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Private Client MAGAZINE

ISSUE 13

THE ROUND UP OF 2023: WEALTH AROUND THE GLOBE

INTRODUCTION

"Human greatness does not lie in wealth or power, but in character and goodness. People are just people, and all people have faults and shortcomings, but all of us are born with a basic goodness".

Anne Frank

As the curtains draw on another chapter of exciting events, we are thrilled to present this year's final Private Client Magazine, our Around The World 2023 issue. Join us in this edition as we journey through the key moments, challenges, and new trends that have shaped the Private Client community. The following articles dive into the world of trustees, tax avoidance, philanthropy, Artificial Intelligence, and how the current world conflicts affect wealth and much more.

We extend a huge thank you to our community partners and contributors for their ongoing support this year. The whole TL4 team wishes you a Merry Christmas and Happy Holiday season.

We are excited to welcome you back in 2024 for our in-person and virtual Private Client events. We hope you enjoy this issue and Bon Voyage!

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NAVIGATING THE WORLD OF TRUSTEES AND HIGH VALUABLE MOVABLE ASSETS

Authored by: Elizabeth Thompson (Associate) and Cerisse Fisher (Group Partner) - Collas Crill (Jersey and Guernsey)

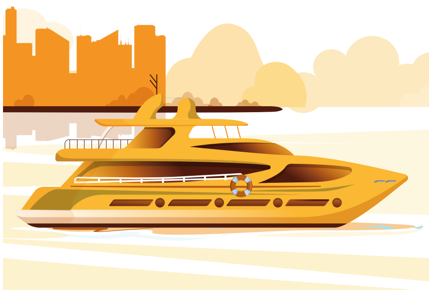
In keeping with the theme 'Around the World', we take a tour of the world of trustees and movable assets.

A recent article in *The Times* detailed in all its decadent, glamorous glory the world of the private buyer at the Monaco Yacht Show.

The article invoked images of the super yacht private buyer; escorted around one of the world's most famous boat shows, champagne in hand, donning a Panama hat and a watch worth more than your car. Sellers are undoubtedly jostling for their attention and vying for their cash.

But the real intrigue lies within the question: when the super-rich purchase such valuable luxury assets (which can be worth up to US$90 million) do they own them in their own name?

Trust structures can bring enormous benefits to ultimate beneficial owners, such as reducing jurisdictional risk, tax benefits and succession planning. It's therefore not surprising that trustees frequently administer structures that own and manage high value movable assets such as yachts, artwork, super cars, jewellery, and wine collections. However, owning movable assets in trust, particularly high-value assets, can present a potential minefield for a trustee.



The first stop on our world tour: Acquisition

Whilst it seems like a very basic starting point, it is always worth considering – what is the basis for acquiring a high-value movable asset on trust? Essential first steps should include a review of trust documents, ensuring the trust can hold the type of property, and the trustee satisfying themselves that they have the power to purchase or acquire the particular asset.

A trustee should always consider if investment powers are the most appropriate power in the circumstances. It would be a mistake to let an eye-watering valuation for a vintage car distract from the fact that it is unlikely to be an income-generating asset and may even depreciate in value. Luxury high-value movable assets, whether appreciating or not, are often uncertain "investments" in the classic sense.

Next stop: Holding

It's not just acquiring high-value movable assets that can be extremely costly. The expenditure involved in holding such assets on an ongoing basis quickly adds up – insurance, transportation, storage, valuations, import/export licences, inventories and inspections will be required.

The inability to properly maintain, protect and preserve the asset could have a serious impact on its value. It is therefore a crucial consideration for a trustee at the outset whether there will be sufficient liquidity in the structure to hold the asset on an ongoing basis.

It is not uncommon to find a trustee questioning whether they can justify the retention of high-value movable assets in the face of such maintenance costs. Retention should be kept under regular review by the trustee and consultation with the beneficiaries should be considered, where appropriate.

Acquiring and holding a high-value movable asset can result in investment risk becoming concentrated in one place. This not only presents an asset diversification headache for the trustee – there is potentially a beneficiary headache on the horizon as well.

The risk of contention between beneficiaries becomes particularly acute in discretionary settlements where different beneficiaries may not view, enjoy or utilise the asset in the same way. This will naturally need to be carefully managed by the trustee, particularly as family dynamics change and values shift over time. While sister may never willingly relinquish her summers on the superyacht in Sardinia, her brother may have more philanthropic desires for the cash.

To assist, it would be helpful for the trustee to clearly understand the intention of holding the asset in the first place, whether the asset can be used to leverage any finance and whether there are any 'trigger events' which should prompt the trustee to think about sale. Letters of wishes are obviously helpful here, but the trustee should also consider carefully documenting all meetings with settlors, beneficiaries or advisers, ensure asset reviews take place regularly and record decisions in robust trustee resolutions, detailing the factors taken into consideration when reaching any decisions.

Next stop: Valuation

The facts of Feilding v Simon C Dickinson Ltd[1] should give pause for thought when it comes to the variables in the valuation process for luxury assets.

In this case, the Claimant trustees instructed the Defendant art dealer to sell artwork. The artwork was sold on behalf of the trustees for £1.15million but within six months, the artwork was resold for $10.5million. The trustees claimed against the art dealer, but the court held that there was no negligence or breach of duty by the Defendant.

It goes without saying that when accounting to beneficiaries, speculative investments can become truly problematic. Getting truly independent advice and valuations in certain circles, the art world being one example, can prove difficult.

Our penultimate stop: Protections for the trustee

At the start of this article, we touched on the need for a trustee to ensure their powers are suitable to acquire high-value movables. For the reasons we've explored on our tour, it is essential to ensure trustee protections are also adequate.

When establishing or varying structures, bespoke drafting can contemplate the holding of high-value movables. For example, broad powers of investment or acquisition and excluding any onus statutory duties (where possible), such as the duty to preserve and enhance the trust fund. Trust provisions can specifically allow trustees to invest in certain assets notwithstanding the potential lack of return or in wasting assets and can incorporate a release for the trustee from a duty to diversify.

Where a trustee is acquiring a high-value movable into an existing trust, the trustee should check it has sufficient exoneration (limitation of liability) provisions in the trust instrument.

When it comes to major decisions involving the assets, such as sale, the trustee must look to protect both beneficial interests and itself. Expert advice, tax advice, consultation with beneficiaries and advisers, appropriate documentation and perhaps even the blessing of a court for a momentous decision, are some of the considerations.

Finally, it might be worth exploring other types of trust or vehicle for holding the asset, such as a purpose trust, some form of reserved powers trust or a foundation. The use of special purpose vehicle companies could also be considered.

End of the line

So, trustee, when you have an asset that literally can move 'around the world', step back, take expert advice and dedicate the time and manpower to make sure you can uphold your fiduciary duties.

1 [2022] EWHC 3091 (Ch)

60-SECONDS WITH:

MATTHEW YATES
PARTNER
HUNTERS LAW

Q **Why did you choose a career path in the legal industry?**

A I wanted to work either in law or in teaching, because I felt that I could help people in both worlds. The law won which is perhaps a relief to future generations.

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

A It's translating the complexities of private client and tax law to clients at an often distressing time. Contemplating and dealing with death and mental incapacity are often low on people's priority list, so it's imperative that our contacts with clients are as stress-free as possible.

Q **What motivates you most about your work?**

A Getting clients to a place where they feel reassured about their estate, and they have done all they can to create a secure future for their families.

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

A Hunters has been in existence for 308 years, and we are rightly proud of our long history, but all of us want to ensure that the firm becomes more widely known for the excellent work we do for our clients.

Q **What has been the best piece of advice you have been given in your career?**

A Never assume, it makes an ass out of you and me!

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

A The possible change in government next year is creating uncertainty about personal capital tax increases. Clients are therefore considering whether to take action now on a "better the devil you know" basis.

Q **Who has been your biggest role model in the industry?**

A I only got to know the late Professor Anthony Mellows for a short time before his death in 2016, but his ability to provide concise, erudite and practical legal advice was inspiring, as were his wide-ranging interests beyond the law, which he pursued with diligence and enthusiasm.

Q **What is one important skill that you think everyone should have?**

A Active listening – it's imperative in what we do as lawyers, but obviously key to ensuring better understanding in all areas of life.

Q **What cause are you passionate about?**

A Bringing people together, whether that's within the firm, or the village where I live, or society at large. We have to work ever harder to understand others' points of view to prevent a difference of opinion or societal silos leading to polarization.

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

A Hopping around the Greek islands with my then girlfriend of 4 months (and co-trainee), who by the time we returned had become my fiancée (and is now my long-suffering wife of 19 years).

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

A I was a bit obsessed with Victoria Wood when I was a teenager, such that I bought all her sketch books and memorized those, and her songs. Dinner with her would have been great fun, although possibly more for me than her!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Authored by: Josh Lewison (Barrister) - Radcliffe Chambers

A trustee is about to get sued by a beneficiary. The trustee has the power to change the governing law and jurisdiction. Doing so will sever the immediate connection between the trust and the beneficiary's intended forum. Can the trustee exercise that power to change the law and jurisdiction to a more trustee-friendly destination and thus escape the litigation?

On its plain words, a power to change the law and jurisdiction has no limits on its legal scope. The underlying legal issue is the purpose of the power and whether it is proper to use it to gain an advantage in litigation. The practical issue is whether it will do the trustee any good.

We now know from Grand View Private Trust Co v. Wong [2022] UKPC 47 that the purpose for which a power is conferred is discerned from a full analysis of all the circumstances, aiming to find the settlor's objective intention. That is more easily done for some powers than others: a power of addition may well have been discussed with the settlor, who might have given some guidance about its purpose in a letter of wishes. But a power to change the law and jurisdiction might just be a bit of boilerplate that wasn't even drawn to the settlor's attention, let alone thought about in detail.

The courts have given a mixed reception to trustees changing the law and jurisdiction of their trusts.

In Bermuda, the court has welcomed previously foreign trusts that have become Bermuda trusts. The aim of changing to Bermuda, at least in some cases, was to exploit Bermuda's Perpetuities and Accumulations Act 2009. That Act provides a simple route for trustees to strip off limits on their powers imposed under the rule against perpetuities. For example, in G Trusts [2017] SC (Bda) 98 Civ, a trust had started life under Cayman Islands law. The trustees changed the law to that of Bermuda so that they could get rid of the perpetuity period and avail themselves of Bermuda's sympathetic attitude to restricting beneficiaries' access to information.

On the other side, cases in the Bahamas, and Jersey and Mauritius have found that a change in law and jurisdiction was made for an improper purpose.

In Patinage Trust (Bahamas, 2017), the plaintiff beneficiary had attempted to issue proceedings against the trustee, but named the wrong entity in her summons. She also, presciently, obtained an injunction which among other things forbade the trustee from changing the proper law. The summons and injunction were sent to the trustee electronically. The trustee pointed out the error, and the plaintiff sought to amend her summons. She was too late:

the trustee had changed the proper law to Irish law and the jurisdiction to Switzerland and had in fact done so before bringing the mistake to the plaintiff's attention.

Winder J took a dim view. He described the trustee's conduct as sharp practice, worthy of moral condemnation. The trustee claimed that it had chosen Switzerland as the forum because the underlying dispute with the beneficiary was about the obligation to pay French tax, and there might have been breaches of French revenue obligations. The explanation about Irish law was even less convincing, and rested on Irish law being based on common law and an assertion that Ireland would not exercise jurisdiction over the trustee in Switzerland. Winder J accepted the plaintiff's submission that the change was exercised for the improper purpose of divesting the Bahamian court of jurisdiction and conferring a litigation advantage on the trustee and that it was prompted by sight of the summons and injunction.

The Crociani saga gives us another example. The case centred on Mme Crociani's extraction of assets from the family trusts and later attempts to put those assets beyond the reach of her disappointed daughter. The then-trustees, of whom Mme Crociani was one, purported to change the proper law of the trust to that of Mauritius and to retire in favour of a Mauritius trustee. By that time, at least one letter of claim had been sent and relations between mother and daughter had completely broken down.

In the judgment (Crociani v. Crociani 2017 (2) JLR 303) following the eventual hearing of the claim – in which Mme Crociani declined to take part – it was held that the appointment of the

Mauritius trustee was a "tactical move, the purpose of which was to impede Cristiana's claims." It was therefore void and would be set aside.

