The Private Wealth & Private Client Review

Sixth Edition

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John Riches

The LawReviews

THE PRIVATE WEALTH & PRIVATE CLIENT REVIEW

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PREFACE

I INTRODUCTION

At a macro level, the dominant trend affecting the private wealth arena in the last 12 months continues to be the impact of various supranational initiatives seeking greater transparency with respect to anti-money laundering regimes and tax information exchange. I propose to focus in this year's introduction on the central importance of the concept of 'beneficial ownership' and the theme of convergence in the increasingly interconnected arenas of anti-money laundering policy and tax information exchange.

The clearest examples of this trend can be found in the introduction of centralised beneficial ownership registers, especially in the European Union and the Crown Dependencies and Overseas Territories of the United Kingdom (generally collectively referenced as CDOTs).[1] There are two specific manifestations of this:

a corporate beneficial ownership registers; and
b trust beneficial ownership registers.

In parallel, 2017 has witnessed the first substantive reporting by the first wave 'adopters' of the Common Reporting Standard (CRS) in the context of the 2016 calendar year.

I would like to first reference the common definitions that connect CRS with beneficial ownership registers and then refer in detail to the UK domestic trust register that was introduced by Regulations adopted in June 2017[2] (2017 MLR) before noting some key developments in the CRS domain.

i Common use of beneficial ownership concept

The key 'source document' with respect to the concept of beneficial ownership is the Financial Action Task Force (FATF) 2012 Recommendations.[3] These recommendations were introduced as part of the international anti-money laundering policy but have been adopted as an essential element of the international tax information exchange policy implemented by the CRS.

1 These jurisdictions includes Jersey, Isle of Man, Guernsey, Cayman Islands, Bermuda and British Virgin Islands.
2 To give them their full title, 2017 No. 692, The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.
3 FATF/OECD (2013), International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation, The FATF Recommendations February 2012, FATF/OECD, Paris, available on www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf.

This is clearly confirmed in a CRS context by the CRS Commentary on the concept of controlling persons. Paragraph 132 of the interpretive notes to Recommendation 10 on Customer Due Diligence, states:

> *Subparagraph D(6) sets forth the definition of the term 'Controlling Persons'. This term corresponds to the term 'beneficial owner' as described in Recommendation 10 and the Interpretative Note on Recommendation 10 of the Financial Action Task Force Recommendations (as adopted in February 2012), 13 and* ***must be interpreted in a manner consistent with such Recommendations, with the aim of protecting the international financial system from misuse including with respect to tax crimes.***[4]

The FATF recommendations lead to a position where one essentially moves away from a strict legal definition of who might be entitled to enjoyment of an asset as a beneficial owner to an expanded concept. Under these rules, if it is not possible to identify a beneficial owner based on 'ownership interests' it is necessary to identify a beneficial owner based on 'control' even though the person or persons who control a legal entity have no capacity to call for the assets of the entity for their own personal benefit. In addition, as a last resort, if no 'ownership' or 'control' test can be satisfied, the final step is to look to the 'senior managing official' of the entity at the top of the ownership chain. This three-level ordering of who is to be regarded as the 'beneficial owner' is taken from the interpretive notes to Recommendation 10 of the FATF 2012 Recommendations:[5]

> *Identify the beneficial owners of the customer and take reasonable measures to verify the identity of such persons, through the following information:*
>
> *(i) For legal persons:*
> *(i.i) The identity of the natural persons (if any – as ownership interests can be so diversified that there are no natural persons (whether acting alone or together) exercising control of the legal person or arrangement through ownership) who ultimately have a controlling ownership interest in a legal person; and*
> *(i.ii) to the extent that there is doubt under (i.i) as to whether the person(s) with the controlling ownership interest are the beneficial owner(s) or where no natural person exerts control through ownership interests, the identity of the natural persons (if any) exercising control of the legal person or arrangement through other means.*
> *(i.iii) Where no natural person is identified under (i.i) or (i.ii) above, financial institutions should identify and take reasonable measures to verify the identity of the relevant natural person who holds the position of senior managing official.*

The immediately following interpretive notes describe the steps to be taken to identify the beneficial ownership of a trust (or similar legal arrangement such as a foundation). In this case the approach is subtly different. They start with a composite list that blends together

4 Emphasis added.
5 FATF/OECD (2013), International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation, The FATF Recommendations February 2012, FATF/OECD, Paris, available on www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf at pages 61-62.

those who might benefit personally with those who are perceived to have some 'control'. They state:

> *For legal arrangements:*
> *(ii.i) Trusts – the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust (including through a chain of control/ownership);*
> *(ii.ii) Other types of legal arrangements – the identity of persons in equivalent or similar positions.*

What is notable here is the introduction of a 'residual' concept of:

> *Any other natural person exercising ultimate effective control over the trust*

I will refer to this as the 'NPEEC' in the rest of this article.

Until recently, there has been a major problem with construing who might be regarded as an NPEEC in a trust context especially because there has been no guidance in a FATF or CRS context that sheds light on what is meant by 'control'. This has created uncertainty as to when a person has 'control' over a trust, for example, will it include someone who has power to remove a trustee, someone who can only exercise powers jointly with someone else or someone who holds only powers of veto rather than positive powers to act.

