

**Asset Protection – How to structure assets in an anonymous way, while meeting the international transparency requirements.**

**Commission(s) in charge of the Session/Workshop:**

Private Clients Commission  
Tax Law Commission

**Munich, 2016**

**National Report of Cyprus**

Stavros Christou

George Z. Georgiou & Associates LLC

1 Eras Street, Nicosia

1060, Cyprus

Tel: 00357 22763340, stavros.christou@gzg.com.cy

**General Reporters:**

<p>Cosima von Rechteren Bär &amp; Karrer AG Brandschenkestrasse 90 CH – Zurich 8027 Phone: +41 58 261 56 01 E-mail: cosima.vonrechteren@baerkarrer.ch</p>	<p>Roos Jongeneel Taxand Netherlands Piet Heinkade 133 Amsterdam, The Netherlands Phone: +31 20 435 64 09 E-mail: Roos.Jongeneel@taxand.nl</p>
---	--

10 February 2016

# INTRODUCTION

## 1. Private Clients

As the world becomes increasingly globalised, it is becoming easier for everyone to hold assets through structures and to make and manage investments through financial institutions outside of its own country of residence. International organisations such as the OECD and the FATF, institutions such as the EU and of course the USA are at the forefront when it comes to combatting tax evasion, money-laundering and terrorist financing. Due to this development, the last several years have brought a new wave of greater financial transparency.

With more than 90 countries already committed to the OECD's Common Reporting Standard (Standard for Automatic Exchange of Financial Account Information), the first stage amongst the early adopters will come into effect on 1 January 2016. The EU recently introduced its new anti-money laundering (AML) rules, namely the Fourth EU Anti-Money Laundering Directive ("4AMLD"). The main novelty of the new Directive is the introduction of a central UBO-register, a public register which identifies the ultimate beneficial owners (UBOs) of companies and trusts. EU Member States have until June 26, 2017 to transpose the requirements of the 4AMLD into national law. Then of course financial institutions are faced with the long arm of the US-legislation in the form of the Foreign Account Tax Compliance Act, known as FATCA.

At the same time, the world is becoming more and more dangerous to any wealthy individual. Unjustified law suits, invented claims, bankruptcy of whole countries, asset seizure, increasing liability risks or the risk of kidnapping, whatever the reason may be, the need for anonymous asset protection structures is bigger than ever.

When planning their individual asset protection structure, international families, high net worth individuals and their advisers are confronted with these changes in new tax and asset reporting regimes and reporting rules. Especially where anonymity is sought, these rules can have far reaching consequences. For the unwary, these new regulations are a potential minefield. Advisers are looking for ways how to lessen the impact of these rules.

Now, how are these issues dealt with in your country? In this section, we would like to find out what kind asset protection structuring possibilities your country offers and how these are affected by the recent international and national compliance and filing requirements.

## 2. Tax

Simultaneously with the introduction of more transparency regarding the structuring of privately held assets, the international developments also strive to more transparency regarding the income and tax planning. Multinationals but also privately owned companies held by the same international families and high net worth individuals who are subject to the transparency requirements as described above, are also faced with increasing

transparency and compliance requirements regarding their tax position and exchange of information between states.

On 5 October the OECD published the final reports regarding the Action Plan Against Base Erosion and Profit Shifting (“BEPS”). The BEPS Action Plan is aimed to equip governments with domestic and international instruments to address tax avoidance and ensure that profits are taxed where economic activities generating the profits are performed and where value is created. The background furthermore lies in three key pillars identified by the OECD: introducing coherence in domestic rules that affect cross-border activities, reinforcing substance requirements in the existing international standards, and improving transparency as well as certainty. The proposed actions by the OECD regard inter alia Country-by-Country reporting, mandatory disclosure of tax schemes and international exchange of information between states.

On 6 October 2015 unanimous agreement was reached between the EU Member States on the automatic exchange of information on cross-border tax rulings. According to the European Commission, the lack of transparency on tax rulings can be exploited by certain companies in order to artificially reduce their tax contribution. Where currently Member States have the discretion to decide whether information such as a tax ruling should be exchanged with another Member State, the proposed amendment to Directive 2011/16/EU will require Member States to automatically exchange information on their tax rulings. The deadline for implementation of the amendment is the end of 2016 as the Directive will come into effect on 1 January 2017.

