



I first came across John Steinbeck when studying English literature at school, with his landmark novella “Of mice and men”. It is indeed quite ironic studying an American author under the subject of English literature, especially if one recalls the words of George Bernard Shaw who is credited with identifying the fact that “England and America are two countries divided by a common language”.

In any case, years have gone by and my reading habits deteriorated to authors who one may consider as being more of a contemporary nature and less of a classic timelessness. It was a couple of years ago that I had the opportunity to read one of the works of John Steinbeck once again. This time, it was “The Grapes of Wrath”, a novel which is considered as being a masterpiece and certainly Steinbeck’s magnum opus; after all, it did result with him being awarded the Nobel prize for Literature in 1962.

The single quote that was somehow etched on my mind was “the bank is something else than men... the bank is something more than men, I tell you... Men made it, but they can’t control it.” Granted, the context is different, but the essence is there. Nearly 80 years after the first publication of “The Grapes of Wrath”, Steinbeck’s axiom remains as contemporary as ever.

Have a pleasant reading.

Pericles

THE RISE (AND FALL?) OF THE CRYPTOCURRENCY

2017 has been a phenomenal year for cryptocurrencies. Bitcoin, perhaps the most widely-recognised of them all, has reached its pinnacle in mid-December by climbing up to \$19,850 following an unprecedented rally that sparked enthusiasm and promise. Things have not been quite as good since then.

On 2 February 2018, Bitcoin, Ripple and Ethereum (the latter two being the close seconds in the cryptocurrency hall of fame) have crashed, wiping out over \$100 billion from the cryptocurrency market capitalisation within 24 hours. Bitcoin recorded losses of nearly 50% within that month and the other two have lost around 40%. It was then that people started talking about the end, or in a milder view, the beginning of the end.

Analysts predict that the situation is not quite so dire. Granted, the market has been overheated and, yes, experts have warned about it being marred with substantial deficits and risks. A market which is, was, and possibly will continue to be (albeit at a lesser extent) volatile. But, being a virgin territory, it does have a lot of scope for improvement and, as a result, growth potential.

This can come in 3 main ways:

- Influx of capital from institutional investors.
- Improvement and increased recognition of cryptocurrency exchanges.
- Improved security measures to counter hacking.

Can these happen overnight? Obviously not. Will they fuel prices back to the pre-crash era? Nobody knows. But one thing is for certain. Cryptocurrency has the potential to be a major player in the fintech industry. It’s only a question of whether it will capitalise on its true potential.





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VAT TREATMENT OF HOLDING COMPANIES IN CYPRUS

Let's talk about our favourite subject; taxes. Earlier this year, in January 2018, the Tax Department of the Republic of Cyprus issued an Interpretative Circular in relation to the treatment of input VAT for holding companies. The Circular discusses the right of such companies to deduct management expenses relating to their subsidiaries.

The circular comes off the back of a recent case law of the Court of Justice of the European Union. Its purpose is to differentiate between instances of simple acquisition and holding of shares, and cases where there is management or administration of subsidiaries.

In the former case, the Circular restates the obvious; the mere holding of shares in a passive manner is not an economic activity for VAT purposes. This is pretty much what we have already known so far. Hence, such a holding company is not entitled to register with the VAT department and consequently it cannot claim back any VAT paid on its expenses ("input VAT"), having to bear it as an outright cost.

In the latter case, the situation is different. The holding company engages in economic activity by being (directly or indirectly) involved in the active management of its subsidiaries. This involvement may come in different shapes or forms such as the administration, overseeing or organisation of the activities of the subsidiaries. The dividend income received by the holding company may be then regarded as the consideration for this active involvement of the parent in the subsidiary's affairs.

The parent company then has the opportunity to claim back the input VAT if the services purchased are used for the provision of taxable supplies relating to its subsidiaries. In instances where the holding company is exercising both economic and non-economic activities, the input VAT has to be apportioned using a suitable method, as we normally do for (say) companies with holding and financing activities.

Cleverly enough, there are no criteria set in stone for ascertaining whether a parent company does indeed carry out active management of its subsidiaries. As one might expect, each case will be examined on its specific merits. It would help one's case if they have directors of the parent appointed on the board of the subsidiaries or properly drafted minutes of directors' meetings.

FACT AND FICTION ABOUT GDPR

Another enlightened piece of legislature from Brussels is knocking on our doors and hitting on our nerves. The EU GDPR (General Data Protection Regulation) is the most important change in data privacy regulation in 20 years. It even has a website so, if you don't want to browse sports pages during working hours any more feel free to visit <https://www.eugdpr.org/>.

What is GDPR?

The GDPR (or, more formally, Regulation (EU) 2016/679) is a regulation by which the European Parliament, the Council of the European Union, and the European Commission intend to safeguard the protection of sensitive, personal data (see below), within the EU.