In the Anti-Money Laundering context, the 2017 MLR includes a definition of 'beneficial owner' and 'control' for the purposes of the Regulations. At Regulation 6 it states:

> *6.—(1) In these Regulations, 'beneficial owner', in relation to a trust, means each of the following—*
> *(a) the settlor;*
> *(b) the trustees;*
> *(c) the beneficiaries*
> *(d) where the individuals (or some of the individuals) benefiting from the trust have not been determined, the class of persons in whose main interest the trust is set up, or operates;*
> *(e) any individual who has control over the trust.*
> *(2) In paragraph (1)(e), 'control' means a power (whether exercisable alone, jointly with another person or with the consent of another person) under the trust instrument or by law to—*
> *(a) dispose of, advance, lend, invest, pay or apply trust property;*
> *(b) vary or terminate the trust;*
> *(c) add or remove a person as a beneficiary or to or from a class of beneficiaries;*
> *(d) appoint or remove trustees or give another individual control over the trust;*
> *(e) direct, withhold consent to or veto the exercise of a power mentioned in sub-paragraphs*
> *(a) to (d).*

A critical point to note here is that the mere existence of one of the relevant powers with respect to a trust is sufficient to be regarded as control even in circumstances where that power is not actually exercised. This is substantially different from the idea of a person who exercises effective management of a trust or a company in many tax contexts, The more conventional concept is a facts and circumstances test that requires the actual exercise of powers rather than the mere capacity to exercise them for control to be attributed to a person.

What is striking here is that in Regulation 6(2), both the holding of joint powers and that the withholding of consent or ability to veto the exercise of key powers is to be equated with 'control'. I will return to the specific implications for CRS Reporting in the context of trusts later – for now, it is sufficient to note the expansive definition of beneficial ownership which sits behind the various regimes.

A final point to note is that the scope of powers that can be held with respect to a trust that come within this incredibly wide concept of control extend substantially beyond the power to appoint and remove trustees.Thus powers that relate to changing the class of beneficiaries, varying or terminating the trust and powers to invest or deal with trust property are also to be equated with control.

ii UK Trust Register

I now turn to the UK Trust Register in its own terms. The reason I wish to consider this piece of domestic UK legislation in detail is because, as far as I am aware, it represents the first instance where a major 'onshore' jurisdiction with a domestic trust law has introduced a centralised beneficial ownership register for trusts. The 2017 MLR effectively implements the UK's obligations under the EU Fourth Money Laundering Directive ((EU) 2015/849 (4AMLD)) to introduce a UK trust register. The regulations have a wide context with respect to the combating of terrorist financing and the fight against organised crime more generally. It seems likely that they will be widely copied, especially by trusts administered in the CDOTs where the UK has substantial influence.

The Regulations require the UK tax authority (HMRC) to maintain a trust register. The trust register will principally apply to trusts with UK resident trustees. However, trusts with non-UK resident trustees are also within the scope of the register if they hold UK situate assets that generate the obligation to report to UK HMRC with respect to certain taxes, including income and capital gains tax, inheritance tax and stamp duty land tax. The scope of the register requires more extensive information to be reported and maintained than that required to be disclosed under CRS.

In addition to the information which would typically be disclosed for the purposes of CRS (see paragraph 11 above) it also necessary to provide HMRC with the following information:

a The trustees must provide information about certain professional advisers to the trust, namely those who provide 'legal, financial or tax advice[6]' to the trust.

b There is a requirement to provide 'a statement of accounts for the trust, describing the trust assets and identifying the value of each category of the trust assets'. CRS, in contrast, only requires a composite value for the notional 'account value' of the trust fund of the trust without breaking this value down into categories.

c In considering who might be regarded as a beneficiary, Regulation 44(5)(b) states that trustees must report information 'about any other individual referred to as a potential beneficiary in a document from the settlor relating to the trust such as a letter of wishes'. This means that reference has to be made to documents other than the trust deed itself which, in the longer term, is likely to create a significant degree of confusion and uncertainty over reporting given that there is no current requirement to undertake such an exercise that I am aware of in any CRS or other equivalent tax reporting context with regard to persons who are not named as current beneficiaries.

6 See regulation [ ] of 2017 MLR.

The UK Trust Register will (subject to the caveat noted below) only be accessible by law enforcement agencies in the UK and throughout the rest of the EU/EEA – the issue of what happens to this EU/EEA access post Brexit is presently unclear. The categories of persons with access to the UK Trust Register under 2017 MLR are arguably narrower than those described in Article 14 of 4AMLD. Article 14 states that:

> *persons who are able to demonstrate a legitimate interest with respect to money laundering, terrorist financing, and the associated predicate offences, such as corruption, tax crimes and fraud should also have access to beneficial ownership*

It is, therefore, possible that NGOs and investigative journalists with an anti-corruption profile could seek access to the UK Trust Register on the basis that the UK (as a current EU member) has failed to implement 4AMLD in full.

iii Trustee obligations under the UK Register

A trustee of a relevant trust[7] is obliged to:

a maintain an up-to-date register of the 'beneficial owners' of and advisers to the trust;

b provide HMRC with detailed information about the beneficial owners on an annual basis and with respect to the assets of the trust and their capital value;

c inform relevant persons[8] of:
- its status as a trustee;
- the beneficial owners of the trust; and
- any change of beneficial owners (within 14 days of the change occurring).

d respond to any request for information from any law enforcement agency with respect to the trust within the reasonable period specified in the notice of request.

iv Information about the trust under the UK Trust Register

With respect to the trust itself, it will be necessary to confirm:

a the name of the trust and its date of creation;

b a statement of accounts for the trust, describing the trust assets and identifying the value of each category of the trust assets;

c the place where the trust is administered;

d a contact address for the trustees; and

e the full names of any advisers who are being paid to provide legal, financial or tax advice in relation to the trust.