The cases offer us two extremes: the variation cases are clearly for the benefit of the class of beneficiaries as a whole; the litigation advantage cases are equally clearly not. But where the situation is something in between, the picture gets a bit murkier. If the proposed claim is unmeritorious then it might well be to the advantage of the trust as a whole if the proceedings can be avoided.

It thus appears that there may not be an absolute rule against severing ties with a jurisdiction to gain a tactical benefit. But is that benefit a practical one? The trust may have severed connections with its starting jurisdiction for the future, but does that insulate the trustee from liability from its past actions?

In England, CPR PD6B para. 3.1(12E) now explicitly allows the court to exercise jurisdiction where a breach of trust was committed in England and Wales. Other jurisdictions may recognise similar grounds to hear a claim without needing express provision. Thus, in Crociani [2014] UKPC 40, the Privy Council held that there was a strong case for contending that whether the change in jurisdiction was a breach of trust should be decided by the Jersey court under Jersey law.

Can the trustee take any steps to protect the decision to move jurisdiction? There is the possibility of a blessing in advance of the exercise of the power. But the application may involve joining the hostile beneficiary – who might respond with an application for an injunction – and would probably require airing the dispute before the court. The trustee would have to find a careful balance between showing that the proposed claim is so unmeritorious that a change in jurisdiction is justified, but not showing that it could strike out the claim or get summary judgment.

There may be no such middle ground, and the trustee would be in a worse position for having telegraphed its intentions.

The risk, then, is that the trust slips its moorings and sails away on the evening tide, but the disappointed litigant, like Ariadne, may still exact a terrible revenge. And if the court has jurisdiction over the trust, even post-departure, a judgment might be entered that can be enforced in the new jurisdiction.

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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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A SECOND BITE AT THE CHERRY?

AN EXPLORATION OF THE DECISION IN DEL CURTO V DEL CURTO [2023] EWHC 2106 (KB)

Authored by: Candy Stockton (Partner) and Amanda Collins (Solicitor) - Irwin Mitchell

Is it possible to enforce an order of a foreign court in England and Wales, even if that order is derived from principles alien to our jurisdiction? In the case of Del Curto, the Italian Courts made an order based on forced heirship, a concept which does not align with freedom of testamentary intention. The Courts of England and Wales, however, ruled that the Italian order may be registered and therefore enforced in England and Wales.

The case

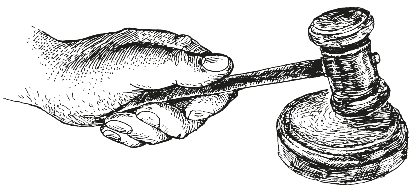
Davide Del Curto, an Italian national and fruit exporter, died in Chile in 1983 having amassed an estate in the region of £50 million. Davide had three children. Julian and Gloria, who were born from his first marriage and Rita, who was born from a subsequent long-term relationship.

Davide left a will, which failed to make provision for any of his children. However, his will did not cover his Chilean assets. The Chilean intestacy rules, at that time, did not provide for "illegitimate children" born out of wedlock and therefore, despite Rita's mother and Davide being in a relationship for 12 years immediately prior to Davide's untimely death, Davide's Chilean assets passed only to Julian, Gloria, and their mother.

In 2003 Rita brought proceedings in Chile for a share of Davide's estate. These proceedings were dismissed in the first instance. Rita appealed this decision and in 2005 the Appeal Court of Santiago dismissed her appeal.

Not to be deterred, Rita set her sights on the Italian courts and, on 30 July 2008, she issued a petition against Julian and Gloria on the basis that Davide had been an Italian citizen at the time of his death. Rita brought the claim under the Italian forced heirship rules which, unlike the Chilean intestacy rules at the time, did not discriminate against "illegitimate" children. Julian and Gloria defended the claim robustly, however, and on 4 February 2022, the Italian Tribunale di Sondrio awarded Rita 2/9ths of the worldwide estate assets. This equated to the sum of €13,133,129.77 as per a valuation report. Due to Julian and Gloria's poor conduct, they were also ordered to pay Rita a further sum in the amount of €50,000 to compensate for their poor behaviour and bad faith during the proceedings plus costs totalling €140,684.12.

Julian failed to pay any sums due to Rita under the Italian judgment and as such, given that Julian was resident in the UK, Rita turned to the English and Welsh courts and sought to register and enforce the Italian judgment.



As neatly summarised by Master Cook at paragraph 74 of his judgment in the High Court, at common law in England and Wales, a foreign judgment that creates an obligation actionable in England cannot be enforced except by commencing new proceedings in which the foreign judgment is the cause of action. As such Rita may have faced re-litigation with the added costs and time this would bring. To the rescue came the Foreign Judgments (Reciprocal Enforcement) Act 1933 which can modify this position by allowing an individual who is owed money under a foreign judgment to register the judgment in England, provided certain criteria are met.

The High Court was asked to determine whether it was right to register a decision of an Italian tribunal in England. The High Court accepted that it was, on the basis that a sum of money was payable under the judgment and therefore it met the criteria of the Foreign Judgments (Reciprocal Enforcement) Act 1993. The Registration Order was made on 22 December 2022.

On 14 February 2023 Julian sought to set aside the Registration order on several grounds, including that:

1. The Italian judgment was not for a sum of money within the meaning of s.1(2)(b) of the 1933 Act; and
2. The judgment was in fact about the restitution of assets in specie rather than a specific amount. Counsel submitted that the 1933 Act expressly excluded the 'administration of the estates of deceased persons'.

It was held that it was possible to calculate the sums registered, with regard to the Italian judgment, by reference to the court-appointed expert's valuation report. The valuation report had quantified the estate assets at €59,099,084. Based on the report, and with the inclusion of simple interest, the Court held that it was a straightforward calculation to determine that Rita was entitled to 2/9ths of the same. In addition to this, the Italian judgment recorded that Rita was to receive her costs, legal expenses, and equitable compensation.

The High Court found that the judgment was clearly for an amount of money rather than restitution of the assets themselves, many of which had been sold or dispersed by Julian and Gloria, this being an issue that had been considered more fully in the Italian proceedings. As such the Italian judgment effectively created a debt rather than any proprietary rights, that could have been considered inappropriate for the English court to enforce.

The debt owed to Rita could be satisfied by the sale proceeds of the estate and as such it was held that 'the enforcement of equitable obligations are personal obligations and they are therefore actions in personam'.

The Italian judgment, therefore, was registrable in England under the 1933 Act thereby providing Rita with an avenue by which she could enforce the same.

Forced heirship by the backdoor?

Despite the prevalence of forced heirship laws among civil law jurisdictions such as France, Germany, Spain and Italy, it is not a concept that has ever gained any traction in England and Wales and is often met with derision by English lawyers. Given that English law subscribes to the notion of testamentary freedom, notwithstanding the effect that a claim under the Inheritance (Provision for Family and Dependants) Act 1975 can have on a person's testamentary dispositions, should we be wary of registering judgments in the English Courts that uphold forced heirship?

Please note that Julian has filed an appeal against the Italian judgment, the appeal is pending before the Milan Court of Appeal.

TAKING RISKS AND TAX AVOIDANCE

BHAUR V EQUITY FIRST TRUSTEES (NEVIS) LTD [2023] EWCA CIV 534

Authored by: Lemuel Lucan-Wilson (Barrister) - Wilberforce Chambers

The recent case of Bhaur v Equity First Trustees (Nevis) Ltd [2023] EWCA Civ 534 provides a timely reminder of the difficulties and risks in seeking to use the equitable mistake doctrine to avoid the intended effects of a tax avoidance scheme.

In Bhaur, the tax avoidance scheme was an employee benefit trust. Mr and Mrs Bhaur had a substantial property business which was transferred to a UK company (Safe Investments UK) as part of the scheme. Safe Investments UK then transferred the property business to a BVI trust company, to be held for the benefit of the employees of Safe Investments UK, or any spouse, child or dependent of such, although any persons who were "participators" or connected with them could not benefit (this would, at the time, have included Mr and Mrs Bhaur) other than receipt of income.

The scheme sought to take advantage of a perceived loophole, that those connected to participators could benefit after the death of that participator, so the Bhaur children would then avoid the need to pay inheritance tax. The assets were then transferred several further times, albeit it not to any material effect for the claim in mistake.

Ultimately, after challenge by HMRC, the trustee then took steps to collapse the trust entirely and appointed the income out to Mr and Mrs Bhuar and their children, and then appointed the capital out to the NSPCC; no doubt to the surprise of the Bhaurs.

As a result, the Bhaurs sought to set aside the initial settlement by Safe Investments UK of the employee benefit trust on the grounds of mistake.

Three mistakes were identified:

1. Firstly, tax – the Bhaurs thought that the EBT loophole would save IHT, and that if the scheme did failure, it would only be that IHT which would become payable, rather than a larger loss being created.
2. Secondly, the honesty of their advisors – the Bhaurs mistakenly thought that the advice given was in their best interests and the trust structure would be administered in their interest.
3. Thirdly, retention of control – the Bhaurs thought they would be able to retain control of their properties despite the structure.

Judgment at first instance

The judge found that there was no relevant mistake. It was clear, that:

1. The Bhaurs knew they would be losing control of their assets. Despite the dishonest advice given to them, what they were told would happen, did happen.

2. The Bhaurs miscalculated the damage they would suffer if the scheme went wrong. That was a misprediction and not a mistake.
3. The Bhaurs knew there was a mismatch between what they had been told the trust would be and what their expectations were.
4. The scheme was inherently tax evasive, and the Bhaurs were aware of and complicit with the dishonest window dressing done by their advisers.

Judgment of the Court of Appeal

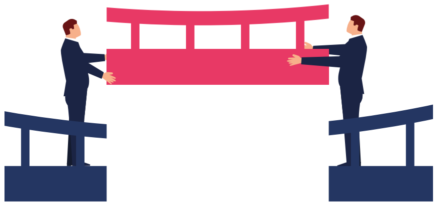
The Court noted (at para 56) the general requirements of a claim in mistake as set out in Pitt v Holt [2013] 2 AC 108, namely 1) a mistake which is 2) of the relevant type and 3) sufficiently serious so as to render it unjust or unconscionable on the part of the donee (here, Safe Investments UK) to retain the property given to them.

The Court of Appeal considered that whilst misprediction could still be a bar to relief for rescission for mistake, it did not need to deal with that fine distinction since the primary question in this case was in the third limb of the test, which had been adapted from Ogilvie v Littleboy (1897) 13 TLR 399 and involved determining whether "it would be unconscionable or unjust for a donee to be permitted to retain the benefit of a gratuitous disposition by a person who has deliberately run the risk that the scheme of which the disposition forms part might not work" (paragraph 85). The court needed to form a view as to the merits of the case generally when assessing that unconscionability. The Court also noted the comments in Pitt v Holt. as to the possibility of relief being denied in cases of "artificial tax avoidance", either on the grounds of misprediction or general public policy.

The Court considered that even if the Bhaurs were operating under a mistake rather than a misprediction (so that the first and second limbs of the Pitt v Holt test were fulfilled) and were innocent of any tax evasion, the appeal still had to fail:

1. Whilst the consequences of refusal would be significant (the IHT bill could be larger than the estate) the Bhaurs had chosen to implement what they knew was a tax avoidance scheme and which they knew carried a risk of failure. They had therefore deliberately run the risk; even if it was not characterised as a misprediction (para 101).
2. It was "of considerable weight" that the scheme in question was "entirely artificial". There was no intention to generally benefit "employees", or anyone outside the Bhaur family as was the normal intention with an EBT (paras 102 and 103). 3. The tax avoidance was not unlawful, but a "social evil" which was a very weighty factor against relief (para 105).

As a result of these factors, it was not unconscionable for the donee to retain the results of the disposition. The Court also considered that the mistake as to the honesty of the Bhaurs' advisors could not be a mistake for the purposes of setting aside a disposition to a third party, and that there had been no mistake by the Bhaurs about the control of their assets. They had known they would give up control, but presumed that those in control of the assets would act differently.



