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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**

National Report UAE

Yann Mrazek

(M/Advocates of Law, Dubai)

**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 realities 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).

The UAE's approach to immigration is generally very open<sup>1</sup>. The procedure is fast and based on a small number of objective eligibility criteria. There is no tax<sup>2</sup> on individuals resident in the UAE, irrespective of the individual's origin, religion, social class or wealth.

The standard set of immigration and residency regulations is one of the most attractive in the world. There is thus no – and no need for a – specific program to attract HNWIs.

Immigration issues in the United Arab Emirates (UAE) are governed by Federal Law No. 6 of 1973 as amended by Federal Law No. 13 of 1996 regarding entry and residence of expatriates (UAE Immigration Law).<sup>3</sup>

An expatriate of any social class shall be permitted to enter the UAE if he or she possesses a valid passport and a visa or residence permit.<sup>4</sup>

There are two types of permits available to foreigners in the UAE: employment and residence. The preferred ways for HNWIs to obtain a residence status in the UAE are by setting up a company<sup>5</sup> or by acquiring real estate of a minimum value of USD 360,000.00<sup>6</sup>.

A scheme for acquisition of UAE citizenship by HNWIs is not available at all. The UAE is keen to protect its cultural values and the quality of life of Emiratis – citizens of the UAE – and therefore does not allow foreigners

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<sup>1</sup> The country is built on foreigners and is regularly in the top 5 of the countries with the highest migration rate. 85% of the total population of the UAE is composed of foreigners. In the Emirate of Dubai, the foreign population amounts to 93% (Source: [http://en.wikipedia.org/wiki/Expatriates\\_in\\_the\\_United\\_Arab\\_Emirates](http://en.wikipedia.org/wiki/Expatriates_in_the_United_Arab_Emirates))

<sup>2</sup> Not even a requirement to file for taxes. Welcome to the UAE.

<sup>3</sup> Other immigration regulations have further been issued through various ministerial decrees and orders.

<sup>4</sup> The legal definitions of "visa" and "permit" are different. A visa allows the bearer to remain in the UAE for a short stay, while a permit allows a longer or indefinite period of stay in the UAE.

<sup>5</sup> Setting up a company entitles the investor to a residence permit valid for up to three years.

<sup>6</sup> Option available since the fall of 2012, this residence permit is valid for two years.

to become a permanent part of the society through the acquisition of citizenship<sup>7</sup>.

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

No.

It is worth noting that UAE Immigration authorities may from time to time, at their discretion and without necessarily notifying the public – change their practice towards the issuance of visa and residence permit under the current regime<sup>8</sup>. At the time of writing, nationals of Iran, Syria, Yemen and Israel were prohibited from obtaining/renewing a residence permit.

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

No. The UAE government welcomes foreigners from all over the world irrespective of the individual's origin, religion, social class or wealth.

The native population is aware that it owes its lifestyle to foreigners and does not object to the government's immigration policies. It is part of the daily routine to interact with other cultures and nationalities in the professional or leisure environments.

## 1.2 Cross-border succession

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

**(A)** Yes

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 and **(B)** No – depending on whether the *De Cujus* was a Muslim or a non-Muslim

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<sup>7</sup> The only route for a foreigner to become a UAE citizen is by marriage to a UAE national, but tougher rules apply if the foreigner is a non-Muslim. In exceptional circumstances, the ruler of the concerned Emirate might grant citizenship to a foreigner who has provided outstanding services to the country over a number of years.

<sup>8</sup> E.g. for motives of National security or Public Health.

*From the non-Muslim perspective*, those entitled to the reserved portion may or may not be able to waive their rights to a reserved share – depending on the applicable law of the deceased individual.

The legal basis for inheritance issues in the UAE is found in UAE Federal Law No. 28 of 2005 (UAE Personal Affairs Law), which is a codification of the Sharia<sup>9</sup>. Subsidiary provisions are found in UAE Federal Law No. 5 of 1985 (UAE Civil Code).

Both the UAE Personal Affairs Law<sup>10</sup> and the UAE Civil Code<sup>11</sup> provide that inheritance shall be governed by the law of the deceased at the time of death.

When the deceased is *not a Muslim*, his inheritance and will – if existent – can be respectively distributed and enforced in accordance with the laws of his community or the country of which he is a national at the time of his death, to the extent that it does not contradict with the UAE public order.