With respect to individuals identified as beneficiaries or NPEECs it will be necessary to provide:

a full name and date of birth;

b details of the individual's role or roles in relation to the trust; and

c unique tax reference number of the individual.

---

7 Essentially a trust within scope of reporting.

8 Essentially financial in institutions and other professional persons with reporting regulations under AML rules.

Where a corporate entity is involved in a trust, one is obliged to 'look through' that entity and identify the individual(s) who control it; they are subject to disclosure in their own right.

v CRS developments

In a CRS context, I would like to consider two key areas. The first is the issue of local guidance and fragmentation, especially with respect to trust reporting. The second is the vexed issue of reporting protectors and its overlap with the NPEEC concept.

vi Fragmentation

On fragmentation, it is notable that during 2017, many jurisdictions issued their own local guidance on certain issues. To take a few examples:

a Canada: as in the case of the Foreign Account Tax Compliance Act (FATCA), Canada takes the position that other than in certain instances where banks or similar entities are concerned, most trusts with professional trustees are to be regarded as passive non-financial entities (NFE) not reportable financial institutions (RFI).

b Singapore: Singapore has issued guidance that permits settlors who are excluded as beneficiaries to report a nil value in terms of the value of their equity interest in the notional account represented by the trust fund.

c Bermuda: a trust where the settlor reserves a right to direct investments is not to be regarded as an RFI even though its trustee is a financial institution.

d Cayman Islands: all financial institutions are required to file a nil report even though they are non-reporting FIs. This is contemplated in CRS but is likely to create a significant degree of extra reporting in large and complex trust structures.

The concern here is that there will be substantial confusion over what to report where local guidance generates positions that contradict OECD's own commentary or the position taken in other jurisdictions generally. It is also likely that a pattern of jurisdictional arbitrage will emerge.

vii Protectors

On the issue of reporting protectors, it is well known that there is an inconsistency in the class of persons who are to be identified as the controlling persons of a trust when compared with those who to be identified as holding an equity interest in a trust. The two lists of persons are substantially similar except that the latter makes no express reference to 'protectors'. This has led to a great deal of confusion and divided opinion on when protectors are required to be reported. OECD in an FAQ issued in June 2016 takes the view that protectors must always be reported but a strict reading of the wording of the Model Treaty leads to the conclusion that they should only be disclosed as holders of an equity interest where they satisfy the test as a NPEEC.

What is interesting is that, in the context of the UK Trust Register, 2017 MLR do not make express reference to protectors either. Instead, as noted above, they refer to 'any individual who has control over the trust' and then refer to the powers over the trust that are to be equated with 'control'.

viii NPEECs and control

I would like to consider the question of who is to be regarded as 'exercising control' and who might be regarded as an NPEEC for CRS purposes if one follows the approach adopted in 2017 MLR.

It is interesting to note that, in commenting on the issue of control under the Controlling Persons heading in the CRS Handbook at paragraph 227, the OECD states:

> *The account held by a trust will also be reportable if it the trusts has one or more Controlling Persons that are Reportable Persons. The concept of Controlling Person used in the CRS is drawn from the 2012 FATF Recommendations on beneficial ownership. As such, the Controlling Persons of a trust are the settlor(s), trustee(s), beneficiary/ies, protector(s) and any other natural person exercising ultimate effective control over the trust.* ***This definition of Controlling Person excludes the need to inquire as to whether any of these persons can exercise practical control over the trust.***[9]

It is reasonable to conclude that OECD's intention was to follow the FATF expansive definition of beneficial ownership which is not based on a conventional legal analysis of matters such as control but, instead, to ensure that those persons reported under CRS include those with the capacity to exercise substantial influence over how a trust is run.

This approach is echoed in OECD's comments at paragraph 214 of the Handbook with respect to those to be regarded as holding an equity interest in an RFI Trust. This states:

> *The Equity Interests are held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust.* ***The reference to any other natural person exercising ultimate effective control over the trust, at a minimum, will include the trustee as an Equity Interest Holder.***[10]

The fact OECD uses the phrase 'at a minimum' is confirmation of this expansive approach.

My view is that the definition of control from MLR 2017 could well be widely adopted in a CRS context to assist in defining NPEECs with respect to trusts. If this does indeed happen, it will mean that virtually all protectors with significant powers with respect to trusts will be reportable as NPEECs, thus rendering the debate about whether protectors of RFI trusts are reportable as such largely academic.

II CONCLUSION

The year 2017 has witnessed some important developments in beneficial ownership reporting. The convergence of the expanded concept of who is to be regarded as a beneficial owner or exercising control in the tax reporting and AML arena looks set to be a dominant trend in the years ahead. Advisers should be very conscious of this, not only in advice on existing wealth ownership structures but also in the design of new ownership structures.