Wider considerations

This case is a useful barometer for the courts' continuing negative views on tax avoidance. Unlike Dukeries Healthcare Ltd -v- Bay Trust International Ltd [2021] EWHC 2086 (Ch) as discussed in this article by Fenner Moeran KC, the judge at first instance here did have sufficient information about the Bhaurs' state of mind to conclude on the evidence that they had taken a risk deliberately, and that the Bhaurs had colluded with the tax avoidance. As the court had evidence of the Bhaurs' awareness of the risks, this was not a case where relief was denied solely on the public policy considerations of tax avoidance, despite the highly artificial nature of the scheme. Indeed, although the tax avoidance was 4 important in the analysis, this was as a factor of unconscionability after the court had decided on the Bhaurs' evidence that the risk had been deliberately run.

Similarly, whilst the tax avoidance was a weighty factor, it is not clear how much the end result would have been different without it – there would still have been the clear evidence of the risk being run, although without tax avoidance it would have been harder to say that refusing relief would be "unconscionable". There is clear evidence of a trend of courts being slow to grant relief in cases involving tax avoidance schemes, following the dicta in Pitt v Holt. Judging how far that trend extends seems likely to require further cases; in particular, the obvious gap at present would be a case with more evidence than in Dukeries so that the Court cannot rely on the applicant failing to meet the evidential burden, but less evidence than in Bhaur where the Court considered it could safely conclude that the risk had been deliberately run.

Any trend that does emerge may well be quite fact specific, given the acceptance by HMRC in Van der Merwe v Goldman [2016] EWHC 790 (Ch) at [42] that in that case, relief could not be denied merely on the basis of tax avoidance.

Practitioners outside of the realm of tax may be happy to note the Court of Appeal's uncertainty and disinclination to deny relief on the basis of a misprediction, but without further clarity as to where the line falls, or its removal, it will remain difficult in fringe cases to accurately advise whether there has been a mistake or a misprediction. In particular, cases without a tax avoidance angle are likely to have to interrogate the difficult distinction more thoroughly, despite the Court of Appeal acknowledging that the application of the test can be problematic.

US DOMESTIC INSTITUTIONS EXITING INTERNATIONAL BUSINESS

Authored by: Jenny Judd (Executive Director) - London & Capital

US Citizens living abroad have a whole host of challenges when managing their financial lives. As you will be aware, the US tax on citizenship rather than residency and as such Americans living overseas must declare their global income and gains to the Internal Revenue Service (IRS).

What's the change?

Over the last few years many of the larger US banks have started to simplify their US operations by rejecting business from foreign US persons. In addition to new business, they are also asking current clients to find alternatives.

Why?

Ordinarily everyone expects this to be a Foreign Account Tax Compliant Act (FATCA) issue, surprisingly it's not. FATCA, passed in 2010, focuses on the foreign account of US individuals abroad. The main drivers for this are risk and compliance.

In addition to the usual bank procedures in the US, for foreign clients the banks will have extended money laundering rules, local country tax rules and potential legal ramifications. With the percentage of overseas clients being so small, many banks have taken the view that this isn't a worthwhile risk and have closed down their operations.

From our experience, Americans living overseas are finding it increasingly difficult to manage accounts held in the US and find themselves in the situation whereby UK domestic financial institutions are also closing the door.

What are the options?

For clients still holding these accounts, this could be a looming problem with possible exit on the cards for the future. So, what should you do?

Option 1

Hold tight – If your US bank hasn't asked you to leave yet, it may be coming up. The first and simple option is to leave everything as is and wait to see until and if this happens. The biggest problem here is timing. Part of building a solid financial plan is the ability to control the timing of moving assets and crystalising gains and losses. Clients, essentially, don't want to be forced to sell out of the markets at the wrong time. Control and management around these decisions, with the support of your wealth manager is fundamental.

Option 2

Put together a plan and move now – We have a dedicated team at London & Capital who are available to speak through your options and see if there is an opportunity to move custodian at your own pace.

THE CRUCIAL ROLE OF TRUSTEES IN PRESERVING A CLIENT'S LEGACY

Authored by: Andrew Cardwell (Director), Charles Crossley (Director), Robert Cattle (Director), and Nina Johnston (Managing Director) - Equiom

In today's complex world of high-net-worth families, where wealth is increasingly mobile across international borders and beneficiaries span the globe, the selection of a trustee is an important decision in wealth management and estate planning. In this article, Equiom directors, Robert Cattle, Charles Crossley, Andrew Cardwell, and Nina Johnston, explain why the choice of trustee is so crucial and outline the key factors clients and their wealth partners need to consider when deciding on one.

Key Factors When Selecting a Trustee

"The trustee a client selects to safeguard and manage their wealth can make all the difference when it comes to ensuring their financial legacy is preserved with the utmost skill and integrity" states Nina Johnston, Managing Director of Equiom's Isle of Man office. While cost is a consideration, it is one of many other factors which should be considered, including:

(1) **Professionalism and integrity:** The trustee should be professional, ethical, and honest, maintaining confidentiality and avoiding conflicts of interest.

(2) **Fiduciary experience:** The trustee should have proven experience as a fiduciary and be skilled at managing trust assets in compliance with trust deeds and applicable laws.

(3) **Financial responsibility:** A trustee should have a strong track record of managing finances and putting the family's financial goals at the forefront.

(4) **Understanding the family:** A trustee should understand the family's dynamics and values, effectively communicating with family members at all levels.

"Families should also consider the trustee's geographical coverage, language capabilities, time zone compatibility, ease of access, and the presence of good travel links to efficiently address the international aspects of their trust" adds Robert Cattle, Client Services Director. "A trustee's range of services, including their in-house legal and tax expertise, as well as their ability to tap into a network of professional advisors is also an essential consideration."

Importance of Expertise in Cross-Border Tax Regulations

In today's global financial landscape, a strong understanding of cross-border tax regulations is imperative for families with international interests. The ever-evolving taxation and compliance regulations requires a trustee with extensive knowledge of potential issues. While trustees may not be experts in all matters, their broad awareness, diverse experience, and access to specialist expertise allow them to effectively navigate international complexities.

Andrew Cardwell, Director of Equiom Tax Services, explains: "In the Isle of Man our in-house tax team specialise in UK and Isle of Man taxation, with expertise in UK anti-avoidance provisions and their implications for trustees, settlors, and beneficiaries. While we may not advise on specific foreign tax issues, our wealth of experience means we can intuitively identify potential concerns. Our trustees can also consult our in-house tax team to consider the broad principles and tap into our global network of tax advisors which we have built up over time.

Balancing Cost and Expertise

Trustee fees can vary significantly worldwide, and striking a balance between cost and expertise is essential. Robert Cattle explains, "In many cases, choosing a trustee based solely on cost can be shortsighted, as the financial consequences of an inexperienced trustee's mistakes can outweigh initial savings. It's vital to evaluate the trustee's experience, qualifications, and track record. Clear communication regarding fee structures is also crucial to avoid surprises and misunderstandings."

Nina Johnston recommends viewing the cost of an experienced trustee as an investment rather than an expense, adding:

"The true value of the trustee is not visible until such time as the trust has been compromised or challenged by which time it becomes costly to rectify. Choosing a trustee with a track record of success in managing international assets is an investment in the future for the client's family wealth."

Cultural and Legal Differences Across Jurisdictions

In today's interconnected world, high net worth families are no longer constrained by geographical boundaries. They diversify their investments across multiple jurisdictions, and their beneficiaries frequently relocate across the globe, giving rise to complex cross-border tax and inheritance considerations. As Nina Johnston points out, "In this intricate web of transparency and global financial regulations, having the right trustee with expertise in navigating a myriad of reporting regimes can make all the difference."

Cultural nuances play a vital role as well as Charles Crossley, Director of Equiom's Private Client Services in the Isle of Man highlights, "In some cultures, the concept of a trust may not exist or may be interpreted differently. This can lead to challenges in the selection of trustees and the management of trust assets. Legal disparities between jurisdictions can also create hurdles in the administration of cross-border trusts. For instance, in common law regions, trusts are frequently utilised for tax-efficient asset management and succession planning, while civil law jurisdictions may not recognise trusts in the same manner."

While cultural and legal differences can pose challenges, they also present opportunities for high-net-worth families. Certain jurisdictions may offer more favourable tax treatment and asset protection laws, while cultural disparities can provide unique insights into investment opportunities and business practices not available in other regions.

A knowledgeable trustee can help high net worth families to mitigate challenges and maximise the opportunities in the complex landscape of cross-border wealth management.

Trustee Qualities and Best Practices

To ensure the long-term preservation and growth of wealth, high net worth families should look for trustees with qualities like integrity, expertise, communication skills, objectivity, and stability.

"For example, a client selected us as future trustees with appointment to take effect on their death" explained Charles Crossley. "However, they faced constant financial requests from their four adult children. They realised it was unwise to continue supporting their children in this way and eventually decided to settle their wealth inter-vivos, knowing that a resolute trustee would scrutinise and decline requests when necessary."

"Choosing the right trustee is therefore critical for ensuring the long-term preservation and growth of a client's wealth, while also making sure their beneficiaries are taken care of."

Other best practices include engaging with the family regularly, reviewing and assessing trust investments, ensuring tax efficiency, and monitoring the performance of investment managers. Robert Cattle adds, "Continually reviewing and assessing the trust investments to ensure risk is being managed and returns are appropriate is crucial".

Conclusion

In the world of international mobility and high net worth families, the choice of trustee is a decision that should not be taken lightly. It's a choice that can shape the financial wellbeing of a client's family for generations to come. While the cost of expertise may be higher, the peace of mind, protection of their assets, and the potential for optimised financial outcomes make it a value proposition that cannot be ignored. Remember, not all trustees are the same. The client's choice matters, and the investment in an experienced trustee is an investment in the enduring legacy of their wealth.

Upcoming Events

18th Jan	The 2024 Practitioners' Forum on Stress Testing Trust Structures
15th Feb	The First Annual Practitioner's Forum on Trusts in Divorce
19th Mar	Landed Estates & Farm Tax Conference: The 3rd Edition
12th - 14th Jun	Private Client Advisory and Litigation Forum: Paris
18th - 20th Sep	Contentious Trusts Next Gen Summit

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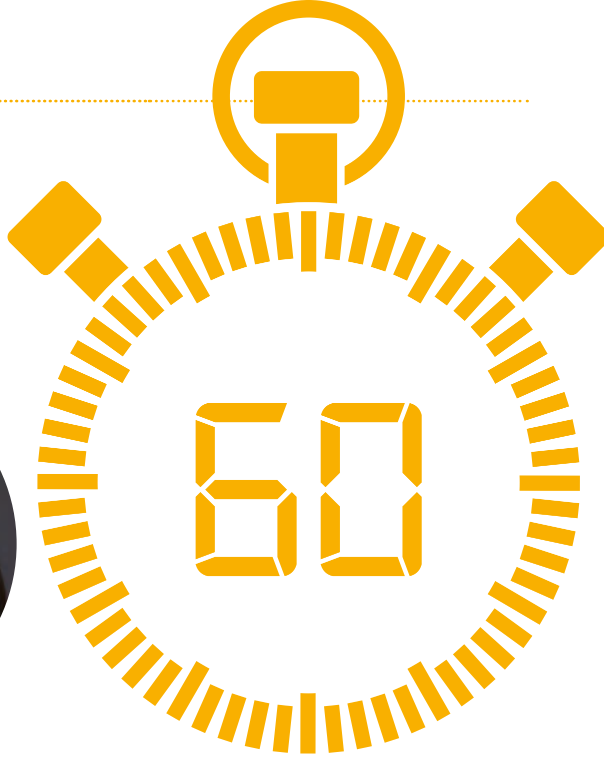

Q: Why did you choose a career path in the financial industry?

A: My entry into finance was serendipitous — I started my career in banking the day I graduated from high school then joined the private client group at a local bank while attending university in the States. Climbing the ranks happened quickly; by my early twenties, I had earned a promotion to VP and embraced my first sales role. I discovered I had a natural skill for communicating (or the gift of gab as my teachers would say) which allowed me to build relationships and excel in a sales role. As the years went by, I called myself an "accidental banker". For the first 10 years of my career; I thought, "I really need to figure out what I'm going to do long term!" But I kept learning, taking on new challenges, I was pretty good at growing a market or region. I started to take on more senior roles that were fun (and stressful) but they allowed me to meet interesting people and travel. I have always been a natural entrepreneur and drawn to things I can help grow and that's been fun.

