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Questionnaire for National Reporters

Private Client and Immigration Working Session

Movement of High Net Worth Individuals
Localisation et Délocalisation des Clients Privés Fortunés

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Background

As certain governments around the world struggle with fiscal deficits, their attention has turned to international tax evasion (illegal) and the perceived shortcomings of the international tax system from the point of view of tax avoidance (legal). In other regions we have seen unsettled economies combined with civil unrest. Families are seeking safer, more stable jurisdictions not just for themselves but for future generations as they look for long term security and are increasingly looking overseas for a solution.

How do our immigration, legal and tax systems cope with the realties and complexities of 21st century aging family life and the demand for economic security/stability? What are the particular challenges for practitioners in assisting these families? How does increasing governmental exchange of information and compliance requirements affect strategies for investment, tax planning and personal security. How does the global citizen manage a world of overlapping, often conflicting regulation?

1. PRELIMINARY MATTERS

We would ask that you return completed the Questionnaire and your answers to the case studies below by **Friday, 28 February 2014** (earlier if possible please).

Prior to dealing with the legal problems thrown up by the case studies, could you please deal with the following questions with reference, where relevant, to any recent case law or general practice. If you need to clarify the answer to a question, please do so. If a question is not an issue in your country, please provide an explanation as to why it is not.

If you are a delegate responding as part of the Immigration Commission, please respond **only** to sections 1.1 and 2.1.

1.1 **Immigration and Nationality [for Immigration Commission only]**

1.1.1 Briefly outline any immigration, residency or citizenship programmes your jurisdiction has to attract high net-worth individuals (HNWIs).

1.1.2 Are there any proposed changes to the programmes outlined in 1.1.1?

1.1.3 Is there a dichotomy between your Government's wish to attract HNWIs as against public perception of immigration?

1.2 **Cross-border succession**

1.2.1 Is testamentary freedom a right recognised by national law or public policy?

(A) Yes (B) No

The Luxembourg law on testimonials is governed by the articles 893 to 1100 of the Code civil luxembourgeois (CCL).

The article 913 of the CCL established a legal reserve (reserved portion) to the profit of the deceased's descendants (children or – if the children are already deceased at the time of death – their children) and in a measure that varies in proportion of the number of these. The reserved portion is not fixed as an individual percentage for each descendant, but as a total portion which varies depending on the number of descendants left by the deceased (1 child is entitled to ½ of the estate left by his or her father, mother or another ascendant – 2 children together have a reserved portion of 2/3 – 3 or more children together have a reserved portion of ¾).

The legal reserved portion limits the testator's freedom to dispose freely of his/her assets in the form of a will. Testamentary freedom does not exist therefore, at least not for the whole possession if the deceased has children.

Sources:

- *Code civil luxembourgeois*
- *Successions in Europe*, http://www.successions-europe.eu/en/luxembourg/topics/restrictions-on-the-freedom-to-dispose-of-ones-succession-by-will, page consultée le 18.02.2014.

1.2.2 Can those entitled to the reserved portion (heirship entitlement), during the life of the donor, waive their rights to a reserved share?

(A) Yes (B) No (C) Not relevant to your country

If so, please briefly set out the options.

Under the law of Luxembourg, Forced heirs cannot renounce the reserved portion before the death of the deceased (art. 791 of the CCL). Upon the death of the deceased, forced heirs wishing to renounce their inheritance must do so expressly and formally, by filing a declaration with the clerk of the court of the district where the succession is opened; this declaration is entered in a special register kept for this purpose.

Sources:
- *Code civil luxembourgeois*
- *Successions in Europe*, http://www.successions-europe.eu/en/luxembourg/topics/restrictions-on-the-freedom-to-dispose-of-ones-succession-by-will, page consultée le 18.02.2014.

1.2.3 Can an individual resident in your country elect the law applicable to his/her succession? If relevant/applicable, please consider your answer in the context of Brussels IV (Regulation (EU) 650/2012) and/or the 1989 Hague Convention on the Law Applicable to the Estates of Deceased Persons.

(A) Yes (B) No

If yes, is this election limited to the law of the deceased's:

(A) Nationality (B) Habitual Residence (C) Other

In the Grand Duchy of Luxembourg, it is not possible for an individual resident to choose the law applying to a succession. So far, the law applicable to the succession is that of the country where the deceased had his/her habitual residence at the time of his/her death (JP Diekirch, 22 February 1900). An exception exists in the case of real estate. Real estate is subject to the laws of the country where the property is located (art 3 of the CCL - principle of the division of the succession -).