John Riches
RMW Law LLP
London
September 2017

9 Emphasis added.
10 Emphasis added.

Chapter 15

FINLAND

Lauri Lehmusoja and Stefan Stellato[1]

Finland is a northern European country with a population of 5.5 million, a substantial portion of which lives in the metropolitan area in the south of the country, including the Finnish capital Helsinki. Finland joined the European Union in 1995 and was among the first Member States to adopt the euro in 1999. Finland's geographical position as a western European market economy and a stable parliamentary democracy sharing a long border with Russia is unique and has shaped the history of the country. Russia has been, and remains, an important trade partner. In 2017, Finland celebrates the centenary of its independence from Russia. Finland is now one of the safest and least corrupt countries in the world, with a high standard of living and a high degree of income equality. It also boasts a world-renowned school system, contributing to most Finns having a very good command of English. Finland is the home of a significant Swedish-speaking minority and the country has two official languages, Finnish and Swedish.

The success of the cell phone and networks manufacturer Nokia Corp, along with a number of high-tech companies, was a major factor contributing to a long period of strong economic growth that Finland enjoyed in the 1990s and 2000s. Finland has, on the other hand, suffered heavily from the recent financial crisis, which coincided with a sharp decline in Nokia's businesses, as well as a downturn in trade with Russia. This combination lead, *inter alia*, to a very slow recovery in terms of GDP growth and to Finnish long-term debt being downgraded from its previous AAA-rating by all major credit agencies. The government is now struggling with increasing levels of national debt and an ageing population. The government is also particularly busy with the remarkably extensive health, social services and regional government reform, which is expected to enter into force within the next couple of years.

The Finnish economy was dominated by agriculture until the 1950s, and rapid industrialisation and growth took place during the following few decades. Since the 1970s, Finland has been among the wealthiest countries in the world. As the emergence of a modern economy dominated by industry and services is quite recent, wealth is less accumulated than in most other countries. Finland is also a Nordic welfare state, characterised by free market capitalism combined with a significant public sector, large-scale income redistribution and high tax rates. Because of these factors, wealth is quite evenly distributed among Finns and Finland is home to relatively few high net worth individuals (HNWIs).[2]

1 Lauri Lehmusoja is a counsel and Stefan Stellato is an associate in the tax group of Hannes Snellman Attorneys Ltd in Helsinki.

2 The former mobile phone manufacturer Nokia (and the Nokia cluster as a whole) generated a handful of HNWIs, but over the past years HNWIs generated by the gaming industry have received more attention.

Despite, for example, a broad network of tax treaties, the Finnish high-tax environment is, perhaps, unlikely to attract HNWIs to Finland. Other factors, such as safety, northern nature, stable institutions, low corruption and a renowned education system are, in this regard, more important assets for Finland.

II TAX

i Recent developments

One issue stands out particularly clearly in the recent developments of Finnish tax law – the ever-increasing disapproval of tax avoidance and planning. In addition, the reputational damage to persons and companies engaging in such activities has grown. Finnish persons and companies involved, for instance, in matters concerning the LGT Bank in Liechtenstein or in arrangements published in the 'Panama Papers' are likely to agree.

As a main rule, tax-related information is secret, including, for example, rulings and tax returns. However, taxable income and taxes payable (as determined in the annual tax assessment) are public information in Finland. Unsurprisingly, access to this information attracts significant media attention and each year the media publishes listings on the income and effective tax rates of high income people and companies. Because of the fact that not all tax-related information is public (e.g., later decisions amending the taxation of a given year remain secret) and that tax-exempt income does not show in the statistics, these listings may be somewhat misleading.

The worsening of the general tax atmosphere can also be seen in that the Finnish general anti-avoidance rule (GAAR) is being applied ever more frequently. The GAAR now appears to be engaged in attacking practices that were previously widely considered acceptable. The Tax Administration is, for example, broadly questioning the deductibility of intra-group interest expenses in corporate taxation and closely scrutinising various holding and personal services company arrangements. It also appears that the Tax Administration may begin to challenge certain types of tailored insurance wrappers, a common tax planning strategy. Also legislative changes are expected to reduce the differences in tax treatment of these insurance wrappers as compared to other types of investments.

Another general trend in Finnish taxation over the past years is the increase of both tax rates and progressivity. To name a few examples, the tax on capital income, which for a long time was proportional, became progressive in 2012. New tax brackets have been added at the high end of the scale for earned income, gift and inheritance tax, although all of these taxes were reduced slightly as of 2017.

A reverse trend can be discerned in the taxation of corporations – the corporate income tax rate has gradually decreased and the present 20 per cent rate was introduced in 2014. The focus of taxation is also shifting from taxation of income to the taxation of consumption, and the standard VAT rate is 24 per cent. Taxation with underlying environmental or health-related goals is common, for example, within excise taxation.[3] Finland levied a wealth tax for a long time, until it was eliminated in 2006. At about the same time, the avoir fiscal dividend tax system was abolished because of its incompatibility with EC law.

3 EU rules on state aid forced Finland to abolish its recently introduced sweets tax, an excise tax, from the beginning of 2017.

ii International agreements

Finland has a wide network of bilateral tax treaties. It is also a signatory of the Nordic Multilateral Tax Treaty, which is a multilateral double taxation convention largely based on the OECD Model Tax Convention.[4] Finnish tax treaties typically follow the OECD Model closely and most of them provide for double taxation relief through the credit method. A number of Finnish tax treaties contain provisions that extend the taxing rights of Finland for a number of years after a Finnish citizen moves abroad.

