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John Riches

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CONTENTS

PREFACE vii
John Riches

Chapter 1 EU DEVELOPMENTS 1
Richard Frimston and Christopher Salomons

Chapter 2 MODERN TRUST DESIGN 12
Patrick Collins

Chapter 3 OECD DEVELOPMENTS 29
Emily Deane

Chapter 4 SUPERYACHT OWNERSHIP: LEGAL ISSUES 2020–2021 37
Mark Needham and Justin Turner

Chapter 5 ARGENTINA 45
Miguel María Silveyra, Valeria Kemerer and Enrique López Rivarola

Chapter 6 AUSTRIA 54
Paul Doralt and Katharina Binder

Chapter 7 BAHAMAS 64
Earl A Cash and Nia G Rolle

Chapter 8 BELGIUM 74
Alain Nijs and Joris Draye

Chapter 9 BERMUDA 89
Stephanie C Bernard and Adam Johnson

Chapter 10 CANADA 101
Margaret R O'Sullivan and Marly J Peikes

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Chapter 11 CHILE......127
Pablo Chechilnitzky R

Chapter 12 CYPRUS......136
Elias Neocleous and Elina Kollatou

Chapter 13 FINLAND......149
Johan Hägerström and Stefan Stellato

Chapter 14 FRANCE......160
Line-Alexa Glotin

Chapter 15 GERMANY......168
Andreas Richter and Katharina Hemmen

Chapter 16 GIBRALTAR......176
Peter Montegriffo QC and Louise Lugaro

Chapter 17 GREECE......187
Aspasia Malliou, Maria Kilatou and Nefeli Sianidou

Chapter 18 GUERNSEY......204
Keith Corbin, Mark Biddlecombe and Rachael Sanders

Chapter 19 HONG KONG......214
Ian Devereux and Silvia On

Chapter 20 HUNGARY......224
Janos Pasztor

Chapter 21 ISLE OF MAN......239
Craig Brown

Chapter 22 ITALY......250
Nicola Saccardo

Chapter 23 LIECHTENSTEIN......261
Markus Summer and Hasan Inetas

Chapter 24 LUXEMBOURG......276
Simone Retter

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Chapter 25 MALAYSIA 289
SM Shanmugam, Jason Tan Jia Xin, Ivy Ling Yieng Ping, Chris Toh Pei Roo and Shona Anne Thomas

Chapter 26 MEXICO 299
Edgar Klee Müdespacher and Joel González Lopez

Chapter 27 NEW ZEALAND 312
Geoffrey Cone and Claudia Shan

Chapter 28 NIGERIA 323
Akhigbe Oserogho, Osasere Osazuwa, Hokaha Bassey, Temidayo Adewoye and Damilola Oyelade

Chapter 29 POLAND 333
Sławomir Łuczak and Karolina Gotfryd

Chapter 30 PORTUGAL 348
Mafalda Alves

Chapter 31 RUSSIA 355
Alexander Golikov and Anastasiya Varseeva

Chapter 32 SWITZERLAND 363
Frédéric Neukomm, Heini Rüdisühli and Alexandra Hirt

Chapter 33 UNITED KINGDOM 375
Christopher Groves

Chapter 34 UNITED STATES 388
Basil Zirinis, Elizabeth Kubanik and Susan Song

Appendix 1 ABOUT THE AUTHORS 407
Appendix 2 CONTRIBUTORS' CONTACT DETAILS 427

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PREFACE

I would like to focus my remarks on some of the key trends that might be expected to affect the world of high net worth individuals in the immediate aftermath of the covid-19 pandemic.

I ISSUES DURING THE PANDEMIC

During the pandemic, we have seen a relatively consistent pattern among OECD countries of measures that are mainly focused on delaying obligations to file tax returns and make tax payments to reflect the turmoil in some business and personal finances that these exceptional circumstances have wrought. Interestingly, at the beginning of April the OECD issued an analysis examining double tax treaties and the impact of the crisis on individuals' presence, which may have been constrained as a result of the pandemic. The following were notable conclusions.

i Permanent establishments

For individuals constrained to work in a different location and, in particular, for those working from home, provided the state of affairs is regarded as temporary and exceptional it would not generate the required degree of permanency to create a fixed place of business.

ii Corporate tax residence

The view from OECD is that the temporary relocation of board members to different locations will not generally impact a company's tax residence.

iii Personal tax residence generally

In considering where an individual's centre of vital interest may be, any exceptional circumstances generated by the covid-19 pandemic should not, by themselves, cause an individual's residence to change.