The Luxembourg law on succession does not allow exceptions to these rules, so that the election of an applicable law to the succession is not possible. In the Grand Duchy of Luxembourg, a person's nationality does not determine the law applying to their succession and the criterion for determining the applicable law for a succession may be two-fold:

- either the deceased's domicile at the time of death for personal property,
- or, for real estate, the place where the property is located.

This rules does not comply with the provisions of Article 22 of the Brussels IV Regulation and Article 5 of the 1989 Hague Convention on the Law Applicable to the Estates of Deceased Persons concerning the election of an applicable law to the succession.

Sources:
- *Code civil luxembourgeois*
- Successions in Europe, http://www.successions-europe.eu/en/luxembourg/topics/restrictions-on-the-freedom-to-dispose-of-ones-succession-by-will, page consultée le 18.02.2014.
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1.3 Personal taxation and compliance

1.3.1 Please provide a brief summary on the current rules as to liability to tax (e.g. residence, nationality, domicile (if applicable)).

The Luxembourg law on liability to tax is governed by the *loi modifiée du 4 décembre 1967 concernant l'impôt sur le revenu.*

The liability of an individual to tax is determined on the basis of the residence.

All those resident and non-resident in the country are subject to income tax (*impôt sur le revenu*) so that the impact of the tax on the income of physical persons depends on their **fiscal residence** (article 2 of the *loi modifiée du 4 décembre 1967 concernant l'impôt sur le revenu).*

Resident taxpayer is a physical person who has his domicile or principal place of residence in Luxembourg. The domicile is located at the place where the individual has a dwelling, which he uses with the intention of maintaining it for a long period of time. The principal place of residence is located at a place where the individual stays for a certain period of time. Furthermore, owners and managers of Luxembourg undertakings are deemed to be residents of Luxembourg for income tax purposes subject to tax treaties. Luxembourg residents are taxable on their worldwide income (Tax treaties allow to limit the double taxation).

For the purposes of taxation, spending more than six months in the country during the tax year is considered to be residency.

Non-Resident taxpayers are physical persons who have no domicile or principal place of residence in Luxembourg and having domestic taxable income. Non-residents are taxable on income arising from Luxembourg sources only.

1.3.2 Have there been any changes introduced in the last 24 months to the definition of who is a “taxpayer” e.g. “resident”, “habitually resident” or “domiciled” in your country?

(A) Yes (B) No

If yes, please briefly summarise the changes.

1.3.3 Has your country introduced in the last 24 months (or proposed the introduction of) any new taxes or reporting requirements for residents?

(A) Yes (B) No

If yes, please briefly set out the key provisions.

1.3.4 Has your country introduced in the last 24 months (or proposed the introduction of) any new taxes or reporting requirements for non-residents with assets located in your country?

(A) Yes (B) No

If yes, please briefly set out the key provisions.

1.3.5 Has your country undertaken (or proposed the introduction of) any legislative steps in the last 24 months to promote transparency in tax reporting obligations and to combat international tax evasion in the context of private wealth?

(A) Yes (B) No

If yes, please briefly set out the key measures.

Luxembourg has now a number of double tax conventions which contain rules relating to the exchange of income and tax information to ensure that residents are paying the correct amount of tax and are not being overcharged. Details of these are available on the Ministry of Finance website.

1.3.6 Has your country introduced in the last 24 months (or proposed the introduction of) any new taxes or reporting requirements for holding structures with assets or “beneficiaries” located in your country?

(A) Yes (B) No

If yes, please briefly set out the key measures

On 13 December 2012, the Luxembourg Parliament adopted two laws that amend the individual income tax, corporate income tax and net worth tax laws from the tax year 2013.

Corporate tax changes: the overall income tax rate in Luxembourg is composed of corporate income tax, municipal business tax and the unemployment fund contribution. from 2013, the unemployment fund contribution was increased by two percentage points to 7%, raising the overall income tax rate for companies located in Luxembourg City from 28.80% to 29.22% (for taxable income exceeding EUR 15,000).

Extension of the minimum corporate income tax.