What constitutes personal data?

Personal data is any piece of information related to a natural person, that can be used to directly or indirectly identify the person. There is a wide range of what this piece of information may be and the list range from the very simple and obvious (eg name and surname of an individual) to the very sophisticated (eg a computer IP address). Other examples include photographs, bank particulars, posts on social network sites, residential addresses and so on.

When does GDPR come into force?

The GDPR was approved by the EU Parliament on 14 April 2016. The enforcement date is 25 May 2018. As the name implies, and in contrast to its predecessor, it is a regulation. This means that it has automatic binding force without the need for local legislation.

Who does GDPR affect?

The GDPR applies to organisations (EU or non-EU) who offer goods or services to, or monitor the behaviour of, EU data subjects. It applies to all companies processing and holding the personal data of data subjects residing in the EU.

What are the penalties for non-compliance?

Organisations may be fined up to 4% of annual global turnover for breaching GDPR, with the maximum penalty for severe offences capped at €20,000,000. Such infringements include not having sufficient customer consent to process data or violating the core of Privacy by Design concepts. There is a tiered approach to fines and it important to note that these rules apply to both controllers and processors (see below).

What is the difference between a data processor and a data controller?

A controller is the entity that determines the purposes, conditions and means of the processing of personal data, while the processor is an entity which processes personal data on behalf of the controller.

Who needs to appoint a Data Protection Officer (DPO)?

DPOs must be appointed in the case of: (a) public authorities, (b) organisations that engage in large scale systematic monitoring, or (c) organisations that engage in large scale processing of sensitive personal data.

PETER PAN, OSCAR WILDE AND THE DUTY OF TRUSTEES TO ACCOUNT TO BENEFICIARIES

Young people often tend to overestimate the extent of their knowledge and skill, thinking that “they know everything”. Perhaps it is for this reason that trusts often include clauses restricting the flow of information to minors or young adults.

One of the principles which are central to the idea of trusts is the duty of the trustees to account to the beneficiaries of the settlement. It forms part of the “irreducible core of obligation owed by the trustees to the beneficiaries”¹ which in turn enables the beneficiaries to enforce the trust by their prerogative to actively monitor the trustees.

The Royal Court of Jersey has recently reached a decision which digresses from this well-established principle and which may give trustees grounds for withholding information from beneficiaries.

The sequence of events which precipitated this decision originated from a Beddoe application by the trustees of the trust, seeking the court’s directions on a proposed settlement of a claim with an unrelated third party. In brief, the trustees had proposed a payoff of £350,000 to an ex-employee of a wholly owned subsidiary of the trust, who claimed wrongful dismissal and sought damages of £2,000,000.



Whereas it is customary for the beneficiaries to be summoned to such hearings, the trustees in this instance decided against seeking representations from the beneficiary in question (“K”), on the basis that doing so would not be to his benefit. Their rationale was that “it would be a harmful and damaging burden for him to learn of the trust’s size” given that the trust had assets in the region of £75m. Although K was aware of the existence of the trust, he was not aware of the size of the trust property, something that would have been revealed to him had he been a party to the Beddoe hearing.

Royal Court of Jersey: Trustees

*may withhold information of
beneficiaries of age*

The Court considered whether denying K the opportunity to provide his views on the settlement of the litigation was justifiable. The court then concluded that the trustee’s view was indeed correct under the circumstances and agreed that denying K access to this information was to his benefit.

It should be noted that K, aged 19, was not a minor at the time. However, the Court took into account the fact that K’s mother (one of the other two beneficiaries, both of whom had been involved in the hearing) was in alignment with the trustee’s decision. The Court also took the view that knowledge of the substantial value of the trust fund by K might adversely influence his decisions on tertiary education and future career. The Court acknowledged that a trustee had discretionary power not to inform a beneficiary of their entitlement on the basis of the beneficiary’s age, character or “some other special reason”. It was not clear if in this case there was indeed another special reason that was taken into account and, if so, what this reason was.

Conclusion

The decision of the Royal Court of Jersey provides a legal precedent which allows trustees sufficient discretion in withholding information from beneficiaries. Although not the rule (rather, it would be the exception), it provides a useful pointer for trustees to consider similar action in instances where they feel that the beneficiaries should not be given information on the trust fund.

However, trustees should bear in mind that such a decision should be both reasonable and well-justified.

I guess that the court may have also taken the sarcastic view that the expression “I am not young enough to know everything” holds true. Interestingly enough, the quote is widely attributed to Oscar Wilde, being the sort of quip one would expect to hear from Henry Wotton in “The picture of Dorian Grey”. It does, however, originate from a book called “The Admirable Crichton”, written by J. M. Barrie, a Scottish writer who gained more far prominence for writing one of the most famous books of all time - “Peter Pan”.

¹ Armitage v Nurse, 1997