Although the transparency requirements on tax planning aim to tackle tax avoidance and aggressive tax planning, all tax payers, “aggressive tax planners” or not, will be faced with an increased administrative burden. Their advisors operate in an ongoing changing environment and are challenged by the international developments when advising their clients on the best tax strategy and e.g. on whether it is still beneficial to obtain a tax ruling. Perhaps it can be questioned whether the key pillar of certainty is still supported.

Now, how are these issues dealt with in your country? In this section, we would like to find out in what way your country is introducing the transparency requirements proposed by the OECD and the European Commission besides the requirements that already exist and how these developments may affect the future tax strategy of your clients.

Please find here some useful information for drafting your report. Following these basic rules will ensure consistency among all our reports as well as a convenient experience for our readers.

## STYLES

- There are two different levels of headings you may use. See example below.
- Your body text needs to be Garamond, Size 12.
- If you need to display a list, you may use bullet points or letters in lowercase.
- For the use of footnote, you can use the style available here<sup>1</sup>.

- **Headings**

**Heading 1, Font: Garamond, Size 14, Bold**

**Heading 2, Font: Garamond, Size 12, Bold**

- **Body text**

Read here your body text in Garamond, Size 12.

- **Lists**

A list can be displayed with letters in lowercase:

- a. Lorem ipsum dolor sit amet, consectetur adipiscing elit, sed do eiusmod tempor incididunt ut labore
- b. et dolore magna aliqua. Ut enim ad minim veniam, quis nostrud exercitation ullamco laboris nisi ut aliquip ex ea commodo consequat.
- c. Duis aute irure dolor in reprehenderit in voluptate velit esse cillum dolore eu fugiat nulla pariatur. Excepteur sint occaecat cupidatat non proident, sunt in culpa qui officia deserunt mollit anim id est laborum.

or with bullet points:

- Lorem ipsum dolor sit amet, consectetur adipiscing elit, sed do eiusmod tempor incididunt ut labore
- et dolore magna aliqua. Ut enim ad minim veniam, quis nostrud exercitation ullamco laboris nisi ut aliquip ex ea commodo consequat.

---

<sup>1</sup> This is a footnote.

- Duis aute irure dolor in reprehenderit in voluptate velit esse cillum dolore eu fugiat nulla pariatur. Excepteur sint occaecat cupidatat non proident, sunt in culpa qui officia deserunt mollit anim id est laborum.

You can also use indentation to add extra levels to your lists.

- Lorem ipsum dolor sit amet, consectetur adipiscing elit, sed do eiusmod tempor incididunt ut labore
  1. et dolore magna aliqua. Ut enim ad minim veniam, quis nostrud exercitation ullamco laboris nisi ut aliquip ex ea commodo consequat.
  2. Duis aute irure dolor in reprehenderit in voluptate velit esse cillum dolore eu fugiat nulla pariatur. Excepteur sint occaecat cupidatat non proident, sunt in culpa qui officia deserunt mollit anim id est laborum.

## **BIBLIOGRAPHY**

If you add a bibliography at the end of your report, please use the style below.

- Doe, John B. *Conceptual Planning: A Guide to a Better Planet*, 3d ed. Reading, MA: SmithJones, 1996.
- Doe, John B. *Conceptual Testing*, 2d ed. Reading, MA: SmithJones, 1997

## **NAMING YOUR FILE**

When saving your report, please name the document using the following format: "National Report (country).doc". The General Reporter in charge of your session will take care adding the Working session/Workshop reference once this is available.

**Example:** National Report (France).doc

General Reporters, National Reporters and Speakers contributing to the AIJA Annual Congress 2015 accept the terms here below in relation to the copyright on the material they will kindly produce and present. If you do not accept these terms, please let us know:

General Reporters, National Reporters and Speakers grant to the Association Internationale des Jeunes Avocats, registered in Belgium (hereinafter : "AIJA") without any financial remuneration licence to the copyright in his/her contribution for AIJA Annual Congress 2015.

