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The International Comparative Legal Guide to:

Private Client 2019

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A practical cross-border insight into private client work

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Country Question and Answer Chapters:

FOREWORD

Welcome to the 2019 edition of The International Comparative Legal Guide to Private Client which I am delighted to introduce this year. The Guide covers a comprehensive and diverse range of articles that would pique the interest of any domestic or international practice client adviser. The publication is designed to provide readers with a comprehensive overview of key issues affecting private client work, particularly from the perspective of a multi-jurisdictional transaction.

The Guide is divided into two sections and the first section contains seven general chapters. Each topical chapter is written by a different firm which will be most helpful for advisers with international clients.

The second section contains insightful country question and answer chapters. These provide a broad overview of common issues in private client laws and regulations in 35 jurisdictions.

As an overview, the Guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of private client work. The articles are provided by some of the most authoritative and respected advisers in the private client industry and I trust that you will find them just as valuable.

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1 Connection Factors

1.1 To what extent is domicile or habitual residence relevant in determining liability to taxation in your jurisdiction?

U.S. domiciliaries are generally subject to U.S. Federal estate tax, gift tax and generation-skipping transfer tax (the "GST tax") in the same manner as U.S. citizens, i.e., on transfers of property wherever located.

Resident aliens of the U.S. are generally subject to U.S. Federal income taxation in the same manner as U.S. citizens, i.e., on their worldwide income. The tests for determining whether an individual is a resident alien is not based on the concept of domicile or habitual residence.

Depending on the jurisdiction, domicile may be relevant for estate, gift and income tax purposes at the state or local level.

1.2 If domicile or habitual residence is relevant, how is it defined for taxation purposes?

For Federal transfer tax purposes, a person is domiciled in the United States by living in the United States, even for a brief period of time, with no definite present intention of later moving away from the United States. (U.S. Treasury Regulation ("Treas. Reg.") § 20.0-1(b).) Domicile thus has both an objective (physical presence) and a subjective (intent) component.

1.3 To what extent is residence relevant in determining liability to taxation in your jurisdiction?

For Federal transfer tax purposes, residence is equated with domicile.

Unless a treaty provides otherwise, resident aliens of the United States are generally subject to U.S. Federal income taxation in the same manner as U.S. citizens, that is, on income derived from all sources, including sources outside the United States, at graduated rates, subject to applicable deductions and credits. Currently, these marginal rates range from 10% to 37%.

Depending on the jurisdiction, residence may be relevant for tax purposes at the state or local level.

1.4 If residence is relevant, how is it defined for taxation purposes?

A non-U.S. citizen will be considered a U.S. resident for U.S. Federal income tax purposes for any calendar year in which he or she (i) is a lawful permanent resident of the United States at any time during the calendar year, or (ii) is "substantially present" in the United States. In addition, under certain circumstances, an alien individual may elect to be treated as a resident of the United States. U.S. Internal Revenue Code of 1986, as amended ("IRC"), § 7701(b)(1)(A)(iii) and (b)(4).

A non-U.S. citizen meets the first test if he or she holds a valid Certificate of Permanent Residence, i.e., a "green card".

The substantial presence test is generally satisfied if a non-U.S. citizen is physically present in the United States in a calendar year for a period of 183 days or more. In addition, the test is also satisfied if (i) an individual is physically present in the United States for at least 31 days during that calendar year, and (ii) the individual's presence in that year and the two preceding years equals a weighted aggregate of 183 days or more pursuant to the application of a specific formula. (IRC § 7701(b)(3)(A).) Subject to certain exceptions, the applicable statutory formula for calculating the 183-day period provides that each day of the current calendar year will count as one day, each day of the first preceding calendar year will count as 1/3 of a day, and each day of the second preceding calendar year will count as 1/6 of a day. A useful rule of thumb is that an individual can spend up to 121 days each year in the United States without becoming a resident under the substantial presence test.

The above is subject to applicable U.S. income tax treaties.