*From the Muslim perspective*, those entitled to the reserved portion are not able to waive their rights to a reserved share during the life of the donor. The mentioned heirs include forced heirs<sup>12</sup> and agnates<sup>13</sup>. The waiving by a legitimate heir to a reserved share after the donor passes away is possible.

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<sup>9</sup> Sharia is the primary source of Islamic law. It is an abstract form of law based on the Quran and the Sunna (sayings of the Prophet Mohammed PBUH) which serves as a complementary source to the Quran. Sharia is subject to adaptations and different interpretations in the Muslim countries.

<sup>10</sup> Art. 1.2 of the UAE Personal Affairs Law: *"The provisions of this Law shall apply on citizens of the United Arab Emirates State unless non - Muslims among them have special provisions applicable to their community or confession. They shall equally apply to non-citizens unless one of them asks for the application of his law."*

<sup>11</sup> Art. 17.1 of the UAE Civil Code: *"Inheritance shall be governed by the law of the deceased at the time of his death."*

<sup>12</sup> Pursuant to Art. 321 (3) of the UAE Personal Affairs Law, the forced heirs are: parents, spouses, paternal grandfather or his agnate ascendants, grandmother who is not related to the decedent by an heir, daughters, the daughters of the son or of his descendants, sisters in the absolute, and the cognate brother

<sup>13</sup> Pursuant to Art. 330 of the UAE Personal Affairs Law, the forced heirs are: sons and grandsons of the son and of his descendants; father and the paternal grandfather and his ascendants; germane or consanguine brothers and their descendants; and paternal uncles.

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

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

**(A)** Nationality

In the UAE, non-Muslim expatriates may secure the application of their nationality's law on their estate after their death by executing a will in a form acceptable by the local courts<sup>14</sup> and testament in front of the local Notary Public.

For the sake of clarity, Brussels IV (Regulation (EU) 650/2012)<sup>15</sup> and the 1989 Hague Convention on the Law Applicable to the Estates of Deceased Persons<sup>16</sup> are not applicable in the UAE jurisdiction.

### 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)).

Individuals holding a UAE residency are not subject to personal taxation at the Federal or any of the seven Emirates<sup>17</sup> level, irrespective of their nationality or type of residence.

Per the UAE Constitution<sup>18</sup>, all Emirates are legally in their right to impose individual taxes, but none of them currently does so.

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<sup>14</sup> Execution of a will in front of the local Notary Public or execution of a will in the foreign country – notarised (Notary Public), legalised (supervising authority), super-legalised (UAE Embassy or Consulate) abroad, and then certified by the UAE Ministry of Foreign affairs and UAE Ministry of Justice.

<sup>15</sup> The Regulation (EU) No 650/2012 Of the European Parliament and of the Council of 4 July 2012 is applicable only in matters of succession within the Member States of the European Union.

<sup>16</sup> The UAE is not a member of the Hague Convention nor a signatory to this particular 1989 Convention ([http://www.hcch.net/index\\_en.php?act=states.listing](http://www.hcch.net/index_en.php?act=states.listing)).

<sup>17</sup> Abu Dhabi, Ajman, Dubai, Sharjah, Fujairah, Um al-Quwain and Ras Al Khaimah.

<sup>18</sup> The UAE Constitution was promulgated and came into effect on December 2, 1971, providing the legal and political framework of the UAE and establishing Abu Dhabi as the capital of the country.

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?

**(B)** No

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?

**(B)** No

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

The UAE does not levy any personal tax on *movable* assets. Therefore, non-residents with movable assets located in the country are not subject to any taxation in relation to the same.

On the other hand, non-residents with immovable assets located in the jurisdiction may be subject to transfer taxes/fees applied by the real estate authority of each respective Emirate.

In September 2013, the Dubai Land Department (DLD) issued a Resolution<sup>19</sup> implementing a transfer tax of 4%<sup>20</sup> of the market value of the real estate unit on all transactions except the first direct sale from the developer to the buyer, where the applicable transfer tax is 2% of the market value of the unit.

The DLD currently applies a 4% transfer tax even when the beneficial owner does not change, e.g. transfer from one/several individual(s) to a corporate structure held by that same individual(s).

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?

**(B)** No

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<sup>19</sup> Executive Council Resolution No. 30 of 2013, published in Issue No. 371 of the UAE Official Gazette and coming into force on 18 September 2013.

<sup>20</sup> The previous fee was 2%, being 1% paid by the buyer and 1% paid by the seller.

