trustees with both challenges and opportunities. In a recent discussion hosted by HIGHVERN and ThoughtLeaders4 Private Client, expert panellists dissected the intricate world of wealth management and the increasing trend towards outsourcing within family offices. The discussion revolved around the challenges and benefits of utilising an Outsourced Chief Investment Officer (OCIO) role, shedding light on how families and trustees grapple with complexities and potential conflicts in their investment strategies.

Understanding the complexity

Richard Joynt, Head of Family Office, HIGHVERN highlighted the challenging choice of outsourcing a family office, particularly for clients and trustees who often lack expertise in investment matters.

With the investment landscape growing increasingly complex, active client engagement has become more common over the past two decades.

Whether you're a client handling investment directly, part of a family office arrangement, or dealing with assets held in trusts, understanding the available options is key.

Exploring investment management options

Catherine Grum, an independent family office and governance consultant, outlined four broad options for investment management within family offices.

External Investment Managers:
In this approach, multiple external investment managers operate independently and in parallel. Trustees are likely familiar with this model as it is what the industry has known traditionally.

External Investment Consultant Route:
The investment managers still play a role, but an external consultant provides strategic reviews and oversees a coordinated portfolio of managers.

Outsourced Chief Investment Officer (CIO):
Opting for an outsourced CIO involves engaging different experts with varying asset class knowledge and investment skills. The outsourced CIO orchestrates on behalf of the family office,

In-House Investment Function:
The fourth option entails establishing an in-house investment function. Whether focused on a specific asset class or spanning the entire portfolio, you can either take on the role of CIO yourself or hire a dedicated team to manage investments internally.

Each approach has advantages, considerations based on uniqueness of the client needs, and the choice should align with the family office's unique goals and circumstances.

Wealth Generation Stages

Andrew Hartle, Director at ARC Group emphasised the correlation between wealth generation/preservation stages and the choice of investment model. A growth-oriented approach suits families in the wealth creation phase, while a preservation strategy fits those focusing on maintaining wealth.

He underscored the significance of an investment policy statement in defining goals and guiding strategic decisions, whether managed by a consultant, outsourced CIO, or internal CIO. Defining the wealth's purpose, whether for an individual or a family, lays the foundation for all subsequent planning and strategy.

Single-Family Office (SFO) Model

Per Wimmer, CEO at Wimmer Family Office, spotlighted the merits and drawbacks of the Single-Family Office (SFO) model, which includes an in-house Chief Investment Officer (CIO) and investment team. As someone who operates an SFO himself, Per emphasises that the suitability of this model depends on individual preferences and circumstances.

Entrepreneurs may prefer active involvement and the ability to drive change within the family office. For those seeking agility and creativity, the SFO model can be appealing. However, the SFO approach isn't universally ideal. In institutional settings, it may not always align with the organisation's needs.

Ultimately, the success of an SFO depends on the principal's desires. Balancing active participation versus a more hands-off approach requires considering family dynamics and consensus. Larger families with complex governance requirements may also benefit from third-party management.

An SFO's involvement in various activities can strain hiring resources. In contrast, outsourced options offer streamlined bandwidth management.

Outsourcing For Customised Solutions

Tom Spencer, Client Advisor at Saranac Partner emphasised the role of an Outsourced CIO in designing customised investment strategies tailored to each client's unique objectives. He stressed the importance of ongoing oversight and adaptation to market dynamics, whether through outsourced or hybrid investment models. He also spoke about this oversight not being a one-time exercise; it evolves continuously. Just as markets change, so do investment objectives.

When considering clients, it's essential to recognise their unique characteristics. While every family and individual differ, certain consistent factors come into play. As wealth accumulates—typically between £50 to £100 million—priorities shift.

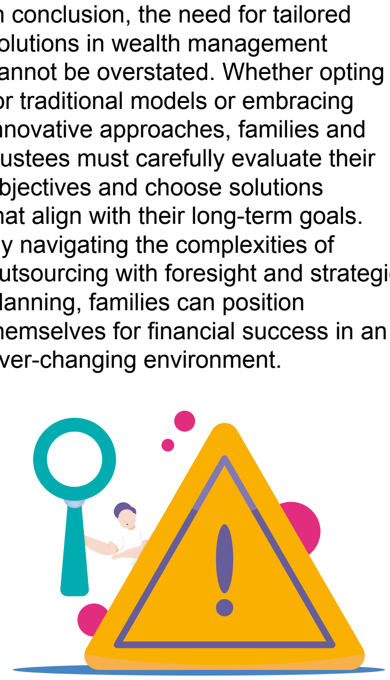
Incumbent family members and immediate descendants transition from short-term concerns to thinking more about dynastic structures and extended time horizons. In case of a new wealth shifts, the journey from entrepreneur to investor can be challenging. Here, an Outsourced CIO plays a crucial role in guiding and supporting clients through this transformation. In the case of next generation, families often resist adopting the same structures as their parents. They seek fresh perspectives and advisors who are responsive to their evolving needs and viewpoints. Understanding these dynamics allows wealth managers to tailor strategies effectively and provide personalised guidance.

Navigating Potential Risks

Andrew and Tom also discussed the potential risks of an OCIO, including reduced ownership and conflicts of interest. Catherine added that the landscape of family office outsourcing has evolved significantly over the past decade, offering more diverse options to cater to specific client needs.

Tailored Solutions For Long Term Success

In conclusion, the need for tailored solutions in wealth management cannot be overstated. Whether opting for traditional models or embracing innovative approaches, families and trustees must carefully evaluate their objectives and choose solutions that align with their long-term goals. By navigating the complexities of outsourcing with foresight and strategic planning, families can position themselves for financial success in an ever-changing environment.

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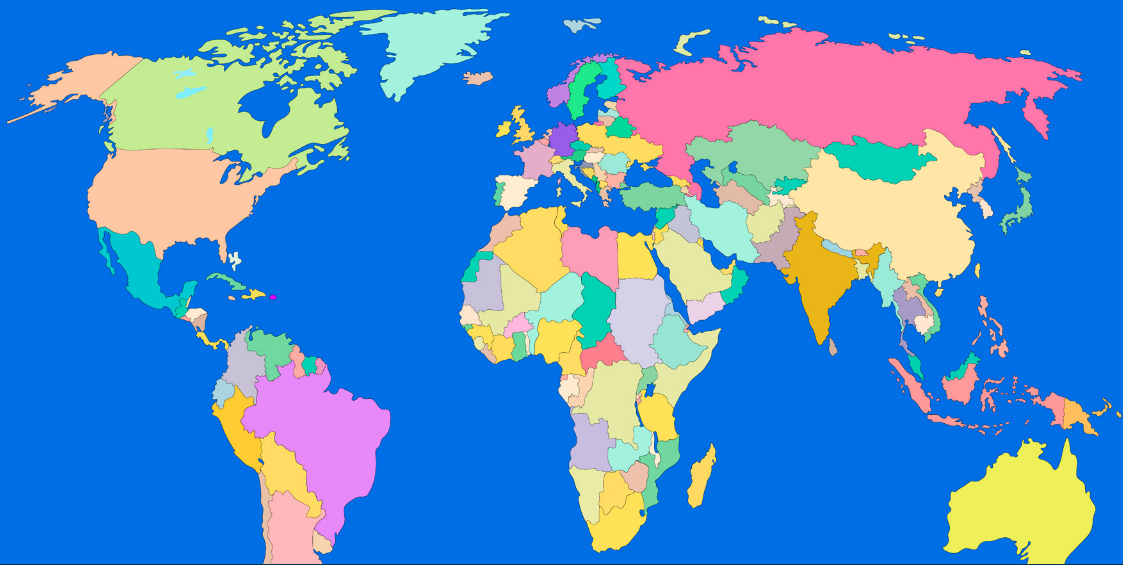


FOREWARNED IS FOREARMED:

PREPARING FOR THE ABOLITION OF THE EXISTING "NON-DOM REGIME"

Authored by: Victoria Yates (Partner) & Bonnie McPartland (Of Counsel) – Collas Crill

When the Conservative Party announced their proposal to abolish the existing Non-Dom Regime in March 2024, there was an audible sharp intake of breath from clients and practitioners across the tax, private client and trust industries. Just as we were starting to consider what the changes would mean and when they would take effect, Prime Minister Rishi Sunak announced that a general election would be held on 4 July 2024.

By the time this article is published, the election will be over. Regardless of who's in power, significant changes to the Non-Dom Regime are inevitable and they look likely to have an impact on foreign trusts.

In this article, we consider what trustees of foreign trusts can do now to ensure that they are best placed to respond to the changes.

What Are The Proposed Changes?

Under the existing Non-Dom Regime, certain UK residents with a permanent home/domicile elsewhere (so called non-doms) are not required to pay UK tax on foreign earned income and gains unless and until they receive it in the UK. This has historically led some individuals to settle a foreign "protected trust" prior to becoming UK resident, so that any income and gains arising on the assets settled are not taxed in the UK unless and until they are remitted to the UK.

Under the proposals, UK-resident non-doms will pay UK tax on all foreign income and gains, subject to certain provisos, time periods, transitional rules and double taxation treaties.

Significantly, the new residency-based regime will also capture foreign income and gains arising within trust structures, resulting in a potential tax liability in the hands of a non-dom settlor of a foreign trust. Inheritance tax in respect of trusts is also subject to review and further consultation.

What Steps Can Trustees Take Now?

1 Undertake A Full Health-Check

As a starting point, trustees should review their existing structures to identify those trusts which may be affected based on where the settlor resides (this includes all individuals that have settled assets into the trust). These trusts can then be prioritised later in the year in terms of considering potential changes once we have clarity on the effect of the new regime.

Undertaking a health-check also provides an opportunity to review the structure with fresh eyes to ensure everything is as it should be including, for example, that accounts are up to date, 10-year anniversaries are diarised where relevant and supplemental instruments are fully executed.

2 Consider The Class of Beneficiaries and Their Requirements

As part of the health-check trustees should determine which of the trusts that might be impacted have a closed class of beneficiaries and which include remoter issue and unborns. Knowing this will impact the trustee's fiduciary considerations and potentially the options available to them. Trusts with a closed class of adult beneficiaries will likely prove easier to deal with should significant decisions need to be made quickly in circumstances where those beneficiaries are willing to provide the trustee with a release.

3 Open A Dialogue With The Settlor

For trusts that have UK-resident non-dom settlors, now is a good time to discuss with them what their intentions are and whether this is reflected in their letter of wishes.

Do they intend to remain in the UK for the time being due to family and/or business circumstances, or are they considering exiting in view of the proposed changes? Are they discussing the changes with an advisor and have they received any initial advice on how the changes might impact them and the trust? Are they considering taking any steps with regard to their financial affairs in order to mitigate the impact of the new regime, such as becoming an Excluded Person who is unable to benefit from the trust in the future? If this is a potential consideration, do they understand the ramifications of being excluded, namely that they can no longer benefit from the trust directly or indirectly?

This conversation should be started as soon as possible and used as an opportunity to reconfirm the settlor's intentions for the trust – for instance, is the primary purpose tax planning or is it driven by other factors such as asset protection and succession planning.

4 Review The Trust Deed

Excluding one or more beneficiaries, particularly a settlor who has to date been regarded as a principal beneficiary, is something a trustee may be asked to consider in light of the abolition of the existing Non-Dom Regime. Settlors should be advised that this is not something a trustee would do at short notice without careful thought and advice.

Some concern has been expressed in relation to the volume of clients who will need advice and changes to be made to their trusts at short notice. Potential time pressures may be alleviated by the trustee reviewing the relevant provisions of their trust deeds now to see whether any improvements can be made at this stage to increase flexibility. For instance, does the trust deed enable a beneficiary to disclaim their interest in the trust and to declare themselves to be an Excluded Person or could such a power be introduced? This would allow beneficiaries to make this decision of their own volition, taking pressure off the trustee being asked to exercise their power of removal.

Another power that trustees may be asked to exercise at short notice is to make significant distributions from the trust thereby reducing the trust fund and potential tax exposure. Alternatively the trustee may be requested to distribute the whole of the trust fund to a beneficiary who is resident in a more favourable jurisdiction, with the intention that they then re-settle the trust. Again, the drafting of the trust deed should be checked to ensure that the powers of appointment are clear and that they can be exercised in favour of one or more beneficiaries to the exclusion of the others (following careful consideration).

In reviewing the trustee's powers, it is important to ascertain whether the trustee can exercise the power solely or if the consent of another power holder (such as the settlor or the protector) is required. Where the trustee does not have sole discretion over the exercise of the power to remove a beneficiary or make an appointment, contact should be made with the power holder now to alert them to the fact that their input may be required at short notice and to agree how best this can be obtained.