1.5 To what extent is nationality relevant in determining liability to taxation in your jurisdiction?

U.S. citizens are subject to U.S. Federal income taxation on their worldwide income and transfer taxation on their transfers of worldwide assets.

1.6 If nationality is relevant, how is it defined for taxation purposes?

The status of an individual as a U.S. citizen is determined under U.S. nationality laws, not U.S. tax laws. A person becomes a citizen of the United States at birth if the individual (i) was born in the United States or certain territories of the United States, (ii) was born outside the United States to two U.S. citizen parents, or (iii) was born outside the U.S. to one parent who was a U.S. citizen and who met certain statutory requirements regarding the parent's presence in the U.S. In addition, a person may become a citizen of the United States after birth either through his parents or by applying for naturalisation. The right of a person born outside the United States to claim citizenship through a parent who is a U.S. citizen (or under certain circumstances a parent who becomes a naturalised U.S. citizen before the child's 18th birthday) is based entirely on statute.

In general, an individual who is a citizen of both the U.S. and another country is subject to U.S. Federal taxation as a U.S. citizen.

1.7 What other connecting factors (if any) are relevant in determining a person's liability to tax in your jurisdiction?

A U.S. citizen or resident is subject to U.S. Federal income taxation on his or her worldwide income.

A non-resident alien is only subject to U.S. Federal income tax on certain types of income from U.S. sources. Income that is effectively connected with a U.S. trade or business is generally taxed on a net basis in the same manner as income earned by a U.S. person. In addition, certain U.S. source "fixed and determinable income", such as dividends, rents and interest, is generally subject to a flat 30% withholding tax. Certain types of U.S. source income, such as interest from U.S. bank accounts and "portfolio interest" on U.S. debt obligations (which includes registered debt issued by the United States and U.S. corporations) is generally exempt from U.S. Federal income tax when held by a non-resident alien.

A non-resident alien who is present in the United States for 183 days or more during the tax year is subject to a flat 30% capital gains tax on gains derived from sources within the United States. In practice, such an individual will generally be a U.S. resident under the substantial presence test. However, this rule may apply to individuals who are not treated as satisfying that test, such as individuals present in the U.S. on a valid student visa.

In addition, states of the United States that have an income tax generally impose that tax on non-residents of such states with respect to income earned in such states.

2 General Taxation Regime

2.1 What gift or estate taxes apply that are relevant to persons becoming established in your jurisdiction?

In the United States, there are three primary Federal "transfer taxes" that apply to the transfer of assets: the estate tax; the gift tax; and the GST tax. Many states of the United States also impose transfer taxes. The application of the Federal transfer taxes may be affected by estate and gift tax treaties to which the United States is a party.

U.S. Federal Gift Tax

The Federal gift tax applies to lifetime transfers of property that are not for full and adequate consideration. A gift may take place in a variety of ways, such as by the forgiveness of a debt, the assignment of property, the creation of a trust, or the exercise, release, or lapse of certain general powers of appointment. No Federal gift tax liability arises unless and until a gift is complete.

U.S. citizens and residents (domiciliaries) are subject to Federal gift tax on gratuitous transfers of property, wherever situated, whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. (IRC § 7701(b)(3)(A).)

A non-U.S. citizen who is also not domiciled in the U.S. (a non-resident) is subject to Federal gift tax on all gratuitous transfers (direct or indirect, by trust or otherwise) of real and tangible property situated in the United States. (IRC §§ 2501(a), 2511.) Such property does not include intangible property, such as shares of stock of domestic (U.S.) corporations or debts of a U.S. person (or entity), unless the donor is a non-resident alien who expatriated from the United States and meets certain statutory requirements. (*See id.* §§ 2501(a)(3), 2511(b).) Special rules apply to such expatriates.