- 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?

**(B)** No

#### 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 the UAE the competence in relation to decisions involving personal status<sup>21</sup> lies with the Personal Status Court, which is part of the Courts of First Instance. The Personal Status Court deals with matters related to individuals who have lost capacity.

- 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?

**(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. Both the UAE Civil Code<sup>22</sup> and the UAE Personal Status Law<sup>23</sup> provide that any disposition made by a person of defective capacity prior to being declared as such shall not be void or voidable unless it results from exploitation or conspiracy.

A power of attorney executed abroad would need to be notarised (Notary Public), legalised (supervising authority), super-legalised (UAE Embassy or Consulate) abroad, and then certified by the UAE Ministry of Foreign affairs and UAE Ministry of Justice.

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<sup>21</sup> Article 5 of the UAE Personal Status Law: “The state courts shall be competed to try personal status actions initiated against citizens or foreigners having a domicile, residence or workplace in the state.”

<sup>22</sup> Article 120 (1) of the UAE Civil Code: “Dispositions made by an idiot or person suffering from a mental disability occurring after the registering of any application for restriction or the making of a restricting order or application for restoration of guardianship or the making of an order for the restoration thereof shall be subject to the same provisions as govern dispositions made by persons of defective capacity. (2) With regard to dispositions made prior to such registration, they shall not be void or voidable unless they result from exploitation or conspiracy.”

<sup>23</sup> Article 175 (3) of the UAE Personal Status Law: “The prodigal person’s financial disposals committed before being interdicted shall be valid unless they are committed as a result of exploitation or conspiracy.”



In case the principal wishes to execute the special Power of Attorney in the UAE, the common procedure is to execute and notarize the same in front of the Notary Public, in English and Arabic languages.

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

**(B)** No

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

**(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

## 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?

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

In view of their stable and flexible financial situation, Roberta, Paul and their children could easily obtain residence permits and/or visas in the UAE and relocate to the country.



As expatriates from Brazil and Netherlands respectively – and assuming the children have both nationalities – Roberta and Paul would be permitted to enter the UAE provided they all possess valid passports and a visa or residence permit.

Would the family enter the UAE for the first time as visitors, Paul and the children – Dutch nationals – would be granted automatic visitor visa upon arrival. Roberta, Brazilian national, would have to apply for a visitor visa through a travel agency<sup>24</sup>.

Would the family decide to relocate directly to the UAE, an employment or residence permit would have to previously be required. Unless one of the spouses – particularly Roberta who seems to have a successful executive career – secures a job in the UAE, the couple would probably settle in the country by setting up a company<sup>25</sup> or acquiring real estate of a minimum value of USD 360.000.00.

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

In order to secure a residence permit in the UAE, Gloria would have to be sponsored by her daughter Roberta, or alternatively, obtain her own investor's residence visa in the UAE, i.e. by setting up a company or acquiring a property.

If the family opts for the first option – residence visa under the sponsorship of the daughter – Roberta would need to evidence a salary in excess of AED 20,000.00<sup>26</sup> per month. Besides, the family accommodation in which Roberta and Paul would be willing would need to be of a size sufficient to accommodate the entire family – i.e. the number of visa holders.

In the event that Roberta benefits from an investor resident permit – as a company owner, as opposed to an employee – she would need to evidence that the business is in existence in the jurisdiction for at least six months.

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<sup>24</sup> Only citizens from the Gulf Cooperation Council (GCC) countries (Qatar, Kuwait, Saudi Arabia, Bahrain and Oman) and citizens from 33 selected countries (most of Western European countries, USA, Australia, New Zealand, Malaysia and Hong Kong, among others) are allowed to obtain a visa upon their entrance in the UAE. Brazil is not included in that list.

<sup>25</sup> The presence of the applicant is not required for the initial application, but it is required for the final visa processing and collection of residence permit.

<sup>26</sup> Approximately USD 5,500 per month.

It is not clear as of this date if any options are available for real estate owners with regard to sponsoring their parents<sup>27</sup>.

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

The applicable requirements depend on the chosen type of residence.

If the entitlement to live in the UAE results from the employment of Roberta, the main requirement is to obtain and maintain an employment agreement<sup>28</sup> with a salary sufficient to justify the sponsoring by Roberta of Paul, Gloria, and the children. If, instead of Roberta, Paul secures a job, he will be able to sponsor Roberta and the children, but not Gloria<sup>29</sup>.

