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EDITORIAL

With the 2016 well behind us, a reflection on what has transpired last year will be be the guide for 2017; undoubtedly, the exit of the UK from the European Union is by far the most significant legacy, especially for us who live in this part of the world.

The politically-minded amongst us will no boubt assert the official beggining of the end of the European Union, which under its spectacular failure to handle the economic crisis, the immigration problem and the terror attacks has added one more fiasco to its brief history.

The economically-focused ones will note the downward rally of the pound sterling which continues to depreciate against the dollar.

Most importantly though, are those who will capitalize on this opportunity. Huge inefficiencies in the markets will allow speculators to profit from moving businesses out of the UK to other European territories, gain from currency fluctuations and so on.

Have a pleasant reading.

Pericles

Pericles Spyrou is the Managing Partner of aQuiver Qapital Ltd.

INVESTMENT DECISION - THE 21ST CENTURY PERSPECTIVE

An investment in knowledge pays the best interest. - Benjamin Franklin

In the good old days, a bank was about taking deposits and lending money. These days are now gone. Banks are extremely reluctant to take deposits and when it comes to lending money – well, you haven't really applied for a loan recently, have you?

Nowadays, banks are all about investments. You walk into any bank and the first thing they ask (well, the second thing really - the first one is where did you find the money from) is what investment portfolio you wish to adopt.

In a world where the word "deposit" is a euphemism for having your money sitting idly around and earning you bank charges, investing your money is pretty much the only way to (a) get a bank account opened and (b) generate a mediocre return on your funds.

There is a plethora of investment options, depending on the risk-appetite of the client. Aggressive for the ones that are risk-hungry, conservative for the ones that are risk-averse and a huge number of other options in between, targeted for those with an investment profile that sits in the middle.

The question is not whether to invest but how to do so. Although there is obviously no right or wrong answer, there are a number of rules that you should always keep in mind:

Always consult a licensed investment advisor. Not just someone who hands you a glossy brochure and asks you to sign where the "x" is. You should rather take the advice of someone who is regulated and authorized to offer investment advice.

Trust your instinct. Most successful business decisions are based on a gut feeling.

Match your investment decision with the horizon of your expenses. If, for example, you expect a substantial cash outflow next year, then it makes little sense to tie down your money in a three-year investment plan.

PS I keep looking at the above quote and I wonder what Benjamin Franklin would say these days about investments.

RECENT AMENDMENTS TO THE CYPRUS PASSPORT SCHEME

On 13 September 2016, the Council of Ministers of the Republic of Cyprus approved a number of improvements to the already successful passport scheme for granting Cypriot citizenship to foreign entrepreneurs and investors. The revised scheme aims to attract additional investors who will select Cyprus as their country of residence and operations.

Some of the main advantages of the Cyprus Passport Scheme are:

1. All the benefits enjoyed by EU Nationals including free movement and residence within the EU

2. No requirement to have lived in Cyprus prior to submitting the application

3. The applicant's family, provided they are financially dependent and under 28 years of age (for the children) may also apply without a requirement for investment on their part.

4. The applicant's parents are also eligible for citizenship provided they purchase a residence of at least €500.000 (plus VAT, if applicable)

The most important change concerns the reduction of the minimum required amount of investment from €5 million to €2 million. The requirement for the purchase of a private residence worth at least €500,000 plus VAT, if applicable, remains. Furthermore, the provision allowing a group investment of up to five investors for a minimum of €2.5 euro per investor has been abolished and bank deposits are no longer regarded as an investment option for applicants.

An applicant may proceed with investments in at least one of the following categories:

1. Investment of at least €2 million in Alternative Investment Funds (AIF) or in financial assets of Cyprus companies or organisations that are licensed by the Cyprus Securities and Exchange Commission (CySEC). These organisations must utilize their capital solely for investments within Cyprus.

2. Investment of at least €2 million for acquiring or incorporating or participating in companies or business organisations established in the Republic of Cyprus which employ at least five Cypriot or EU citizens who had been permanent residents of Cyprus for at least five years prior to the commencement of their employment in the business.

3. Investment of at least €2 million (plus VAT where applicable) for the purchase and development (residential, commercial, tourist) of real estate in the Republic of Cyprus.