U.S. citizens and residents currently have a lifetime gift tax exemption of $10,000,000 (this amount is indexed for inflation and is $11,400,000 in 2019; such amount is scheduled to revert to the pre-2018 amount of $5,000,000 (as adjusted for inflation) for transfers on or after January 1, 2026). Non-residents do not have any lifetime gift tax exemption. The Federal gift tax is imposed at rates beginning at 18% and reaching a maximum of 40% for gratuitous transfers of more than $1,000,000. The donor is primarily liable to pay the gift tax, which is payable by April 15 of the calendar year following the year in which the gift was completed.

All donors, whether U.S. persons or not, are eligible for the Federal gift tax annual exclusion of $10,000 (this amount is adjusted for inflation and is $15,000 in 2019) *per donee*. (IRC § 2503(b).) The annual exclusion amount is indexed annually for inflation (rounded to the lowest multiple of $1,000).) To qualify for the annual gift tax exclusion, the gift must consist of a present interest, not a future interest, in property.

An unlimited marital deduction applies to gifts made to a U.S. citizen spouse so that these gifts are not subject to U.S. Federal gift tax regardless of whether the donor is a U.S. person or not. Gifts made to a non-U.S. citizen spouse do not qualify for this unlimited marital deduction. Instead, the donor (whether or not a U.S. person) may make annual tax-free gifts to a non-U.S. citizen spouse each year up to $100,000 (this amount is adjusted for inflation and is $155,000 in 2019).

U.S. Federal Estate Tax

U.S. citizens and residents (domiciliaries) are subject to Federal estate taxes on their worldwide assets owned at death. A decedent's interest in property, such as certain interests in trust, and certain lifetime transfers for less than full and adequate consideration, may be includible in the decedent's gross estate for Federal estate tax purposes.

U.S. citizens and residents currently have a Federal estate tax exemption of $10,000,000 (this amount is indexed for inflation and is $11,400,000 for decedents dying in 2019; such amount is scheduled to revert to the pre-2018 amount of $5,000,000 (as adjusted for inflation) for decedents dying on or after January 1, 2026). Almost all taxable transfers, whether lifetime or testamentary, are taken into account for purposes of computing the Federal estate tax, so that the amount of estate tax exemption is reduced by the amount of the Federal gift tax exemption used by the decedent during his or her lifetime.

A non-U.S. citizen who is also not domiciled in the U.S. (a non-resident) is subject to Federal estate tax on his or her assets situated in the United States at death. For this purpose, U.S. *situs* assets include real and tangible personal property located in the U.S. and shares of U.S. corporations (which are, by contrast, not subject to Federal gift taxation (except in limited circumstances involving a donor who expatriated from the United States) because such shares are treated as intangible property). Non-residents are not eligible for the U.S. Federal estate tax exemption. Instead, non-residents receive a credit of $13,000 which effectively exempts the first $60,000 in U.S. *situs* property from the Federal estate tax.

The Federal estate tax is imposed at rates beginning at 18% and reaches a maximum rate of 40% for gratuitous transfers of more than $1,000,000. Federal estate tax payments are due nine months after the decedent's date of death.

U.S. Federal Generation-Skipping Transfer Tax

The Federal GST tax applies to certain lifetime and testamentary transfers of property to or for the benefit of persons at least two generations (or if the person is not a family member, more than 37.5 years) younger than the transferor. The GST tax applies to generation-skipping transfers whether by way of a trust or direct transfer.

The GST tax is applied at a flat rate equal to the maximum Federal estate tax rate (40% in 2019). Each donor, including non-residents, currently has an exemption from GST tax equal to $10,000,000 (this amount is indexed for inflation and is $11,400,000 in 2019; such amount is scheduled to revert to the pre-2018 amount of $5,000,000 (as adjusted for inflation) for transfers on or after January 1, 2026) which may be used with respect to transfers during life or at death. Depending on which of three possible taxable events triggers the tax, the tax is to be paid either by the transferor, the transferee, or the trustee of the trust with respect to which a taxable transfer has occurred.

2.2 How and to what extent are persons who become established in your jurisdiction liable to income and capital gains tax?

U.S. citizens and resident aliens are subject to Federal income taxes on their worldwide income.