5 Take Professional Advice

To understand the effect of any legislative changes surrounding the Non-Dom Regime so that the trustee can properly consider what actions to take, it is critical that tax advice is obtained. Where the settlor and/or a beneficiary has taken their own tax advice, the trustee should request a copy of this to satisfy itself that the advice is appropriate and based upon a correct understanding of the facts. It would be a breach of fiduciary duty for a trustee to simply rely on an oral confirmation that a beneficiary has received tax advice, and ideally the trustee should always obtain their own independent advice which will take into account the varying interests of the beneficiaries in light of the power they are considering exercising. Most trusts will have incumbent advisors but it is essential to check that any trusts with UK resident non-dom settlors have advisors in place now who are able to assist promptly.

6 Consider Preparing Legal Documents That May Be Required At Short Notice

Similarly, instructing lawyers now might be prudent to enable relevant legal documentation to be pre-prepared so it is available at short notice should the trustee decide to take a particular course of action. This could include documents such as supplemental instruments of exclusion of beneficiaries, instruments of appointment of capital, or instruments of amendment to the terms of the trust deed, as well as potentially breach of trust style indemnities which might assist in circumstances where the trustee is asked to make a momentous decision in circumstances where time constraints mean a court blessing is not possible.

While some time pressures on trustees are inevitable as the year progresses, planning and preparing ahead of time will certainly ease the process.

MONACO PRIME RESIDENTIAL 2024

Authored by: Kelcie Sellers (Associate Director, World Research) – Savills
Foreword by: Irene Luke (Co-Head of Monaco) – Savills Monaco

While not immune from global events and trends outside its borders, Monaco continues to punch above its weight, maintaining its position as the world's most expensive prime property market in 2023. In a time of uncertainty, stability remains the name of the game for prospective residents.

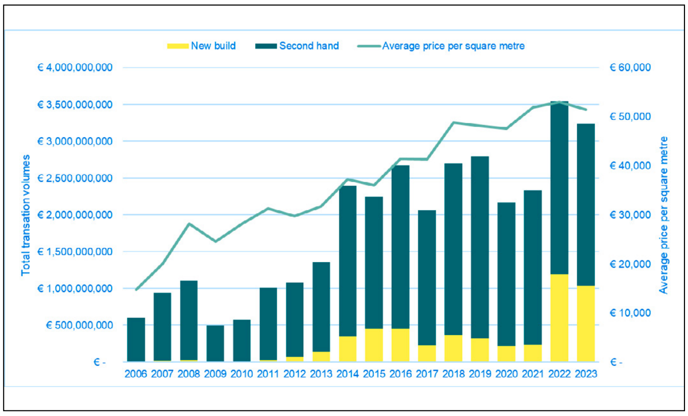
While many buyers may adopt a wait and see attitude over the coming year, the transactions of larger and higher price-point transactions from the two large developments completing in 2024 should still support sales volumes.

For those who choose to delay purchases for a short period, the rental market will remain a refuge. Regardless of the property type selected by new residents, the lifestyle, infrastructure, access to global markets, and stability will keep Monaco front of mind.

Market Overview

In the face of wide macroeconomic headwinds, prime residential globally has remained resilient. Monaco, often seen as a safe haven in good times and in bad, has maintained this resilience as well. Across the markets tracked in the Savills World Cities prime residential index, capital values increased by 2.2% in 2023, compared to Monaco which saw price per square metre growth of 0.9%. While this growth is lower than the global average for 2023, prices in the Principality have reached a high plateau. Current prices per square metre stand at €51,418, less than 1% below the record price point seen in 2021.

Total Transaction Sales Volume and Average Price Per Square Metre



Source: Savills Research using IMSEE

While transaction volumes were down -8.7% for 2023, the total volume by value remains over €3.2bn with over €1bn of new-build sales, nearly equalling the record new-build and overall volumes seen in 2022. New build sales remain over 30% of the total sales in a market where, historically, this category accounts for less than 10% of total sales since Savills began collecting data in 2006.

Over the course of 2023, there were 416 individual transactions across the Principality, which represents a decline of around a fifth compared to the previous year.

However, the total transaction value has declined by a smaller amount than the number of transactions, which points to fewer but higher value transactions occurring this year.

These higher value transactions can be seen most clearly when examining the total sales by price point. There was growth of two percentage points in the proportion of flats selling for more than €5mn in 2023, while the share of flats sold priced below €5mn fell by two percentage points over the same period.

Size Matters

The race for space continues in Monaco as a result of the pandemic causing global reassessment of housing needs for many. Additionally, this trend is enhanced because of a change in approach to residence card applications in recent years where the property size must match with the size of the family applying for residence. This has resulted in greater scrutiny of the size of properties rented or bought by prospective residents.

This change to residential card applications has been filtering through the wider property market, with many new build projects offering larger apartments in response. As a result, the sales of larger apartments with three bedrooms or more accounted for over 60% of the new build sales and 22% of the resales across the Principality last year. As more buyers look for larger apartments, smaller flats, such as studios and one bedrooms, have fallen in their share of total sales.

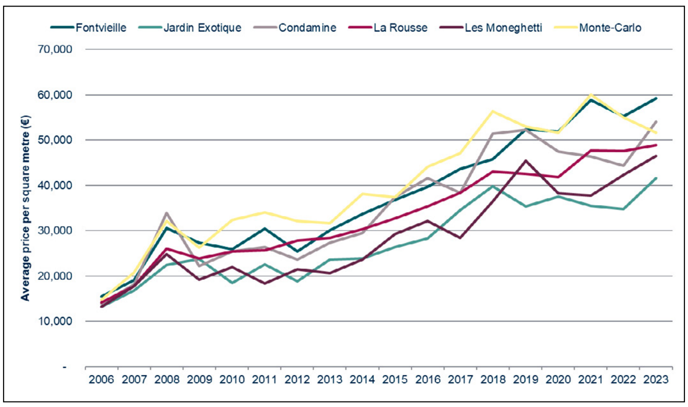
A shift to larger apartments is seen in the resales market too. The number of resales in Monaco has returned to pre-pandemic levels, and this rebound has largely been driven by the increase in sales of larger apartments, with two bedroom or larger property sales increasing by 12% from 2021. Two bedroom properties in particular saw the largest increase in sales with 103 properties transacting, an increase of 18% from the previous year.

District Dominance

When looking to purchase a property in Monaco, it isn't just a decision to be in the Principality. Many are looking for properties within specific districts or developments. Monte Carlo and La Rousse together account for over 60% of the resale transactions in 2023; these two districts comprise over 40% of the total housing area in the Principality and each have international appeal.

And it isn't just a select few districts which are seeing success: the mean price for resales has increased to an all-time high in five out of seven districts with Jardin Exotique and La Condamine seeing the highest price per square metre growth of 19% and 22% respectively. For the second year running, Larvotto took the top spot for most expensive district by square metre in 2023, with prices rising 6% on the year to over €65,000psm; however for a district with so few properties changing hands each year (an average of four properties a year since 2010), any high price-point transaction has the potential to skew the average price per square metre for the district.

Average Price Per Square Metre, By District



Source: Savills Research using IMSEE

New Year, New Builds

For decades, the prevailing story of the Monaco property market has been one of chronic under-supply. For a micro-state less than half the size of Central Park in New York City, seeing global levels of demand, this is hardly surprising.

To try to meet the consistently high levels of demand, construction projects continue apace. There are two large projects in the pipeline which are launching in 2024: Mareterra and Bay House Monaco, plus other smaller projects such as Le Luciana and Villa Ninetta.

Both Mareterra and Bay House combined will add 166 new apartments and 15 villas to the residential market in Monaco. Each of these projects will bring much needed stock to the Principality but will do little to keep up with the consistently high demand across the Principality.

Trial Period: The Monaco Rental Market

Monaco remains the most expensive location in which to rent residential property worldwide, well above the average asking rents of New York, London, Hong Kong, and Tokyo, even though prime rents have largely increased across the board. For many prospective residents to the Principality, renting a property and getting a feel for the lifestyle is often the first step before searching for an apartment to purchase.

Within the Savills World Cities Prime Residential Index, prime rents increased by 5.1% in the year to December 2023. This was driven by a lack of stock and rising demand, with rents outperforming capital values in many locations, a trend which is also readily apparent in Monaco.

Rents within the Principality have fallen by 2% on average over the past year, with average asking rent now €108 per square metre per month. However, this average figure obscures the fact that two bed flats have seen strong increases in asking rents of 35% over 2022, exemplifying the trend of the race for space across the Principality and the world at large.

Outlook

For many prospective buyers globally, the mood for the coming year is one of caution as many buyers choose to wait for clarity on the global macroeconomic environment, inflation, and interest rates. However, the perceived safe haven status of Monaco may attract buyers to the market who would have purchased property elsewhere, supporting pricing, transactions, and overall demand for the year ahead.

60-SECONDS WITH:

COLIN SENEZ HEAD OF IMMIGRATION MAURICE TURNOR GARDNER

Q: Imagine you no longer have to work. How would you spend your weekdays?

A: I would travel more and visit the places that are on my list but which never quite make the cut when planning holidays. The list gets longer every year. I would also play too much golf, read more, and spend more time cooking and half-finishing jobs around the house.

Q: What do you see as the most rewarding thing about your job?

A: Helping clients get from 'A to B' and relieving them of problem they are seeking help with: the prospect of being able to provide a solution is always the highlight.

Q: What's the strangest, most exciting thing you have done in your career?

A: After a client died, he left a couple of properties that needed to be dealt with as part of the administration of his estate. This fell to me and a colleague. For a number of reasons, the properties had been left untouched, exactly as they were when the client last walked out – one still had the daily paper tossed on a side table, dated from 12 years previously. It was particularly eerie walking into those flats, the first people to have done so since the client had last been there - it felt as if the client had just had just gone to the shops and would be back any minute.

Q: What is one work related goal you would like to achieve in the next five years?

A: I would like to contribute on wider immigration policy. As above, I love helping clients – but being able to use my experience to work with government (of whichever hue) and provide recommendations based on what I am finding does and does not work in practice would be an objective of mine.

Q: What is the most significant trend in your practice today?

A: Currently, governments are closing routes residence that are based in the investment of passive wealth (like the UK investor visa). This is making it harder to implement a client's plans without having to substantially alter their arrangements to fit within current tax legislation and immigration rules.

Q: What book do you think everyone should read, and why?

A: Given what is going on, I am finding "Jerusalem" by Simon Sebag-Montefiore an excellent read. I would recommend it to others.

Q: Dead or alive, which famous person would you most like to have dinner with, and why?

A: I should probably pick someone who has died as there is always a (remote) possibility that I will have dinner with someone who is still alive. In that case, I would like to dine with Robin Williams. I can imagine that would be a dinner to remember.

Q: What is the best film of all time?

A: I love thrillers, and I also appreciate films that have pushed societal norms at their time of release. With that in mind, I would have said "The Birds" by Hitchcock. However, there are some troubling stories about the filming, so for that reason, I think it gets tipped by "Psycho".

Q: What legacy would you hope to leave behind?

A: In the context of work, a set of happy clients.

Q: Where has been your favorite holiday destination and why?

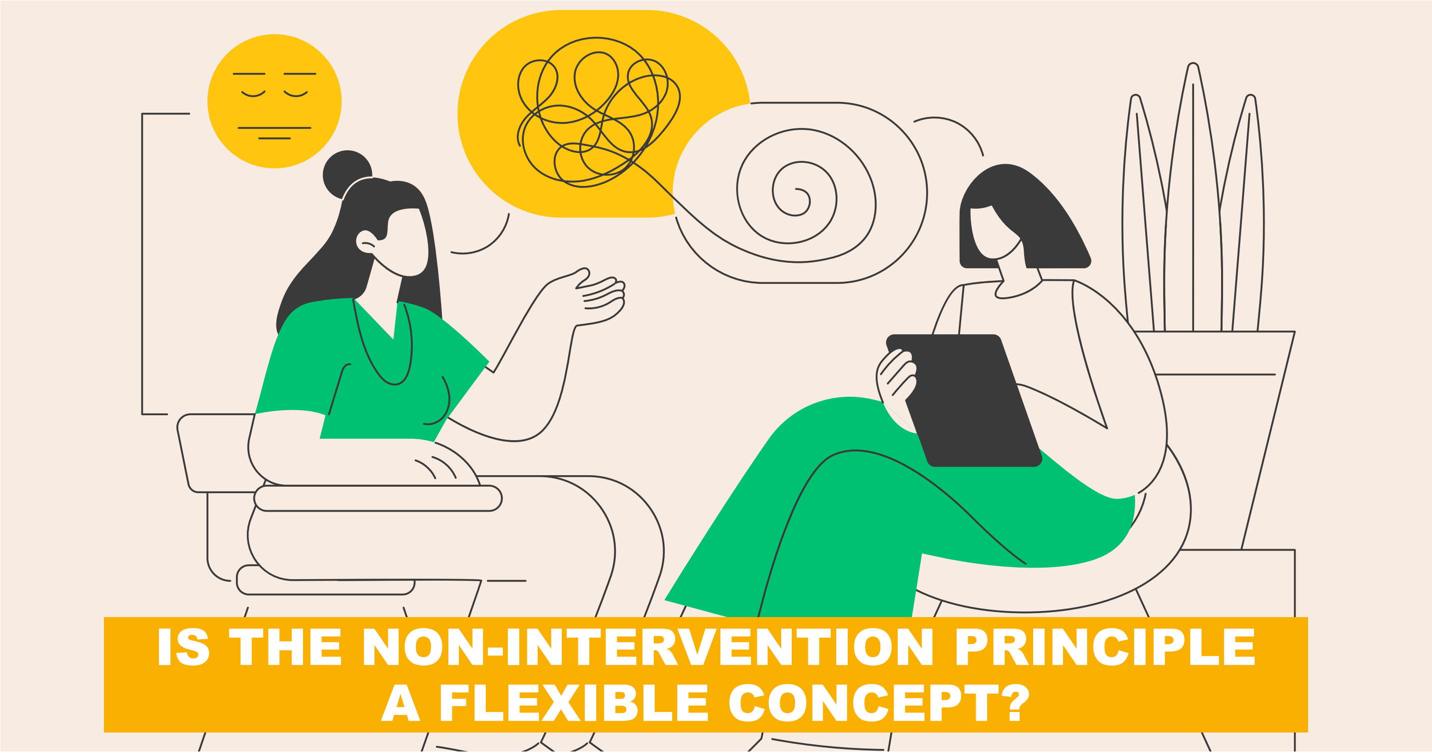
A: France is a home from home for me. Please don't ask me to pick between the alps, or the south – I can't. California is also a strong contender, especially the national parks. I spent my honeymoon there, and for that reason it holds a special place in my heart.