Since 17 Dezember 2010, Luxembourg introduced a minimum corporate income tax (Loi du 17 décembre 2010 portant introduction des mesures fiscales relatives à la crise financière et économique) on Luxembourg-resident companies not requiring a business license or approval of a supervisory authority and whose financial assets exceed 90% of their total assets. As from 1 January 2013, regulated entities which are subject to corporate income tax will also be subject to the_minimum corporate tax. The minimum corporate income tax will also be applicable to companies investing in risk capital (SICAR an securitization vehicles).

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1.4 Mental capacity of adults

1.4.1 What system is in place in your country to deal with an individual who has lost capacity?

In Luxembourg the protection of an individual who hast lost capacity is governed by the articles 488 to 514 of the *Code civil luxembourgeois* (CCL).

The dispositions of this Code provide 3 protections schemes:

a) The under judicial protection (art. 491 - 491.6): it is a transitional regime to the establishment of a curatorship or tutelage. It is limited in time.

b) The curatorship (art. 508 – 515): it applies to people whose mental impairment is such that they need to be assisted by a committee in the acts of civil life

c) The guardianship (art. 492 – 507): it applies to people who cannot express themselves and who therefore need to be represented by a guardian.

1.4.2 Does your country provide for Powers of Representation/Lasting Powers of Attorney/Mandats de protection future in relation to an incapacitated adult's personal welfare and/or property and affairs?

(A) Personal welfare only (B) Property and affairs only (C) Both personal welfare and property and affairs

1.4.3 Will your country recognise and enforce a form of Power of Representation or Attorney intended to have effect after the onset of mental incapacity valid in the state in which it is prepared?

Yes.

1.4.4 Are there proposals for legislative change in the field of mental capacity?

(A) Yes (B) No

If yes, what are the proposals?

1.4.5 Is your country a party to the Hague Convention XXXV for the International Protection of Adults of 13 January 2000?

(A) Yes (B) No

1.4.6 Is your country a party to the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol 2006?

(A) Yes (B) No

Luxembourg signed the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol on March 30th, 2007. On July 13th, 2011, the Convention was ratified by the vote in the Chamber of deputies. It is introduced in Luxembourg law by the law of Law of July 28th, 2011 concerning the 1. Approval of the Convention on the Rights of Persons with Disabilities and its Optional Protocol.

QUESTIONS FOR CASE STUDIES

2. CASE STUDY A: ROBERTA AND PAUL

Roberta and Paul married in the Netherlands in 2008. Roberta is Brazilian and Paul is Dutch. Roberta, an IT specialist, was offered a job with Pear Inc in Silicon Valley and she and Paul moved to California (USA) in 2011. The family grows with twin boys and life is good.

Roberta's mother, Gloria, who is in her 70s, wants to live with Roberta (her only child) and Paul so that she can spend more time with her grandchildren. Interested in moving to your country, Roberta and Paul come to see you for advice.

2.1 **Immigration law [for Immigration Commission only]**

2.1.1 Roberta and Paul are exceptionally wealthy. What immigration categories (e.g. investor type programmes) might apply to HNWIs such as Roberta and Paul to:

(a) move firstly to the US (please omit this if you do not advise on US immigration law);

(b) and then secondly to your country?

In Luxembourg, Immigration is governed by the *loi modifiée du 29 Août 2008 sur la libre circulation des personnes et l'immigration*.

As national of European Union Member States, Paul falls under the immigration category of the right of residence of nationals of European Union Member States, giving him and Roberta the right to come and to live as non-working person in Luxembourg (articles 5 and 6.1). But as Roberta is national of a non-EU country, she must apply for a residence permit within the framework of family reunification (articles 6.1(2), 12.1(a)).

The formalities to be complied with depend on whether or not the stay exceeds 3 months (articles 5, 6, 8, 12, 13(1), 14, 15).

If your advice would change if Paul was not a Dutch national, please explain.

If Paul was national of non-EU country like Roberta, both must apply for residence permit for nationals of non-EU countries for private reasons in Luxembourg (article 78).

2.1.2 What immigration options does Gloria have to move to your country on a long term basis?

Gloria can, before entering the territory, make an application for a residence permit for the family member of the spouse of an European Union citizen within the framework of a family reunification process (article 38.1(f)) or a residence permit for personal reasons (article 78(1)).

2.1.3 What, if any, are the residency requirements for a long term move to your country for Roberta, Paul and Gloria?

A third party country national that can prove lawful uninterrupted residence on Luxembourg territory of at least five years can apply for the status of long-term resident from the Ministry of Foreign Affairs.