Most states of the United States and some localities impose a tax on income earned by residents of such states. Many states also tax non-residents of such states with respect to income earned in such state.

See also question 4.1.

2.3 What other direct taxes (if any) apply to persons who become established in your jurisdiction?

The United States taxes workers and employers to fund Social Security and Medicare programmes through payroll taxes. At the Federal level, Social Security taxes are generally imposed on an employee's wages (up to $132,900 in 2019) at a rate of 6.2% payable by the employee and 6.2% payable by the employer. In addition, Medicare taxes are generally imposed at the Federal level on all of an employee's wages at a rate of 1.45% (with a surcharge of 0.9% for compensation in excess of $200,000) payable by the employee and 1.45% payable by the employer. Many states and some localities also impose payroll taxes. Employers are also subject to unemployment taxes at the Federal and (in many instances) the state levels.

2.4 What indirect taxes (sales taxes/VAT and customs & excise duties) apply to persons becoming established in your jurisdiction?

There is no VAT in the United States.

Most states and many localities impose a sales tax on goods purchased, or services provided, in such states and localities. In addition, many states impose a "use tax" on goods or services purchased out of state if they are to be used within the state.

Specific goods may be subject to Federal and/or state excise taxes. Excise taxes apply to such items as gasoline, alcohol, airline tickets and tobacco.

2.5 Are there any anti-avoidance taxation provisions that apply to the offshore arrangements of persons who have become established in your jurisdiction?

2.5.1 Controlled Foreign Corporations and Passive Foreign Investment Companies

The CFC and PFIC rules, discussed in question 3.2.4 below, seek to eliminate the advantages of deferral by U.S. persons of U.S. Federal income taxes on certain passive income of foreign holdings. The CFC and PFIC rules do not apply to non-resident aliens.

CFCs

A CFC is defined as a foreign corporation that has more than 50% of either the vote or the value of its stock owned (or treated as owned) by U.S. shareholders on any day during the corporation's taxable year. (IRC § 957(a).) For these purposes, a "U.S. shareholder" is defined to include any U.S. person who owns, directly, indirectly (e.g., through an interest in a trust, corporation or partnership) or constructively (e.g., by attribution through a close relative), 10% or more of the voting stock of the foreign corporation. (IRC § 951(b) and § 958.)

If a foreign corporation is a CFC at any time during the taxable year, the U.S. shareholders of such CFC are subject to current U.S. Federal income taxation, at ordinary income tax rates, on their proportionate shares of the corporation's "Subpart F income", regardless of whether such U.S. shareholders receive any distributions from the CFC during such tax year. (IRC § 951(a).) Subpart F income includes most forms of passive income. Generally, effective beginning in 2018, U.S. shareholders of a CFC are also subject to U.S. Federal income taxation, typically at reduced rates, on "global intangible low-taxed income" ("GILTI") which can be active business income.

PFICs

A PFIC generally is defined to include any foreign corporation where, for a given taxable year, the foreign corporation either derives 75% or more of its gross income from passive income or 50% or more of the foreign corporation's assets produce passive income or are held for the production of passive income. (IRC § 1297(a).) To avoid the overlapping of the anti-deferral rules discussed above, a "U.S. shareholder" of a foreign corporation that is both a CFC and a PFIC will generally not be subject to tax under the PFIC rules. (IRC § 1297(d).)

All U.S. shareholders of a PFIC, regardless of their percentage of stock ownership, whether direct or indirect (such as through a trust), generally are subject to U.S. Federal income tax, at ordinary income tax rates, on any gain from the direct or indirect sale or exchange of, and certain direct or indirect distributions in respect of, their stock in a PFIC. (IRC Code § 1291.) In addition, the amount of the PFIC tax may be subject to an interest charge.

2.5.2 Taxation of Accumulation Distributions from Foreign Non-grantor Trusts

Another set of rules, known as the "throwback tax rules" is designed to avoid the tax-free accumulation of income in non-U.S. trusts. The throwback tax applies a tax on U.S. beneficiaries who receive distributions from a foreign non-grantor trust of income accumulated from a prior year. Generally, the throwback rules are designed to tax these distributions of accumulated income at a rate equal to that which the beneficiary would have paid had the income been distributed to him or her in the year in which it was earned by the trust. The throwback tax does not apply to distributions to non-U.S. beneficiaries.

