The Aver Advisory

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Privacy

US life insurance must now be reported (exceptionally)

Information Reporting for Certain Life Insurance Contract Transactions, US Dept of the Treasury, IRS Reg-103083-18, March 22, 2019

The US Internal Revenue Service has released a set of proposed regulations to clarify the new reporting requirements for some life insurance contract transactions—including reportable policy sales, transfers of life insurance contracts to foreign persons, and payments of reportable death benefits—under the *Tax Cuts and Jobs Act.*

The regulations target the sale of life insurance contracts to unrelated, third-party investors—so-called life settlements. They require the issuer to report the amount the seller would have received if the seller had surrendered the life insurance contract on the date of the reportable policy sale.

While a foreign candidate policyholder not resident in the US generally must file a Form W-8 with the US insurer at the time of submitting an application for life insurance, there are generally no US tax reporting requirements imposed on life insurance policyholders or beneficiaries—not even upon payout of the death proceeds.

A reportable policy sale is a commercial transfer of a policy. It is the acquisition of an interest in a life insurance contract, where the acquirer has no substantial family, business, or financial relationship with the insured. Under the regulations, any transfer of an interest in a life insurance contract for cash or other consideration reducible to a money value is a reportable policy sale.

The proposed regulations provide several exceptions from the definition of reportable policy sale. They also provide guidance on the amount of death benefits to be excluded from gross income following a reportable policy sale. The new reporting requirements apply to life insurance contract transactions occurring as of January 1, 2018. ■

Portugal passes law requiring banks to disclose confidential tax amnesty data

With the passing of Portugal's *2019 Budget Bill* on November 28, 2018, banks in the country are now required to disclose confidential account information relating to individuals who took advantage of Portuguese tax amnesty programs in 2005, 2010, and 2012.

Portuguese tax authorities had offered tax amnesty programs to allow individuals to regularize their tax affairs and, in particular, to declare any undisclosed offshore assets. In exchange for their disclosure, taxpayers who participated in an amnesty received forgiveness of tax liability without fear of criminal prosecution. The amnesty filings typically included the names of offshore financial institutions where the assets were held, information about foreign companies and trusts linked to the assets, and the identities of beneficial owners.

It is unclear whether Government use of the confidential information will be restricted, nor whether particular measures will be taken to protect any data transfer. According to the Portuguese Parliament, the purpose of the new law is to evaluate the effectiveness of previous tax amnesties, and to provide tax authorities with the ability to verify whether taxpayers fulfilled their obligations under those programs. ■

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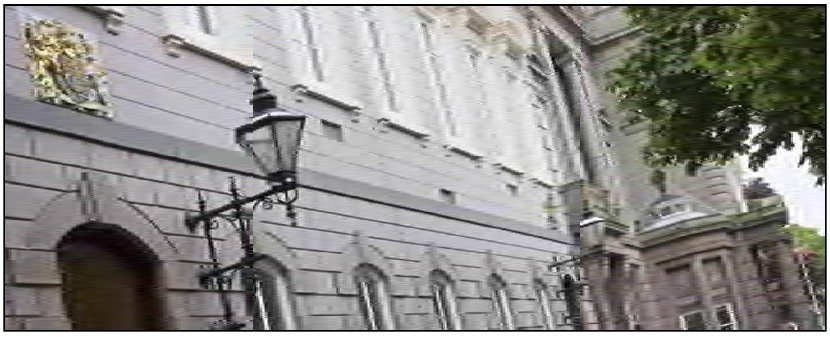

Trusts

Court refuses trustee decision to sell the sole asset of illiquid trust

In re H Trust, Jersey Royal Court, [2018] JRC 171

The Jersey Royal Court recently provided guidance to trustees who find themselves administering an illiquid trust.

Facts. The trust in this case was established in 1979 in Jersey. The settlor (who died in 1984) and his family resided in Kenya. The beneficiaries were the settlor's children and his widow.

The trust has only one material asset; a Jersey company which in turn owns a property in London. The property was acquired by the Company in 1981 and has been used by the beneficiaries and their families when they visit London.

Neither the company nor the trustee has any funds with which to pay for the maintenance and upkeep of the property. The expectation has been that family members who used the property would pay for its expenses. The property has deteriorated because of the lack of ability to pay for its upkeep and is now in need of renovation. The trustee is also owed substantial fees in connection with administration of the trust and the company.