AIJA shall have non-exclusive right to print, produce, publish, make available online and distribute the contribution and/or a translation thereof throughout the world during the full term of copyright, including renewals and/or extension, and AIJA shall have the right to interfere with the content of the contribution prior to exercising the granted rights.

The General Reporter, National Reporter and Speaker shall retain the right to republish his/her contribution. The General Reporter, National Reporter and Speaker guarantees that (i) he/she is the sole, owner of the copyrights to his/her contribution and that (ii) his/her contribution does not infringe any rights of any third party and (iii) AIJA by exercising rights granted herein will not infringe any rights of any third party and that (iv) his/her contribution has not been previously published elsewhere, or that if it has been published in whole or in part, any permission necessary to publish it has been obtained and provided to AIJA.

## 1. Private Clients

### 1.1. Asset Protection – structuring possibilities and other means of asset protection

1.1.1. Does your jurisdiction recognize domestic or foreign trusts? If yes, what types of domestic trusts are there and what type of trusts is usually used for asset protection purposes? Are there any restrictions in your jurisdiction as to the possibility of the settlor to be a beneficiary at the same time?

(...)

1.1.2. Does your country recognize private foundations (domestic or foreign) which are suitable for asset protection purposes (such as family foundations or similar)? If yes, what are the main characteristics of such domestic private foundation and are there any restrictions in your jurisdiction as to the possibility of the founder/donor to be a beneficiary at the same time?

(...)

1.1.3. Are there any other asset protection vehicles which are commonly used in your jurisdiction? What are their specific characteristics?

(...)

1.1.4. Is your jurisdiction asset protection-friendly? E.g. does your jurisdiction typically respect asset protection structures or does it recognize principles such as "sham" or "piercing the corporate veil"? If yes, what are the prerequisites for a court/other administrative body to apply such principles? What is the right balance between settlor control and asset protection?

(...)

1.1.5. Are there any other characteristics in your jurisdiction that make it particularly asset protection friendly, e.g. political stability, banking or other secrecy rules, favorable civil procedural rules (e.g. in relation to the (non-

)recognition of foreign judgments) and have there been any changes to these principles recently?

(...)

1.1.6. Has there been any recent case law particularly relevant with regard to asset protection structures and what was it about?

(...)

1.1.7. What, if any, taxes apply to trusts or other asset-holding vehicles in your jurisdiction, and how are such taxes imposed? How is the transfer of assets to trusts/foundation or other asset-holding vehicles taxed in your jurisdiction?

(...)

## **1.2. National and international transparency requirements**

1.2.1. What are the developments in your country with regard to the automatic exchange of information? Will your jurisdiction implement the OECD-CRS and if yes, when and how?

(...)

1.2.2. Has your country entered into a bilateral FATCA agreement? If yes, what are the main features of such agreement?

(...)

1.2.3. FATF (Financial Action Task Force) recommendations and developments: What are the recent developments in your country and what are the specific due diligence obligations in your jurisdiction?

(...)



1.2.4. Will your country be subject to the Fourth EU Anti-Money Laundering Directive (“4AMLD”) including UBO-register?

(...)

1.2.5. If not, does your jurisdiction know similar shareholder registers?

(...)

1.2.6. Are there any other transparency requirements in your country that pose a threat on the anonymity of asset protection structures?

(...)

## **2. Tax**

### **2.1. Transparency requirements under national law**

- 2.1.1. Does the national law currently include transparency obligations regarding income derived from other states (directly or by subsidiaries) and the tax treatment thereof (including the transfer pricing applied)?

No. In addition, Cypriot tax law does not have specific transfer pricing rules. What it does provide for, however, is the arm's length principle (section 33 of the Income Tax Law). Pursuant to the arm's length provisions in the Cyprus tax law, related party transactions should be based on purely commercial terms, meaning that transactions between related parties should be based on terms and conditions similar/comparable to those between unrelated parties.

There are no specific substance requirements from an arm's length viewpoint in Cyprus' tax law.

- 2.1.2. Does the national law in your country currently include regulations to report the world wide transfer pricing policy of the group?