One specific area where countries have taken steps to introduce exceptional guidance is in the context of a day count test. Specifically, Australia, Ireland and the UK have given guidance in the context of disregarding days of presence where this is used as a factor in determining residence. Clearly in all these cases, significant care needs to be taken to ensure that a temporary, exceptional circumstance does not become a permanent state of affairs. Where any tax analysis is dependent upon an individual being constrained in their ability to travel, it is likely to be prudent to keep contemporaneous records of attempts to travel to show that an individual has not changed his or her behaviour or residence in consequence of

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the crisis on a more permanent basis and taken the opportunity to leave the relevant country as soon as possible. Difficulties may arise if an individual in Country A is unable to travel to Country B but could have gone to other locations. Will it be possible to argue that all steps were taken to leave if the individual waited until it was possible to travel to Country B?

II POSSIBLE RESHAPING OF TAX POLICY POST COVID-19

There have been many pronouncements and speculations appearing in the media about how national governments will look to finance the deficits they have incurred during the crisis. A significant degree of speculation has focused on the extent to which high net worth individuals will be targeted with an increased tax burden as one of the mechanisms for financing government deficits. Speculation varies between the possible introduction of some form of annual wealth tax to increased estate taxes.

One interesting example is a proposal in Argentina for a one-off tax levy on ultra-high net worth individuals (UHNWI). The bill being promoted in Argentina proposes a one-time tax on wealth calculated on personal assets of Argentine residents as at 31 March 2020. For individuals with a personal asset base of US$3 million, the proposed rate of tax would fall in the range of 2 per cent to 5.5 per cent. This would be in addition to the current annual wealth tax burden of 2.25 per cent for individuals on wealth that is held outside of Argentina. An article published by an Argentine think tank in April 2020[1] sets out an interesting array of proposals that have been advanced, principally by opposition parties, in South America and Europe. One additional strand that has emerged in Europe is the exclusion from state aid programmes for companies that are headquartered in 'tax havens'. This has been promoted in countries including the United Kingdom, Denmark and France.

A pan-European tax for UHNWIs in the EU has been suggested by economists, Gabriel Zucman and Emmanuel Saez (University of California at Berkeley) and Camille Landais (London School of Economics).[2] The suggested parameters they advance would be to tax those holding assets of more than €2 million (the top 1 per cent) at 1 per cent, those holding assets of more than €8 million (the top 0.1 per cent) at 2 per cent above that threshold and those holding more than €1 billion at 3 per cent above that threshold. They also argue that by making the tax EU-wide, there will be no incentive for individuals to relocate within the EU to avoid the tax.

Historically, one of the objections that has been raised, certainly in Europe, to wealth taxes is the relative inefficiency in the collectability of wealth tax because of the significant degree of compliance work required in checking an individual's filings and valuing their net worth to calculate the levy.

Clearly there is a paradox for tax authorities in considering any form of one-off, or permanent, tax measures that are targeted on high net worth individuals, namely the concern that such measures do not detract from the efforts of business entrepreneurs to create employment and prosperity for others. Furthermore, there will clearly be concern about measures that could be seen as targeting wealthy individuals from other jurisdictions who are looking to locate in the relevant country where increased tax measures could both discourage

1 https://centrocepa.com.ar/files/informes/20200502-wealth-tax.pdf.

2 https://voxeu.org/article/progressive-european-wealth-tax-fund-european-covid-response.

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high net worth migrants from relocating to the jurisdiction or, in some cases, might create an incentive for such individuals to give up their residence.

If new measures of this character are proposed, it will be very interesting to see, in countries such as the UK or Italy that have special regimes for non-domiciliaries, how those regimes will be impacted, if at all, by tax-raising measures targeted at wealthy individuals.