Q: Do you have any hidden talents?

A: A remarkable ability to lose my keys, especially when I am in a hurry, or someone is waiting on me.

Q: What piece of advice would you give to your younger self?

A: To relax a little more, and take your time.



IS THE NON-INTERVENTION PRINCIPLE A FLEXIBLE CONCEPT?

Authored by: Judith Swinhoe-Standen (Associate) – Stewarts

In recent years, focus on the non-intervention principle has sharpened thanks to several cases concerning the court's role in trustee decision-making. Traditionally, the court has tended to require trustees to do all the running, but these recent cases have seen it taking a more active role.

What Is The Non-Intervention Principle?

The question of the court's (non-) intervention usually arises when a trustee asks the court to bless a momentous decision it proposes to take.

Myriad case law provides that the court's role in trustee decision-making is limited to considering two questions:

- Is the trustee's proposed decision within the scope of its powers?
- If so, is the proposed decision irrational?

The Bermuda Court of Appeal in XYZ Trusts [2022] emphasised that its consideration of these questions is supervisory and that a blessing application is "not an invitation for the court to chip in on its impressions and opinions on the best options available to the trustees".

By extension, the court must not withhold its approval simply because it would not itself have exercised its powers in the way proposed.

The court should not impose its own view of the merits of the proposed decision; its only consideration is whether the trustee's decision is one that no reasonable trustee could have reached.

Departing From The Non-Intervention Principle

Courts are generally very reluctant to take a trustee's decision into their own hands. If there is any way the trustees can reach a decision without the court's intervention, they must do so.

AB v CD and others [2019] illustrates this. Deadlocked trustees asked the court to make the decision for them but the court still directed them to attempt again to reach a unanimous decision and to return to the court only if that proved impossible.

Ultimately, the trustees were unable to reach agreement, so the court made the decision, but AB v CD shows that court intervention should be a last resort.

On the other hand, the court chose to intervene in Klug v Klug [1918]. One trustee (the beneficiary's mother) objected to a proposed distribution to her daughter because she had married without her consent. The court considered it was duty-bound to intervene because the mother's reason for refusing the distribution was entirely unconnected to the trust.

These cases indicate that – as noted in Children's Investment Fund v Attorney General [2022] – exceptions can be made to the non-intervention principle if the circumstances require it.

Non-Binding Guidance

It is not uncommon for the court to make observations about a trustee's proposed decision without breaching the non-intervention principle. However, the Jersey Royal Court explored the boundaries of the principle in SG Kleinwort Hambros Trust Company (CI) Limited and others v B and others [2023]. Among directions for a timetable leading to an approval hearing of final restructuring proposals, the court listed a three-day hearing to give non-binding observations on the proposals at an interim stage in the proceedings.

A group of beneficiaries appealed this direction on the basis that such non-binding guidance would represent the court taking an uncharacteristically active role in trustee decision-making, thus breaching the non-intervention principle.

The court dismissed the appeal, commenting that the non-intervention principle was sufficiently flexible to accommodate the giving of non-binding guidance and was not, in any event, outside the court's statutory powers.

Over-Interpretation

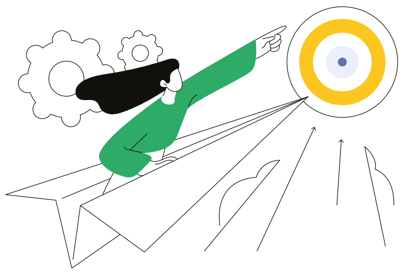
More recently, in A and B v C and D (2023), the Isle of Man High Court considered a trustee's proposal to distribute part of a discretionary trust fund to the settlor's widow (D) and then exclude her. D opposed this: she sought a third of the trust fund because she believed the settlor's letter of wishes demonstrated that he wanted equality between her and the other principal beneficiaries (A and B, the settlor's children from an earlier marriage). In contrast, the trustees considered that the letter of wishes intended the trust to be a long-term vehicle to benefit subsequent generations of the family, ie A and B's issue.

At first instance, the court disagreed with the trustee's interpretation and declined to bless its decision. It ordered the trustee to distribute a third of the fund to D on the basis that there was "only one way a reasonable trustee could determine what course of action to follow in the circumstances".

A and B appealed to the Staff of Government Division (SGD), arguing that the lower court had breached the non-intervention principle. The SGD agreed, noting that the lower court had made an executive decision for the trustee where there had been no surrender of discretion, conflict of interest or deadlock, and no case law supporting the exercise of the court's inherent jurisdiction in this way. Furthermore, it said the lower court had been wrong to conclude there was only one way the trustees could correctly have exercised their discretion.

The SGD made some helpful comments about the court's role in trustee decision-making. Importantly, it highlighted that the non-intervention principle should not be circumvented unless there really was only one way for trustees to exercise a permissive power.

It also emphasised the limitations that should apply to the court's role in trustee decision-making, describing the case as "an example of why the court should be very slow to assume a trustee's responsibility, and why the categories of exercising the inherent jurisdiction to do so should be applied cautiously".



What's Next?

Although SG v B tentatively extended the boundaries of the non-intervention principle at first instance, it is worth noting the Court of Appeal's concluding remark. Despite dismissing the appeal, it warned that "nothing […] in this judgment should be interpreted as an encouragement to first instance judges either to depart from the non-intervention principle or to express provisional views as to the substantive content of any possible restructuring".

This, coupled with the SGD's remarks in A and B v C and D, indicates that the principle is not as flexible as it briefly seemed, and that future attempts to extend the principle will be reined in.

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NAVIGATING 2024'S CHALLENGES FOR PRIVATE CLIENTS AND THEIR ADVISERS

Authored by: Joshua Kendal (Director, Guernsey) - ZEDRA

As we accelerate through 2024, private clients and families holding international assets are facing a number of changes in the market that will undoubtedly require full consideration and financial planning alongside their professional trusted advisers.

These uncertainties are wide ranging and include political shifts in respect of governmental elections, proposed tax reforms, and ever evolving regulatory frameworks. While such unpredictability often presents challenges, it can also provide unique structuring opportunities for those individuals and families who are prepared to adapt.

Key Changes Impacting Private Clients In 2024

Elections

2024, the ultimate global election year. With elections already held across the UK, France and India, and the upcoming US election looming, key shifts in power amongst these respective economic powers are likely to have a significant impact on private wealth structuring in the near future. Changes in government policies, tax laws and foreign investment legislation, all of which are key considerations for private clients and their offshore structures.

Political changes can often alter the dynamic of professional offshore jurisdictions like Guernsey, resulting in a re-evaluation of asset types and locations, in conjunction with offshore structures held. In the UK, despite a historic landslide result for the Labour party, whether or not policies will come to fruition remains to be seen, the release of the Autumn Budget is likely to be a key indicator of the path ahead.

Whilst election cycles can often create uncertainty, they do also present opportunities for entrepreneurial clients and families. It is important that private clients and their trusted professional advisors remain alive to such opportunities and are prepared to act when the time comes.

Tax Reforms

Coinciding with the global elections unfolding, countries are reviewing their tax policies to either drive new revenue or attract capital investment, the choice of which is often driven by shifts in political ideology. Governments continue to battle financial difficulties post-pandemic and tax is under the spotlight.

In the UK for example, we can expect to see tax changes emerge as Labour step into power. Proposed tax reforms can present an opportunity to restructure offshore investments in a more efficient manner, and certainly accelerate discussions previously held, which have not yet materialised due to a previous reluctance to change.

Regulations

Global financial markets, in particular professional offshore centres, remain subject to increased scrutiny and regulation. Initiatives aimed at combating tax evasion, money laundering, and terrorism financing are ever-evolving. As a result, enhanced due diligence requirements and the push for greater transparency mean that private clients need to ensure their affairs are in order from a regulatory perspective while still being able to achieve their desired outcome. It should be noted that regulation should not always be seen as an administrative burden.

We increasingly encounter private clients who are now much more aware of the benefits regulation can provide, and - most importantly - the adverse consequences of working with jurisdictions and service providers that do not operate within a well-regulated environment.

In Guernsey, we have certainly seen that an increased focus on regulation is an attraction to private clients and their respective corporate partners who take comfort investing their assets in a reputable jurisdiction with a trusted professional service provider.

Strategies For Private Clients Preparing For Market Changes

Stay Informed

In today's world private clients do not struggle to keep appraised of breaking political and economic news. Being alive to such updates means there are no surprises and preparation is a key strategy to ensuring any required changes are not an afterthought. Keeping track of pending tax and legal reforms (in conjunction with views of their professional trusted advisors, who themselves will be following such updates closely) is vitally important to ensure there are no adverse repercussions of not acting promptly.

Consulting Experts

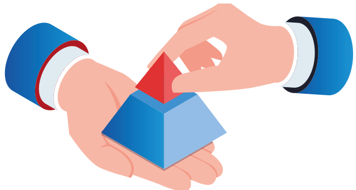
Conversations should be starting now to ensure all the necessary financial and tax planning is undertaken with the relevant experts. Advisors can provide insights into how proposed changes in law and policy might impact client assets and structures held. It is also an opportunity to discuss with your advisors the options available moving forwards, which can be considered through a scenario planning exercise. This is something we have been actively discussing with our own private clients and families in Guernsey, and across our offices worldwide.

Diversify

Diversification remains a fundamental strategy when mitigating risk in an uncertain environment. By spreading investments across different asset classes and jurisdictions, private clients can protect themselves against the risk concentrated in any single country or market segment. Such an example of this would be the holding of UK property through professional offshore structures which can create a maze of tax reporting for offshore trustees and service providers. It is important to implement a diversification strategy to ensure the risk associated with a particular asset or structure is mitigated.

Leverage Flexible Structuring Options

There are now a number of flexible and attractive structuring options for private clients and families which range from the use of trusts, foundations, holding companies and partnerships, all of which can provide unique structuring opportunities for their private wealth assets, particularly when having to adapt to significant changes. These structures can often facilitate the swift reallocation of assets or modification of client structures in response to new laws or fiscal policies.



In Summary

Navigating the uncertainties of 2024 requires a proactive and informed approach from private clients holding offshore assets, together with their advisors. By understanding the specific challenges and potential opportunities these uncertainties present, and by preparing strategic responses, clients can not only mitigate risks but also position themselves to take advantage of new possibilities. The key lies in timely adaptation and the strategic use of offshore structuring opportunities to ensure the resilience and growth of their investments in a fluctuating global environment.

ZEDRA have a skilled private client and corporate team that are experienced in managing such client structures, preparing for an unknown future, and adapting to the circumstances presented. It is clear that the key to future success is having those conversations now with private clients and families to ensure all scenarios are planned for and the appropriate opportunities identified.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HNWS: UNDERSTANDING HMRC'S OFFSHORE INFORMATION GATHERING CAPABILITIES

Authored by: Michelle Sloane (Partner) and Liam McKay (Senior Associate) – RPC

Wealthy individuals have long been the focus of a substantial part of HMRC's compliance activities, but a difficult economic climate together with a looming general election and possible change of government is likely to lead to even greater scrutiny of HNWs by HMRC in the short term. Much of that scrutiny will be driven, as it is now, by the vast amounts of information HMRC gathers about the financial affairs of HNWs and which it uses to identify potential non-compliance risks and inform its decisions on the civil enquiries and criminal investigations it undertakes. Understanding the key aspects of HMRC's information gathering capabilities, including how and from where HMRC obtains information, is therefore critical to ensuring that the tax affairs of HNWs are efficiently managed. In this article, we focus on HMRC's offshore information gathering capabilities.