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

A: I'm going to keep this one simple, the people. The clients are the reason we have a job and recruiting and keeping the right people to take care of them is key.

Q: What motivates you most about your work?

A: Looking at the big picture and understanding how one thing impacts another; having a vision and then putting the pieces of the puzzle together. As a leader, I love coaching and mentoring. Helping someone discover their true and full potential is one of the most rewarding things that keeps me motivated. I love when I get feedback that someone is using the techniques we spoke about in our coaching sessions and now seeing even more success.

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

A: I'm eager to be at the forefront of innovation in the financial services industry, serving as a catalyst for a shift that has yet to really be seen in this sector what it truly is, I'm not sure that we know that yet. How Uber revolutionised transportation and Airbnb transformed the way we travel, I believe there's potential to disrupt wealth management. I don't want to just participate, I want to help drive the change. I believe we could bring more open-sourced ideas to market and have more peer collaboration across the industry to continue to move us forward.

Q: What has been the best piece of advice you have been given in your career?

A: Adaptability. We all know the only constant in life is change. Those who master adaptability don't just survive; they thrive. I learned this at a very young age, changing schools as we moved around a lot it's very hard to be the new kid constantly until you learn to just go with it. Being flexible and adaptable was the first major lesson I learned in my career, as roles changed, or I moved to a new city for a role and the group got folded, leaders changed, I have too many examples to share. If you are adaptable, adaptability becomes not just a skill but a mindset. Embracing it makes it much easier to find your way around obstacles and have more successful outcomes.

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

A: Planning led advice. With the consolidation of the industry, robo advisers, and online banks, we still see human led planning and advice as the best-in-class trend. If you want to truly help someone achieve their goals, there is so much more to it than just data input. It's capturing the vision, values, and dynamics of the family to help them achieve their goals. I absolutely do think we need to continue to digitise and give people an amazing user experience and give them data at their fingertips, but it's the intangibles that you can't input into a tool.

Q: Who has been your biggest role model in the industry?

A: I had a career coach, now friend and mentor, Dr. Christopher K Bray. Chris is a cognitive behavioural researcher. While Chris isn't in the industry directly, he's coached some of the top business leaders in the world and prior to starting the Adaption Institute, Chris led sales for large multinational companies, so he absolutely understands business. As my coach, he helped me truly see the value in gaining a deeper understanding of human behaviour and how to put other people's perspectives, communication, and learning styles first. This has allowed me to gain a deeper understanding of perspectives and objectives and how to effectively communicate which is so important when working with clients and leading teams.

Q: What is one important skill that you think everyone should have?

A: At the time of writing this article, I think we all need to learn how to embrace AI. I think the skill that we all can immediately learn is how to prompt well so we can leverage these tools for efficiency. Personally, I use Chat GPT and Bard where I can to create efficiencies and it has been a game changer.

Q: What cause are you passionate about?

A: I am deeply passionate about championing women in business. My career started when the norm was to see other women as rivals rather than allies. This perspective was not only limiting but counterproductive. I firmly believe in the power of solidarity among women in the professional world—it's crucial for us to bolster one another, sharing knowledge and opportunities to advance collectively. When women support each other, we create a dynamic where everyone can win. We should embrace an environment where we all grow together, leveraging our unique strengths to shatter glass ceilings and pave new paths for the generations of women who will follow.

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

A: This one is hard, there are so many. I love the Caribbean for the relaxed vibe of wind, sailboats, and reggae. I love Hawaii for the majestic Napali coast. I love Rome because every corner you turn has something more incredible than the last. The beautiful mountains of Switzerland, the bright lights and bustle of Tokyo. I guess if one country has my whole heart though, it is Italy. It will always be Italy.

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

A: Leonardo da Vinci. He was the quintessence of the Renaissance man, embodying innovation, entrepreneurship, and a pioneering spirit in a time ready for advancement. While he was gifted in painting, sculpture, architecture, science, music, mathematics, engineering, literature, and so much more, I'm drawn to him for being an innovator. I would love to have dinner and understand how his mind worked. I recently visited the Louvre and this time, I needed to give Mona her time. I stood in front of the Mona Lisa for at least ten minutes, I really wanted to see what type of emotion she evoked. How could he make a painting that looked innocent and angelic one-minute look sinister and like she knew a deep secret about me the next minute. I think the man was a genius and also apparently had a good sense of humour, so no doubt it would be entertaining!

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WHERE IN THE WORLD SHALL I GO?

Authored by: Kristina Volodeva (Partner) - Rawlinson & Hunter

Recent articles in TL4's Private Client Magazine have looked at the potential abolition of the UK tax regime for foreign domiciled individuals and the rules for achieving non-residence or treaty non-residence for those who would respond to the removal of the regime by leaving the UK.

There is, of course, the other side of the coin – where does one actually leave for? This article aims to consider, at a very high level, a few European countries seeking to attract individuals through preferential tax regimes of one sort or another.

Preferential tax regimes have economic side effects

Over time, preferential tax regimes will, more often than not, have a distorting effect. For instance, it was recently announced that the highly popular Non-Habitual Residents (NHR) regime in Portugal is to be removed in 2024 and replaced with a new one, more narrowly focused on new residents engaged in scientific research and higher education. One of the reasons behind this was an influx of wealthy foreigners since NHR's launch in 2009 which has driven up property prices in popular areas such as Lisbon, Porto, the Algarve, Setubal and the Silver Coast (such that since January 2022 there are restrictions on acquisitions of residential property in these areas). One might argue that the UK non-domicile tax regime has had a similar effect on prime central London property prices.

So, whilst the abolition of the non-domicile tax regime in the UK is edging closer as the general election looms large on the horizon, other countries in Europe are in a state of readiness to accommodate those who will vote with their feet and leave.

It should first be noted that the fiscal landscape can change rapidly, and any decision to move in order to benefit from a favourable tax system should only be taken with the support of a tax specialist conversant with the rules of the jurisdiction of choice. Tax rules can be changed or withdrawn at short notice, as can the ways to obtain residency permits and visas (with a recent spate of withdrawals of Investor Visas by some countries, and the introduction or enhancement of an Investor Visa programme by other countries, such as Cyprus earlier this year).

Switzerland

The longstanding lump sum taxation regime remains available, subject to the relevant conditions being satisfied. This regime:

01 Is potentially open to non-Swiss citizens taking up residence in Switzerland for the first time or returning after an absence of at least 10 years.

02 Does not allow undertaking any gainful activity.

03 Is "priced" not by reference to the taxpayer's global income or wealth, but their lifestyle expenses

or housing costs, subject to a minimum deemed amount for both federal and cantonal tax purposes (the cantonal amount depending on which canton the taxpayer is establishing residence in). The lumpsum is then calculated at standard rates for the location of residence applied to the deemed expenses, with the final sum usually being agreed through a 'ruling' with the competent authorities.

The lump sum is payable in addition to wealth tax, calculated at the usual cantonal rates applied to the hypothetical 'wealth' (usually being ascertained as a multiple of the tax base for the lump sum).

Lump sum taxation was abolished by the cantons of Appenzell Ausserrhoden, Basel Landschaft, Basel Stadt, Schaffhausen and Zurich. Perhaps unsurprisingly, academic studies on the effects of this measure concluded that it precipitated a significant exodus of wealthy foreign nationals from those cantons.

Italy

In January 2017, Italy introduced a strong competitor to the UK's remittance basis of taxation for non-doms, coinciding with the UK government capping the number of tax years for which a remittance basis claim could be made to 15 (out of the previous 20).

The Italian flat tax regime:

01 Is available to both Italians and non-Italians taking up residence in Italy, on the proviso that they have been resident elsewhere in 9 of the past 10 tax years.

02 Can be availed of in exchange for a flat payment of €100,000 for tax on non-Italian income and gains (plus €25,000 for each relocating family member).

03 Can be utilised for up to 15 years.

It is important to note that the flat tax payment cannot be reduced by foreign taxes. Perhaps more importantly also, in the first 5 years, it does not cover tax on gains realised on a 'qualified participation' in a company (significant interests in close or non-close companies; professional advice should be sought).

Another noteworthy point is that there is no additional liability on the remittance of foreign income and gains, which is an advantage over the UK's remittance basis offering.

Greece

'Timeo Danaos et dona ferentes', wrote Virgil. Yet there is no need to fear the Greek gift presented by the alternative tax regime introduced in December 2019, which:

01 Is open to those who have not been resident in Greece in 7 of the previous 8 years prior to the year in which residence is established.

02 Requires an investment of at least €500,000 in property or businesses located in Greece, or in shares or securities in Greek legal entities, by the taxpayer, through an entity controlled by them, or by a close relative.

03 Can be utilised for a maximum of 15 fiscal years.

As with the Italian regime, a sum of €100,000 is payable in lieu of tax on foreign income and gains, with tax on Greek source income being payable under the domestic taxing code. Additional family members can avail themselves of the regime at a cost of €20,000. These payments cannot be reduced by foreign tax credits.

Republic of Ireland (RoI)

Ireland still offers a remittance basis of assessment of foreign source income and capital gains for taxpayers who are resident but not domiciled in RoI. The concepts of 'domicile' and 'remittance' will be familiar to anyone who has studied the UK tax regime, but the Irish scheme requires no payment of a 'remittance basis charge', nor is its use limited to 15 years. As things stand, it only becomes unavailable on acquisition of a domicile of choice in RoI.

In conclusion

Tax of course is, and should, not be the be all and end all and one needs to think about the qualify of life and matters like comfort and convenience, safety, political stability, local laws and customs, the existence of an expat community, etc. etc. etc. So there is much to ponder for UK based non-doms with itchy feet who are contemplating their options and there are many possibilities, of which the above are just a few. There is equally much (if not more) to ponder for those who would seek to abolish the UK regime but at the same time wish to prevent a mass exodus...

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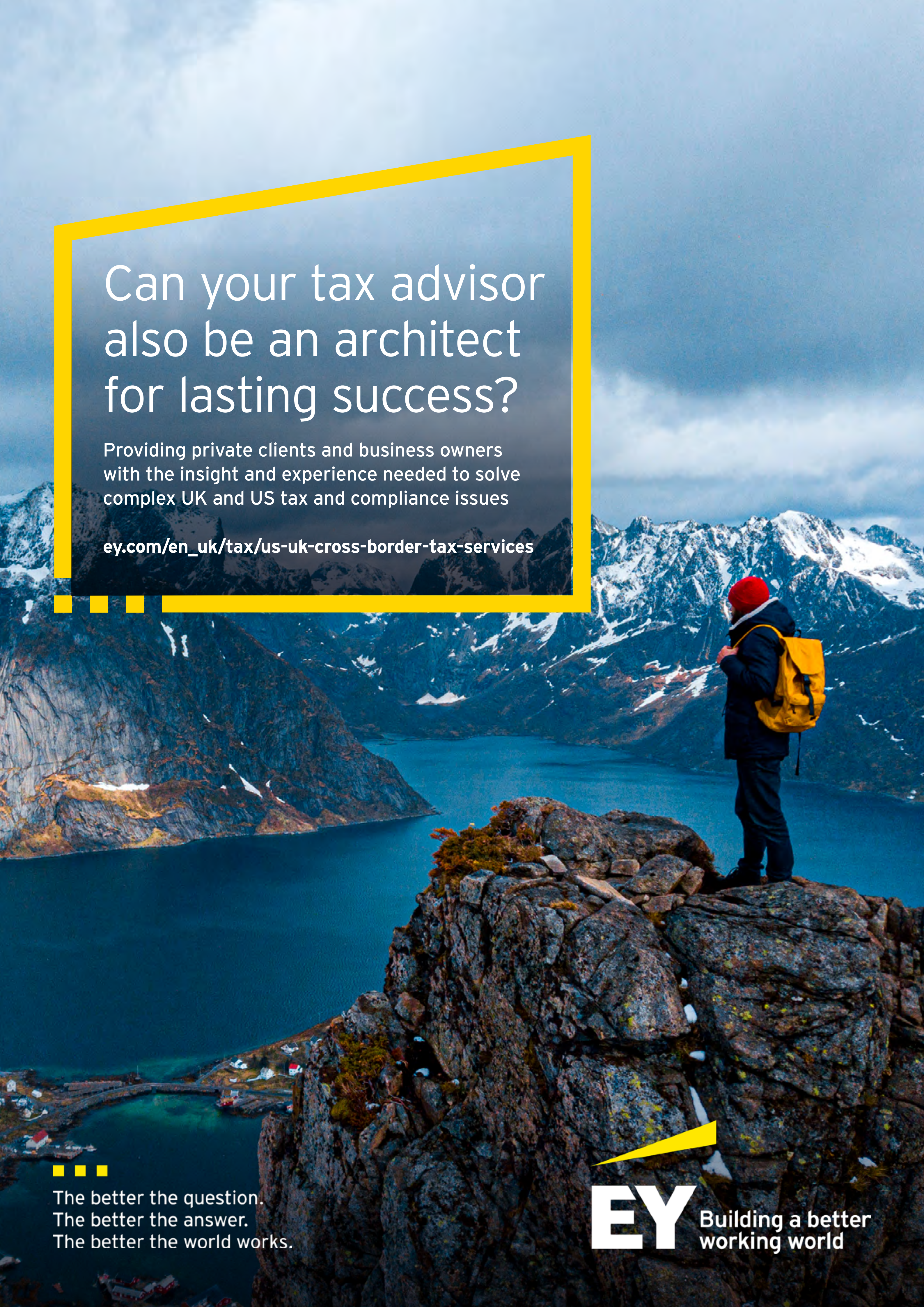
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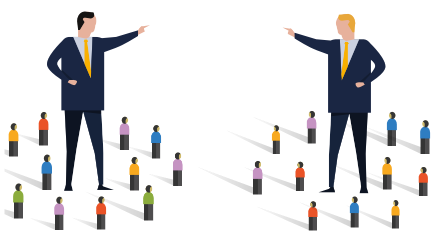
AROUND THE WORLD