Contact us at our new offices

aQuiver Qapital
2nd floor
71 Limassol Avenue
2121 Nicosia
Cyprus

Correspond via post

PO Box 20335
2150 Nicosia
Cyprus

Check us out on the internet

www.aquiver.eu

Alternatively, the foreign applicant may opt to proceed with a combination of any of the above-mentioned categories, provided that the total amount of investments is at least €2 million and the investments are held for a minimum period of three years – as is applicable to all categories. In the case the applicant makes a combination of investments he/she is also entitled to buy government bonds issued by the Republic of Cyprus for an amount not exceeding €500,000.

Additional conditions for eligibility:

1. The applicant must have a clean criminal record and his name must not appear on any list of individuals whose property within the EU has been placed under any restrictions.

2. For categories (1) and (2) above and for the case of a combination of investments, the applicant is additionally required to purchase a residence within the Republic of Cyprus of at least €500.000 in value, (plus VAT if applicable). This must be retained by the applicant for life. For category (3), the applicant is not required to purchase an additional residential property provided that at least one of the properties purchased will be used as the permanent residence and is worth at least €500,000 (plus VAT if applicable).

3. In the circumstances where the applicant does not already possess a permanent residency permit in the Republic of Cyprus, then an application must be submitted simultaneously with the citizenship application.

It is noted that applications already submitted will be examined based on the provisions in effect so far. However, the applicants may withdraw their application and submit a new one based on the revised scheme if they so wish. Furthermore, for the period up to 31 October 2016 both the old and updated schemes will be in effect, hence applicants may choose the scheme under which they wish to apply given their specific circumstances.

THE SUBSTANCE OF SUBSTANCE

I do seem to recall, with a certain feeling of bemusement, the days when international clients would set-up of companies as long as they were accompanied by a general power-of-attorney; these days are long gone. Oh, and for the record, I would always decline servicing such requests.

The crack down on tax evasion by authorities which want to tax anything that moves, the introduction of the guidelines of the so called "base erosion profit shifting" (BEPS) and the changing attitude of the banks who have now become holier than the Pope, has obliterated the appetite for such structures and has rendered such requests as comical rather than anything else.

On the contrary, an increasing number of clients are now adept to the notion of creating structures with so-called "substance". A company which claims treaty benefits and the avoidance of any tax being withheld, will be asked to prove that it is not a paper company with no essence. As with everything in this vain world, the definition of substance is left intentionally vague and subject to interpretation on the merits of each specific case. However, there are a useful number of pointers that we will explore in further detail.

Common practice has shown that substance must follow common business sense. For instance, it would make little commercial sense for a company which purports to establish substance, to carry on its balance sheet (I believe today it is called "statement of financial position") assets in the region of millions of dollars, only to be matched with a profit and loss account (or "statement of comprehensive income" as it is called nowadays) with expenses of five thousand dollars.

Indeed, a company should be able to demonstrate that it occupies its own premises, it employs adequate staff to carry out its day-to-day activities and relies on a board of competent directors with substantial experience and expertise to take management decisions.

A board of directors should be made up primarily of local individuals with sufficient and relevant experience. Such individuals would normally be qualified professionals such as chartered accountants, lawyers, actuaries and so on. The board should convene at least twice a year and ideally once a quarter and it should amply document its proceedings through properly drafted minutes which would evidence that the major strategic decisions are taken during these deliberations. We would normally suggest that the board comprises of both executive (salaried) and non-executive, independent directors, the latter bringing external expertise and balance in the discussions.

The company should also rent its own offices and not share an address or an office with another 2,000 companies. It is normally recommended for this office to be sizable in space (as opposed to a single cubicle) and to be backed up with a commercially-oriented lease agreement. Serviced offices are normally considered to be far from an ideal solution and they are a pointless compromise made on the grounds of cost reduction.

An essential element of substance is also for the company to employ its own staff. This staff should be located in the company's premises and should pay all the local income and social insurance taxes. Caution should be used to avoid instances of subcontractors which receive remuneration through their own companies without any obligation to pay social insurance, something that works against substance rather than in favour of it.

One can easily deduce that all of the above (as well as many more) would come with a substantial price tag, something that the end client should have in mind. However, a long-known dictum professes that "you can't make an omelette without breaking any eggs". How can you create substance at no cost?