Wealthy taxpayers are dealt with by the Wealthy Team within HMRC's Customer Compliance Group.

Wealthy taxpayers are defined by HMRC as individuals with incomes of £200,000 or more, or assets equal to or above £2m in any of the last three years.

HMRC advises that it applies a risk-based model utilising high quality intelligence to identify wealthy taxpayers with potential errors in their tax returns. As to that intelligence, HMRC holds significant amounts of information collected from both internal and external sources. The key sources are as follows:

HMRC's "Connect" computer system and HMRC sources.

HMRC maintains a high degree of secrecy around its Connect computer system, its capabilities and how it operates.

However, it is understood that Connect is a highly sophisticated data mining system that sifts through databanks of personal and commercial information, and compares that information against that provided to HMRC by taxpayers themselves. Connect looks for discrepancies in the data to identify potential non-compliance, which may lead to an HMRC enquiry or investigation.

While it is difficult to obtain any official statements on Connect, it has been said that the system sifts more data than that stored in the British Library, and the information it can gather includes everything from bank records, land registry records and DVLA records to information on online platforms and social media. It is also understood that Connect interfaces with British Overseas Territories and around 60 other OECD countries.

As well as Connect, HMRC utilises its own internal sources to obtain information about HNWs. HMRC is a vast organisation, with various teams and directorates responsible for different parts of the tax system.

They include the Wealthy Team, HMRC's Fraud Investigation Service (FIS) and the Counter-Avoidance Directorate and, as part of their activities, they obtain large amounts of information which they share with each other.

Other potential internal sources of information on HNWs include the Trust Registration Service, the Register of Overseas Entities, and the World Wide Disclosure Facility.

Foreign Sources of Information on HNWs

HMRC is increasingly more connected with regulators and financial institutions abroad, giving it access to unprecedented levels of financial information about HNWs at an international level. The key mechanisms by which HMRC obtains information from, and indeed shares information with, foreign sources are:

- The Common Reporting Standard (CRS), which was developed by the OECD and provides for the automatic exchange of financial account information between those jurisdictions that have signed-up to the measure. To date, more than 100 jurisdictions have committed to adopting the CRS, and a significant number of countries have activated agreements in place to exchange information with the UK, including the Bahamas, Barbados, the British Virgin Islands, the Cayman Islands and the Isle of Man. The International Tax Compliance Regulations 2015 require UK Financial Institutions, such as banks and building societies, to collect, maintain and report information for exchange with CRS jurisdictions.
- Tax Information Exchange Agreements, which are described by HMRC as bilateral agreements under which territories agree to co-operate in tax matters through exchange of information. The UK has entered into such agreements with a number of countries, including the Bahamas, Belize, British Virgin Islands, and the Isle of Man.
- Tax Treaties, which are bilateral tax agreements between the UK and other countries and that may make provision for the exchange of information.

Tax crime has become increasingly complex and international in nature as global economies and technology has developed.

HMRC have been building their global connections and data sharing capability in order to prevent taxpayers slipping between jurisdictional cracks.

At the cornerstone of this, HMRC is a founding member of the joint chiefs of global tax enforcement (J5), which was formed in 2018 in response to a call from the OECD for greater international co-operation to tackle tax crime. The J5 is an alliance of tax authorities from the UK, Canada, the Netherlands, United States and Australia who work together to gather information, share intelligence and conduct coordinated operations against tax fraud. The J5 have also invested in a digital platform which enables the countries to compare, analyse and exchange real-time data to enable them to identify risk areas and financial anomalies to then investigate.

Conclusion

HMRC has an ever-increasing arsenal of sophisticated tools for gathering offshore information about the financial affairs of taxpayers and, perhaps not surprisingly, HNW individuals are a particular focus when it comes to deploying those tools. The advent of automatic exchange of information and AI developments in particular will make HMRC's task of ensuring tax compliance easier than it has been in the past and will likely place taxpayers at a disadvantage when it comes to challenging HMRC's enquiries and investigations. It is therefore crucial that HNWs familiarise themselves with the wide range of sources from which HMRC can and does obtain information about their financial affairs and consider what that might mean for their own tax compliance.

GLOBAL PROPERTY MANAGEMENT: CHALLENGES AND SOLUTIONS FOR HIGH-NET-WORTH OWNERS

Authored by: Esther Smyth (Senior Trust Officer)- Saffery Trust

Reportedly the biggest store of global wealth1 – estimated at close to USD 380 trillion – 'property' remains a hugely popular investment for high-net-worth individuals around the world.

Offering a tangible asset with the potential for consistent returns, and appreciating in value over time, the appeal of maintaining a property portfolio continues to attract high-net-worth individuals and families.

In fact, according to the 2024 Wealth Report2, 70% of respondents already possess multiple properties, with an additional 23% expressing a desire to expand their holdings.

For wealthy individuals who live abroad, overseeing their properties can become a daunting challenge, fraught with concerns about damage, maintenance, and unforeseen risks.

Challenges

One of the biggest concerns for affluent property owners is the potential for damage to their investments. From luxurious estates to high-rise condominiums, every property is vulnerable to various threats, ranging from natural disasters to human error.

According to the Wealth Report[3] , a staggering 71% of respondents cited damage during renovations as their top concern, highlighting the inherent risks associated with property upkeep and enhancement.

This concern was followed closely by exposure to extreme weather due to climate change. Aside from physical damage to property, it is estimated that annual returns on real estate investments could reduce by up to 40% by 2030[4] due to the impacts of climate change, highlighting the validity of property owners' concerns and emphasising the importance of proactive measures to mitigate risks and safeguard investments.

For owners living thousands of miles away from their properties, the administrative burdens and logistical challenges of owning this type of asset are amplified, adding an extra layer of complexity to the already demanding task of property management.

Moreover, financial obligations associated

with property ownership can be particularly burdensome for individuals living abroad. Property taxes, insurance premiums, mortgage payments, and other recurring expenses demand meticulous attention to detail and timely payments to avoid penalties or legal complications. Failure to stay abreast of these financial responsibilities can have detrimental consequences for property owners, regardless of their wealth or status.

Tenant management poses another significant challenge for wealthy property owners residing abroad. Whether leasing out residential apartments or commercial spaces, dealing with tenants requires constant attention and effective communication. From rent collection to addressing maintenance requests and

1 https://www.savills.com/impacts/market-trends/the-total-value-of-global-real-estate-property-remains-the-worlds-biggest-store-of-wealth.html
2 https://www.chubb.com/content/dam/chubb-sites/chubb-com/uk-en/individuals-families/wealth-report/chubb_uk_wealth_report.pdf
3 https://www.chubb.com/content/dam/chubb-sites/chubb-com/uk-en/individuals-families/wealth-report/chubb_uk_wealth_report.pdf
4 https://inventorybase.co.uk/blog/how-does-climate-change-impact-real-estate/

resolving disputes, absentee landlords must rely on trusted intermediaries to uphold their responsibilities and maintain positive tenant relationships.

Solutions

Considering these challenges, wealthy property owners must adopt strategic approaches to managing their global real estate portfolios effectively.

From conducting regular inspections and communicating regularly with tenants and agents, to obtaining adequate insurance, keeping comprehensive records, and implementing security measures, there are a multitude of steps owners can take to help mitigate the risk of property damage or loss.

Additionally, staying informed about local regulations, market trends, and emerging risks is essential for making informed decisions and safeguarding long-term investments.

For high-net-worth property owners living abroad, these measures to mitigate risk pose challenges, not only practically, but also due to the significant time burden required.

For some, a workable solution is to enlist a private client service provider, engaging reliable trustees and advisors to shoulder the administrative burden of, and ultimate responsibility for, property management and maintenance.

Swiss Trustees are a particularly attractive option for wealthy individuals and families as they can choose the governing law of their trust from any relevant trust jurisdiction.

Trustees and Safeguarding Property

Trustees have a fiduciary duty to manage and look after assets for their clients in a responsible and trustworthy manner. This includes the establishment and administration of appropriate structures to protect a broad spectrum of assets, including residential, commercial, and developmental properties.

Working in partnership with clients and their diverse property portfolios, trustees will utilise a global network of specialist intermediaries to navigate the complexities of multi-jurisdictional property management.

It is essential that a trustee has expert contacts across a wide spectrum of professional fields, including lawyers, tax advisors, letting agents and property developers. These connections ensure access to specialised expertise and resources as needed.

From managing lease agreements and rental payments, to understanding the fiscal framework around the purchase of a large property asset, trustees may undertake both granular and 'big picture' tasks relating to property ownership, ultimately saving their client time, and reducing stress.

It is important for trustees to understand the experience and expertise of their clients, and their wishes. For example, a client who has accumulated wealth through construction and property development may express a wish to be more involved in this area of property management than a client who perhaps views property as a holiday home.

When a client engages a trustee, they transfer legal ownership of their property – and all other assets – that are held within the trust.

Transferring ownership of property to a trustee also safeguards the asset(s) from legal claims – for example in the case of financial difficulties or family disputes – and ensures seamless succession planning. There are also significant tax planning benefits to holding property within appropriate wealth structures.

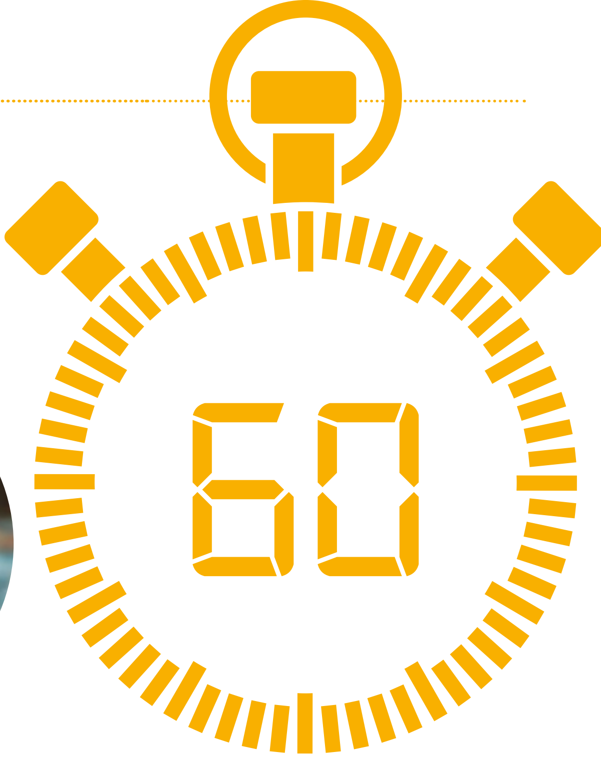
Finding The Right Fit

Relinquishing ownership of property – or any other asset – can be a daunting prospect. It is essential for individuals and families to find advisors and intermediaries that they trust.

While each client will have different requirements on partners for their wealth journey, key considerations for selecting service providers may include:

- **Longevity:** Is the firm well established?
- **Stability:** Is the firm independent, or has it gone through multiple changes/acquisitions?
- **Experience:** Can the firm evidence direct experience of property portfolios?
- **Ownership:** Is the firm independent and able to make autonomous decision? If bank-owned/private equity, is there a potential for conflicts of interest with long-generational goals?
- **Fees:** Have you been provided with all costs upfront, or could you be subjected to hidden extras?
- **Reputation:** Do other professionals or peers have a positive view of the firm?

Ultimately, the challenges and risks of property ownership and management from abroad can be overcome or mitigated by appointing experienced service providers to dedicate the necessary time and resources. By entrusting the property to experienced professionals, owners can enjoy peace of mind knowing that their investment is in capable hands, even when located overseas.



60-SECONDS WITH:

JACO VAN JAARSVELD
HEAD OF FIDUCIARY SERVISES MAURITIUS
STANDARD BANK

Q: Imagine you no longer have to work. How would you spend your weekdays?

A: If at all possible, I will continue working! If not, I will get involved in projects that can positively impact others' lives. Perhaps I'll start playing golf once a week, I don't know!

Q: What do you see as the most rewarding thing about your job?

A: Creating a mechanism for people to preserve and grow their wealth, plan, make provision and leave a legacy, also to expand a business, partner with others and build something which will hopefully last for a long time.

Q: What's the strangest, most exciting thing you have done in your career?

A: Setting up my own law firm as a young lawyer. Also, moving to Mauritius over 5 years ago to fully entrench myself in the financial services industry was pretty exciting.

Q: What is one work related goal you would like to achieve in the next five years?

A: For Standard Bank's trust company to be the best fiduciary services provider in Mauritius and Jersey. If you cannot be the best in your industry, what is the point of being in that industry? (I borrowed this from the book 'Good to Great' by Jim Collins).