The Cyprus income tax legislation does not include such a provision.

- 2.1.3. Does the national law currently include obligations to report tax schemes?

The Cyprus income tax legislation does not include such a provision.

### **2.2. Exchange of information under national law**

- 2.2.1. What are the current regulations regarding international tax assistance and exchange of information on the tax position of companies in your country?

Within the context of improving international tax compliance with the common reporting standard (CRS) for the automatic exchange of financial information developed by the OECD), the Republic of Cyprus signed on 29 October 2014, following a Council of Ministers decision dated October 22, 2014, the Multilateral Competent Authority Agreement for the automatic

exchange of financial information of financial accounts and came into effect as from 1 January 2016.

The primary goal of CRS is to facilitate the automatic tax information exchanges between non US countries. Simply put, CRS is intended to be a standardized, cost effective model for automatic exchange of information bilaterally. The transparency obligations that stem from CRS is another deterrent to taxpayer's use of offshore financial accounts to avoid domestic tax liabilities.

Refer also to 2.2.3. below.

- 2.2.2. For EU countries, please describe the current implementation in our country of the Directive 2011/16/EU of 15 February 2011 and any developments regarding the automatic exchange of information on tax rulings? Please also describe the current status and any legislative proposals.

Information exchange provisions are introduced, in compliance with the EU Directive No. 2011/16/EU, between member states of the European Union (EU) covering all natural and legal persons of the EU.

The law covers all taxes of any kind excluding VAT, customs and excise duties, consumption taxes and social insurance contributions.

The automatic exchange of information applies to natural persons resident in another member state earning the following revenues in the Republic of Cyprus:

- a) income from employment
- b) director's remuneration
- c) life insurance
- d) pension
- e) ownership of immovable property and income therefrom

The Law is effective from 1 January 2013. The provisions relating to the automatic exchange of info are effective as from 1 January 2015.

- 2.2.3. What are the current developments in your country regarding international tax assistance and exchange of information on the tax position of companies (other than the BEPS and EU action plans)?

On 2 December 2014 the Cyprus finance minister and the American ambassador to Cyprus signed the intergovernmental agreement between Cyprus and the USA under the Foreign Account Tax Compliance Act ("FATCA").

FATCA was enacted in 2010 with the purpose of implementing mechanisms designed to prevent and detect US tax evasion on income derived by US persons from sources outside the US. FATCA creates greater transparency and improves taxpayer compliance by strengthening information reporting and compliance with respect to US accounts and assets held overseas.

### **2.3. BEPS Action Plan**

- 2.3.1. Please describe in what way the BEPS Action Plan no. 5, 12 and 13 will be introduced in the national tax law of your country (e.g. via legislative proposals, inclusion in the policy of the tax authorities or solely used as guidelines) and the current status thereof.

On 30 December 2015, the Administration of the Ministry of Finance announced the upcoming amendment of the Intellectual Property tax regime. The said amendment will incorporate the recommendations of Action 5 of the Organisation for Economic Co-operation and Development (OECD), which were issued on October 5th 2015 for the Action Plan against 'Base Erosion and Profit Shifting' (BEPS) as well as the Conclusions of the ECOFIN Council adopted on December 8th 2015.

Action 5 deals with favourable tax regimes among which the Intellectual Property regime (IP regime). The approach of the Action 5 (nexus approach) requires the existence of material activity which includes the clear interconnection between the rights which create the income and the activity which contributes to that income.

Having regard the above, the Cyprus Authorities will proceed with the amendment of the Intellectual Property tax regime in order for it to be aligned to the parameters of Action 5 for the Intellectual Property tax regime and for the inclusion of persons to be possible who acquire or already acquired Intellectual Property in a competitive tax regime fully aligned as from July 1st 2016 with the Action Plan against the Base Erosion and Profit Shifting of the OECD and the applicable framework at the European Union level.

The intention of the Cyprus Authorities is for the amendment of the Intellectual Property legal framework in line with the provisions of Action 5 to provide for the maximum transitional arrangements that are included within the revised framework.

In relation to Actions 12 and 13, no legislative proposals or guidelines have yet been issued.