Before entering the territory of Luxembourg, Paul has to make an application for a residence permit within the framework of family reunification for Roberta and Gloria (art. 39(1)). The residency requirements are different for Roberta, Paul and Gloria before and upon arrival in Luxembourg.

Residency requirements before entering Luxembourg

Paul:

- Valid national identity card or passport (art. 5)
- Proof of sufficient living resources for him, Roberta and Gloria (art. 6.1(2)).
- Proof of marriage with Roberta

Roberta:

- Valid national passport (art. 34(1))
- Proof of marriage with Paul (art. 12.1(a))
- Schengen visa

Gloria:

- Valid national passport
- Proof of financial support, in any appropriate means, proving that the she was in a situation of dependency on Roberta and does not have the necessary family support in USA before the application for the family reunification.
- Schengen visa.

In addition to the visa conditions, Roberta and Gloria must necessary fulfil the following conditions (art. 34.2(2-4).

- not be located in the Schengen Information System;

- not be the subject of a decision to forbid entry to the territory;

- not be considered as being in a position to compromise public order, national security, public health or the international relations of the Grand Duchy of Luxembourg or one of the States which is party to an international convention concerning the crossing of external borders, binding upon the Grand Duchy of Luxembourg;

- provide evidence of the purpose and conditions of the planned stay and of sufficient personal resources, both for the duration of the planned stay and to return to the country of origin or transit to a third party country to which you are guaranteed to be admitted, or demonstrate the possibility of legally acquiring these means and have health insurance covering all risks on the territory.

Residency requirements upon arrival in Luxembourg:

- The application for a residence permit as family member should be made upon arrival in Luxembourg to the commune authorities in the place of residence of the resident

When Roberta and Gloria arrive, they should contact the commune authorities of the place of their residence with Paul. This must be done within three months after arrival, therefore as long as the visa in their passport is still valid. At the commune authorities he or she signs a request for a family member residence permit. Whilst waiting for this permit to be issued, the family member receives a receipt as proof the application has been submitted, which is valid as a residence permit for a period of six months whilst waiting for the residence permit (art. 15, 40)

2.1.4 Are there are any long term requirements that the family should be aware of in order to maintain their immigration status in your country?

The family must provide evidence of stable, regular and sufficient resources to subsidise without use of the social security system (art. 24(1)).

2.1.5 Will any of the members of the family be able to acquire citizenship of your country?

Each of them is able to acquire the citizenship of Luxembourg if the conditions below were fulfilled (loi du 23 octobre 2008 sur la nationalité)

- Be over 18 years of age at the time the application is submitted (art. 6.1)
- Have legally and actually resided in Luxembourg for seven consecutive years (art. 6.2)
- Have passed an oral test in the Luxemburgish language (art.7.1(b))
- Have attended three civic instruction sessions (art. 7.1(c))
- Meet the integrity requirements (art. 7.2)

Now settled into the hustle and bustle of life in your capital city, Roberta and Paul (who are very happy together and, incidentally, exceptionally wealthy), having purchased rental properties in Brazil and invested wisely in stocks and bonds, they are looking to buy a US$ 20 million Penthouse Duplex in the hipster district of your capital city. They believe it is time to consider tax and estate planning opportunities and come to see you.

During the meeting you are also told that:

- Roberta is likely to inherit family assets - principally artwork - from Gloria. The family want to ensure that upon Gloria's death, the family assets will not be considered a "matrimonial asset" and that the assets, to the extent possible, can pass to the grandchildren (**the Inheritance**).

- Paul's father has been diagnosed with a degenerative medical condition, which may lead to a loss of mental capacity. Paul has been told that the condition is likely to be hereditary.

2.2 **Real estate planning**

What structuring and/or tax planning opportunities should Paul and Roberta consider with respect to the purchase of the Penthouse Duplex (i.e. to mitigate taxation in your country)?

Structuring to be considered:

When Paul and Roberta have found the right property, a lawyer or notary should be used to draw written contracts or sales agreement for submission to the notary.

Tax planning to be considered:

The main points to consider by Paul and Roberta as Luxembourg residents owning a **residential** property in Luxembourg are the tax aspects. The tax aspects come into play at three key stages: when the property is purchased, when it generates rent, and when the property is sold or in the case of inheritance.

When the Penthouse Duplex is purchased:

Various duties and taxes have to be paid and come on top of the notary's fees.