Turning to estate taxes, one recent proposal that is worthy of note in the UK is a report published in January 2020 by a cross-parliamentary group of politicians that considered the UK's inheritance tax policy in the context of intergenerational fairness.[3] Notable conclusions from the report were to highlight the extent to which the UK's rule exempting gifts between individuals that occurred more than seven years before the death of the donor as allowing the very wealthy to mitigate their estate tax burden in a way that is not open to those of more modest means who do not have significant surplus to donate to future generations. The central proposal from the report was to scrap a 40 per cent inheritance tax burden levied on gifts occurring on death or within seven years with a flat rate 10 per cent tax that would apply to all gifts giving each individual a lifetime allowance for gifts that were exempt. Part of the thinking behind switching to a donee-based tax system is to encourage senior generations to make wealth transfers to younger generations (potentially from grandparents to grandchildren) in a manner that rebalances the distribution of wealth towards the young. While such measures are unlikely to be central in financing any deficits arising from the covid-19 pandemic in the short term, it will be interesting to see whether a flat rate tax, at a lower level, will find favour with policy makers in the UK. The thinking of the group issuing the report was that the overall unpopularity of the current regime, where taxes are levied on death could be overcome by one that is levied at a much lower rate and is applied uniformly to gifts during the lifetime as well as on death.

Another notable initiative from the EU that is likely to, potentially, impact private clients are the proposals incorporated within the sixth version of the EU Directive on administrative cooperation (DAC6). DAC6 aims to provide the tax authorities of EU Member States with additional information to enable them to close potential loopholes in tax legislation and harmful tax practices. Intermediaries advising on cross-border arrangements involving EU jurisdictions are obliged to report details of the arrangements and the relevant tax payers involved to their Member States who will share the information with other Member States' tax authorities. If there is no intermediary with an obligation to report, the relevant taxpayer will be obliged to do so. For the purposes of DAC6, an arrangement is interpreted very broadly and a cross-border arrangement is reportable if it concerns at least one EU member state and satisfies at least one of the hallmarks described in the Directive.

The hallmarks are very broadly worded and describe certain characteristics which, if satisfied, make the arrangement reportable. The majority of the hallmarks cover arrangements with some form of tax 'benefit' but there are specific hallmarks relating to arrangements that undermine the application of automatic exchange of information agreements such as the Common Reporting Standard and attempts to conceal beneficial ownership. A key concern with this particular hallmark is that the test appears to be wholly objective and the intentions of the parties are arguably not relevant. Intermediaries acting for high net worth individuals

3 www.step.org/sites/default/files/media/files/2020-05/STEPReform_of_inheritance_tax_report_012020.pdf.

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and their structures will need to consider the impact of these rules on any arrangements entered into that may concern one or more EU Member States.

Turning away from the tax arena, many jurisdictions have introduced measures during lockdown to facilitate the digital execution of documents, including wills. It will be interesting to see to what extent policymakers will be happy to allow such measures to prevail on a long-term basis. Historically, the very strict measures that prevail on the execution of wills are clearly designed as a protective measure to mitigate the impact of undue influence. It seems likely that such measures will become a permanent part of the overall landscape for the execution of wills going forward. In circumstances where wills are drawn up by professional advisers who have direct contact with a testator or testatrix without the intervention of family members, such measures could well be a welcome relaxation that will make it easier for individuals to make wills in the years ahead in circumstances where it is likely to be less easy to travel to meet, in person, with one's professional advisers for a significant period of time. Given that, in many circumstances, there is a significant degree of 'inertia' that stops individuals from engaging with estate planning, this can only be a welcome development.

In conclusion, we can expect a significantly changed paradigm to prevail to the planning arena for wealthy families in the months and years ahead once the primary crisis generated by the pandemic concludes. A key area of uncertainty at present is the extent to which enhanced tax measures will be targeted at the wealthy. The wider changes in business practice and greater use of video meetings could, however, provide something of a 'silver lining' in terms of making it easier for individuals to access reliable estate planning and succession advice and measures on digital execution could facilitate the easier execution of documents once that process is concluded. What is certain is that a combination of these various measures is likely to significantly impact the planning environment for wealthy families in the years ahead. It seems likely in this context in particular that the EU will become more assertive in its approach to wealthy individuals and their tax affairs as DAC6 is implemented.