The trustee suggested to the beneficiaries that the property might have to be sold, but not all of the beneficiaries agreed with this approach. The property was put up for sale in July 2016 and received several offers. The trustee gave the siblings a chance to match the offers and the younger son eventually offered to buy out the older brother's interest in the trust. The younger son provided a deposit but the transaction never materialized.

The deposit was used to settle some of the outstanding invoices for professional fees of the trustee. There is a dispute between the younger son and the trustee as to whether the younger son consented to the use of the deposit in this way.

Ultimately, the trustee took the decision that the property should be sold to a third party. Given that this was the sole trust asset, the trustee applied to court for a blessing of its decision.

Decision. The court considered three criteria from a well-established test in considering a blessing application:

- Was the decision formed in good faith?
- Was the decision one which a reasonable trustee could have reached?
- Was the decision vitiated by any actual or potential conflict of interest?

The court questioned the reasonableness of the trustee's decision to sell the property. It found that, notwithstanding the illiquidity of the trust, the trustee should have, for example, sought professional advice regarding the tax implications of selling the property. It should also have been proactive in seeking alternatives to a sale, including the real possibility that a loan might be available which would enable the property to be retained.

The court also found that it was patently obvious that the trustee had a conflict of interest; that is, the sale of the property was the most obvious way in which the trustee would be able to recover the fees which it was owed.

Applying the test, the court did not consider that it could bless the trustee's decision. ■

Trusts

Sharia law as a way out in divorce proceedings

Akhmedov v. Akhmedova, Dubai International Finance Centre, Court of First Instance 011/2018

Russian oligarch and oil tycoon Farkhad Akhmedov married Tatiana Akhmedova in 1993. In 2013, Tatiana filed for divorce in the UK, where she resided with the couple's two children. In December 2016, in one of the largest divorce payouts in UK history, the UK High Court awarded Tatiana £453 million—a 41% share of Akhmedov's marital assets, including the $500 million yacht "Luna".

Akhmedov referred to the judgment as "toilet paper" and took numerous steps to place his assets beyond the reach of his wife, including transfers of money and assets to a Liechtenstein Anstalt and to a Bermuda trust.

Due to Akhmedov's lack of cooperation, the court placed a world-wide freezing order on all of his assets in England, Liechtenstein and the Isle of Man. In October 2017, the Luna was also impounded in Dubai by UK court order. In April 2018, the UK Court ordered that ownership of the yacht be transferred to Tatiana. In May 2018, the Dubai International Financial Centre's commercial court upheld the freezing order on the Luna.

Then, in a landmark development, Dubai's Joint Judicial Commission ruled, in July 2018, that the case must be heard by the local sharia courts on the grounds that it is a matrimonial dispute and not a commercial matter.

In November 2018, the DIFC's civil court of first instance dismissed Tatiana's case and ordered her to pay legal and administration costs. The court ruled that the freezing order granted by the UK Court could not be enforced in Dubai. The Luna, meanwhile, remains in dock at Prince Rashid Harbour in Dubai. ■

Taxation

Monaco eliminates gift and succession duty on transfers to trust

Monaco has long been known for its favourable tax regime. The Principality does not, for example, tax income of individuals acting within their private activities. There are no wealth taxes, no capital gains taxes, and no property taxes. Furthermore, there are no inheritance or gift taxes between ascendants and descendants or between spouses.

Until recently, however, the Monaco tax administration did apply the highest tax rate of 16% to any assets held or sited in Monaco passing into a trust. Monaco authorities have now implemented a system recognizing that trust assets held in the Principality will no longer be subject to the Monaco gift and succession duty (the 16% tax) when transferred to the trustee. ■

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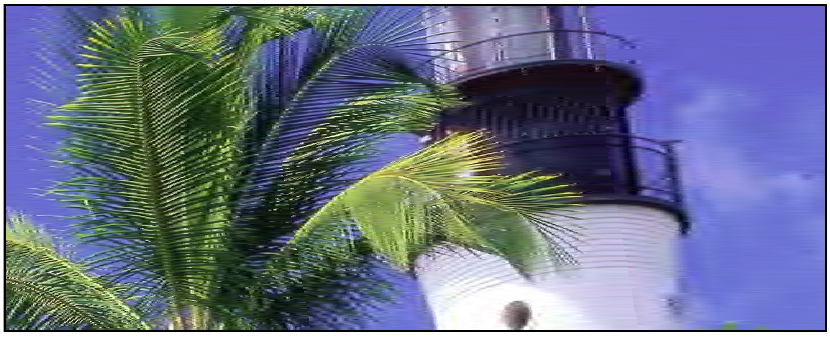

Asset Protection

Florida homestead exemption and non-residents

In re Oyola, 571 BR 874 (Bankr. MD Fla. 2017)

A Florida court recently provided further guidance on the use of residency in Florida to shelter wealth from creditors.