Q: What is the most significant trend in your practice today?

A: Transparency and value add.

Q: What book do you think everyone should read, and why?

A: 'Rich Dad Poor Dad' by Robert T Kiyosaki. It teaches about financial literacy which I think can benefit us all.

Q: Dead or alive, which famous person would you most like to have dinner with, and why?

A: Nelson Mandela, he was an inspirational leader who unselfishly served South Africa and others. We need more such leadership in governments and corporates all over the world.

Q: What is the best film of all time?

A: Braveheart: never stop trying and when all is done, depart this life in peace. Freedom!!

Q: What legacy would you hope to leave behind?

A: That hard work, professionalism, and keeping to the highest ethical standards pay off.

Q: Where has been your favorite holiday destination and why?

A: Jeffreys Bay, South Africa. It's where I went on holiday as a child and I still have family there, it's the place I love going back most to relax and play mini golf (aka putt-putt).

Q: Do you have any hidden talents?

A: I can sing a little and, apparently, I make great coffee.

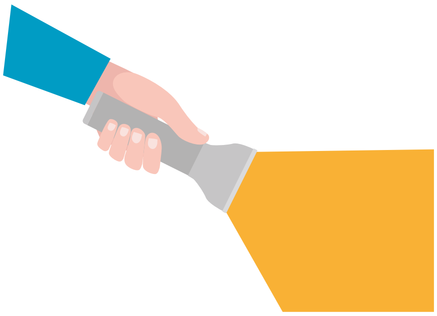
Q: What piece of advice would you give to your younger self?

A: To not be afraid of anything really and enjoy the moment.

SHINING A LIGHT

Authored by: Matthew Howson (Counsel) – Harneys

As radiant as the stars shining over the Caribbean Sea, we see the Cayman Islands' STAR trust growing in popularity in recent years, particularly in Europe and the US, as advisors have discovered the different ways it can be used, and other jurisdictions look to copy its principles. Now a new case confirms its responsible use in the modern trust industry.



By way of reminder, the key features of a STAR trust are that, aside from existing indefinitely with no compulsory trust/perpetuity period

- It can benefit beneficiaries, or purposes, or both.
- The beneficiaries have no right to information or to bring proceedings against the trustee concerning the trust's administration. Instead one or more enforcers must be appointed, which will have such rights and which is usually defined as a fiduciary role.

The first feature opens up interesting uses for such trusts. More straightforwardly, it can be used to create a reserved powers trust, for example by way of making one of its purposes that of following the instructions of selected persons such as the settlor and their advisors. Or, if reserved powers are not desired, a more innovative use is to keep the trustee in control but make a purpose that of investing in ESG assets, or cryptocurrency, or art.

Thus, one can have a "traditional" trust with beneficiaries and a trustee with full investment and management duties, but allowing the particular slants on investment that some contemporary settlors prefer, without the trustee incurring the usual 'prudent investor' problem.

However, the second key feature is the one discussed in our case, AA v JTC (Cayman) Limited (FSD 12 of 2024 (IKJ)): in essence, does an enforcer have standing to apply for the Court's blessing of a "momentous" decision on the same legal basis as a trustee, and if yes, how will the Court approach such an application?

In this case, the enforcer of the relevant trust wished to instruct the trustee to exercise certain rights attached to shares held by the trustee for the benefit of the trust. The exercise of these share rights was central to the purpose of the trust.

Section 48 of the Cayman Trusts Act (2021 revision) has essentially codified what is known as Public Trustee v Cooper [2001] WTLR 901 applications. Section 48 itself only mentions applications by trustees or personal representatives. However, following representation by Richard Wilson KC on behalf of the enforcer, the Court agreed that the part of the Act dealing with STAR trusts, in particular sections 98 and 101-102, serves to modify the general parts of the Act so far as they relate to such trusts.

It was particularly interesting that the Court considered section 101(2): 'Subject to evidence of a contrary intention, an enforcer is deemed to have a fiduciary duty to act responsibly with a view to the proper execution of the trust.

This is because like other offshore courts, the Cayman Court is determined to ensure the proper exercise of fiduciary powers. This focus was in evidence when Kawaley J considered the application itself. He classified it as a 'category 2' case under Cooper:

'where the issue is whether the proposed course of action is a proper exercise of the trustees' powers where there is no real doubt as to the nature of the trustees' powers and the trustees have decided how they want to exercise them but, because the decision is particularly momentous, the trustees wish to obtain the blessing of the court for the action on which they have resolved and which is within their powers.'

This is probably the most typical category of application we see, so it is helpful that the Court has given a further example of how they would approach them (agreeing to provide their reasoning to the public upon representation). The Cayman Court applied, as it has done in other such cases before it, the following tests:

- does the trustee or enforcer have the power to enter into the proposed transaction?
- is the Court satisfied that the trustee (or enforcer) has genuinely concluded that the proposed transaction is in the interests of the trust and the beneficiaries and/or in furtherance of its purposes?
- is the Court satisfied that a reasonable trustee (or enforcer) would arrive at the relevant conclusion?
- does the trustee (or enforcer) have any conflict of interests which prevents the Court from granting the approval sought?'

The four requirements were satisfied here and in the Court's reasons we see the heavy imprint of fiduciary duty.

Section 48 already cancels any protection provided by an application where 'any fraud, wilful concealment or misrepresentation was committed' in obtaining it, in other words full and frank disclosure is expected.

Now in applying these tests, the Court was particularly pleased that the Enforcer had 'genuinely decided that the proposed instruction to the Trustee was in the best interests of the Trust and in furtherance of the purposes for which it was established', and that the decision 'followed careful deliberation and receipt of appropriate legal advice'.

The fourth test is probably most interesting, especially where the enforcer's role is classed as fiduciary, because enforcers will often be family members or advisors of the settlor and hence more often have a conflict of interest (again, unlike standard purpose trusts, STAR trusts can have beneficiaries). Here the enforcer may have had arguable potential conflicts, but properly disclosed them and the Court considered that they were not impeded by those potential conflicts from concluding that it was appropriate to give the relevant instruction.

The case of AA v JTC (Cayman) Limited therefore not only shows that STAR enforcers can make Cooper applications to the Cayman Court in the same way as trustees. It also repeats that the Court, although not placing onerous demands on applicants, will not act as a mere rubber stamp. It expects to see the same careful deliberation and proper motives as we would expect from any fiduciary role.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LIFE INSURANCE AND OFFSHORE CLIENTS

Authored by: Jacob Fay (Protection Specialist) – John Lamb Hill Oldridge

Placing life insurance for clients based offshore who are looking for cover against UK IHT liabilities can present initial challenges, particularly regarding the structuring of cover. We see a significant number of offshore clients who hold UK situs assets which are therefore subject to UK IHT. Typically, these IHT-liable assets are properties, while other assets subject to UK IHT are often held in Excluded Property Trusts (EPTs). Currently, assets within EPTs are excluded from an individual's estate for IHT purposes.

However, Labour's proposals suggest that EPTs will fall within the UK IHT scope from April 5, 2025. This could significantly increase the number of offshore clients facing UK IHT liabilities or raise their existing liabilities. Of course, this proposed legislation is subject to consultation and the outcome of the 2024 election.

Within life insurance markets, the ability to obtain cover is always based on residency rather than domicile. The cover we are able to procure, and the providers and markets we are able to utilise, will depend on both the client's nationality and residency. It is crucial to establish the structure of the cover before underwriting begins to provide clients with an accurate reflection of cost and medical requirements.

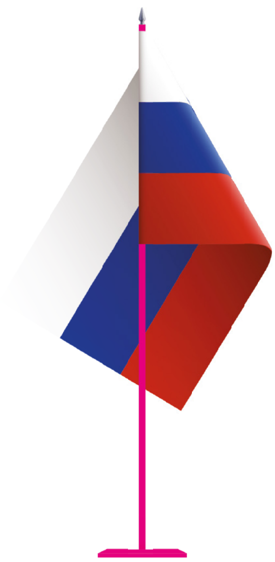
For UK IHT purposes, we typically prefer to use the UK market for three main reasons: lower costs for the client, full Financial Services Compensation Scheme (FSCS) protection, and avoiding currency risk (a sterling liability should ideally be covered in sterling). For non-UK residents and nationals, we may be able to consider using a UK trust as the applicant for cover and policyowner from the outset, provided the beneficiaries are UK residents.

In this scenario, as the life assured is still non-UK resident, the premiums would likely incur a residency loading.

However, having access to the UK market usually results in more cost-effective premiums compared to using offshore markets. Depending on the client's individual circumstances, we may have to obtain cover in the offshore or US markets. This remains a useful option for non-UK residents and nationals and can be the best option for some individuals.

Following the EU referendum, the UK IFA market cannot provide advice to clients resident in Europe, even if they are UK nationals. Instead, these clients need to be referred to an EU-regulated or US broker.

Regardless of these options, there are certain circumstances where insurers will not offer cover at all. Firstly, client's resident in or travelling to a warzone or nearby areas will not be offered cover. From an underwriting perspective the risk is too significant to the insurer. In certain circumstances they may offer cover with an exclusion for travel against the Foreign, Commonwealth and Development (FCO) advice.

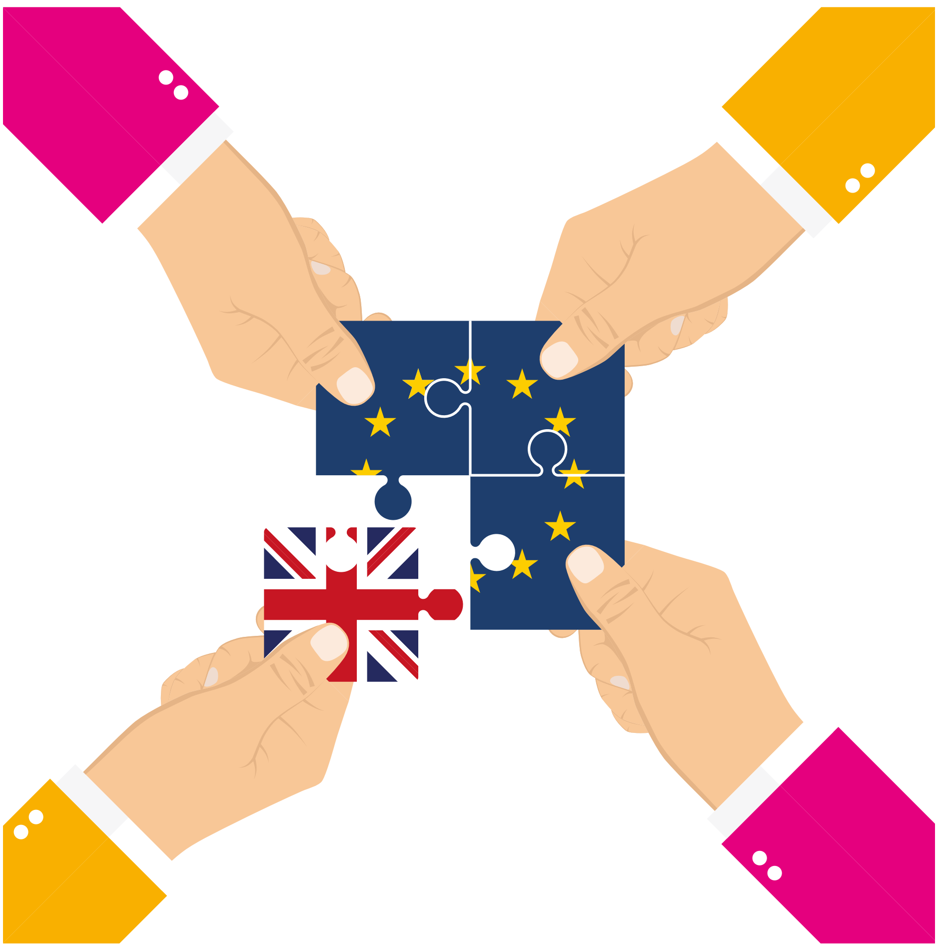


Secondly, the UK market is very hesitant to cover Russian nationals even with significant due diligence and clear source of wealth evidence. If a client still has links to Russian corporations or travels there, even to visit family, the insurers are unlikely to be willing to offer cover in the current climate.

In summary, structuring life insurance for offshore clients, particularly those with UK situs assets, requires careful consideration of the evolving legislative landscape and the client's residency status. Utilising the UK market for IHT purposes offers several benefits, though it may involve a loading for non-UK residents.

Individual circumstances may necessitate exploring offshore or US markets.

Geopolitical factors and the aftermath of Brexit complicates the process, underscoring the importance of tailored advice and strategic planning in managing these challenges effectively. By addressing these complexities upfront, we ensure that our clients receive accurate cost assessments and appropriate coverage to meet their needs.