Finland has an agreement with the US to exchange information under the US Foreign Account Tax Compliance Act (FATCA). Finland has also agreed on automatic exchange of information in the context of the OECD Common Reporting Standard (CRS), implemented at the EU level through the DAC2 directive (2014/107/EU). Finland is among the countries that start reporting in 2017. Finland also requires, based on OECD and EU transfer pricing initiatives, multinational groups with revenues exceeding a certain global threshold to file country-by-country reports starting in 2017. Specific plans for amendments to Finnish tax laws necessitated by the Anti-Tax Avoidance Directive (ATAD) and its 2017 amendment (ATAD II) have not yet been released by the government. Furthermore, as an EU Member State, Finland is committed to implement the OECD and Base Erosion and Profit Shifting (BEPS) recommendations.

In 2016, in a case related to the LGT Bank/Liechtenstein tax affair, the Supreme Administrative Court ruled that documents received from a foreign authority may be taken into account as evidence, even if it is possible that the documents were obtained through a criminal act.

iii Income tax

Two categories of tax liability exist in income taxation: unlimited and limited tax liability. People that reside in Finland (as defined in the Income Tax Act) are subject to unlimited tax liability and pay tax on their worldwide income. Conversely, people who do not reside in Finland are subject to limited tax liability and pay Finnish taxes solely on their Finnish-sourced income, as defined in the Income Tax Act.

A three-year rule applies to Finnish citizens when they move abroad. Under the rule, a Finnish citizen is considered a Finnish tax resident during the year of emigration and for the subsequent three calendar years, leading to tax liability for both Finnish and foreign-sourced income. However, if the person establishes, to the satisfaction of the tax authority, that no 'close ties' to Finland remain, Finnish tax non-residency (and limited tax liability) may begin before the end of the three-year period.[5]

Taxable income is calculated separately for earned income and capital income. Capital income is income generated through the possession of wealth and earned income is defined as all other income. Earned income is typically salaries, directors' fees or benefits in kind and is taxable at progressive rates of up to approximately 55 per cent. Capital income is taxable at a rate of 30 per cent up to €30,000 per calendar year and the excess at a rate of 34 per cent.

In some situations, taxation is complicated by the fact that taxable income is assessed separately under three different acts, depending, among others, on if the source of the

4 The signatory countries of the Nordic Multilateral Tax Treaty are Denmark, Finland, Iceland, Norway and Sweden.

5 It should be noted that this three-year rule does not apply to foreign citizens.

income is employment, business or farming.[6] Losses from one source of income may not be offset against another source of income, apart from in rare exceptions. Changes to the rules, introducing among others a presumption that the income of a limited liability company is income from business, are expected as of 2018 or 2019.

Capital gains are generally taxable at the capital income tax rate of 30 or 34 per cent.[7] Some capital gains are exempt, including the sale of a house or apartment that has been used as a permanent home for two consecutive years.

The extensive taxation of capital gains creates an incentive for persons with inherent capital gains to move abroad and realise the gains while no longer subject to Finnish unlimited taxation, or at least resident in another state under the applicable tax treaty. However, moving abroad before realising a significant capital gain requires careful examination of the applicable tax treaty and tax law provisions, including the above-mentioned three-year rule.

Interest income is also taxable at the capital income tax rates. However, interest paid on deposits in Finnish bank accounts and Finnish bonds is subject to a final tax at source at a flat rate of 30 per cent. As far as interest expenses are concerned, deductions are generally granted only where interest is paid with an aim to obtain taxable income. The interest on loans to buy a permanent home was, however, fully deductible until 2012, when the deductible portion started a gradual decrease. It is projected that in 2019 only 25 per cent of home loan interests will be deductible.

The taxation of dividend income is very complex, and the tax rates range from approximately 7.5 per cent to above 55 per cent. These discrepancies highlight the importance of careful tax analysis, but may also offer significant tax advantages. Examples of factors that may have an impact on the applicable tax rate are whether the company distributing the dividend is listed, the value of the company's net assets, the place of incorporation and on what basis the amount of the dividend is determined.

As far as natural persons resident in Finland are concerned, the least tax is payable when receiving from an unlisted company a dividend that meets two conditions: it equals less than 8 per cent of the shares' calculated mathematical value and is less than €150,000 in a calendar year. When these requirements are met, 75 per cent of the dividend is exempt and 25 per cent is taxed as capital income, leading to a tax rate of around 7.5 to 8.5 per cent. At the other extreme are, among others, dividends paid in place of wages and dividends paid by companies in non-EU/EEA and non-treaty countries. Such dividends are fully taxable as earned income at progressive tax rates of up to approximately 55 per cent.

Limited liability companies and certain similar types of companies are subject to 20 per cent corporate income tax on their profits. Cross-border restructurings may in some situations trigger exit taxation; for example, where assets are transferred outside the reach of Finnish taxation. In the case of exchange of shares, the tax deferral allowed is forfeited, if a person who has been granted shares in consideration moves his or her residence, as intended in the relevant tax treaty or national laws, outside the EEA within five years after the end of the year in which the exchange of shares was carried out.