If the entitlement to live in the UAE results from the investment in a company, the main requirement is to setup an entity in the UAE, which would entitle the whole family to obtain residence visas.

The license of such entity must be renewed yearly and all fees paid accordingly. In order to demonstrate a genuine presence in the UAE – and therefore take advantage of the tax free environment – the company must have a physical office in the UAE; employ individuals or local service providers; use local infrastructure (phone, internet access, electricity, etc.); and maintain an effective management and control in the jurisdiction.

Finally, if the entitlement to live in the UAE results from the investment in real estate, one must acquire property(ies)<sup>30</sup> in the jurisdiction, obtain a title deed and keep all relevant fees paid, as well as provide all and any documents required by the authorities from time to time.

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

Yes. Considering that, in any case, the residency is always granted for a term of up to three years, UAE expatriates residents must apply for renewal on or before its expiration upon the payment of the fees

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<sup>27</sup> We are of the view that the route should be open subject to the unit being of a sufficient size and Roberta and Paul evidencing their net-worth to the migration authorities.

<sup>28</sup> The termination of the employment agreement would ultimately result in the cancellation of the visas of the whole family.

<sup>29</sup> As he is not deemed to have a sufficiently direct family link to his step-mother.

<sup>30</sup> The property must be completed and handed over. Off-plan properties do not qualify the buyer to obtain residence visas.

applicable in each case, besides providing updated documents to the UAE authorities required from time to time, such as Emirates ID. Besides, a UAE resident travelling abroad must return to the UAE at least once every 6 months to maintain the validity of the resident permit.

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

No.

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)?

Rather than for tax planning reasons, structuring real estate in the UAE makes sense for succession planning and local probate avoidance purposes. A local probate – i.e. the legal process that takes place after someone's death – will take place in the event that the deceased directly holds assets in the UAE or, irrespective of the location of the assets, if he passes away in the jurisdiction. Immovable assets – i.e. real estate – located in the UAE and directly held by the deceased are automatically subject to UAE succession law irrespective of the confession of the deceased or the existence of a will.

The advisable structure is a Jebel Ali Free Zone Authority (JAFZA) Offshore<sup>31</sup> company, itself directly owned by another foreign offshore company<sup>32</sup>.

If an individual directly holds shares in a JAFZA offshore company, such shares – as movable assets – will be included in the local probate and will be subject to UAE succession law unless a will is in place. If these shares are instead placed into a foreign offshore company, all direct ownership links with the UAE are removed and such shares will not be part of the local probate procedure.

## 2.3 Succession law and mental capacity

### 2.3.1 What would you advise with respect to the Inheritance?

If the estate to be inherited by Roberta – which consists of movable assets, i.e. artwork – is located in the UAE, it is advisable for Gloria to execute a will<sup>33</sup> in front of the local Notary Public. The provisions of such may be governed by the law of her nationality. She should declare her wish to leave all her estate in the UAE, at the time of her death, primarily to her daughter Roberta, and, in the case Roberta being predeceased at the time of Gloria's demise, to her grandchildren (50% to each).

### 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?

Paul must execute a power of attorney in front of the local Notary Public, whereby Paul appoints Roberta to act in the capacity of his attorney upon his incapacity or disability – such condition to be duly certified by one or more physicians.

The above mentioned power of attorney would empower Roberta to represent Paul before any UAE authorities, sign documents and agreements, operate bank accounts, lease properties and/or receive

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<sup>31</sup> Since January 2012, JAFZA offshore companies are the only offshore structures permitted by the Dubai Land Department (DLD) to directly own real estate in Dubai – in so-called designated areas, as specified from time to time – and be issued a title deed.

<sup>32</sup> Shares in a JAFZA offshore company may be held by any corporate vehicle registered in a reputable offshore jurisdiction outside the UAE, e.g. British Virgin Islands, Jersey, Cayman Islands, Samoa, etc. The latter is very popular locally as it offers unique succession planning advantages: the Samoa Default Succession Company allows the inclusion in the Articles of Association of specific provisions that cause a designated membership interest to automatically vest in a specified person upon the happening of a specified event, e.g. the death of a shareholder.

<sup>33</sup> A non-Muslim individual in the UAE may only opt for his/her national succession law through the execution of a will.

income from the same, make claims, pay debts, represent him in court procedures, execute or renew insurance policies, etc.