THE END OF THE NON-DOM REGIME: SPOTLIGHT ON US TAXPAYERS

Authored by Tom Buchan (Senior International Tax Manager) - SRLV

In the Spring Budget, Jeremy Hunt outlined the government's proposed changes to the non-domicile (non-dom) tax system. Here, we review how these proposals will impact US taxpayers living in the UK and which of them stand to benefit the most.

The Chancellor's announcements have widely been seen as an attempt to get ahead of the Labour Party's own proposals on the same issue. Notwithstanding the political context, the government's proposed changes seek to modernise the non-dom tax system and bring it into line with other European regimes from April 2025.

At the time of writing, it's uncertain whether the Chancellor's proposals will make it into a Finance Act, following the July election. However, the Labour Party have only criticised specific elements of the proposals, so we can therefore assume that the framework of the proposed changes will take effect, even if some minor details change.

The Framework

The proposed changes replace the UK's existing non-domicile tax system with a residency-based system, which is particularly favourable to new UK tax residents.

Individuals who have been non-UK resident for the past ten years, will receive a full tax exemption on foreign income or gains brought to the UK during the first four years of their UK residency.

For brevity and to maintain focus on US taxpayers, I will defer to my colleague's article, **THE END OF THE NON-DOM REGIME**[1], which outlines the proposed rules in more detail.

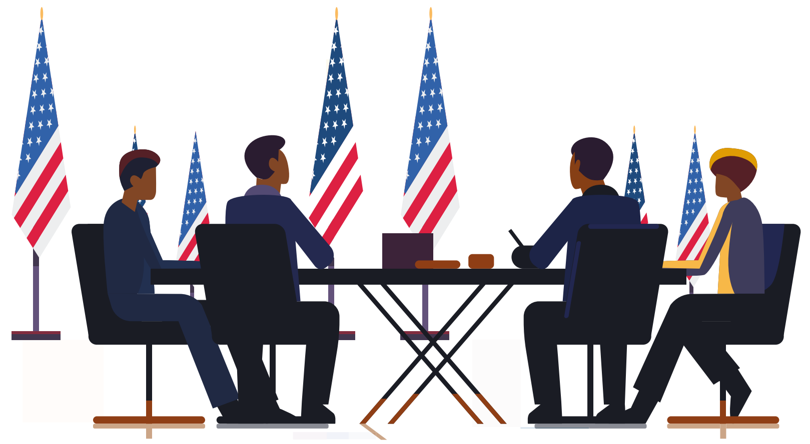
US Taxpayers & the

Remittance Basis: A Brief History

US taxpayers living in the UK have had a nuanced relationship with the existing non-dom remittance-based tax system, because they are still subject to the US tax system (often referred to as "worldwide tax").

In the context of this article, a US taxpayer is a US citizen or Green Card holder. Whilst it is technically possible to be living in the UK and still subject to the US tax system (because of the Substantial Presence Test), this is an esoteric example and not one on which to provide general commentary. Similarly, the concepts in this article don't apply to

1 https://www.srlv.co.uk/insights/spring-budget-2024-the-end-of-the-non-dom-regime/



Non-Resident Alien US taxpayers.

In general, the UK remittance basis is less attractive to US taxpayers than for non-US taxpayers, because foreign income or gains not subject to UK tax are still subject to US tax (assuming they are eligible to access the remittance basis).

Consequently, each year, US taxpayers carefully weigh the more limited benefit of the remittance basis against the restrictions on transferring money to the UK. The introduction of the Remittance Basis Charge complicated this annual calculation further, as the outcome relied on being able to utilise the Remittance Basis Charge as a credit against US tax.

The remittance basis provides an obvious benefit in limiting the interaction between the UK and US tax system and thus, lowering the compliance burden of US taxpayers and in many cases, reducing fees. Typically, a US taxpayer, who is living in the UK, would claim the remittance basis for the first seven years of UK tax residency and then move over to the arising basis (when the Remittance Basis Charge became relevant).

Proposed Changes and the Impact on US Taxpayers

There will be winners and losers under the proposed changes; the winners will be new arrivals to the UK who, for their first four years of residency, will be able to remit foreign income and gains to the UK tax-free. The losers will be the US taxpayers already living in the UK, whose ability to protect their foreign income, or gains, from UK tax will be reduced.

New Arrivals

The ability to bring foreign income or gains to the UK tax-free in the first four-years of residency will be a significant advantage for US taxpayers. Under the remittance basis, a common challenge for these individuals has been managing available UK funds (particularly when buying property). Under the current system, remitting foreign income or gains, which have been taxed in the US previously, often leads to double taxation, because of rules relating to the timing of foreign tax credit claims on US returns.

The proposed rules should also provide US taxpayers more time to plan their financial affairs. Currently, it has been advisable for a taxpayer's affairs to be aligned for both UK and US tax from day one of their UK tax residency. The proposed rules afford US taxpayers more time to align their affairs with the UK tax system. Importantly, it will give US taxpayers time to determine how long they are likely to stay in the UK and allow them to fine-tune their financial affairs accordingly.

Linked to this greater flexibility, US taxpayers will be able to retain their existing US advisors for longer as the interaction between the UK and US tax systems will be limited over the proposed four-year period. This affords US taxpayers more time to find UK advisors, should they wish to remain in the UK longer-term.

US Taxpayers resident for less than four years

For US taxpayers, who are resident in the UK for less than four years, there will be both winners and losers.

On one hand, their ability to protect foreign income or gains from UK tax will be reduced from seven years (under the current system) to four years.

However, these taxpayers will also have the ability to bring any previously unremitted foreign income or gains which had been held offshore to the UK, at a reduced 12% UK tax rate.

Depending on the final details, there may be opportunity to reduce the effective tax rate on the remittance through the use of tax credits.

US Taxpayers resident for more than four years

The impact of the reduced timeframe to protect foreign income or gains from UK tax will need to be assessed on a case-by-case basis. Many US taxpayers will have moved to the arising basis (worldwide basis) for UK tax already so won't see much change.

These individuals (provided they previously filed on the remittance basis) will be able to remit pre–April 2025 foreign income or gains at reduced 12% UK tax rate.

US taxpayers in this group still claiming the remittance basis should focus on aligning their UK and US tax affairs by April 2025.

Capital gains rebasing to 5 April 2019 – a note of caution

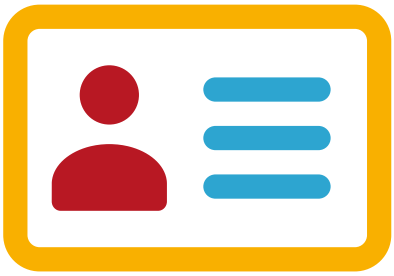
The proposed rules permit, as a transitionary measure, the rebasing of assets for capital gains tax to their 5 April 2019 value. For US taxpayers, the ability to rebase assets for UK tax, should be considered carefully, as the rebasing will not apply for US tax.

UK Inheritance Tax & Trusts

The government will consult on changing the UK Inheritance Tax (IHT) regime to a residence-based system. Under the current system, no IHT is due on the non-UK assets of non-UK domiciles until they have been UK resident for 15 out of the past 20 tax years. The proposed change is that it will require ten years of UK tax residence for worldwide assets to fall within the scope of UK Inheritance Tax.

There will be a corresponding ten-year 'tail' for those leaving the UK.

For US citizens/Green Card holders, who are also subject to IHT, their global position is typically governed by the US/UK Estate Tax Treaty. The wording of this treaty is important, as it assigns taxing rights based on the domicile of the individual. Although there is a presumption the proposed changes can operate alongside the existing treaty, confirmation from the government will be welcomed by the US/UK taxpayer community.



The Labour Party has indicated their view that non-UK trusts, which were settled before the settlor was deemed domiciled, will no longer be outside of the scope of IHT. Trusts have been a common planning tool for US taxpayers, enabling individuals to manage their IHT exposure, as well as crystallising the historically generous US estate tax allowance (which is due to reduce from 1 January 2026).

Removing the IHT protections will be a significant concern for US taxpayers and may drive some US taxpayers to leave the UK.

Uncertainty & Potential Change of Government

It is widely anticipated that the Labour Party will form the next government, following the UK elections on 4th July. This therefore presents some uncertainty around the current government's proposed rules and whether they will come into force.

Absent from the above commentary, is the proposed 50% reduction in the tax rate on foreign income for individuals transitioning out of the remittance basis during the 2025/26 tax year. The reason for this is that the Labour Party have suggested that they would not adopt this measure.

For many non-doms, a 'plan-but-take-no-action' approach has been adopted. Before acting on these proposed changes, many will want to wait until certainly is provided in the first Budget from a new government.

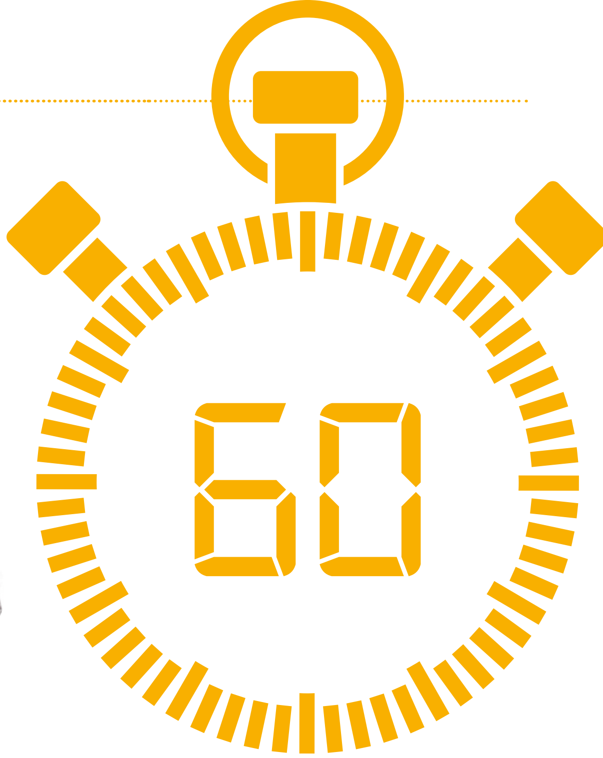
As the next budget is not expected until the autumn, this leaves very little time before the new system is introduced from April 2025.

For further information on the Spring Budget announcements or to discuss any of the issues raised, please contact Tom Buchan[2], Janice Lloyd[3] or Steve Wren[4] on 44 (0)20 7079 8888 or email tom.buchan@srlv.co.uk.

2 https://www.srlv.co.uk/people/tom-buchan/
3 https://www.srlv.co.uk/people/janice-lloyd/
4 https://www.srlv.co.uk/people/steve-wren/

60-SECONDS WITH:

KATIE DOUGLAS ASSOCIATE DIRECTOR HIGHVERN



Q Imagine you no longer have to work. How would you spend your weekdays?

A Doing something to keep me busy and active, that is good for the soul. Perhaps as a trustee of a philanthropic of charitable trust. Or something property related. I love interior design and décor. I've always wanted to run a cafe or small guesthouse so perhaps get a run-down building and bring life back into it, do the renovation, decoration and then run it.

Q What do you see as the most rewarding thing about your job?

A Building strong trusted relationships with clients, accompanying them on their journey and helping them achieve their goals. Sometimes it's a challenge to get there but that's what makes it so rewarding.

Q What's the strangest, most exciting thing you have done in your career?

A I get to meet and work with so many talented and interesting people in this role; clients, their families, and advisors. Its always fascinating to meet clients in their homes. You get to see much more of their personality in the comfort of their own homes and it's on these visits that some of the strangest and funniest moments happen.

Q What is one work related goal you would like to achieve in the next five years?

A Continue to bring recognition to the HIGHVERN brand and the great team of people behind it.

Q What is the most significant trend in your practice today?

A The upcoming changes to the non-dom regime is the topic of many discussions and will have huge implications for the industry. Although with the uncertainty about what changes will come into effect and when, we don't know exactly what the impact will be.
Also, we are going through the great wealth transfer and engagement with the next generation is key.

Q What book do you think everyone should read, and why?

A Nelson Mandela's *Long Walk to Freedom.* It is such a moving and inspiring story of struggle, perseverance, hope and triumph.

Q Dead or alive, which famous person would you most like to have dinner with, and why?

A Sir David Attenborough. He is so captivating and would have some wonderful stories.

Q What is the best film of all time?

A *The Goonies.* It's my childhood favourite and probably the movie I've seen the most.

Q What legacy would you hope to leave behind?

A The power of determination, perseverance and always acting with integrity.

Q Where has been your favorite holiday destination and why?

A Thailand. I practiced Muay Thai (Thai Boxing) for many years and have spent a lot of time there. It is such an amazing country with beautiful people. The culture, the food, the beaches, the mountains, the jungle; its all incredible.

Q Do you have any hidden talents?

A Puzzle solving

Q What piece of advice would you give to your younger self?

A Take every opportunity offered even if it puts you out of your comfort zone. It's in these environments that you will learn and grow.