2.5.3 Taxation of U.S. Grantors of Foreign Trusts with U.S. Beneficiaries

If a U.S. person transfers property to a non-U.S. trust, and if the trust has or may have one or more U.S. beneficiaries, then the U.S. grantor will be subject to current U.S. Federal income taxation on the trust's income as if the grantor had realised such income directly (such trusts are a type of "grantor trust"). Income accumulated in such a trust is not subject to the throwback tax because the income was already subject to U.S. income tax.

The same result applies if a non-U.S. individual transfers property to a non-U.S. trust having one or more U.S. beneficiaries, and the grantor becomes a U.S. resident within five years of such transfer to the "pre-immigration" trust, even though the grantor may not have retained any interest in or powers over the trust.

2.5.4 Taxation of Transfers of Appreciated Property to Foreign Trusts

If a U.S. person transfers appreciated property to a non-U.S. trust which is not a grantor trust as described above (because, for example, the trust does not have any U.S. beneficiaries), the grantor will be subject to Federal income tax as if the grantor had sold the appreciated property for its fair market value.

The same rule applies if a trust that is a U.S. trust for U.S. tax purposes becomes a foreign trust. In this case, the U.S. trust will be taxed on its deemed sale of any appreciated property. The same rule also applies if a U.S. individual is treated as owning any portion of a non-U.S. trust under the grantor trust rules, and the trust then ceases to be a grantor trust (for example, because the individual grantor ceases to be a U.S. resident). In this case, the U.S. individual is taxed on the deemed sale of any appreciated property.

2.6 Is there any general anti-avoidance or anti-abuse rule to counteract tax advantages?

U.S. Federal tax law has general anti-abuse rules designed to ensure that transactions reflect economic reality and are not designed solely to avoid tax. For example, under U.S. Federal tax law, a transaction that lacks a business purpose other than the reduction or elimination of tax may be disregarded. In addition, the U.S. taxing authorities may apply the "substance over form" doctrine to transactions in which the economic substance differs from the legal form of the transaction.

2.7 Are there any arrangements in place in your jurisdiction for the disclosure of aggressive tax planning schemes?

Taxpayers must disclose transactions that are the same as or substantially similar to certain transactions that the Federal tax authorities have determined to be tax-avoidance transactions (i.e. tax shelters).

3 Pre-entry Tax Planning

3.1 In your jurisdiction, what pre-entry estate and gift tax planning can be undertaken?

The United States has a Federal gift tax on gratuitous transfers during life, a Federal estate tax on bequests and other transfers at death, and a Federal GST tax on certain transfers, during life or at death, to beneficiaries two or more generations younger than the donor or decedent. These "transfer taxes" apply differently depending on whether the donor or decedent is (a) a U.S. citizen or resident (i.e., a domiciliary), or (b) a non-U.S. citizen who is also not domiciled in the United States (see question 1.2 for the definition of "domicile" for this purpose). The U.S. transfer taxes are described in more detail in question 2.1, but generally a U.S. transferor is subject to a transfer tax on taxable transfers of property (real, tangible and intangible) wherever located, whereas a non-U.S. transferor is only subject to a transfer tax on taxable transfers of U.S. *situs* property. In addition, a non-U.S. transferor is generally only subject to gift tax on transfers of U.S. *situs* real property and tangible personal property, but not on transfers of U.S. and non-U.S. *situs* intangible personal property.