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

The main succession planning measures should be as follows:

- (a) With relation to the real estate in the UAE, it is advisable to set up a dual structure – a JAFZA Offshore in combination with a another offshore company outside the UAE jurisdiction – in order to ensure that Sharia (Islamic) Law does not apply and that the real estate is not be subject to local probate.
- (b) With relation to movable assets – as well as for the purpose of clarifying the guardianship of the minor children in case of both parents’ demise – it is advisable that Roberta and Paul execute (separate) wills, electing the law of their nationality –respectively Brazilian and Dutch – in order to ensure that Sharia (Islamic) Law does not apply to their estate in the jurisdiction and to facilitate the whole local probate procedure.

### **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?

The UAE is a tax free country, thus no pre-arrival planning is necessary from a taxation standpoint.

As of this date, the UAE has not signed any DTA with Australia allowing UAE or Australian companies or individual nationals with residence in the other country to take any advantage with regard to income earned in any of the involved countries.

In the absence of such agreement, Bruce shall continue to comply with his reporting obligations before the Australian tax authorities, particularly with regard to the tax levied on the income derived from dividends in the shares of the family mining company in Australia.

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

Bruce shall not have any tax reporting obligation towards the UAE authorities.

He must, however, keep a valid residence visa stamped in his passport – probably as a company's shareholder/investor – and must mandatorily obtain an Emirates ID Card<sup>34</sup>.

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?

As a UAE resident, Bruce can transfer funds from another country to the UAE without any reporting obligations to the UAE

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<sup>34</sup> The latter is required locally for all transactions with any Government office, particularly for obtaining driving license, opening bank accounts and subscribing for mobile pre-paid services.



authorities, particularly if the investment is made towards the formation and operation of companies.

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

As stated above, the UAE and Australia have not signed any double tax agreement. Furthermore, in the UAE Bruce and his company will not be subject to the payment of any taxes, including income tax.

- (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?

The best structuring opportunity that Bruce should consider at inception is the setup of his company in a free zone, as this type of entity allows 100% of foreign ownership, as opposed to a limited liability company incorporated in Dubai mainland, which requires a local sponsor as a holder of at least 51% of the shares.

For the same reasons as those mentioned above add 2.2., it is advisable for the free zone entity to be owned by a foreign offshore company<sup>35</sup>.

### 3.3.2 As to the unreported bank account:

- (a) what would you advise Bruce?

Bruce can sleep quietly. In the UAE, in the UAE, he does not have any reporting obligations with regard to a bank account in another jurisdiction. Besides, his securing residency in the UAE is likely to change – i.e. improve – Bruce's KYC risk profile with the trustee and the bank as a beneficiary of the trust.

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

None. There are no Trustee's reporting obligations in the UAE.

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

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<sup>35</sup> Shares in a Free zone company may be held by any corporate vehicle registered in a reputable offshore jurisdiction outside the UAE, e.g. British Virgin Islands, Jersey, Cayman Islands, Samoa, etc. The latter is very popular locally due to its unique succession planning advantages – see above add footnote 32.



### 3.4 Succession law

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

In the UAE Kylie and Jason would have a financial claim against Bruce's estate only if Kylie and Bruce were officially married<sup>36</sup> at the time of his death.

A probate procedure would take place in the UAE in order to define the distribution of Bruce's estate located in the jurisdiction<sup>37</sup>.

Considering that Bruce and Kylie were married, and Bruce did not leave a will clearly stating that Australian Law should be relied upon in case of his demise, his estate is going to be divided according to the local Courts decision based on Sharia Law and its different categories of heirs and their shares.

In that case, and in the absence of any other surviving forced heir, Bruce's estate in the UAE – supposedly the company's shares and bank accounts – would be distributed in the following proportion: 1/8 (12.5%) to Kylie and 7/8 (87.5%) to Jason.

#### 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?

No taxes are to be paid by Bruce's heirs in the UAE.

February 2014

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<sup>36</sup> If the couple was not married, it would in theory not have been able to share the same home, and particularly, have a child, as having sexual intercourse out of wedlock (or an "illegal affair") is considered a crime in the UAE, punishable with penalty, jail term and deportation.

<sup>37</sup> Theoretically, the UAE Courts should cover all assets of the deceased – i.e. assets located in the UAE and abroad. In practice however, local Courts tend to restrict the probate procedure to assets located in the jurisdiction.