A person who claims the Florida so-called "homestead exemption" must be a Florida resident who establishes that they intended to make the real property in question their permanent residence. The Florida *Constitution* permits a property owner to claim the homestead exemption, even if they are not living there, provided the owner's family is living on the property.

In this case, Gloria Oyola was neither a US citizen nor a US permanent legal resident, but she owned and lived in her Tampa, Florida home with her daughter and granddaughter. In 2015, Oyola filed for bankruptcy and claimed her home as her Florida homestead.

The issue was whether Oyola, her daughter and granddaughter constituted a family for purposes of the homestead exemption. Florida has applied a two-factor test for determining "family", which stipulates that "the head of the family must not only be obligated to, but must actually support their dependents."

The court explained that this two-prong test should actually be applied in the disjunctive, rather than conjunctive. It noted that a "family in law" as determined by the first factor, and a "family in fact" as determined by the second factor, both constitute a family.

While there was no "family in law" in this case—Oyola's daughter was an adult who did not rely on her mother for legal support, and Oyola had no legal obligation to support her granddaughter—there was no doubt that Oyola was living communally with her daughter and granddaughter.

Accordingly, the court found that Oyola was living as a family for purposes of assessing her intent and could therefore claim her home as a homestead. ■

Wealth Preservation

US life insurance proceeds not part of the estate

In Matter of Liu, 2018 NY Slip Op 30665, Surrogate's Court, New York, April 12, 2018

During a trip to Atlantic City in July 2014, Micky Liu—a 50-year old IT executive from New York—visited a gentlemen's club located in the Taj Mahal casino. On that occasion, Liu met Veronica Beckham—a 34-year old entertainer at the club—and the two became friends.

One month later, Beckham moved to Florida for personal reasons. She returned to New Jersey to clean out her apartment and arrange her affairs. During her return trip—from August to October 2014—Beckham stayed at Liu's New York apartment.

Beckham described her relationship with Liu as an "everlasting friendship". Liu obviously felt the same way as he named Beckham the beneficiary of his retirement accounts and a life-insurance policy worth a combined $223,000.

Liu, who suffered from diabetes and heart disease, died without a Will in March 2015. Liu is survived by his parents, his brother and his sister. Liu's sister was appointed administrator of his estate. In her capacity as administrator, she filed a petition in the New York County Surrogate's Court to compel Beckham to turn over the proceeds of these benefits.

She claimed that the beneficiary designations were the product of undue influence, suggesting that "Beckham, as a professional exotic dancer, was adept at applying and using coercion and manipulation upon men". She also argued that the estate was insolvent and that the insurance benefits were needed to pay the estate's liabilities.

The court found that Beckham was not aware that she was the beneficiary of these benefits until after Liu's death. She was not even aware that he had died until April 2015, more than a month after his death.

The court rejected the administrator's claims, holding that life insurance and retirement benefits are not subject to a decedent's creditors. Since life insurance and retirement benefits are exempt from creditors in New York, the estate had no interest in these benefits, even if the estate was insolvent. ■

French Supercentenarian stole identity to dodge inheritance tax

The world's longest-living person may have stolen her mother's identity to avoid paying steep French inheritance tax, calling her true age into question, a Russian researcher has alleged in a controversial new study.

In a paper uploaded in December 2018 on ResearchGate.net, mathematician Nikolay Zak of the Moscow Center for Continuous Mathematical Education scrutinizes the longevity record of Jeanne Calment, a French woman from Arles.

Calment was generally recognized as history's oldest documented person, reaching the age of 122—and soaring to fame in the process—before her death in 1997.

However, Zak argues that Calment was a statistical outlier among validated supercentenarians, and that by the time she became known to gerontologists at the age of 114, her personal probability of reaching the age of 122 was less than 0.5 percent. No other human has ever been confirmed as living past 119.

Zak argues that the real Jeanne Calment had actually died at age 59 in 1934, and her daughter, Yvonne, had assumed her identity when she was aged 36. "The possible financial motive for the identity switch could be tax evasion," Zak writes.

Between 1791 and 1901, proportional estate tax rates in France were minor, generally less than 2% for children and spouses, so the motivation for tax evasion was low. However, by the mid-1930s, the inheritance tax rate soared to 35%—close to today's rate of 40%, Zak wrote. "Interestingly, the tax laws seem to affect the timing of reported deaths." ■