



EDITORIAL

There are two fundamental questions that have inundated humanity since the dawn of civilization. The first one is the age of the universe. The second one is to keep a proper record of utility bills. Let's start with the second one.

It is standard practice to request clients to provide their utility bills as part of the usual onboarding process, as a substitute of verifying their residential address by an in-person visit. This is just one part of a jigsaw puzzle for constructing the client's profile that includes a copy of the passport, a brief résumé of their business affairs and a reference letter, preferably from a bank; the latter is due to the high level of reliance one can place on a bank's rigorous screening methods.

Whereas most of the above documents have found a way to be dealt with, the handling of the utility bill still remains an unveiled mystery – in the words of Winston Churchill, it could be described as a “a riddle, wrapped in a mystery, inside an enigma”. Why so? Well, all anti-money laundering guidelines (and believe me, there's a plethora of those) prescribe for a utility bill to be received in original form and to be updated every six months. Let's tackle each challenge separately.

In an attempt to save what is left of the Amazon after the August fires, to minimize postal costs and to optimize efficiency both for themselves and their clients, most utility companies now issue electronic utility bills. Each and every one of the aforementioned motives is good enough in its own right; question is, can we force utility companies to send utility bills by post, so we can complete our KYC files?

More interesting, is the requirement for “updating *expired* utility bills” (funny – though I can bring myself to reconcile with the idea of milk having an expiration date I can not quite do the same for utility bills). How can a bank with hundreds of thousands of clients, update these clients' utility bills every 6 months? Other than the commercial unattractiveness of the process, can one fathom the cost, monetary and administration, of so doing?

Obviously, I have steered away from a discussion on the rationale of verifying an individual's residential address, as all of us are aware of it. Even so, the answer to the question of how to deal with the form of the document and its purported expiration, eludes the minds of today's professional community.

Thankfully, the scientific community has solved the other mystery that has perplexed it for years – the age of the universe is 13.79 billion years; give or take.

Have a pleasant reading.

Pericles

WHAT'S ON TODAY'S EDITION?

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FORTIFY THEIR REPUTATION
AS A LEADING
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FRIDAY THE 13TH, THE
LOCKHEED SCANDAL AND
CLAIMS FOR BREACH OF
TRUST

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 coming soon

Cyprus concludes double tax treaty with Kazakhstan

Cyprus reinforces and expands its extensive double tax treaty network

Earlier in the year, on 24 May 2019, Cyprus ratified the first-time double tax treaty it had signed with Kazakhstan on 15 May 2019. The treaty will be in force as of January 2020 and it is expected to boost the business relationships between the two countries. The main highlights of the treaty are as follows:



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Dividends

A maximum 5% withholding tax rate applies on dividend payments where the parent holds at least 10% of the subsidiary. In all other instances, the double tax treaty provides for a of 15% maximum withholding tax rate on dividends.

Irrespective of the withholding tax rates mentioned above, Cyprus will not withhold any tax on outward dividends to non-Cyprus tax residents.

Interest

A maximum 10% withholding tax rate applies on interest payments. For certain interest payments to the Government, the double tax treaty provides for a 0% withholding tax rate on dividends.

Irrespective of the withholding tax rate mentioned above, Cyprus will not withhold any tax on outward interest payments to non-Cyprus tax residents.

Royalties

A 10% maximum withholding tax rate applies on royalty payments. Royalty payments are in consideration for the (right to) use (of) copyright of literary, artistic or scientific work, software, patents, trade marks, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience. The definition also includes payments for the (right to) use (of) industrial commercial or scientific equipment. Royalty payments do not include payments for the (right to) use (of) ships or aircrafts.

Irrespective of the withholding tax rate mentioned above, Cyprus will not withhold any tax on outward royalty payments to non-Cyprus tax residents, except for instances of royalty payments earned on rights used within Cyprus.

Capital gains

Cyprus retains the exclusive taxing rights on disposals of shares made by Cyprus tax residents, except for the following two instances:

- Non-listed shares which derive more than 50% of their value, directly or indirectly, from immovable property situated in Kazakhstan.
- Shares which derive the greater part of their value from certain offshore rights and/or movable property relating to exploration or exploitation of the seabed or subsoil or their natural resources located in Kazakhstan.

UAE introduce substance requirements

In an article that seems a bit like déjà vu (please refer to our previous edition), we are pleased to confirm that the United Arab Emirates have introduced economic substance legislation, with the aim of being removed from the European Union's blacklist of uncooperative jurisdictions.

The economic substance legislation that has now been introduced by the UAE as Cabinet Resolution No. 31 of 2019, aims to address this by meeting the EU's substance requirements, as many other international financial centres have either done or are in the process of so doing.

