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GONE WITH THE WIND

"Clean Sweep Ignatius" is a short story written by Lord Jeffrey Archer and originally published in his 1988 collection "A Twist in the Tale". It tastefully recounts the fictitious story of a senior government official called Ignatius Agarbi who visits a foreign bank and, at the behest of his government, goes out of his way to convince a senior banker to divulge confidential information for citizens of his country holding undeclared accounts. He unsuccessfully employs all sorts of persuasive methods, from flattery to coercion. The banker refuses to comply and, at the very pinnacle of the story, he reluctantly still rejects to do so, albeit threatened at gunpoint. Ignatius withdraws the weapon, smiles, opens a suitcase full of cash and kindly requests that the banker opens an account for him.

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The double tax treaty of Cyprus with Russia has long been considered as the crown jewel of the Cyprus financial services industry. And now? In spite of the spin that was placed in various press announcements, the fact of the matter remains that investors will no longer have any competitive *tax* benefit in investing into Russia through Cyprus. First it was de-offshorisation, then it was BEPS - or was it the other way round? In any case, this business, in the form it was known for the past decades, is now gone. Gone with the wind.

But. And this is a big "But". Far greater competitive advantages have been eroded over the years and the jurisdictions that suffered far greater losses came out stronger than ever. The first obvious example that presents itself is the confidentiality of Swiss banks. Irrespective of that no longer being there, Switzerland still remains the number one destination for private banking, on account of its stability, sophistication and legacy. The second example that comes to mind was the lack of public information and the unavailability of a public registry in the BVI, which created opacity since the very inception of this business. Despite that the BVI have now created such a registry, little did the Territory suffer, remaining a sought-after destination due to its long-standing tradition in the corporate services industry.

Similarly, the (Russian) business that has propelled Cyprus' economy in the past may not be there in the future in such quantity or such form. However, the fortification of Cyprus' economic pillars (efficient public sector, robust banking, sophisticated regulation), the culmination of years of assiduous work by recent administrations, guarantee the country's enduring success in the future. As Scarlett O' Hara so appropriately, if not plainly, epitomised: "Tomorrow is another day".

Have a pleasant reading.

Pericles

What's On Today's Edition?

coming soon

Cyprus Notional Interest Deduction rules – Recent amendments

Time we talked about our favourite subject – taxation. The Cyprus Notional Interest Deduction (NID) rules have been augmented by the Cyprus Income Tax (Amending) Law 66(I)/2020. The main changes are highlighted below:

NID reference rate

The NID reference rate will now be the interest rate of the 10-year government bond yield of the country in which the new equity is invested plus a 5% premium.

The interest rate of the Cyprus 10-year government bond will no longer be used as a comparison. It will only apply in the event where the country in which the new equity is invested has not issued a government bond up until 31 December of the year preceding the year in question.

This amendment is in force as of 1 January 2020.

'New equity' vs 'old equity'

'New equity' represented any equity introduced into the business on or after 1 January 2015. Such 'new equity' excluded any equity created from the capitalisation of reserves existing on 31 December 2014. However, 'new equity' included the capitalization of pre-2014 reserves, as long as they created new business assets which did not exist on 31 December 2014.

The new law stipulates that it will no longer be possible to claim NID on equity created from the capitalization of reserves existing on 31 December 2014 regardless of whether such equity is funding new business assets.

This amendment will be in force as of 1 January 2021.

Clarifications to the matching principle

The law has been amended retrospectively to align the tax law provisions with Circular 10 of 2016 issued by the Cyprus Tax Department on the practical implementation of the NID rules.

In this respect the amending law introduced in the Cyprus Income Tax Law the matching principle between the new equity and the net taxable income that arises from such equity and the application of the 80% deduction on every stream of income separately. The amending law has also placed a restriction of the NID, in instances where there is a net allowable loss as a result of the introduction of new equity.

This amendment will apply retrospectively as of 1 January 2015.

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DAC6 reporting deadlines deferred

Good news; for a change. The first reports under the Directive on Administrative Cooperation ('DAC6') have now been deferred to January 2021.

The Council of the European Union on 24 June 2020, announced that the EU will give EU Member States the option of more time to comply with certain rules on cross-border information reporting. As one would have guessed, the deferral is provided as a response to the coronavirus (COVID-19) pandemic.

Following an informal agreement reached by EU Member States in early June 2020 and the approval by the European Parliament on 19 June 2020, the Council of the EU announced that it has adopted an amendment to the DAC, allowing the member states of the EU the option to defer the time limits for filing and exchange of information with respect to mandatory disclosure requirements for intermediaries and relevant taxpayers under DAC6.