A LOOK BACK AT 2023

Authored by: Rosamond McDowell (Head of Private Client Services) - Payne Hicks Beach

One of the wonderful things about doing my job as head of Private Client at my firm is being surrounded and supported by great colleagues. So, on 1 November, Payne Hicks Beach were able to host an evening with my colleague Sir Robert Buckland, who is also the Conservative MP for South Swindon, and a Former Lord High Chancellor and Secretary of State for Justice, in conversation with Ed Balls, former Shadow Chancellor, now writer, broadcaster, economist, dancer and musician.

You would have thought that in what may be the last full year of a Tory government, just over a year after the mini-budget in late 2022 of Liz Truss and Kwasi Kwarteng plunged the UK economy and their party into chaos, that the two men might have found it difficult to find agreement on any number of issues. As it happens, however, hindsight has a wonderful way of smoothing over differences, and the two were in reflective mood as their conversation unfolded.



Since the Truss/Kwarteng fiasco, of course, we've had several more budgets, coupled as ever by much speculation on the more thorny questions affecting Private Clients and their advisers. Will the non-dom status survive a Labour government or won't it? Rachel Reeves, the prospective Chanceller says it won't. Ed Balls, asked to gaze into that particular crystal ball, noted that it wasn't under the last Labour government's decade in office from 1997 to 2007 that the greatest inroads were made into the "200 year old loophole" (so-called by James Murray MP, the Shadow Financial Secretary to the Treasury, earlier this year) but in the 2008 reforms introduced by George Osborne as one of his first acts as Tory Chancellor, and in 2017 under another Conservative government. Wait and see, says Ed Balls; the enormity of scrapping such a fundamental tenet of tax legislation will likely mean more tinkering at the edges than scrapping.

Given the tax take from non-doms hit a record high last year, no-one wants to see these people taking their leave of Blighty.

Having said that, our experience as a firm is that there are still more people looking to settle in the UK than those looking to leave. Those who wish to live in the UK may seek to order their tax and estate planning to make best use of UK rules, but they come here for much more personal reasons. Since investor visas were scrapped in April 2022, efforts to replace them have been postponed and delayed; we are unlikely to see this change under the current government, and it remains to be seen what the next one will do. Following the Russian invasion of Ukraine in 2021, the UK government introduced a temporary arrangement for Ukrainians seeking sanctuary here, and there has been talk of introducing similar temporary arrangements for those fleeing the Israel/Gaza conflict, though these arrangements will not assist in acquiring indefinite leave to remain in the UK.

And what of the idle rich? Has wealth continued to be a dirty word in 2023? On one level, you might say so, though my experience of wealthy people has been to observe how very hard they work.

As much as we would all be delighted to see a reduction or even elimination of poverty and need, it is remarkable how little our clients' good fortunes can be attributed to exploitation – on the whole I see only diligence and a generous open-handedness to charity and philanthropy, and mindfulness of the needs of those in less fortunate positions. And the Labour Party, having for years urged the Tories to impose a wealth tax, has been at pains over the

Autumn to reassure the middle classes that no such tax will be introduced, lending credence to the practical proximity in thinking between the reasonable fringe of both sides of the political spectrum that was apparent in our Buckland/Balls conversation.

But that sort of meeting of minds seems quite far, looking around the world as we approach the end of 2023. There are seemingly intractable problems to address, a refugee crisis that will not go away, a continuing cost of living crisis, trouble in the NHS and in our transport services and infrastructure. Looking further afield, it's easy to think that we inhabit a world that has lost its way, with a resurgent right wing in Europe, murder and bloodshed of Jews in Israel, the like of which has not been seen since the Holocaust, followed by the incarceration and slaughter of 14,000 Palestinians, including countless children. The death of the 100 year old Henry Kissinger should give us pause for reflection. Kissinger, having fled Nazi Germany in 1938, brokered the end of the Yom Kippur war in 1973. A controversial figure, for his political decisions, yet he was an example of someone who could see beyond his own personal position to the value of peace and stability.

In 2024, with elections due to take place in the UK and the US, we may be looking forward to more turbulence before we are done, but beyond that, one hopes, to a return to a more even keel and the fiscal dividend that peace brings. These things are, after all, cyclical.

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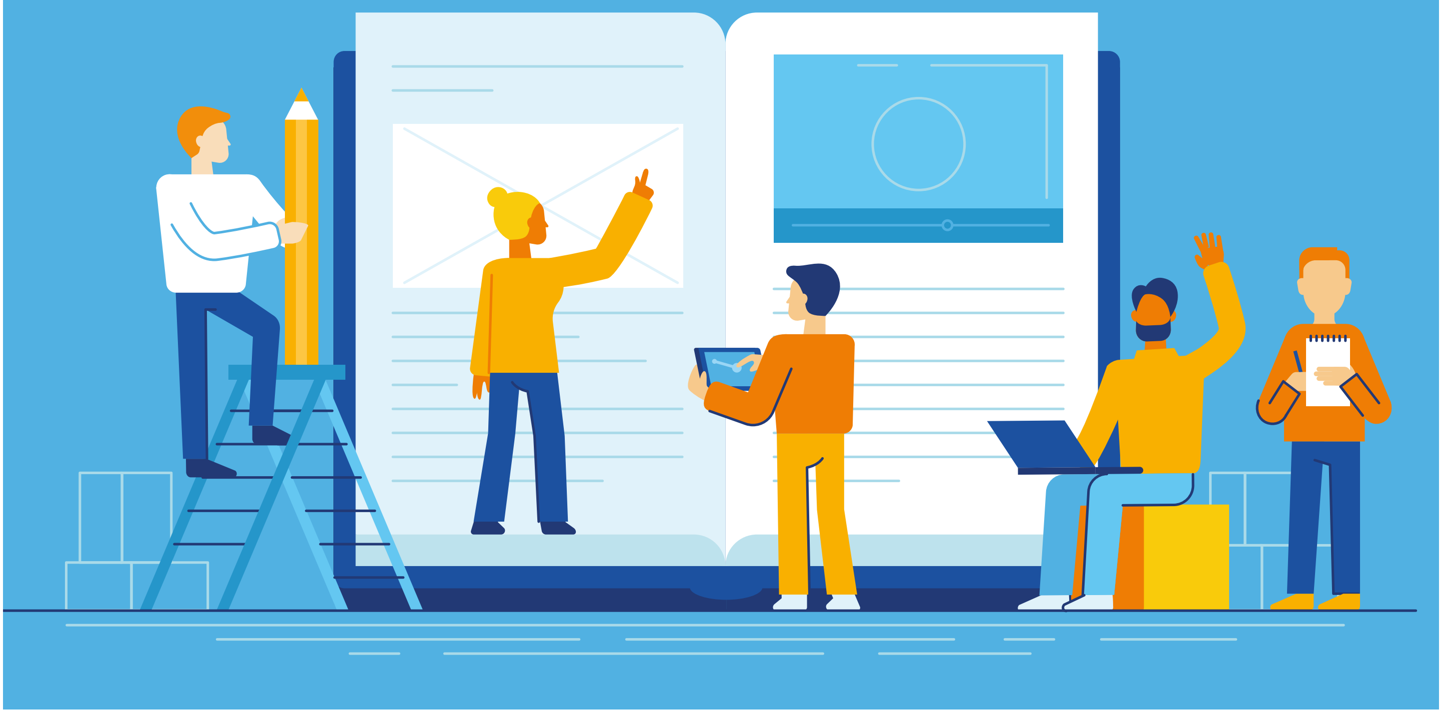
LESSONS FROM THE SHARP END



Authored by: Matthew Howson (Counsel) - Harneys

In the last edition we described what we see as a Caribbean trust-law practice with most of our clients based in Asia, Latin America, the Middle East: civil law countries whose HNWs and UHNWs are enthusiastically exploring the world of trusts for the first time. We shall here sketch a few lessons we've learned from and with them. They may seem obvious but we've seen them often missed in practice. Central themes are education; the balance between control and asset protection; and security. Not for nothing are these examples mostly about bank accounts: the money for these trusts is first generation, still being earned, and fragile.

Our first example is La Dolce Vita Fine Dining Co L|td v Zhang Lan ([2022] SGHC 278). In summary this was a Singapore case where a settlor purported to create a trust for the benefit of her family but, the Court found, did not in reality relinquish her right to benefit from the trust property. The trust property remained hers by reason of a resulting trust and was thus available to her creditors. This case caused some stir in Asia: was this a wholescale attack on the trust concept? But in fact the judge was just making the very practical, and basic, point that the Settlor had not parted with the trust assets, literally. Years after she had ceased to be either shareholder or director of the main trust fund asset company, the company's bank accounts still listed her as UBO, her lawyers still described them as hers, and she continued to transfer money in and out of them for her own private purposes.

Most offshore jurisdictions have legislation to prevent transfers into trust with the intention to defraud creditors, and this was her naked intention throughout.

Meanwhile the professional trust company played little role.

The lessons of that case are self-explanatory and, in our experience, even apply to some UK settlors: if you're going to settle a trust, make sure you follow it through. But they have particular relevance to trusts whose trustees are Private Trust Companies (PTCs) because there any gap in understanding will be felt most acutely. PTCs are often owned by the families themselves and are a very popular way to manage the multi-branch family organisations common in the Middle East, with, for example, each branch having a right to elect its own director.

There is also no doubt that PTCs can in theory act as trustee, not least because the legislation of the incorporating jurisdiction will state it explicitly. But it is clear that a PTC must be treated with the same regard for fiduciary duties as an independent trust company, especially if the settlor is the owner and sole director (we do not recommend this arrangement if asset protection is a concern).

The assets must be in the name of the PTC and the usual trust governance procedures followed, with careful notes recorded of the reasons for decisions.

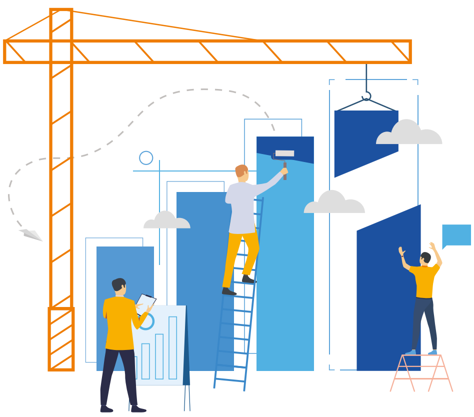
Several PTC registered agents now offer assistance and education for families on their responsibilities. Ideally the PTC shares should be owned themselves by an independent trust company via, potentially, a further purpose trust with reserved powers regimes like VISTA, and whose only role is to hold the shares.