NAVIGATING COMPLEXITIES:

BEST PRACTICES IN FAMILY GOVERNANCE FOR OFFSHORE WEALTH MANAGEMENT

Authored by: Tsitsi Mutendi (Co-Founder) – African Family Firms

In the realm of private wealth management, the importance of robust family governance cannot be overstated. As a Family Governance and Family Office advisor, I have witnessed firsthand the transformative impact that effective governance structures can have on families managing significant offshore assets. The complexities of such arrangements necessitate a nuanced approach that balances the unique needs of the family with the stringent regulatory environments of offshore jurisdictions. In this article, we will explore the best practices in family governance for offshore wealth management, emphasising key strategies that ensure sustainability, compliance, and harmony within the family unit.

Understanding Family Governance

Family governance refers to the system of processes, structures, and practices that guide family members in making decisions about their collective wealth and business interests. It encompasses everything from succession planning and conflict resolution to the establishment of family councils and constitutions. For families with offshore assets, these governance structures must also integrate with international legal and regulatory frameworks, adding an extra layer of complexity.

The Importance of a Family Constitution

One of the foundational elements of effective family governance is the family constitution. This document serves as a formal agreement among family members, outlining their shared values, vision, and objectives. It also sets forth the rules and procedures for decision-making, conflict resolution, and the management of family assets. In the context of offshore wealth management, a well-drafted family constitution can help navigate the diverse legal landscapes and ensure that family members are aligned on key issues.

A family constitution should be a living document, reviewed and updated regularly to reflect changes in the family's circumstances and external environment. It is crucial to involve all generations in the drafting process to ensure that the document reflects the collective will of the family and fosters a sense of ownership and commitment.

Establishing a Family Council

The family council is another critical component of family governance. This body typically includes representatives from different branches and generations of the family, tasked with overseeing the implementation of the family constitution and making decisions on strategic issues. For families with offshore wealth, the family council plays a vital role in coordinating with external advisors, such as legal, tax, and financial professionals, to ensure compliance with international regulations.

The effectiveness of a family council hinges on its structure and the clarity of its mandate. It should have a clear charter outlining its responsibilities, meeting frequency, and decision-making processes. Regular meetings and open communication are essential to build trust and ensure that all family members are informed and engaged.

Succession Planning

Succession planning is often one of the most challenging aspects of family governance, particularly for families with substantial offshore assets. A well-thought-out succession plan not only ensures the continuity of leadership and management but also helps prevent conflicts and preserve family harmony.

Key elements of a successful succession plan include identifying potential successors, providing them with the necessary training and development, and setting clear criteria for their selection. It is also important to consider the legal and tax implications of transferring assets across jurisdictions and to structure the plan in a way that minimises potential liabilities.

Involving external advisors with expertise in cross-border succession planning can be invaluable. These professionals can help navigate the complex legal and regulatory requirements and ensure that the succession plan is both compliant and tax-efficient.

Conflict Resolution Mechanisms

Conflict is an inevitable part of any family dynamic, and without proper mechanisms in place, it can threaten the stability and continuity of the family enterprise. Effective family governance includes clear procedures for resolving disputes, whether they arise from differences in business strategy, asset distribution, or personal relationships.

Mediation and arbitration are common methods of conflict resolution in family governance. These processes provide a structured framework for addressing disagreements and can help prevent conflicts from escalating into costly legal battles. Including conflict resolution clauses in the family constitution and establishing a standing committee within the family council to handle disputes can also be effective strategies.

Leveraging Professional Advisors

For families with offshore assets, engaging with professional advisors is not just a best practice; it is a necessity. Legal, tax, and financial advisors with expertise in offshore jurisdictions can provide critical guidance on compliance, asset protection, and tax optimisation.

A family office, whether dedicated to a single family or serving multiple families, can act as a centralised hub for coordinating these advisory services. The family office can also play a key role in implementing the family governance framework, managing day-to-day operations, and ensuring that the family's strategic objectives are met.

The Role of Education and Communication

Education and communication are the cornerstones of effective family governance. Ensuring that all family members, especially the younger generation, are well-informed about the family's values, governance structures, and business operations is essential for long-term sustainability.

Regular family meetings, retreats, and educational workshops can foster a culture of transparency and engagement. These gatherings provide an opportunity for family members to share their perspectives, learn about the family's assets and business interests, and develop the skills necessary to participate in governance and leadership roles.

Balancing Privacy and Transparency

One of the unique challenges for families with offshore wealth is balancing the need for privacy with the demands for transparency, particularly in the context of increasing global regulatory scrutiny. A well-structured family governance framework can help manage this balance by establishing clear policies on information sharing and disclosure.

While it is important to comply with legal and regulatory requirements, families should also consider the reputational risks associated with their offshore structures. Proactive communication and transparency with key stakeholders, such as banks and regulatory authorities, can help mitigate these risks and build trust.

Effective family governance is the cornerstone of sustainable offshore wealth management. By establishing clear structures and processes, involving professional advisors, and fostering a culture of education and communication, families can navigate the complexities of managing offshore assets while preserving harmony and achieving their long-term objectives.

Possible Pitfalls of Handling Offshore Wealth Without Governance or Best Practices

1 **Lack of Clear Decision-Making Processes**

Without established governance structures, families may struggle to make unified decisions regarding their wealth. This can lead to indecision, delays, or conflicting actions, ultimately hampering the effective management of assets.

Impact: Important decisions regarding investments, asset allocation, and business operations may be neglected or poorly executed, reducing the overall value and performance of the family's wealth.

2. **Increased Risk of Disputes and Conflicts**

In the absence of formal conflict resolution mechanisms, disagreements among family members can escalate into major disputes. These conflicts often arise over differing visions for the family's wealth, perceived unfairness in asset distribution, or personal issues.

Impact: Unresolved conflicts can lead to costly legal battles, damage familial relationships, and disrupt the management of assets. Prolonged disputes may also attract unwanted public attention and scrutiny.

3. **Regulatory and Compliance Challenges**

Offshore wealth is subject to complex international regulations. Without a clear governance framework, families may fail to stay compliant with tax laws, reporting requirements, and other regulatory obligations.

Impact: Non-compliance can result in severe penalties, fines, and legal repercussions. It can also damage the family's reputation and lead to the freezing or seizure of assets.

4. **Poor Succession Planning**

Without a well-defined succession plan, the transition of wealth and leadership from one generation to the next can be chaotic. This is particularly problematic in families where leadership roles and responsibilities are not clearly delineated.

Impact: The lack of a succession plan can lead to power struggles, loss of business continuity, and the potential fragmentation of the family's wealth. It can also cause significant tax liabilities and legal complications during the transfer of assets.

5. **Inefficient Asset Management**

Families without a structured governance framework may not have a coordinated approach to managing their assets. This can lead to inefficient asset allocation, missed investment opportunities, and higher operational costs.

Impact: Over time, inefficient management can erode the value of the family's wealth. The lack of a strategic investment plan can also result in a portfolio that does not align with the family's risk tolerance or long-term goals.

6. **Loss of Privacy and Increased Exposure**

Without clear policies on information sharing and confidentiality, families risk unintentional disclosure of sensitive information. This can happen through careless communication or inadequate data protection measures.

Impact: Breaches of privacy can expose the family to security threats, blackmail, and reputational damage. It can also make the family's financial situation more vulnerable to external scrutiny and legal challenges.

7. **Neglect of Philanthropic and Social Goals**

Families often have philanthropic goals that reflect their values and legacy. Without governance structures, these goals may not be strategically pursued or adequately funded.

Impact: Neglecting philanthropy can lead to missed opportunities for positive social impact and damage the family's legacy. It may also result in the inefficient use of resources allocated for charitable purposes.

Multicultural Families and Cross-Border Wealth Management

1. **Diverse Cultural Expectations and Values**

Multicultural families often have members with different cultural backgrounds and values. These differences can influence their expectations regarding wealth management, spending, and investments.

Impact: Cultural clashes can lead to misunderstandings and conflicts over financial decisions. It is important for family governance structures to acknowledge and respect these differences to ensure cohesive decision-making.

2. **Varied Legal and Tax Environments**

Family members who are citizens of different countries may be subject to diverse legal and tax regimes. This complexity can complicate the management and transfer of offshore assets.

Impact: Navigating multiple legal and tax systems requires specialized knowledge and planning. Without proper governance, families may face unexpected tax liabilities, legal hurdles, and difficulties in asset repatriation.

3. **Communication Barriers**

Multicultural families may encounter language barriers and differing communication styles, which can hinder effective collaboration and decision-making.

Impact: Miscommunication can lead to misunderstandings and conflicts. Establishing clear and inclusive communication protocols is essential for maintaining transparency and unity within the family.

4. **Differing Risk Tolerances and Investment Preferences**

Description: Family members from different cultural backgrounds may have varying attitudes towards risk and investment strategies. These differences can affect the overall investment approach of the family's wealth.

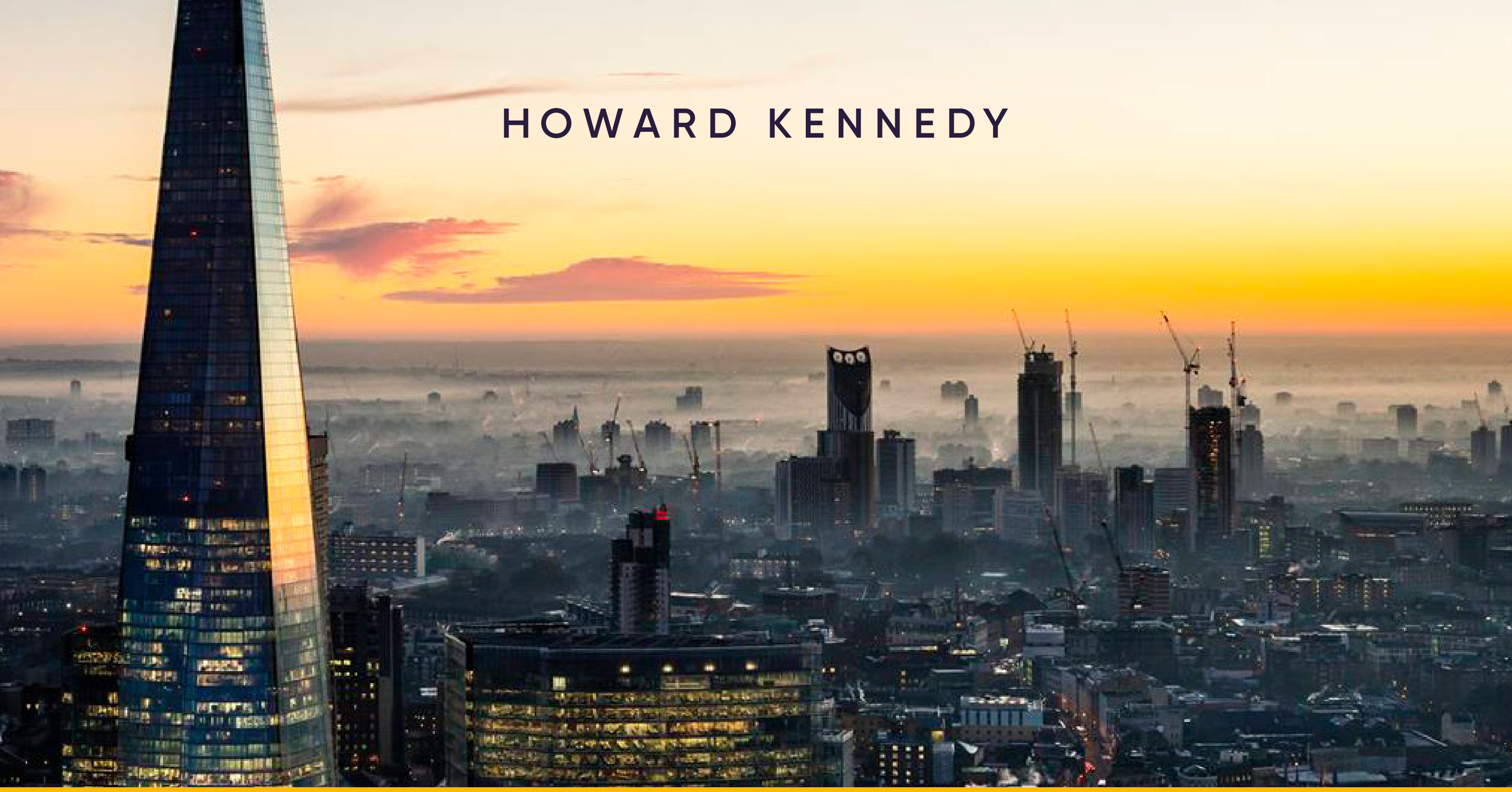
Impact: Without a unified investment strategy, the family's portfolio may become fragmented and misaligned with its overall goals. Governance structures should incorporate mechanisms to reconcile these differences and develop a cohesive investment plan.