Finland introduced CFC legislation in 1995. Since then, the legislation has been amended many times to reflect developments in EU law. In addition, an interest limitation

6 These acts are the Income Tax Act, the Business Tax Act and the Act on the Taxation of Farm Income.

7 The rules were changed as of fiscal year 2016 so that capital losses of individuals and death estates are deductible against all capital income. Under the previous rules, capital losses could only be offset against capital gains.

rule was introduced recently, roughly barring deductions for net interest expenses that exceed 25 per cent of tax-EBITDA on loans between related parties within the business source of income. There is a safe haven for net interest expenses that do not exceed €500,000. The scope of the current rule will have to be broadened significantly to render it compliant with the requirements of the ATAD as of 2019.

iv Gift and inheritance tax

Inheritance or gift tax is payable, if the place of residence of the decedent or donor, or the place of residence of the beneficiary or donee, was in Finland at the time of death or donation. In addition, tax must be paid on Finnish real property and on shares in any corporate body in which more than 50 per cent of the assets consist in Finnish real property, even if both the decedent or donor and the beneficiary or donee resided overseas.[8] Only inheritances that are at least €20,000 and gifts that are at least €5,000 are subject to tax.

Inheritance tax is assessed on each beneficiary's net portion of the estate. Tax is payable on portions that are at least €20,000, but widows may deduct an additional €90,000 and minors in immediate lineal descent an additional €60,000 from their portions. The favourable tax treatment of certain insurance indemnities paid to close relatives will be abolished as of 2018.[9]

For the purposes of both inheritance and gift tax, the value of any rights of possession is deducted from the beneficiary's portion, if such a special possession has been provided for in a will or a deed of gift. The value of the right of possession is not as such taxable, but income derived from the right of possession constitutes taxable income. For example, the title of a house may be donated to person A, but the donor may retain the right to use the house. In this case, person A is taxed on the value of the house less the value of the possession right (calculated according to a formula) and the donor is taxed only on income received from the right of possession (e.g., rental income).

Both gift and inheritance tax have two brackets – the lower tax bracket I applies to close relatives and the higher tax bracket II applies to more distant relatives and to beneficiaries and donees that are not relatives of the decedent or donor.[10] The taxes are progressive within both brackets. As an example of the applicable rates in 2017 in tax bracket I, the tax payable on an inheritance portion of €200,000 is €21,700. An inheritance portion of €1 million is subject to a tax of €149,700 at the lower limit of €1 million and at 19 per cent on any part exceeding €1 million. In tax bracket II, rates are roughly double those of bracket I.

The Inheritance and Gift Tax Act leaves considerable room for tax planning. It may, for example, be wise to pass down property to a greater number of beneficiaries to multiply recipient-specific allowances and thresholds, but also to mitigate progressivity. The same goals

8 This extended definition of real property is found also in some other tax laws and in tax treaties.

9 Under the rules that are to be abolished certain insurance indemnities could be exempt up to €35,000 or in the case of a widow, up to half or at least €35,000.

10 Tax bracket I for gift and inheritance tax purposes includes, among others, the donor's or the decedent's spouse or registered partner, any heir in lineal ascent or descent and any heir of the spouse in lineal descent. As a general rule, cohabitants come under tax bracket II, but they may come under tax bracket I, for example, if they have earlier been married or have a child together.

may be obtained by skipping generations by willing or donating property to, for example, grandchildren.[11] Rights of possession are also frequently retained to lower the valuation of the donated property and hence the payable gift tax.

There are, however, rules aimed at curbing tax planning. Gifts received from the same donor during a three-year period are aggregated. Loans with no intention to pay back and sales at less than 75 per cent of fair market value are subject to gift taxation. There is also an exception to the general rule, according to which the donee may use the gift tax value as his or her acquisition cost – if the donee disposes of the gift within one year from receipt, the acquisition cost will be the donor's original acquisition cost. Also, in inheritance taxation the value for inheritance tax purposes becomes the beneficiary's or heir's acquisition cost, but there is no one-year rule like the one in gift taxation.

The media regularly brings to the public's attention cases where people move abroad with the aim to avoid gift or inheritance tax. Finland's neighbours Sweden and Norway, which levy neither inheritance nor gift tax, are particularly attractive from this point of view. However, among others, the tax provisions concerning Finnish real property and Finnish real estate holding companies place hurdles for such tax planning strategies. Similar media attention was attracted by people moving to Spain or Portugal to avoid tax on their private-sector pensions, as the relevant tax treaty did not allow Finland to tax such pensions. New treaties allowing Finland to tax such pensions have now been negotiated with both countries and are currently expected to enter into force in 2018.

The Income Tax Act and the Inheritance and Gift Tax Act provide for relief for certain transactions that aim at passing a business or a farm to the next generation. The relief is implemented, for example, through favourable valuations in inheritance and gift taxation, non-taxation of capital gains, allowing sales at 50 per cent of fair market value without triggering gift taxation or longer tax payment times. The types of relief depend on the way in which the change of generation is carried out and on whether relief is granted under the Income Tax Act or the Inheritance and Gift Tax Act.