The legislation requires relevant companies to conduct certain core business activities within the UAE. These activities include management decision-making (properly documented with minutes), employment of qualified staff, incurring operating expenses and so on.

As always, it is highly advisable to speak to your local UAE who, no doubt, will be able to assist you.

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The defendants maintained that Edoarda was always intended to benefit from the Grand Trust through an obscure structure, Camillo Crociani Foundation Limited which was also a beneficiary of the Grand Trust and of which Edoarda had a beneficial entitlement.

It was, however, the view of the court that the Foundation (which had been set-up as a not-for-profit company with charitable purposes) was never intended to be an actual beneficiary but its very existence was an artificial arrangement and part of an elaborate planning scheme for US tax purposes; after all, the Foundation had never received any distribution from the Grand Trust.

In a subsequent surprise move, Edoarda claimed that the settlement of the trust was based on a *bona fide* mistake and should be set aside, as it was always the intention for her to be able to benefit from the Grand Trust as a direct beneficiary. One can easily foresee that this would not sit well with the court.

In an even more surprising development, reminiscent of court room dramas, both Edoarda and Camilla, on the eve of the trial, wrote to the court to indicate that due to poor health they will neither be attending the proceedings nor be legally represented. It was Friday the 13th, no doubt a day that proved to be unfortunate for the defendants. The court dismissed the explanation provided and rejected the defendants' claim of a mistake in the structuring of the Grand Trust, reaching the precipitous conclusion that the Grand Trust was never intended to culminate in any benefit for Edoarda.

Having reached the conclusion that the Grand Trust has never been set up with an intention to benefit to Edoarda, the court deliberated on the power used by the trustees of the Grand Trust to make the appointment to the Fortunate Trust in 2010. The court concluded that the aforementioned clause of the Grand Trust, based on which the appointment was made, prohibited any transfer to a trust of which Edoarda was a beneficiary, declaring this transfer to be legally void.

In finding for the plaintiffs on all three of the grounds by which they had sought to challenge the appointment of 2010 and reconstitute the trusts, the court presented to the defendants a bill of close to \$200m. Not for the faint-hearted.



Friday the 13th, the Lockheed scandal and claims for breach of trust

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In Greek orthodox culture, Tuesday the 13th is considered to be an unlucky day, akin to Friday 13th in the rest of the civilised World. The difference in day (Tuesday vs Friday) dates back to the medieval times as Constantinople fell to the hands of the Ottoman Turks on a Tuesday.

Camillo Crociani was a wealthy, self-made Italian millionaire who sought refuge to (and subsequently died in) Mexico, after fleeing Italy off the back of his alleged involvement in the Lockheed scandal. His substantial interest in Vitrociset SPA, a successful Italian technical and logistics company, generated a fortune for Camilo and his family and afforded them an opulent and glamorous lifestyle. Camillo Crociani passed away peacefully in 1980.

Having moved to New York with her two daughters, in 1987 Edoarda Crociani (Camillo's widow), set up the Grand Trust, a Bahamas settlement, for the benefit of her two daughters, Camilla and Cristiana. The assets,



most of which have been inherited by Camillo and which were bequeathed by Edoarda to the Grand Trust, included receivables (see later), cash, liquid investments and part of a unique art collection. Over the years, the value of the trust fund increased considerably, largely as a result of receipts under an interest-bearing promissory note from Croci International BV, a Dutch holding company. Additional works of art were also subsequently settled into the trust.

In 2010, the trustees of the Grand Trust appointed a large portion of the assets of the Grand trust to the Fortunate Trust, a separate settlement of which Edoarda (unlike the Grand Trust) was a direct beneficiary, an of which Edoarda retained substantial control with powers such as revocation or amendment of the trust deed, direction over the trust's management and investment policy, powers to direct distributions of income to herself and so on. The provision of the Grand Trust which made this appointment possible was a clause stipulating that an appointment from the Grand Trust to another trust had to be "in favour or for the benefit of all or any one or more exclusively of the others or other of the beneficiaries (other than the settlor)".

Following a deterioration in family relations between Edoarda and Camilla on the one hand and the youngest daughter, Cristiana, on the other, Edoarda exercised her substantial powers over the Fortunate Trust, revoking it in favour of herself. Cristiana Crociani, along with her two young daughters, filed a claim against the trustees and former trustees of the Grand Trust and the Fortunate Trust for breach of trust, which is what this case ultimately is about.

The validity of the appointment made in 2010 was pivotal for the Jersey court in considering the case. The claim of the plaintiffs was this appointment shifted assets from the Grand Trust to the Fortunate Trust, contrary to the terms of the former, and therefore in breach of that trust.

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