- *Registration and transcript duties* - (Loi modifiée du 30 juillet 2002 déterminant différentes mesures fiscales destinées à encourager la mise sur le marché et l'acquisition de terrains à bâtir et d'immeubles d'habitation)

  The registration duties would be 6%, with an additional 1% transcript duties based on the acquisition price. On these duties, Paul and Roberta can receive a tax credit to a maximum of € 40,000 -*bëllegen Akt*- (article 4, 6, 7 de la loi du 30 juillet 2002).

  - *Reduced rate of VAT* (Point 22° de l'annexe B de la loi TVA du 12.02.1979)

  VAT would not normally be applicable (current rate 15%). Under certain conditions, a reduced rate of VAT (3%) can be applied to construction and renovation work on the property.

- *Real Property tax* (loi du 1er décembre 1936 sur l'impôt foncier (Grundsteuergesetz)

  A tax on the property is charged by municipalities in Luxembourg. This tax is very low and varies between 0.7 to 1% per annum based on the unitary value of real property, including industrial plants. This tax is mutiplied for coefficients fixed by each municipality and varies according to the type of real estate.

  - *Notary fees*

The property transaction is always registered and recorded in the notary's deed. A public notary will present the sale deeds for recording in this register. Paul and Roberta would then be expected to pay notary’s fees based on the acquisition price.

If the property is owned via a company, Luxembourg inheritance tax will apply, with exemption in the case of a direct line inheritance or between spouses who have children together. This latter point offers particular value to the formation of a Luxembourg "Société Civile Immobilière" for the purchase, ownership or transfer of a property in Belgium.

2.3 Succession law and mental capacity

2.3.1 What would you advise with respect to the Inheritance?

The law applicable to the succession upon Gloria’s death would be that of the country where the deceased (Gloria) had her habitual residence at the time of her death. An exception exists only in the case of real estate. Real estate is subject to the laws of the country where the property is located (principle of the division of the succession). The laws of Luxembourg do not allow any derogation from this rule, which means that Gloria cannot choose the applicable law for her succession. So if she became Luxembourg resident at the time of her death, the following principles would be applied the family to the succession:

When there is no will, and Gloria was unmarried and leaves children, the estate will be divided equally between the children, so that Gloria can inherit the family assets.

2.3.2 What steps can Paul take to ensure that Roberta has full authority to take decisions on his behalf and deal with their assets in the event that Paul loses his mental capacity?

If Paul is unable to express his will due to the fact that he loses his mental capacity, Roberta can be empowered by the court to represent him, in general, or for specific acts, in the exercise of powers resulting from matrimonial regime (Article 219 of Civil Code)

Paul can also apply for a guardianship (Articles 492-507 of the law of 11 august 1982 portant réforme du droit des incapables majeurs*)*

2.3.3 More generally, with a shared wish to keep matters “simple”, what estate and succession planning opportunities should Roberta and Paul consider?

They must particularly consider the tax and duties aspects of the real estate planning which are very low in Luxembourg and the succession regime which allow Roberta to inherit the family’s assets.

The liquidation of the succession will depend on whether the deceased has made a will or not. If there is a will, the succession will be liquidated in accordance with the provisions of the will. In the absence of a will, the succession will be regulated in accordance with the legal order, i.e., a system of succession per stripes, which divides the possible intestate heirs into different orders depending on the relation to the deceased person, while the closest applicable order excludes the more distant orders.

If the deceased was unmarried and leaves children, they are entitled to equally shares of the estate. The unmarried surviving partner is not entitled to the succession (Articles 745, 767 of Civil Code).

The matrimonial regime chosen by the spouse has an influence on the assets to be included in the estate. Three main marital regimes are available in Luxembourg succession law (Articles 1400 to 1581 of the Civil Code).

The universal community regime under which all assets are owned in common by both spouses, regardless of whether the assets were acquired before or during the marriage. Should the spouses opt for the universal co-ownership rule with attribution to the survivor, the assets will automatically pass to the surviving spouse at the death of one of them. There is no succession. When there is no rule with attribution to the survivor, the surviving spouse has the choice of opting either for the usufruct of the immovable property inhabited jointly by the spouses and the furniture pertaining thereto, or a full ownership share equal to that of the children with at least a quarter. The rest is shared equally between the children (Article 767 of Code Civil).