It's also important to think through what can seem a mundane point: how will the trust literally work day-to-day and does that play any role in its initial drafting? Our example is from the world of charities. Offshore jurisdictions do not set up too many charities for the counter-intuitive reason that because they levy no tax, they issue no tax registration numbers, making it difficult for charities to collect funds from donors based in onshore taxing jurisdictions. However, we do see private charitable trusts set up by HNW families, particularly those in Latin America and Asia. When such families want a private non-charitable trust, they are often attracted to reserved powers trusts, thus allowing the entrepreneurial settlor to continue growing the family company. But for charities they often want the trust company to be heavily involved, even down to being a co-signatory of the instant-access bank account. Their reason is usually simple: to ensure that the account is not emptied by an employee.

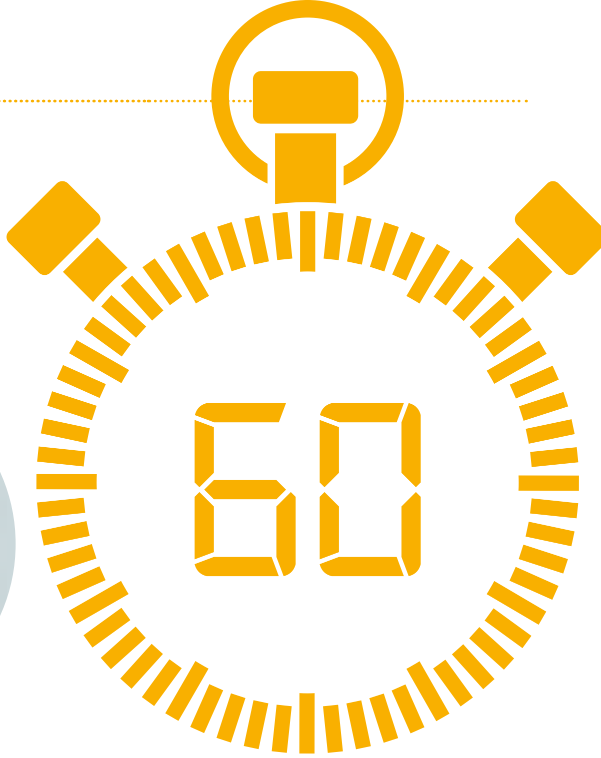
Finally, many such clients are very familiar with corporate structures which set out all terms clearly, and so it is important to explain to them those trust concepts that are not written anywhere (this can be a frustrating experience for them). For example, some clients like to keep the classes of beneficiaries small, often wishing to introduce ideas like rankings, contingencies (the son only becomes a beneficiary after the father dies etc).

We try to discourage these where asset protection is a concern because as wide as offshore firewalls are, they cannot prevent, for example, an onshore court deciding to allocate the trust fund or a portion of it to a divorcing beneficiary's notional "share".

But in the context of this article, a tiny beneficiary pool can also scupper the trust because of the oft-forgotten "Rule in Saunders v Vautier ([1841] EWHC J82, 4 Beav 115)", common to all English-stream common law jurisdictions. By way of reminder, this old case (appears to) allow the beneficiaries, if all adult, of sound mind, and between them wholly entitled to the trust property, to direct the trustees to end the trust and transfer the trust



property to themselves as beneficiaries absolutely. Unless defeated the Rule can cause problems, especially in transactions. We were once instructed late in a financing to check the deed of a trust being used as collateral for a loan to its sole beneficiary. The bank was to be given a veto over distributions, but we had to tell them that this would not prevent the beneficiary from exercising the Rule and claiming the trust fund, whether the bank liked it or not. We told them this cautiously, "for the sake of completeness, as we are sure he would not do this in reality"; the response was "thank you, knowing him he would absolutely do this!" The Rule can be easily defeated, for example by adding "Charities" to the pool of beneficiaries (because it would be impossible to obtain agreement from every Charity in the world), and some legislative trust regimes like VISTA allow settlors to exclude the Rule for a period. But of course, one needs to know the Rule to defeat it.



60-SECONDS WITH:

RUPERT TICEHURST
PARTNER
MAURICE TURNOR GARDNER

Q Why did you choose a career path in the legal industry?

A I'm not entrepreneurial, so a career in a profession which provides career structure has worked well for me. I would have preferred to have been a doctor, but I was very poor at chemistry.

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

A Thinking – we should all do more of it.

Q What motivates you most about your work?

A Helping people – clients and co-workers.

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

A Stop shouting at my computer.

Q What has been the best piece of advice you have been given in your career?

A Mark Twain: "I apologise for such a long letter - I didn't have time to write a short one". Good correspondence should be to the point, but that takes time. For the record: Mr Twain did not give me this advice in person.

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

A Aggression. When I receive correspondence from some solicitors, I feel they need therapy to get over their anger issues.

Q Who has been your biggest role model in the industry?

A As a junior lawyer I worked for 5 years with Paul Stibbard – then a partner at Baker & McKenzie now at Sequent. He has had an enormous impact on my career.

Q What is one important skill that you think everyone should have?

A Every lawyer should be able to write clearly and succinctly.

Q What cause are you passionate about?

A The environment – I look in horror at the environmental catastrophe we face, and our collective willingness to do little to avert it.

Q Where has been your favorite holiday destination and why?

A France: I think that in a previous life, I must have been French.

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

A I could listen to Bill Gates speak for hours, so it would be a great pleasure to have dinner with him.

OVERCOMING THE CHALLENGES OF CROSS-BORDER GIVING

Authored by: Joe Crome (Head of CAF American Donor Fund) - CAF

Donor-advised funds have soared in popularity for overseas giving in recent years, due to their flexibility, cost-efficiency, the relative ease of setting one up and ability for wealthy donors to remain anonymous. They're also able to receive gifts of non-cash assets because clients can donate cash, stocks, shares, art, antiques, and even property.

Cross-border giving – the term for any donation that qualifies for tax relief in one country and is given directly to a foreign charity – is not new.

But as we see increased migration around the world, more natural disasters and heightened awareness of humanitarian crises and international conflicts, it has become an ever more popular way to give. The Global Philanthropy Tracker[1] recently estimated that the world's cross-border philanthropy totals £57 billion.

In the last financial year, Charities Aid Foundation (CAF) helped deliver over £1bn to over 100,000 charities in 119 countries. More than a fifth of those donations moved across borders, originating from our offices in the UK, the United States and Canada.[2]

But giving abroad is not simple. Despite the huge potential of cross-border philanthropy to alleviate the effects of humanitarian crises, it is often limited by a complex web of national policy and tax systems varying from country to country.

Even in the UK, there are considerable administrative burdens. The complex rules can make giving difficult for individual donors and foundations, necessitating expert support. Organisations such as CAF support donors by carrying out the necessary checks and due diligence in order to comply with HMRC requirements. We need to collect information and assurance to ensure fund recipients fulfil definitions of charitable causes. We must also minimise the risk of contravening anti-money laundering and countering the financing of terrorism regulations. When sending charitable funds and fulfilling these requirements across multiple jurisdictions and in various languages, it can take considerable time and costs can grow substantially.

1 https://globalindices.iupui.edu/tracker/index.html.

2 https://www.cafonline.org/docs/default-source/about-us-research/wgi_report_2023_final.pdf?sfvrsn=402a5447_2

That is in part why, when it comes to donating quickly in the aftermath of humanitarian emergencies, it is sometimes more practicable for donors to give to large international relief charities, who can more easily receive the funds whilst employing their experience in reacting quickly to these situations. For longer term recovery and future resilience - an essential but too often forgotten consideration - small, local charities on the ground can be better-placed as they are there for the long-term and have a better understanding of the needs of the communities they are serving. In order to effectively direct donations to these charities, cross-border giving is crucial.

Cross-border giving is not just about emergency relief though. Education and health are the most popular causes (2023 Global Tracker) but it can cover a spectrum of important issues.

We recently provided a grant to a conservation charity based in Zimbabwe, which is subject to UK sanctions. In this case, the organisation is planting trees as part of its goal to address the reduction in the rate of natural woodland loss in Zimbabwe, to preserve biodiversity at scale within threatened landscapes. But the necessary and detailed verification process of the charity took considerable time and expertise, as well as cooperation and support from the organisation themselves.

Due in some part to the administrative burden of giving to charity, donor-advised funds (DAFs) have become more popular for donors who want to be more proactive in their giving but want an alternative to the legal requirements and burdens of setting up and maintaining a charitable foundation.

One of the key advantages of managing giving through a DAF is that the fund's trustees are responsible for compliance with charitable law and regulatory requirements, not the funder. Within a DAF, charitable funds can also grow, which in turn increases the amount available to give to charity. We have one client who has recently set up a DAF using money he had inherited and CAF will invest that money while he works with us to consider which causes he would like to recommend for support, ultimately allowing more funds to be granted to charities.

Cross-border giving can become even more complex when the donor is a dual taxpayer. More than twenty years ago, CAF launched the CAF American Donor Fund (CADF), which allows dual UK-US taxpayers to take advantage of charitable tax relief in both jurisdictions to maximize their donations. This specialist donor advised fund recently surpassed £1bn distributed to charitable causes worldwide since 2000. Our deep expertise in the regulatory and tax environment around cross-border giving means that dual UK-US taxpayers turn to the CADF for knowledgeable, safe and efficient ways to grant money to causes and realise greater impact through their giving.

CADF's ability to receive non-cash gifts, including complex shares, property and art has been especially welcomed by an increasing number of donors. This year saw us process our first property donation; a client was relocating and rather than go through the hassle of selling their house and paying capital gains tax, they generously gifted the house to CAF. We processed the sale, raising almost £4m for charities in the US.

These donations can take a bit more time, regulatory oversight and administration by the intermediary, but they are well worth that extra effort for the charities they support.

Cross-border giving could be made more effective and accessible though, which is why we recommend the UK government looks at making practical changes to reduce bureaucracy and incentivise overseas giving. The UK is a generous country – it ranks third in the world for giving money to charity (CAF World Giving Index 2023)[3]. We want to ensure that the giving mechanisms available, such as DAFs and the regulations around cross-border giving, make it easier for those who can, to give more. As charities and communities around the world face into the effects of conflict, climate change and population displacement, there is so much potential to do more to support them in their endeavours.

3 https://www.cafonline.org/docs/default-source/about-us-research/wgi_report_2023_final.pdf?sfvrsn=402a5447_2.

THE RISE AND RISE OF AI

HOW IT IMPACTS FAMILY GOVERNANCE

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

Artificial Intelligence (AI) has been a buzzword in recent years, rapidly transforming various aspects of our lives. From healthcare to finance, AI has shown its potential to revolutionise industries. One area where the impact of AI is becoming increasingly significant but often overlooked is family governance among families of wealth. In this article, we will explore the rise of AI and its far-reaching implications on family governance, shedding light on what families of wealth need to know and how they can prepare for this inevitable change.

The Ascendance of AI

AI in Daily Life

The rise of AI is unmistakable in our daily lives. From virtual assistants like Siri and Alexa to recommendation systems on streaming platforms, AI has seamlessly integrated itself into our routines. It's also present in smartphones, autonomous vehicles, and even our homes, thanks to the Internet of Things (IoT). These AI-powered technologies are designed to simplify life, but their influence goes beyond convenience.

AI in Business

Businesses are increasingly relying on AI to enhance productivity, reduce costs, and make data-driven decisions. From chatbots handling customer queries to predictive analytics optimising supply chains, AI is a valuable tool for companies of all sizes. In family-owned businesses, this adoption of AI can be a game-changer, helping them remain competitive and adaptable.

AI and Family Governance

Family governance refers to the systems and structures that families with substantial wealth put in place to manage their financial assets, family businesses, and long-term goals. These families often have complex arrangements, including trusts, foundations, and intricate decision-making processes.

1 Investment and Wealth Management

AI-powered algorithms have demonstrated their effectiveness in investment strategies. They can analyse vast datasets and market trends in real time, enabling more informed investment decisions. Families of wealth can benefit from AI-driven wealth management, but they must also consider the potential risks associated with automated financial decision-making.

2 Family Business Succession

AI can assist in the succession planning of family-owned businesses. It can identify suitable successors based on objective criteria and track their performance over time. However, it also poses challenges regarding emotional factors, which are essential in family governance. Balancing AI's analytical capabilities with the human touch required for succession decisions is crucial.