John Riches
RMW Law LLP
London
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Chapter 13

FINLAND

Johan Hägerström and Stefan Stellato[1]

I INTRODUCTION

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. In 2017, Finland celebrated 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 2008 financial crisis, which coincided with a sharp decline in Nokia's businesses, as well as a downturn in trade with Russia. This combination led, 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. Finland is now struggling with increasing levels of national debt and an ageing population.

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. Finland is 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]

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.

1 Johan Hägerström is a managing associate 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.

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II TAX

i Recent developments

One issue that stands out particularly clearly in the recent developments of Finnish tax law is the ever-increasing disapproval of tax avoidance and planning, as manifested also on an international level by the Organisation for Economic Co-operation and Development (OECD) and EU actions against such activities. In addition, the reputational damage to persons and companies engaging in tax avoidance and planning 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 and income routed to personal holding companies do not show in the statistics, these listings may be somewhat misleading.

The worsening of the general tax atmosphere can also be seen in the fact 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.

Another general trend in Finnish taxation over recent years is the increase of both tax rates and progressiveness. New tax brackets have been added at the high end of the scale for capital income, earned income, gift and inheritance tax. 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.

Legislative amendments that entered into force in 2020 aim to better align the tax treatment of different forms of investment. The amendments include the abolishment of the possibility to withdraw invested capital from insurance wrappers without triggering taxation, the introduction of a share saving account[4] and broad changes to the taxation principles concerning investment funds.

Finally, Finland had a parliamentary election in April 2019, which the Social Democratic Party won with a margin of just one or two seats over the more right-leaning Finns Party and the National Coalition Party. Nevertheless, the new government is much more left-leaning than its predecessor and during the negotiations to form it, even quite radical tax-related proposals were discussed. Such proposals included, for example, reintroduction of a wealth

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

4 The adopted model of share saving account is very restricted, because the share saving account, in essence, only allows private persons to invest a maximum of €50,000 in listed shares and to benefit from a tax deferral on dividend income and capital gains. The tax treatment is similar as for mutual funds: the investor pays capital income tax at the point of withdrawing funds from the account.

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tax, abolishment of generation shift reliefs, exit tax for individuals, increased tax on dividends from unlisted companies, withholding tax targeted at foreign institutional investors, meat tax, etc. However, it seems likely that most of these proposals will never actually be implemented even despite the covid-19 health emergency, which puts pressure on increasing tax revenues.

ii International agreements

Finland has a wide network of bilateral tax treaties. 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 recently renegotiated its outdated tax treaties with, inter alia, Germany, Spain and Portugal. The new treaty with Germany has been applied since 2018, and the one with Spain as of 2019. Renegotiation of the treaties with Spain and Portugal was the result of increasing media attention towards high-income individuals moving to Spain or Portugal to avoid tax on their private-sector pensions, as the relevant treaty did not allow Finland to tax such pensions. The Finnish government terminated its current tax treaty with Portugal with effect from 2019 to put pressure on the country, which was not working sufficiently to have the new treaty accepted nationally. Therefore, there is currently no applicable tax treaty between Finland and Portugal.

Finland is a signatory of the Nordic Multilateral Tax Treaty, which is a multilateral double taxation convention largely based on the OECD Model Tax Convention.[5] Finland is also among the countries that signed the OECD Multilateral Instrument (MLI) in June 2017. Finland included most of its tax treaties as covered agreements but made broad reservations to the applicable provisions. Consequently, it is expected that the most important practical effects of the MLI will be the introduction of the principal purpose test and mandatory arbitration procedure. The MLI has been applied as of 2020.

The EU's Anti-Tax Avoidance Directive (ATAD) and its 2017 amendment (ATAD II) have required significant amendments to Finnish national laws, especially with respect to the interest-deduction limitation, controlled foreign corporation (CFC), corporate exit tax and hybrid mismatch rules. Finland is also required to broaden its hybrid mismatch rules to cover reverse mismatch situations as of 2022.