The EU Council's announcement does note the fact that this optional deferral is in response to the severe disruption to the activities of tax advisors, financial entities, tax authorities and so on, caused by the COVID-19 pandemic. The amendment provides the possibility for the Council to further extend the deferral period once, for a maximum of an additional calendar quarter (three months). Such an additional extension will be reviewed one month before the end of the revised deadlines. It is noted that any extension would depend on the development of the COVID-19 pandemic. It is also noted that any extension would have strict conditions attached to it.

The professional community in Cyprus expects that the country will take up this option. As a result, the original deadlines will be postponed by two quarters (six months).

US citizenship renunciation reach record levels

The first six months of 2020 saw Americans renouncing their citizenship at the highest levels on record. It is believed that the crisis promulgated by the coronavirus (COVID-19) pandemic has motivated US citizens, mainly expats, to sever their ties with the US.

Official figures show close to six thousand renunciations recorded up to 30 June 2020 (Up to 31 March 2020: 2,909). This number is thirteen times higher than the number of renunciations recorded in the preceding six months and three times as many as the number of renunciations of 2019, which were just over two thousand.

The number of US nationals renouncing have been in steady decline since 2017, and the latest figures signal a sharp reversal in the trend since the start of the COVID-19 pandemic.

US citizens who live abroad are still required to file US tax returns each year, potentially pay US tax and report all their foreign bank accounts, investments and pensions held outside the USA.

In order to renounce their citizenship, US citizens need to pay:

- An 'exit-tax' (akin to a capital gains tax) on the assets they own on a global basis
- A government fee of $2,350

Those based overseas must renounce in person at the US Embassy in their country, and may even have their renunciation rejected if they are thought to be doing it for tax reasons.

Power to dissolve a trust, the Red Cross and the 'Saunders v Vautier' principle

It is common practice in the trust business to draw up a list of beneficiaries in the trust deed, comprising only of a charity; such as the Red Cross or UNICEF. Normally, the rationale behind doing so is to avoid naming the actually intended beneficiaries, for confidentiality reasons, only to add them at a later stage by a power vested to the trustees in the trust deed. The recent case of Rusnano Capital serves as an interesting reminder of how precarious it is to do so.

'Saunders v Vautier principle'

The 'Saunders v Vautier principle' emanates from a leading English trusts law case, Saunders v Vautier [1841] EWHC J82, (1841) 4 Beav 115. It provides that, if all of the beneficiaries in the trust are of adult age and under no disability, they may request of the trustee to distribute the trust assets to dissolve the trust.

The Rusnano case

The Rusnano case relates to a trust settled in Guernsey pursuant to a trust deed dated in 2014. Rusnano Capital AG invested in a recently launched medical technology enterprise called Pro Bono Bio Plc, holding the shares through the RNPharma trust.

Being the only beneficiary named on schedule 4 of the trust deed, Rusnano brought an application for an order that the trust be terminated and for the entirety of the property of the trust to be distributed to them. This application was contested by both the trustee and the appointer, on the basis that there was a continuing power under clause 7 of the trust deed for the appointer to add beneficiaries to the trust. The trustee and the appointer took the view that this continuing power to add beneficiaries should be interpreted as resulting in an 'open' class of beneficiaries. Therefore, the power to add further beneficiaries meant that the class was not closed and the Trust could not be terminated.

Royal Court of Guernsey

At first instance, the Royal Court of Guernsey granted the application. The court held that at the relevant time Rusnano was the sole beneficiary, therefore Rusnano was entitled to terminate the trust under Section 53(3) of The Trusts (Guernsey) Law, 2007.

Court of Appeal

This decision was appealed by the trustee and the appointer, only to be reaffirmed by the Court of Appeal. In its judgment, the Court of Appeal added that a court has discretion under Section 53(4) of the 2007 Law to override the termination of the trust, if it thinks this would be appropriate; for instance, given the intentions of the parties at the time the trust was settled. The question of whether the court should exercise this discretion in the case of Rusnano was referred back to the court of first instance.

'Red Cross' trusts

The Court of Appeal also referred to the so-called 'Red Cross' trusts, settlements which only name a charity as the beneficiary. The intention in these cases is that the trustee will add further beneficiaries in the future via supplemental deeds. The court recognised the predicament whereby charities in such trusts could bring an application to terminate the trust, before additional beneficiaries are added. It noted however the court's inherent discretion in denying such applications and preventing unwarranted trust terminations.