3 Data Security and Privacy

As families of wealth increasingly rely on technology for managing their affairs, data security and privacy become paramount. AI can help detect and prevent cyber threats, but it also raises concerns about the protection of sensitive information. Developing robust cybersecurity protocols is essential to safeguard family assets and confidential data.

What Families of Wealth Need to Know

Adaptation is Key: Families of wealth need to recognise that AI is no longer a futuristic concept but a present reality. To thrive in this evolving landscape, they must adapt and embrace AI technologies that align with their goals and values. It's essential to stay informed about AI developments and understand how they can be integrated into family governance.

AI is a Tool, Not a Replacement: While AI can streamline processes and provide valuable insights, it should be seen as a tool that complements human judgment and decision-making. Families should ensure that AI doesn't overshadow the core principles of family governance, which are often rooted in human values and relationships.

Education and Training: To harness the full potential of AI, families must invest in education and training for family members, advisors, and stakeholders. Understanding how AI works, its benefits and its limitations is critical. This knowledge empowers families to make informed choices and collaborate effectively with AI systems.

Legal and Ethical Considerations: Navigating the legal and ethical dimensions of AI is essential. Families need to establish clear policies and guidelines for the use of AI within their governance structures. This includes addressing issues such as data ownership, algorithmic bias, and AI ethics.

Preparing for the AI-Driven Future

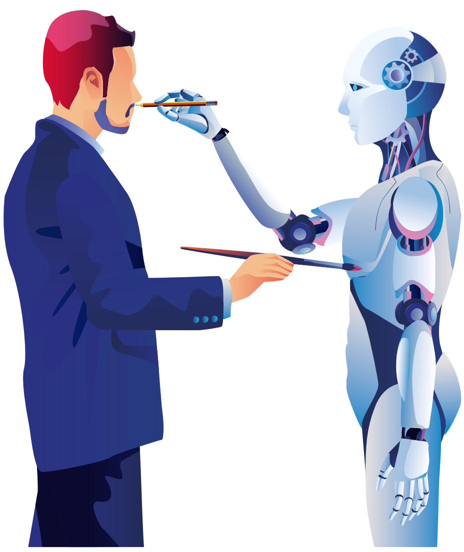
Creating a Digital Strategy: Developing a digital strategy is the first step in preparing for the AI-driven future. Families should assess their current technology infrastructure and identify areas where AI can add value. This may involve investing in AI software, data analytics, and cybersecurity solutions.

Building a Cross-Generational Vision: Families should involve multiple generations in crafting a shared vision for how AI will be integrated into their governance. This collaborative approach ensures that the transition to AI is smooth and aligns with the family's long-term goals.

Working with AI Experts: Engaging AI experts and advisors can be invaluable. These professionals can provide guidance on AI implementation, data security, and compliance with AI-related regulations. Their expertise is instrumental in maximising the benefits of AI while minimising risks.

Monitoring and Adaptation: AI technology is constantly evolving. Families need to remain vigilant, monitoring AI systems, and regularly evaluating their effectiveness. Flexibility and the ability to adapt to changes in AI technology are key components of a successful family governance strategy.

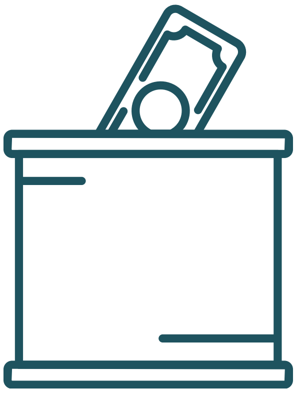
The rise of AI is reshaping family governance for families of wealth. While it offers numerous benefits in investment, succession planning, and data security, it also presents unique challenges. Families must recognise that AI is a tool to enhance decision-making, not a replacement for human values and relationships. To thrive in an AI-driven future, families need to educate themselves, establish clear policies, and invest in technology while never losing sight of their shared vision and legacy. By embracing AI while preserving their core principles, families of wealth can ensure that their governance remains strong and adaptable in an ever-changing world.



PHILANTHROPY IN THE FAMILY

Authored by: Neasa Coen (Counsel, Charities) - Forsters

The proposed Philanthropy Tax Incentive Scheme is an interesting new development in Singapore. The Monetary Authority has announced that from 1 January 2024 qualifying donors in Singapore will be eligible to claim tax deductions for overseas charitable donations made through qualifying local intermediaries. The Philanthropy Scheme aims to encourage single family offices to use Singapore as a base from which to conduct philanthropic activities.



In order to take advantage of the Philanthropy Scheme, it will be necessary (amongst other things) for family offices to employ a philanthropy professional or engage an external service provider to advise on philanthropic activities.

The Philanthropy Scheme presents an opportunity for families and family offices in Singapore and Asia more widely to give thought to the structuring of philanthropic activities.

This article explores the key issues that families should consider when embedding significant philanthropic endeavours into their wealth plans.

Charitable Themes

The type of charitable work which is of interest to a family should be at the core of family discussions around philanthropy.

It is essential for families to think carefully at the outset about key charitable themes, whether they encompass, for example, the protection of the environment, the relief of poverty or the advancement of education.

It is often the case that the type of charitable work which is carried out will reflect the interests of particular family members, their life experiences (for example, an interest in the prevention or cure of a particular disease), or a particular geographic area. Where there is a family business, the charitable work can be informed by the nature of the business activities, for example, a construction business might show an interest in the prevention of homelessness or a food business might consider the relief of poverty. Apart from giving insight into social needs which are important to family members, a discussion around charitable themes will also provide more information about those family members who are most likely to wish to devote time and effort to charitable projects. This, in itself, can affect future structuring considerations.

It is also helpful for families to reflect on the way in which the charitable work will be carried out i.e. whether it will be grant-making or operational. Grant-making activities involve the provision of funds to other entities, usually in accordance with a grant agreement which stipulates how the funds may be used. Grant making charities, therefore, do not become involved in the underlying charitable work and they generally have a small staff, to deal with the administration of grants. By contrast, an operational charity, is involved in carrying out the underlying charitable work, for example, the provision of a food bank, the carrying out of medical research, or the operation of a school or a research institute. Operational charities generally have a higher number of staff, to reflect their activities and they often come with a greater risk profile. Most family philanthropy takes the form of grant making activities but there are sometimes situations where a family sets up a charity which carries out frontline charitable work.

Funding

It is important to explore funding issues at an early stage, partly so as to ensure that the activities can be properly tailored to reflect the fiscal backdrop, but also to ensure that the structure chosen is adequate for the proposed activities. Consideration might be given to the following issues:

1. How much money is likely to be available to carry out philanthropic work and over what timescale will it be paid?
2. Are the funds already available or is it intended to provide funds for charitable work as a result of future transactions, for example, will funds be available as a result of the future sale of family businesses or following the death of a particular family member?
3. What form will the funding take – cash, shares, or real estate?
4. If a charity is set up, will it be expected to hold shares in family businesses or real estate assets as an investment?
5. Will there be other entities with which the family will cooperate to raise funds? For example, is it expected that a family business will also raise funds, for example, by leveraging donations through customers, suppliers, or employee fundraising programmes?

Ethical issues have risen in significance in the philanthropic domain in recent years. In particular, charities and their founders are concerned with ethics in the context of the use of charitable funds, for example, a desire to ensure impact within a grant-making framework, as well as to ensure that the investment of the charity's funds reflects wider issues of sustainability against the backdrop of climate change, global poverty and inequality. These issues should be considered when planning charitable endeavours to ensure that the legal structuring reflects family concerns.

Structure

Structure is crucial to charitable planning as the structure needs to reflect the scope and range of the proposed activities and provide maximum flexibility for the future.

The first question is whether a stand-alone charity is needed at all. Some families structure their charitable giving by making donations directly to existing charities – this is recognised in the Philanthropy Tax Incentive Scheme. It is entirely possible to make large gifts to charities without setting up a bespoke charity. This usually requires entry into a donation agreement between the family and the charity about how the funds are to be used, reporting back requirements, and naming rights.

A donation agreement can be used to fund large capital projects (for example, the construction of a hospital, or the redevelopment of a wing of a national museum) but also for significant donations to charitable bodies where the money is to be expended over a period of time.

It is also possible to consider the creation of a trust structure, whereby the recipient charity holds the funds donated on trust, rather than outright. This can allow greater control for donors, for example, the ability to appoint a new trustee if the required charitable activities are not carried out and can also enable funds to be kept safe from a liquidator in circumstances where the charity enters insolvency. There are also occasions when the proposed charitable work does not fall neatly within existing charitable purposes (for example, because the work has a political element or where the stakeholders wish to take some profit from the organisation). To that extent, families can consider donating to non-charitable entities or to social enterprises.

It is also possible to make use of donor advised funds. Their use has increased considerably in Singapore in recent years and in certain circumstances they are capable of serving as a useful substitute for a bespoke charity. In essence, a donor advised fund is a registered charity to which donors make donations with a request that the donor advised fund makes an onward grant in furtherance of charitable purposes. In circumstances where: a) the main philanthropic objective is the making of grants only, rather than carrying on operational charitable activity; and b) the grant making itself is not complex and does not require significant contractual input; it can often be easier and more cost effective to use a donor advised fund.

Bespoke charity

That said, a bespoke charity is often useful as it provides permanence for charitable activities, can operate as a holding structure for a wide variety of charitable work, allows family members to have defined roles, and can provide considerable reputational benefit to a family. A bespoke charity usually takes the form of a charitable company or a charitable trust. A trust structure can be useful where it is desired to distinguish between capital and income (with, for example, the income being spent and the capital retained in perpetuity) and where the charity is grant-making. A company limited by guarantee has separate legal personality and can reduce risk of personal liability for trustees. It is often used where the charity carries on operational work or where it proposes to enter into significant contracts.

What about jurisdiction and taxation?

Jurisdiction will need to be considered on a case-by-case basis in conjunction with geographical factors and regulatory requirements.

Depending on family circumstances, it may be necessary to consider structuring the charitable piece to take account of the location of business activities or donations from corporates.

Taxation will always be a driver when considering jurisdiction, with a view to maximising the amount of funds used for charitable purposes and obtaining tax relief on gifts. The tax piece will usually be driven by a comparative assessment of tax reliefs on charitable gifts in various jurisdictions.

And the role of the family?

A bespoke charity brings with it a number of obligations, including fiduciary obligations for trustees, accounting and compliance requirements as well as the need to ensure good governance of the charity. Family input around its establishment and operation is crucial. This will be reflected in the leadership of the charity, as well as in the membership of committees and advisory boards. In considering family involvement it will be important to reflect on how the charity will be operated on a day-to-day basis, as well as looking to longer term issues, including the availability of family members to commit time and energy to philanthropic work in future years. Although rules vary from jurisdiction to jurisdiction, charitable entities generally need to be operated independently. To that extent, it is likely that family members will be able to form part (but not all) of the charity's board and consideration will therefore need to be given to identifying suitable independent trustees.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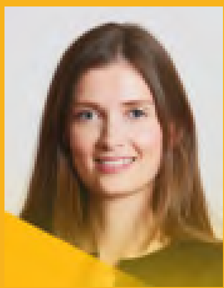

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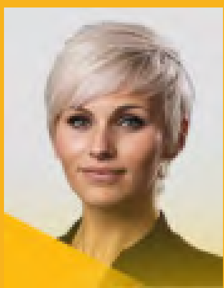