Relief is subject to various conditions, which include that at least 10 per cent of the activity is transferred and the activity is continued by the transferee after the transfer. A further sale of a company, farm or other business that has been transferred to the next generation in a transaction enjoying change of generation relief leads to forfeiture of the relief and to a penalty payment if the sale occurs within five years of the purchase agreement or the tax assessment in which the relief was granted.[12] The tax provisions on change of generation transactions are a politically highly sensitive topic in Finland.[13]

11 Wills may be, partially because of their flexibility, an attractive tool for inheritance tax planning. For example, suspensive conditions that give ownership rights to the beneficiary only after certain conditions are fulfilled have been used to create an interim ownerless period and thus defer the payment of inheritance tax. It should be noted that this strategy has obvious pitfalls.

12 Until 2017, a further sale at a later point was treated favourably: the capital gain was calculated using as the acquisition cost the full fair market value at the time of the generation-shift transfer (and not the actual taxable value that was lowered based on the above-discussed reliefs). This rule was changed as of 2017 and the capital gain is now calculated using as acquisition cost the (lowered) taxable value that was actually applied.

13 One common argument against taxes on inheritances is that they endanger the prerequisites to continue a business, especially where the transferred business has no liquid assets that could be used to pay the tax due.

v Property and transfer taxes

Owners of real property pay real estate tax, which is typically around 1 per cent of the value of the real estate per year. When acquiring real estate, a transfer tax of 4 per cent is payable by the purchaser. The transfer tax rate applicable to housing and real estate companies is 2 per cent, in which case the tax base also includes certain loans of the company, and 1.6 per cent for other shares. No transfer tax is generally payable on listed shares or assets received as a gift or inheritance.

III SUCCESSION

i Legal implications of marriage, registered partnership and cohabitation

Marriage and registered partnership have almost identical legal effects, the main differences being that the possibilities to take the other partner's last name and adoption are more limited in registered partnerships.[14] Cohabitation, in turn, does not create any immediate legal rights or obligations. The possibility to conclude new registered partnerships ended in March 2017, when legislation allowing same-sex marriages entered into force. Existing registered partnerships can now be turned into marriages with a notification.

Marriage does not cause changes in the ownership of property. Nor is there liability for debt taken by the other spouse, but there may be joint liability for debt taken for the maintenance of the family. The common home is protected by requiring both spouses' consent to its sale, even where owned by one spouse alone.

A petition for divorce may be filed by the spouses jointly or by only one of them. The reasons for divorce are not examined. Upon granting a divorce, normally after a reconsideration period of six months, one of the spouses may be ordered to pay maintenance to the other spouse, if deemed equitable.[15]

At divorce, the net marital property is totalled and divided into two in order to determine the share of each spouse. The spouse with less property receives an equalisation payment, which is tax exempt, from the other spouse so that each spouse leaves the marriage with the same amount of what used to be matrimonial property. However, prenuptial agreements are relatively common and they frequently entirely remove the duty to make equalisation payments.[16]

ii Intestacy and wills

Finland is a signatory of the Nordic Convention of 19 November 1934 concerning Inheritance, Testamentary Dispositions and the Administration of Estates of Deceased

14 Because of significant similarities, in the text below, references to marriage apply also to registered partnerships.

15 Since 2011, there is a somewhat limited possibility to receive compensation also upon a cohabitation separation if one partner has assisted the other in accumulating property over a long period.

16 Prenuptial agreements cover around a third of all marriages and registered partnerships. Some flexibility as to how a prenuptial agreement is drafted is allowed and it is, for example, quite common to provide that the agreement shall apply only at divorce (but not death of a spouse) or that the prenuptial agreement only affects property accumulated before the marriage. In order to be effective, a prenuptial agreement must be concluded in writing, dated, signed, attested and registered by the local register office.

Persons between Denmark, Finland, Iceland, Norway and Sweden. In 1976, Finland joined the Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions.

As an EU Member State, Regulation No. 650/2012 on international successions is of particular importance for Finland. This Regulation governs issues such as applicable law, recognition and enforcement of decisions and the creation of a European Certificate of Succession. It brings more choice, simplicity and clarity to cross-border successions and is binding on most EU Member States.[17]

In some situations, gifts and other payments received during the decedent's lifetime are taken into consideration in determining the size of the estate to be distributed. After a married person passes away, a division of property is carried out between the spouses. Thus, if the decedent's net assets exceed the net assets of the surviving spouse, the death estate makes an equalisation payment to the surviving spouse. No inheritance or gift tax is due on equalisation payments. A surviving spouse with more net assets than the decedent may decide not to make an equalisation payment to the estate of the deceased person. No division of property is carried out if the spouses' marital rights in each other's property have been removed through a prenuptial agreement.

In the case of intestacy, the children inherit the whole estate even if the decedent was married. If there is no spouse and there are no children, the parents inherit everything, and if there are no living parents, the decedent's brothers and sisters inherit.

A will can be used as a tool to choose the heirs and give them either a share of the estate or a legacy. As a main rule, for a will to be effective, it has to be made in writing and signed in the presence of two witnesses. Direct descendants are protected by a forced heirship regime that gives them the right to claim a reserved portion that equals half of the share that they would have received absent the will. The surviving spouse is protected almost invariably through retention of possession (but not ownership) of the undivided common home.

IV WEALTH STRUCTURING & REGULATION

i Wealth structuring vehicles

Finnish law does not recognise the common law institution of trust.[18] In addition, the use of foundations for wealth structuring purposes is very limited, because foundations are typically required to have a charitable purpose and they are subject to strict supervision enforced with even criminal sanctions. Limited partnerships, on the other hand, are mainly used by private equity investors and in other circumstances where the features of a transparent entity are desirable.