Finland has an agreement with the US to exchange information under the US Foreign Account Tax Compliance Act. Finland has also agreed on automatic exchange of information in the context of the OECD Common Reporting Standard (CRS), implemented at the European Union (EU) level through the DAC2 Directive (2014/107/EU). Finland requires, based on OECD and EU transfer pricing initiatives, multinational groups with revenues exceeding a certain global threshold to file country-by-country reports. In addition, the DAC6 Directive rules on mandatory disclosure has set an obligation for taxpayers and intermediaries to report, in particular, tax-driven cross-border arrangements with the first exchange of information taking place in late 2020.

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.

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

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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. This three-year rule does not apply to foreign citizens.

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.

Taxable income for all entity types is assessed separately under three different acts, depending, among others, on if the source of the income is employment, business or farming. Losses from one source of income may not be offset against another source of income, apart from in rare exceptions. The system was simplified somewhat by taxing most corporations exclusively under the business income source as of tax year 2020. However, there are still limitations on what types of tax-deductible items and taxable income can be offset against each other, which causes uncertainty, especially for private investment companies.

Capital gains are generally taxable at the capital income tax rate of 30 or 34 per cent. 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. In its report of February 2020, the Ministry of Finance did not recommend introducing an exit tax for private persons because of the challenges involved, but recommended monitoring international developments. Consequently, it cannot be excluded that an exit tax on private persons could be introduced during the coming years.

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 and is planned to be completely removed by 2023.

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

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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 and may in some situations even attract social security charges.

Limited liability companies and certain similar types of companies are subject to 20 per cent corporate income tax on their profits. Cross-border restructurings and managing the company from abroad can trigger exit taxation where assets are, in one way or other, 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 European Economic Area (EEA) within five years after the end of the year in which the exchange of shares was carried out.

Finland originally introduced a CFC rule in 1995 and an interest-deduction limitation rule in 2014, which were both tightened as of 2019 owing to the ATAD. Under the current CFC rule, Finland taxes the income of a foreign entity if a Finnish taxpayer, either alone or together with its related parties, has, directly or indirectly, at least 25 per cent of votes, ownership, right to capital or right to profits or assets, and the foreign entity's effective tax rate is less than three-fifths of that calculated under the Finnish rules. An entity within the EEA may escape the CFC rule if it carries out actual economic activities, whereas an entity outside the EEA must meet more criteria to escape CFC taxation. The requirement to carry out actual economic activities makes it much more difficult for entities in tax treaty countries, which were usually exempt under the old CFC rule, to escape CFC taxation and especially Finnish-owned investment companies within the EEA are now struggling with what level of actual economic activities is sufficient. In its 2019 ruling, the Central Tax Board concluded that a Luxembourg investment company did not carry out actual economic activities because it did not have premises, equipment or staff managing day-to-day operations independently in Luxembourg.

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.[6] Only inheritances that are at least €20,000 and gifts that are at least €5,000 are subject to tax.

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

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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.

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). However, person A may deduct as their acquisition cost the value of the house including the value of the possession right in the capital gains taxation upon a subsequent disposal.

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.[7] The taxes are progressive within both brackets. As an example of the applicable rates in 2020 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 may be obtained by skipping generations by willing or donating property to, for example, grandchildren.[8] 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 their 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, such as the one in gift taxation.

The media regularly brings to the public's attention cases where people move abroad with the aim of avoiding 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.

7 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.

8 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. This strategy has obvious pitfalls.

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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.[9] Recent case law shows an increasing tendency to grant the relief only to the extent the company's assets are related to its business activities and to deny relief to the extent the assets are personal investments in nature. The tax provisions on change of generation transactions are a politically highly sensitive topic in Finland.[10]

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. 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.[11]

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.

9 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.

10 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.

11 Because of significant similarities, references to marriage in this text also apply to registered partnerships.

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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.[12]

At divorce, the net marital property is totalled and divided into two, 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 cover around a third of all marriages and they frequently entirely remove the duty to make equalisation payments. 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.

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 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.[13]

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

12 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.

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

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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 AND REGULATION

i Wealth structuring vehicles

Finnish law does not recognise the common law institution of trust.[14] 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.[15] Setting up a limited liability company is very straightforward and, as of July 2019, there is no required minimum incorporation capital. 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.