These differences provide transfer tax planning opportunities for non-U.S. individuals before moving to the United States. Specifically, a non-U.S. individual may make gifts of intangible property (such as shares of U.S. and non-U.S. corporations) and of real and tangible personal property (such as artwork) before moving to the U.S. without any U.S. gift tax liability. Such gifts may be made directly to other beneficiaries or to an irrevocable trust for other beneficiaries. It may be possible in certain circumstances for the donor to also be a discretionary beneficiary of such a trust. The primary transfer tax benefit of such gifts is that they reduce the value of the donor's estate that may otherwise be subject to U.S. estate tax if the donor dies after moving to the U.S. If the gifts are made to properly structured irrevocable trusts, the trust assets may also be protected from U.S. estate tax on the death of any trust beneficiary.

Before making any such gifts, the non-U.S. individual should determine whether the gifts will have any adverse tax consequences in any other relevant jurisdiction, such as the individual's current country of residence or the country in which the gifted assets are located.

3.2 In your jurisdiction, what pre-entry income and capital gains tax planning can be undertaken?

The United States has a Federal income tax that also applies to capital gains. The Federal income tax applies differently depending on whether the income is derived by (a) a U.S. citizen or resident alien of the U.S., or (b) an individual who is neither a U.S. citizen or a U.S. resident alien. In general, a U.S. individual is potentially subject to Federal income tax on his or her worldwide income, whereas a non-U.S. individual is only subject to income tax on certain types of income from U.S. sources.

This difference provides income tax planning opportunities for non-U.S. individuals before moving to the United States.

3.2.1 Accelerate Timing of Recognition of Income

If a non-U.S. individual can control the timing of his or her receipt of income, such as the payment of a bonus, then, depending on its taxability in the foreign jurisdiction, if any, and on the applicable income tax rate in each relevant jurisdiction, the individual may wish to consider recognising that income before moving to the United States.

3.2.2 Step Up Tax Basis of Appreciated Assets

For Federal income tax purposes, the tax basis of an asset, for the purposes of determining gain or loss upon a sale or taxable exchange of the asset, is usually the amount paid by the owner for the asset (i.e., its historic cost).

The potential benefit of a tax basis step up for appreciated trust assets at the settlor's death is that the amount of pre-death appreciation in the trust assets may be forever exempt from U.S. income taxation.

If an individual sells an appreciated asset after becoming a U.S. resident, generally he or she will recognise a capital gain in the amount by which the sales proceeds exceed the tax basis of the asset, even if part or all of the gain accrued before the individual moved to the U.S. If, however, the individual can sell the asset before moving to the U.S., the gain will escape U.S. taxation. For example, the individual could sell appreciated stock and then repurchase the stock at its higher current market value. This would step up the tax basis to the stock's new cost basis.

It may be possible to step up the tax basis of appreciated assets without making an actual sale. For example, if the individual owns appreciated assets through a non-U.S. holding company, the individual could liquidate the holding company before moving to the U.S. The individual would, in effect, be treated as having purchased the company's assets for their then fair market value, thereby stepping up the tax basis of the assets. Alternatively, the same tax result may be obtained if the company continues in existence but files an election with the U.S. Internal Revenue Service (the "IRS") to be treated as a disregarded entity with respect to its sole shareholder.

The effect of this so-called "check the box" election is that the company is deemed to have liquidated for U.S. Federal tax purposes.

3.2.3 Postpone Timing of Deductions and Losses

U.S. individuals may be able to reduce their income tax liability by claiming deductions for certain business expenses. A non-U.S. individual should consider postponing any such expenses that would be deductible if incurred after the individual becomes a U.S. resident. Likewise, if the non-U.S. individual holds property that has depreciated in value, the individual should postpone the recognition of that loss until he or she has become a U.S. resident.

3.2.4 Restructure Foreign Corporations and Trusts

Individuals may also consider restructuring various corporate holdings to avoid income tax consequences upon a non-resident alien becoming a U.S. shareholder.