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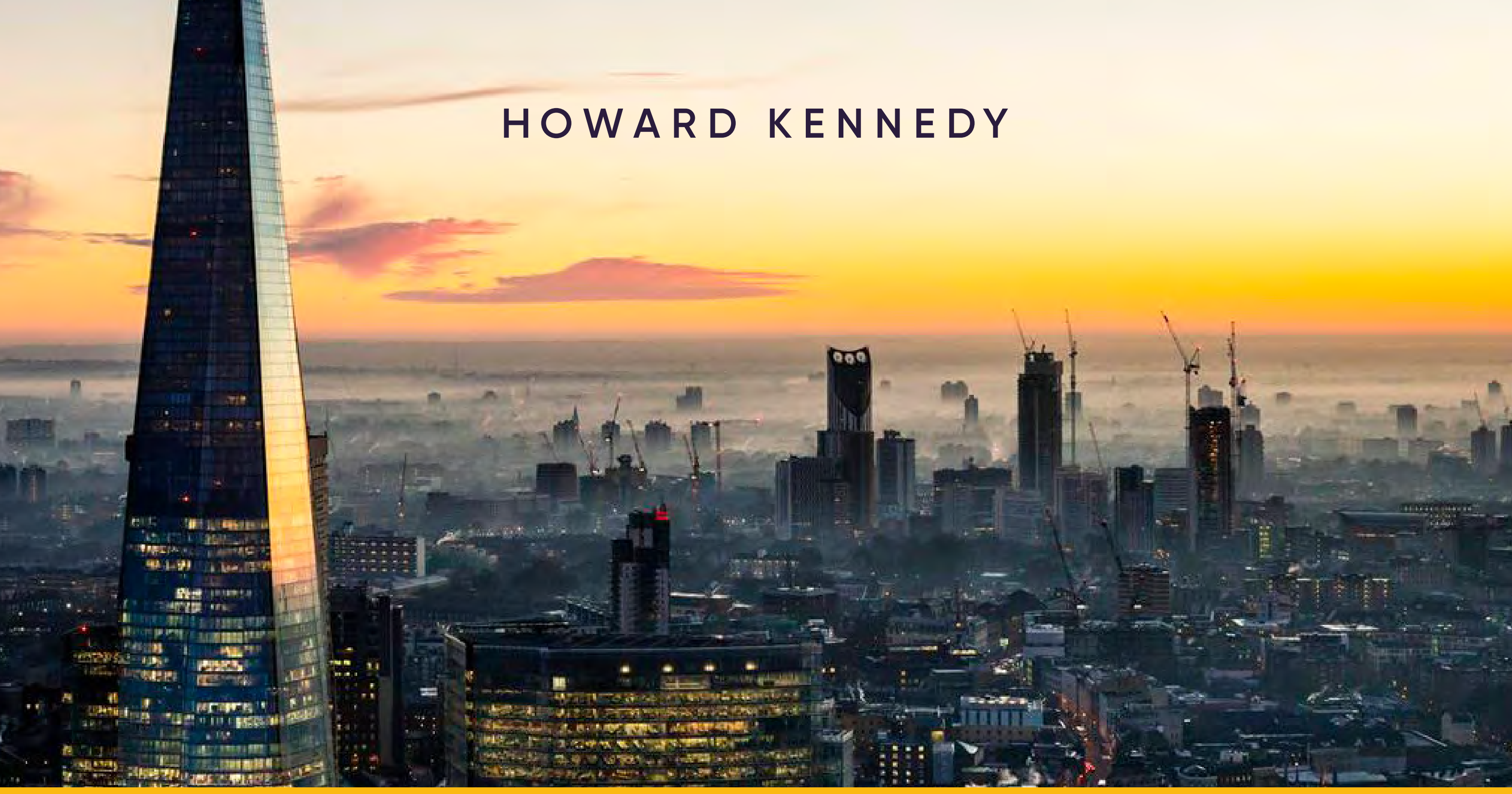

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CULTURAL CONSIDERATIONS OF WEALTH STRUCTURING FOR MIDDLE EASTERN CLIENTS

Authored by: Lisa Vizia (Director) - Saffery Trust

Being a modern trustee means understanding that wealthy families – and their assets – are increasingly globalised and need tailored wealth structuring solutions that are often multi-jurisdictional.

Alongside the legal, tax, regulatory, and administrative considerations of cross-border wealth structuring, trustees must also never underestimate the importance of understanding and respecting their clients' culture.

Whilst structures are set up in specific jurisdictions to meet the needs of each client, it is imperative that the culture of the individual or family is embraced and incorporated by the trustee.

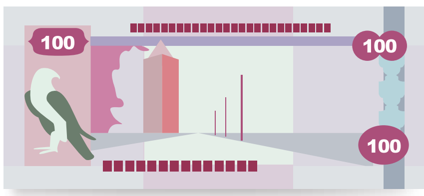
Culture undoubtedly influences the financial and personal objectives of any client. It must always be at the centre of the decision-making process and of the relationships between clients and trustees.

The weight of cultural considerations varies for each client. For Middle Eastern clients this weight is substantial; their culture, law and religion are a way of being. Sharia Law should be recognised and respected by a trustee, rather than viewed as something to be mitigated or ignored.

Building relationships and trust with any client is fundamental to the role of a trustee, and for Middle Eastern clients this can be a particularly lengthy process with several unique considerations.

Where possible, a trustee should endeavour to build relationships with each member of the family to educate them on the role of a trustee and purpose of a structure, and to also understand their individual and collective values. However, the culture for Middle Eastern families can mean that the patriarch – or matriarch – is the primary, or sometimes only, family member who will have a relationship with a trustee during their lifetime.

The size of a Middle Eastern family may also be considerably larger than an Asian or Western family. Under Sharia Law, a man may have up to four wives, each with children, and so establishing relationships with a vast array of beneficiaries becomes a complex challenge for the trustee.



Certain Sharia customs also pose a potential barrier to building relationships will all members of a Middle Eastern family. As a woman, I have the benefit of being able to meet with both men and women in the family, where a male trustee, or other professional, might be prohibited from meeting with the female family members without supervision.

With over twenty years' experience working with Middle Eastern families, I have seen firsthand how respectful their culture is of women, both within their family, and professional service providers, including trustees and lawyers.

While there may be a perception that, under Sharia Law, women do not benefit from family wealth in the same way as men, this is not the case. Generally, sons and daughters will inherit at a ratio of 2:1. On the surface, this may seem an unfair balance, however this structure is in place as it is a man's responsibility to provide for the women in his family, so ultimately everyone benefits from this distribution of wealth.

This is a prime example of why it is essential for trustees to take the time to understand the rationale behind Sharia Laws, and to be entirely respectful of a client's culture.

When it comes to wealth structuring, international assets and investments can be structured in such a way to strictly adhere to Sharia Law, or can allow for more flexibility, depending on the preference of the client. Whereas on demise, the client will predominantly want the devolution of wealth to be in accordance with Sharia Law.

Under Sharia Law, generally there needs to be a male beneficiary to inherit family wealth. In a case where the immediate beneficiaries (eg the Settlor's children) are all women, a male heir should be found, which may be a distant relative. This is sometimes a compelling reason for Middle Eastern families to establish international trust structures, which would enable immediate female heirs to benefit directly more than they would if the assets were held personally by the patriarch.

It is important to establish a Settlor's wishes as to succession planning on establishment of the trust – supported by a letter of wishes – and to then revisit the subject regularly through their lifetime. It is particularly relevant to clarify whether the Settlor wishes for succession planning to be undertaken in accordance with Sharia Law – stipulating which sect - or a variation of this.

In a case where we had a Settlor who wished for distributions to be made to their named heirs under Sharia Law, we came across a fundamental issue that the Sharia Law principles conflicted with underlying Common Laws governing the discretionary trust, under which there was a larger class of beneficiaries.

After extensive enquiries into the size and nature of the wider beneficial class, we arrived at a momentous decision which adhered to the Settlor's wishes and were able to clearly demonstrate our rationale behind the decision and evidence that thought had been given to each class of beneficiary. In this case, due to the complex nature of the decision, we obtained a blessing from the Grand Court of Cayman, to protect the beneficiaries from any retrospective disputes being raised over the distribution of assets.

In my experience, one of the primary reasons why a patriarch or matriarch will put their wealth and assets into trust, is to ensure continuity. If assets and wealth are held within the individual's estate, probate matters can see assets frozen for years.

The probate process can be further drawn out, and costly, when disputes arise between the family, for example in the case of Aretha Franklin's estate, which involved a five-year dispute between her children.

For Middle Eastern families, continuity is an important consideration in respect to family businesses, which account for around 90% of private companies in the UAE and Saudi Arabia.

When establishing wealth structures, it is important for a trustee to acknowledge that some family members may be more involved in the operations of the family business than others. It may be that the business is structured within trusts to split out the economic value from the business management. This ensures that the required beneficiaries benefit from the business – in accordance with Sharia Law - while allowing for the business to be run smoothly with minimal family input.

As families, businesses and wealth continue to extend globally, we are also finding that Middle Eastern families are looking to mirror their domestic structures internationally. Trustees can facilitate this, by investing time and resources in understanding Middle Eastern culture and laws and building relationships.

THE GAZA WAR

SHAPING THE DECISION-MAKING OF FAMILIES OF WEALTH FOR THE FUTURE

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

The Gaza War, a recurring conflict in the Middle East, is a poignant example of how global events can impact families of wealth and their decision-making processes. Beyond its immediate and devastating effects, this ongoing crisis holds lessons and implications for families of wealth worldwide. In this article, we will explore the impact of the Gaza War on these families, examining how it shapes their decision-making for the future.

Understanding the Gaza War: Historical Context

The Gaza War, a series of conflicts between Israel and various Palestinian groups in the Gaza Strip, has a long and complex history. Its roots extend back to the mid-20th century, tied to the broader Israeli-Palestinian conflict, with deep-seated political, religious, and territorial disputes. In 2023, a Hamas strike on Israel triggered a series of events that has led to loss of life on many innocent civilians and international outcry and ultimately tensions have spilled over in many forums.

The Gaza War has resulted in significant loss of life and widespread destruction.

It has left countless families displaced, struggling to cope with the aftermath of violence, and has underscored the broader humanitarian crisis in the region. The human suffering is impossible to ignore.

Impacts on Families of Wealth

Global Economic Impact: The Gaza War has far-reaching consequences, extending beyond the region itself. It affects global markets, investor confidence, and economic stability. For families of wealth with diverse investments and business interests, these economic repercussions are a pivotal consideration.

Philanthropic Responses: Families of wealth often have philanthropic foundations and initiatives aimed at addressing global issues. The Gaza War highlights the importance of strategic philanthropy and the need for families to make informed decisions about where their resources can have the most significant impact. Also decisions that have been made by families to withdraw funding to spaces that do not support their viewpoint and alignment has become a huge PR issue all round.

Ethical and Social Responsibility: The conflict underscores the ethical and social responsibility that families of wealth bear. It challenges them to examine their investments and business practices, ensuring alignment with their values and principles, and to actively promote peace and reconciliation in conflict regions.

Lessons from the Gaza War

Risk Assessment and Mitigation: The Gaza War serves as a stark reminder of the need for comprehensive risk assessment and mitigation strategies. Families of wealth should diversify their assets and invest in industries that are resilient to geopolitical tensions, helping to shield their wealth from unforeseen conflicts.

Geopolitical Awareness: Geopolitical events like the Gaza War highlight the importance of staying informed about global issues. Families must closely monitor international affairs and engage with geopolitical experts to better understand how regional conflicts can affect their financial interests.

Humanitarian Initiatives: The Gaza War underscores the need for families of wealth to invest in humanitarian initiatives that address the root causes of conflict, provide assistance to affected populations, and promote peaceful resolutions. These initiatives can have a lasting impact on global peace and stability.

Decision-Making for the Future

Investment Strategy: Families of wealth should reevaluate their investment strategies in light of the Gaza War. This includes considering investments that align with ethical principles and exhibit resilience in the face of geopolitical conflicts. A well-diversified portfolio can be a vital shield.

Philanthropic Focus: The ongoing conflict highlights the importance of strategic philanthropy. Families of wealth can engage with experts in the field and develop focused, sustainable initiatives that address the underlying causes of conflicts and support vulnerable populations.

Promoting Peace and Reconciliation: Families of wealth can play a role in promoting peace and reconciliation efforts. They can support organisations and initiatives that work towards conflict resolution and diplomatic dialogue, leveraging their influence to advocate for peaceful solutions.

Ethical Investing: The Gaza War serves as a catalyst for families of wealth to reevaluate their ethical investment practices. It is crucial to assess the ethical alignment of their investments and ensure that their financial endeavours reflect their values and commitment to a better world.

The Gaza War is a stark reminder of the far-reaching impact of geopolitical conflicts on families of wealth. Beyond financial considerations, it underscores the ethical and humanitarian responsibilities these families bear.

The lessons learned from the Gaza War can guide families of wealth in making more informed, ethically sound, and resilient decisions for the future. By aligning their investments, philanthropy, and advocacy efforts with principles of peace and stability, these families can contribute to a more prosperous and peaceful world. The Gaza War may be a tragic event, but it can also be a catalyst for positive change and ethical decision-making.

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