Exit tax provisions introduced as of 2020 could trigger exit taxation, if managing the company from another country causes the company's residence to switch to that other country and Finland to lose the right to tax the company's assets. The February 2019 judgments of the Court of Justice of the European Union on the concept of beneficial ownership and misuse of EU law could limit the possibilities to utilise foreign intermediate holding companies (e.g., as vehicles for investment to Finland).

Legislative amendments aiming to better align the tax treatment of different forms of investment have been applied as of 2020. Among others, these amendments greatly reduced the attractiveness of insurance wrappers by, for example, abolishment of the possibility to withdraw invested capital without triggering taxation and complete forfeiture of tax deferral when the policy owner yields too close control over the underlying assets. For example, the

14 There is, however, some case law, for example, regarding foreign trusts and their treatment in Finnish taxation.

15 As noted above, the taxation of dividends in Finland is very complex. Another factor affecting the use of a Finnish holding company is that dividends from unlisted companies within the EU/EEA, regardless of ownership, and dividends from listed companies within the EU/EEA, subject to a holding requirement of at least 10 per cent, are generally tax exempt. There are no similar exemptions if the shares are held by an individual personally.

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explicit or implicit possibility to exercise voting rights in the underlying investment object or bypass the insurance company when giving purchase and sell orders ('self-management') cause complete forfeiture of tax deferral.

As of 2020, Finnish contractual investment funds have to meet certain conditions related to, for example, a minimum number of unit holders and open-endedness to be tax exempt. HNWIs, who tend to choose limited liability companies or insurance wrappers, rarely use Finnish investment funds as wealth structuring vehicles. For many HNWIs, foreign private funds could be a more attractive alternative, especially after the 2020 amendments.

ii Regulation of financial service providers and prevention of money laundering

Marketing and offering of financial products and services in Finland by investment firms, and fund managers of both UCITS (i.e., funds established under the EU Directive on Undertakings for Collective Investment in Transferable Securities) and alternative investment funds (i.e., funds governed under the EU Directive on alternative investment fund managers) require prior authorisation or 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 the obligation to provide a key investor information document and the rules under the Consumer Protection Act, apply. The definition of a professional client under the Investment Services Act is based on the requirements set out in the EU Directive on Markets in Financial Instruments (MiFID II).

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. The 4th Anti-Money Laundering Directive was implemented into Finnish legislation by the recast Act on the Prevention of Money Laundering and Financing of Terrorism (AML Act) and the Act on the Financial Intelligence Unit. Finland has also transposed the 5th Anti-Money Laundering Directive into national law. Requirements under the AML Act 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. Violations are subject to administrative and criminal sanctions, and negligence towards the obligations may lead to corporate criminal liability and criminal liability for individual employees. Money laundering offences are sanctioned in the Penal Code.

V OUTLOOK AND CONCLUSIONS

The continuously increasing exchange of information is a clear trend in Finland. The Finnish authorities are receiving a substantial amount of information from international exchange of information arrangements, and this flow of information has already led to some investigations concerning the taxpayers affected. In the absence of an effective voluntary disclosure policy, it has been less popular among Finnish taxpayers to disclose unreported overseas assets on a voluntary basis. In addition, the DAC6 Directive rules on mandatory disclosure will set an obligation for taxpayers and intermediaries to report especially tax-driven cross-border arrangements with the first exchange of information taking place late 2020. Attorney–client privilege could exempt tax advisers that are attorneys from mandatory disclosure requirements.

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As far as tax planning is concerned, the generation-shift reliefs, as well as holding company and personal service company arrangements, may present attractive opportunities, but careful planning is essential, as tax planning is becoming less tolerated than before. The GAAR is being interpreted ever more broadly and new measures against tax planning are introduced. OECD Base Erosion and Profit Shifting proposals and EU legislation against tax avoidance and aggressive tax planning, chiefly ATAD and ATAD II, have recently been implemented. The tax treatment of different forms of investment has been aligned as of 2020, limiting, for example, the tax benefits of insurance wrappers. As ever-fewer tax planning alternatives remain available and, for example, because Finland levies gift and 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 new government has signalled that this will continue to be the emphasis. Due to the impact that the covid-19 pandemic has had on Finland's state budget, the government is also under pressure to increase taxation. Above all, the new government has signalled a strong appetite to tackle tax planning with measures, which could be difficult to foresee. 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.

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