In case of separate property regime under which each spouse retains sole title to assets and wealth he or she acquired before and during the marriage. The surviving spouse is not entitled to inherit the estate of the deceased unless otherwise specified in the will. The Children inherit the entire estate of the deceased, under full ownership.

3. QUESTIONS FOR CASE STUDY B

3.1 Case Study B: Bruce and Megan

Bruce, who has been given your contact details from an AIJA member, comes to see you for advice. Bruce gives you his background:

- 30 years old;
- Australian resident, national (and, if relevant to your country) “domiciled in a state of Australia”;

- Single;
- Commodities trader;
- Family wealth from mining opals;
- Bruce has an Aus$15 M portfolio in Switzerland;
- Bruce also has shares in family mining company in Australia.

Bruce is looking to move to your country for 3-5 years.

3.2 **Pre-arrival planning**

3.2.1 What pre-arrival tax planning opportunities would you advise?

Resident taxpayers of Luxembourg are liable to personal income tax on their worldwide income while non-residents are subject to tax on their Luxembourg-source income only. Luxembourg income tax law takes into account only 8 categories of income for the determination of total taxable income, including income from trading and business, employment, pensions and annuities, capital and investment, rentals and leases and sundry net income. The tax on the assets of wealthy residents was abolished in 2006.

The personal income rate schedule is adjusted periodically for inflation. Liability is based on the individual's personal status (family status, number of dependent children). The three tax classes are Class 2 (married taxpayer), Class 1a (intermediate), and Class 1 (single taxpayers): The maximum overall marginal personal income tax rate is 40% for the bracket of income exceeding EUR 100,000.

Luxembourg's VAT rate is the lowest in the EU: 15%. The substantial condition to benefit from this VAT rates is the existent of an entity to be given the possibility to carry out an economic activity in an autonomous and permanent way in Luxembourg.

Luxembourg has a number of tax treaties in place which can help prevent residents from paying tax on the same income in more than one country and these can be beneficial for expats as residents are expected to pay tax on all the money that they earn worldwide. This will ensure that those who have an income deriving from another country are not charged twice.

3.2.2 What are Bruce's tax, residence or other reporting obligations upon becoming resident in your country?

Bruce's Tax as Luxembourg resident:

Bruce is liable to personal income tax on his worldwide income in the Class 1 taxpayer. The taxable income Bruce's as Luxembourg resident includes:

- Income from the commodities business,
- Income from shares (dividend income) from family mining company in Australia:

Dividends paid to shareholders of foreign companies are in principle subject to a withholding tax. This withholding tax is determined based on the applicable law in this country and/or in accordance with the applicable tax treaty to eliminate double taxation of dividend income. In addition, foreign dividends received by a resident taxpayer must be reported under the income tax return and are subject to the ordinary progressive rates (from 0% to 42.80% or 43.60%). 50% of dividends paid by companies resident in countries that have concluded a tax treaty with Luxembourg are tax-free for a Luxembourg resident

- Income from portfolio in Switzerland (dividend)

<u>Bruce's reporting obligations as Luxembourg resident taxpayer:</u>

All income from the commodities business and the dividend income must be declared by Bruce on a tax return which has to be submitted by the end of March in the year after the income was received.

When you next meet Bruce 3 years later, life is looking good. He has met fellow Australian Kylie and they are expecting their first child (Jason). Bruce is looking to start his own commodities business and wants to know whether he can invest part of his foreign income or gains in the target company.

Bruce also tells you that his grandfather died in 2011 and that he (together with his 3 cousins) is a beneficiary of a trust structure with a bank account in a sun kissed jurisdiction. The bank account has not been reported in his tax return and he now wonders whether it should have been.

3.3 Lifetime matters

3.3.1 With respect to the commodities business, how would you advise Bruce in relation to:

(a) the most tax efficient way to make the inward investment?

There are two tax efficient ways to make the inward investment planned by Bruce: Luxembourg global tax credits (1) and direct investment into shares of companies or funds implanted in Luxembourg (2).

1- <u>Luxembourg global tax credit</u>

Generally, Luxembourg offers a full range of custom-made support designed to give a head start to new ventures. He is encouraging operational companies to invest in their production assets. These incentives are available to both large corporations as well as small and medium sized companies (SMEs) and start-ups legally established in Luxembourg. They can take different forms, ranging from cash grants to tax credits and guarantees.