Thus, the most common vehicle for wealth structuring remains the limited liability company. As the taxation of dividends in the hands of an individual shareholder is affected by the value of the dividend-distributing company's net assets, accumulating property in a limited liability company is often advantageous from a tax perspective.[19] Setting up a limited

17 Denmark, Ireland and the UK do not participate in the Regulation.

18 There is, however, some case law, e.g., regarding foreign trusts and their treatment in Finnish taxation.

19 As noted above, the taxation of dividends in Finland is very complex. Another factor affecting the use of holding companies is that dividends from listed companies received by unlisted companies with at least a 10 per cent shareholding, are tax exempt, whereas there is no similar exemption if the shares are held by an individual personally.

liability company is very straightforward and requires a minimum incorporation capital of €2,500. At least one member of the board has to reside within the EU or the EEA, unless a special permission is granted.

Another reason why corporations are an attractive vehicle for accumulating wealth is that invoicing through personal service companies or holding companies, especially in the field of professional services, may to some extent be used as an alternative to receiving the same amount of income as wages. As discussed above, earned income is taxed at rates of up to approximately 55 per cent, whereas the tax burden when charging through a corporation may be more modest – the corporate tax rate is 20 per cent and dividend distributions are often taxed at only 7.5 per cent. Depending on the circumstances, there might not even be a need to distribute dividends, resulting in ulterior tax savings.

The possibilities to use a corporation to mitigate the very heavy taxation of earned income, for example, by medical doctors at private clinics, have been limited through a legislative change in 2010. As a result of the legislative change, the Income Tax Act now provides that dividends received instead of wages are fully taxable as earned income.[20] Even before this amendment, companies with only one shareholder could under certain circumstances be disregarded for tax purposes under the GAAR.

As mentioned above, insurance wrappers, resulting in tax deferral, are frequently used for tax planning purposes. They also offer many tax planning opportunities in cross-border situations. In these arrangements, an insurance policy is 'wrapped' around the policy owner's assets (e.g., shares) that are transferred to the insurance company for the lifetime of the policy. However, it appears likely that the Tax Administration may challenge some of these arrangements, especially those involving the use of a tailored insurance wrapper to hold unlisted assets with personal ties to the insurance holder. Also legislative changes to limit the use of insurance wrappers to obtain tax deferral are anticipated, a discussed alternative having been yearly taxation of a deemed yield.

ii Regulation of financial service providers and prevention of money laundering

Marketing and offering of services in Finland by investment firms and fund managers of UCITS or alternative investment funds require prior registration with the Finnish Financial Supervisory Authority, which is also the supervising authority. When marketing is directed to non-professional investors (retail investors), certain additional requirements, such as providing Key Investor Information Documents (KIIDs) and the Finnish Consumer Protection Act, apply. The definition of professional investor under the Finnish Investment Services Act is based on MiFID requirements.

Finnish legislation on the prevention of money laundering is largely based on international standards, which include the EU's Anti-Money Laundering Directives, which are based on recommendations of the Financial Action Task Force on Money Laundering. Requirements under the Finnish Act on the Prevention of Money Laundering and Financing of Terrorism apply to, *inter alia*, investment firms, fund managers, credit institutions and other entities offering financing in Finland. The duties include identification and verification of customers, ongoing monitoring of customer relationships, record-keeping, detecting and analysing suspicious transactions and reporting suspicious transactions to the Financial Intelligence Unit, which operates in connection with the National Bureau of Investigation.

20 The new provision has encouraged quite creative tax planning schemes to circumvent it.

Violations are subject to administrative and criminal sanctions, and negligence towards the obligations may lead to criminal liability for individual employees. Money laundering offences are sanctioned in the Finnish Penal Code.

V CONCLUSIONS & OUTLOOK

A government proposal to introduce a temporary tax amnesty for undeclared income and assets was given in the autumn of 2015, but heavy criticism ultimately caused the government to call off its proposal. However, increasing exchange of information is a clear future trend. Finland has agreed on automatic exchange of information in the context of the OECD Common Reporting Standard, implemented at the EU level through the DAC2 directive (2014/107/EU). Finland takes part for the first time in 2017, reporting and presumably receiving information for year 2016.

As far as tax planning is concerned, the generation-shift reliefs as well as holding company and personal service company arrangements and potentially insurance-based structures may present attractive opportunities, but careful planning is essential, as tax planning is becoming tolerated less than before. The GAAR is being interpreted ever more broadly and new measures against tax planning are introduced. Implementation of OECD BEPS proposals and EU legislation against tax avoidance and aggressive tax planning, chiefly ATAD and ATAD II, can also be anticipated. As ever fewer tax planning alternatives remain available and, for example, because Finland levies inheritance tax, moving abroad may at present be a relatively effective planning strategy.

There has been a small shift from taxation of income to taxation of consumption and the government has signalled that this will continue to be the emphasis. However, this is by its very nature uncertain, as a change in government coalition may bring alterations to this thinking. What is clear is that Finland will remain a high-tax jurisdiction for individuals, but other factors for which Finland is well known, such as institutional stability, low levels of corruption, good education and a clean environment, are also likely to stay.

Appendix 1

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