5. **Challenges in Implementing a Unified Governance Framework**

Creating a governance framework that accommodates the diverse needs and perspectives of a multicultural family can be challenging. It requires sensitivity to cultural nuances and a flexible approach.

Impact: Failure to implement an inclusive governance framework can lead to disengagement and dissatisfaction among family members. It is crucial to involve representatives from all cultural backgrounds in the governance process to foster inclusivity and commitment.

Handling offshore wealth without proper governance structures and best practices can expose families to a myriad of risks and challenges. From regulatory compliance issues to family conflicts, the pitfalls are numerous and significant. For multicultural families, these challenges are compounded by the need to navigate diverse cultural expectations and legal environments. By implementing robust governance frameworks, engaging professional advisors, and fostering inclusive communication, families can mitigate these risks and ensure the sustainable management of their offshore wealth. Effective family governance not only protects the family's assets but also preserves its legacy and promotes harmony across generations.



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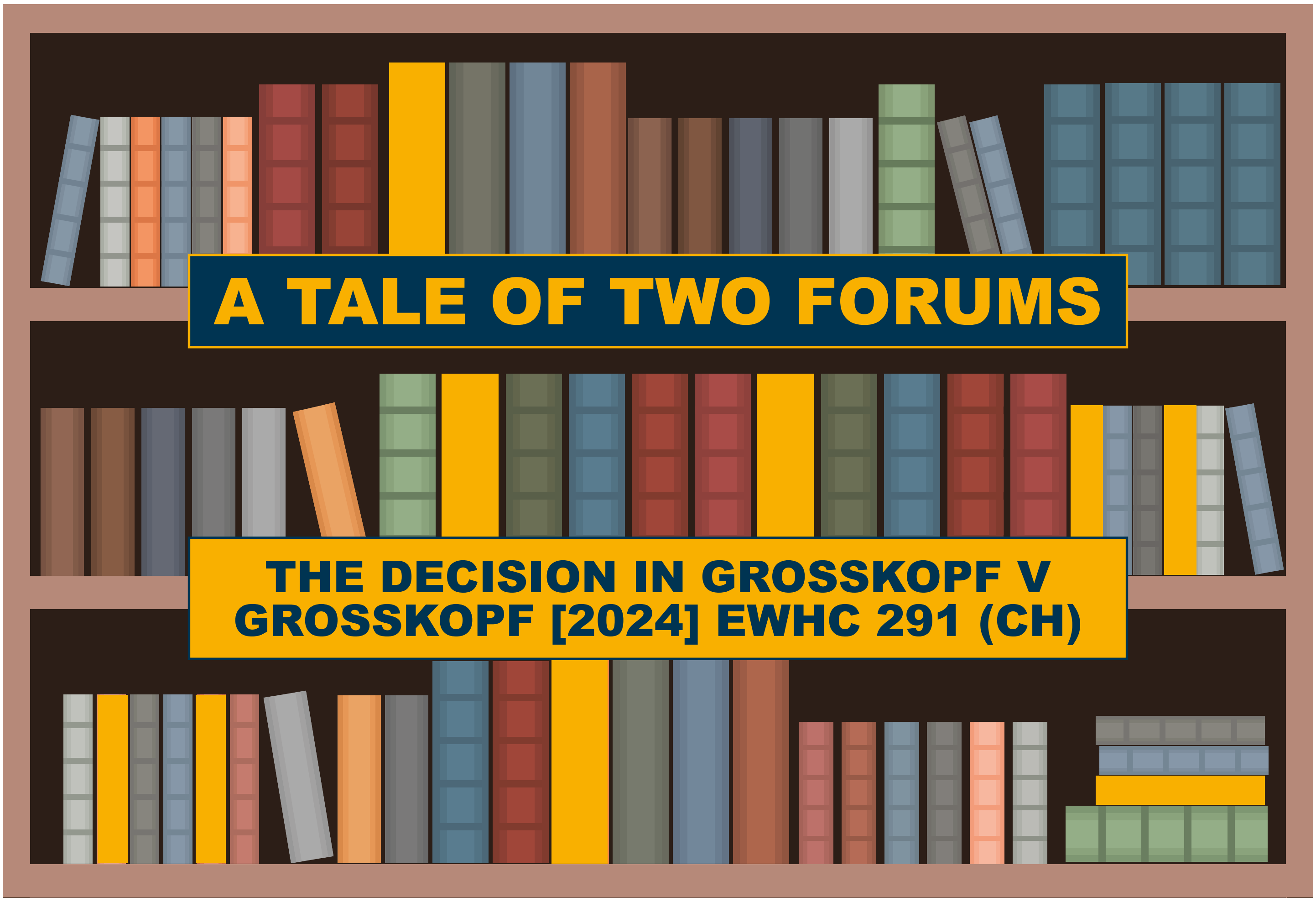


A TALE OF TWO FORUMS

THE DECISION IN GROSSKOPF V GROSSKOPF [2024] EWHC 291 (CH)

Authored by: Ernest Leung (Barrister) – Wilberforce Chambers

The decision by Master Clark on 16 February 2024 in Grosskopf v Grosskopf (two members of Wilberforce Chambers: Fenner Moeran KC and Simon Atkinson acted for the C in this case) is a judgment on an increasingly important point – to what extent can parties contractually agree to submit their trust dispute to arbitration? Does section 9 of the Arbitration Act 1996 bite in circumstances where the claimant seeks a replacement of the trustee with a judicial trustee?

The answer it would seem is that you can, but the arbitrators will have their hands relatively tied as to what relief they can order.

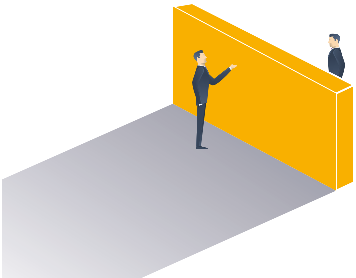
The basic facts of the case are as follows: C is the beneficiary of a trust established in 1974 by the Grosskopfs and Ds the trustees.

C sought the appointment of a judicial trustee on the basis that Ds have been in breach of their duties as trustees and may be dishonest such that their conduct should be investigated independently.

On 14 June 2017, however, the parties agreed into an arbitration agreement in favour of the Beth Din of the Federation of Synagogues. Four interim awards were issued by the Beth Din; these contained extensive orders on disclosure, and for an account of the trust.

It was further found that in January 2019, C submitted to the Beth Din a Details of Claim and sought relief materially identical to those before the court.

Against this background, C issued the present claim as the arbitration in the Beth Din rumbled on.



The Master considered the application of s. 9 of the Arbitration Act 1996 which provides for an automatic stay of legal proceedings in respect of a matter which under the agreement is referred to arbitration.

The Master considered that the claim fell within the scope of the arbitration clause and, in any event since the question of jurisdiction was addressed explicitly by the Beth Din and C participated in those proceedings, an issue estoppel applied to bar C from taking a second bite at the cherry (at [55])

The more interesting points in this case are the submissions advanced by C in support of the proposition that the claim was incapable of arbitration as the appointment of a judicial trustee lay in the exclusive jurisdiction of the court.

The High Court has a supervisory jurisdiction over trusts and to ensure that trusts are properly administered.

Furthermore, it was submitted that since not all the beneficiaries (including minors and unborns) were made parties to the proceedings, the arbitral proceedings were not properly constituted.

Master Clark rejected these submissions and these are the key-takeaways from the judgment:

While the court does have a supervisory jurisdiction over trusts, '[u]nless and until it is invoked, private trusts are left to operate outside court' (at [62]).

It is irrelevant whether all beneficiaries have participated in the Beth Din as beneficiaries 'have no general right to control the exercise of a power of appointment of new trustees' anyways (at [64]). However, in some circumstances, if the beneficiaries have not been properly informed or consulted, this may provide a basis for setting aside the appointment.

The fact that the Beth Din has no jurisdiction to make an order to appoint a judicial trustee does not render the matter non-arbitrable. It merely restricts the kinds of relief the arbitral tribunal can give, for instance the arbitral tribunal could exercise its in personam jurisdiction to direct Ds to step down but it could not appoint a judicial trustee; the latter is a matter within the exclusive jurisdiction of the court under s. 41(1) of the Trustee Act 1925 (at [65]).

The Master further endorsed the reasoning in Rhinehart v Welker [2012] NSWCA 95, a New South Wales Court of Appeal decision which expressed the view that submitting disputes involving the removal of a trustee to an arbitration was not contrary to public policy.

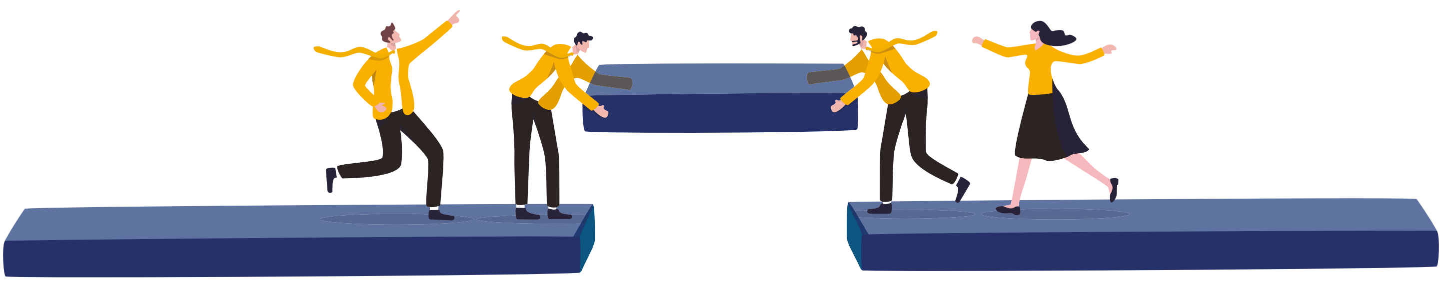
An analogy was also drawn with FamilyMart China Holding Co Ltd v Ting Chuan (Cayman Islands) Holding Corporation [2023] UKPC 33, a Privy Council decision which laid down the principle that a winding up petition on just and equitable grounds is arbitrable.

While the arbitral tribunal cannot make a winding up order, it can decide whether one party has breached its obligations under a shareholders' agreement or equitable rights arising from the parties' relationship have been flouted.

Similar principles can be distilled from decisions in relation to unfair prejudice petitions brought in the agreed forum outside of the company's place of incorporation. In Fulham Football Club (1987) Ltd v Richards [2011] EWCA Civ 855, Patten LJ considered that while a winding-up order lies within the exclusive jurisdiction of the court, the question of whether or not there has been unfairly prejudicial conduct can be arbitrated.

It is said that the 'only restriction placed upon the arbitrator is in respect of the kind of relief which can be granted'.

In the BVI, in Artemis Trustees Ltd & Ors v KBC Partners & Ors Claim No BVIHC (COM) 2012/0137, Bannister J endorsed the reasoning in Fulham and stated that the solution, where the appropriate remedy is for the winding up of the company, may well be for the petitioner to apply to the court in the place of incorporation for the order on



the basis of the award (at [17]).

Indeed the judgment in Grosskopf comes hardly as a surprise in light of the English court's general pro-arbitration policy.

Consider a case where a creditor tries to wind up a company in the place of incorporation but the underlying agreement contains an agreed forum clause. Should the winding up petition be stayed in favour of the agreed forum? The answer it would seem depends on whether the clause is an arbitration clause or an exclusive jurisdiction clause:

In relation to arbitration clauses, the English Court of Appeal has held that even though a winding-up petition does not fall strictly within the scope of s. 9, the pro-arbitration policy embodied by the Arbitration Act means that s. 9 should apply by analogy under common law such that the winding up petition should be stayed in favour of arbitration unless if the creditor could show exceptional circumstances: Salford

Estates (No. 2) Limited v Altomart Limited [2014] EWCA 575 Civ. The same position has been adopted by the Singapore Court of Appeal in AnAn Group (Singapore) PTE Ltd v VTB Bank [2020] SGCA 33.

The BVI Courts have, however, taken a different approach in the well-known decision of Jinpeng Group Limited v Peak Hotels and Resorts Limited BVIHCMAP 2014/0017. To avoid a stay in favour of arbitration, the creditor need not show exceptional circumstances, but need only show that the debt is not disputed on genuine and substantial grounds; in other words, the existence of an arbitration agreement does not alter the court's usual jurisdictional test for appointing a liquidator.

As for EJCs, the prevailing position under English law seems to be that the winding up petition should still proceed in the place of incorporation, ignoring the EJC: City Gardens v Dok 82 Ltd [2023] EWHC 1149 (Ch) (another member of Wilberforce Chambers Bobby Friedman acted for the successful party in this case). The decision is based on two extremely thinly reasoned English decisions and in light of the seminal judgment by the Hong Kong Court of Final Appeal (in Guy Kwok-Hung Lam [2023] HKCFA 9) ruling to the contrary, one might expect the position to change.

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