So one of the most tax efficient ways to make the inward investment is to invest in enterprise situated in Luxembourg in order to take advantage of the Luxembourg global investment tax credit. A tax credit of 7% is granted on qualifying investments acquired during a year (3% on the amount of the investment exceeding € 150,000). For investments in ecological equipment and projects, these rates are increased by a further 1%. In addition, a tax credit of 13% is granted for additional investments made during the tax year. These investment tax credits will reduce the corporate income tax of a company and may be carried forward for 10 years if unused.

Sources: Ministry of the Economy and Foreign Trade, *Conquer the world from your Luxembourg headquarter* [http://www.luxembourg.public.lu/catalogue/economie/lfb-conquer-world-lux-headquarter/lfb-conquer-world-2011-EN.pdf]

2- Investment into shares of companies or funds

Bruce can manage his assets tax free in Luxembourg, by investing into shares of companies or funds where he has no substantial participation. Luxembourg has a favourable tax regime related to income, gains, or net worth related to the substantial holding of shareholdings. This regime is commonly referred to as a participation exemption regime. Under the participation exemption regime, there is an exemption from Luxembourg corporate income tax on dividends received if certain conditions are met. Source: Ministry of the Economy and Foreign Trade, Conquer the world from your Luxembourg headquarter [http://www.luxembourg.public.lu/catalogue/economie/lfb-conquer-world-lux-headquarter/lfb-conquer-world-2011-EN.pdf]

(b) any planning and structuring opportunities (including the use of double tax treaties) that Bruce should consider in order to minimise any tax leakage?

Generally, taxation in Luxembourg of foreign-source income is mitigated through numerous double tax avoidance treaties. If no tax treaty applies, a foreign tax credit is available under domestic law to Luxembourg resident companies for foreign-source income that has been subject to an equivalent income tax abroad. The maximum tax credit corresponds to the Luxembourg corporate income tax that is payable on the net foreign-source income.

In addition, Luxembourg does not impose any withholding tax on the payment of interest, except in specific cases such as interest on profit participating bonds or payment of interest from EU citizens falling within the scope of the EU Savings Directive.

There is no withholding tax on royalties paid to resident or non-resident companies related to patents, trademarks and know-how. Finally, there is also no withholding tax on liquidation proceeds.

Sources: Ministry of the Economy and Foreign Trade, Conquer the world from your Luxembourg headquarter [http://www.luxembourg.public.lu/catalogue/economie/lfb-conquer-world-lux-headquarter/lfb-conquer-world-2011-EN.pdf]

(c) eventually exiting the business. In particular, are there any structuring or other opportunities that Bruce should consider either at the inception of the business or in the run-up to an exit?

3.3.2 As to the unreported bank account:

(a) what would you advise Bruce?

(b) what are the Trustee's reporting obligations in your country?

Tragically, some years later still resident - and wealthy - in your country, Bruce dies without making a Will.

3.4 Succession law

3.4.1 Do Kylie and Jason have a financial claim against Bruce's estate?

If Bruce was unmarried, Jason is entitled to inherit all the estate. (Articles 745 and 767 of Civil Code). In the absence of a will, the succession will be regulated in accordance with the legal order. The matrimonial regime chosen by Kylie and Jason has an influence on the assets to be included in the estate.

3.4.2 What inheritance or estate tax (if any) is to be paid and by whom? What steps could Bruce and Kylie have taken in order to mitigate/reduce this tax charge?

A distinction is drawn in Luxembourg law between **estate tax** (droits de mutation par décès) due on the transfer of the estate of a non-resident deceased person and **inheritance tax** (droits de succession), which is due if the deceased person was a resident of Luxembourg.

Inheritance taxes (droit de succession) are governed by the *loi modifiée du 27 décembre 1817 sur le droit de succession* amended by the *loi du 18 décembre 2009 relative aux droits de succession et de mutation par décès*.

The estate will be taxable in the Grand Duchy of Luxembourg (except for property located abroad) on the basis of death duties. In Bruce's case as Luxembourg resident at the moment of his death, only the inheritance tax should be considered in regard to the part allocated to each beneficiary (Kylie and Jason). The following rates should be applied:

. 0% in direct line will be levied for a transfer ab intestat to Jason

• 5% inheritance tax will be levied in the case of Kylie who have common child with Bruce; and an exemption of EUR 38,000 is applicable on the share of the inheritance received by Kylie.

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