The U.S. Federal income tax imposes certain generally adverse special tax regimes on U.S. shareholders of "controlled foreign corporations" ("CFCs") and "passive foreign investment companies" ("PFICs"). See question 2.5.1 for more information on CFCs and PFICs. In general, a U.S. shareholder of a CFC may be subject to current U.S. income tax at ordinary income tax rates on income earned by a CFC, even though the CFC does not distribute any income to the U.S. shareholder. A U.S. shareholder of a PFIC may be subject to U.S. income tax at ordinary income tax rates on gain from the disposition of shares in a PFIC or on receipt of an "excess distribution" from the PFIC. In addition, the PFIC tax is also subject to an interest charge.

It is generally advisable to eliminate any potential CFC or PFIC issues before the individual shareholder becomes a U.S. resident. For example, since most non-U.S. hedge funds are PFICs, the non-U.S. individual could sell his or her interest in any such funds. A foreign holding company could be liquidated or, in the alternative, the company could file a "check the box" election with the IRS to be treated for U.S. tax purposes as a disregarded entity (if it has only one shareholder) or a partnership (if it has more than one shareholder). The CFC and PFIC rules only apply to foreign entities that are treated as corporations for U.S. tax purposes.

Likewise, the U.S. Federal income tax imposes a generally adverse special tax regime on U.S. beneficiaries who receive distributions from accumulated income of certain non-U.S. trusts. See question 2.5.2 for more information on the so-called "throwback tax" rules. For example, it may be advisable for such a trust to pay out its accumulated income to a beneficiary before he or she becomes a U.S. resident.

3.3 In your jurisdiction, can pre-entry planning be undertaken for any other taxes?

Many states in the United States impose estate, gift and income taxes. In addition, some localities in the U.S. (such as New York City) impose income taxes. Planning that is effective for U.S. Federal tax purposes may also be effective for state and local tax purposes.

4 Taxation Issues on Inward Investment

4.1 What liabilities are there to tax on the acquisition, holding or disposal of, or receipt of income from investments in your jurisdiction?

Generally there are no taxes on the acquisition of investment property in the United States. U.S. persons generally recognise gain (or loss) for Federal income tax purposes upon the sale or other disposition of an asset. Gain on capital assets held for more than one year are taxed at a maximum rate of 20%, while assets held for one year or less are taxed at ordinary U.S. Federal income tax rates, the maximum of which is 37%. In addition to the above, there is a 3.8% Federal tax to fund Medicare programmes which is imposed on the "net investment income" applicable to U.S. persons who meet certain income thresholds. This additional tax does not apply to non-resident aliens. Depending on the jurisdiction, there may be additional state and local taxes as well.

Generally, a non-resident is not subject to Federal income tax on capital gains that are not effectively connected with the conduct of a U.S. trade or business (unless, in the case of an individual, the individual is physically present in the United States for 183 days or more during the year of the sale). However, separate rules apply to gains from the disposition of certain U.S. real property interests (see question 4.3).

Interest and most other investment income is taxed to U.S. persons at ordinary income tax rates; however, dividends paid by U.S. corporations (which have been held by the investor for the requisite holding period) may qualify for the lower 20% capital gain income tax rate. Investment income is also generally subject to the 3.8% Medicare surtax discussed above. Investment income may also be subject to state and local income tax.

A non-resident alien is generally only subject to Federal income tax on certain types of income from U.S. sources. See question 1.7.

4.2 What taxes are there on the importation of assets into your jurisdiction, including excise taxes?

There are various customs duties depending on the types of goods and the country from which the goods are being imported.

4.3 Are there any particular tax issues in relation to the purchase of residential properties?

U.S. real property (including condominium apartments) held directly by a non-resident alien at death is subject to Federal estate tax. If U.S. real property is subject to a recourse mortgage (that is, the indebtedness is the non-resident alien's personal obligation), the total fair market value of the property is includible in the non-resident alien's gross estate, and only a portion of the mortgage is deductible as a debt. (To calculate the deduction for the mortgage, the amount of the outstanding mortgage is multiplied by a fraction, the numerator of which is the value of the decedent's total U.S.-*situs* property and the denominator of which is the value of the decedent's total worldwide property.) Further, to claim the deduction, the disclosure of the value of the decedent's worldwide assets on a Federal estate tax return is required. (*See* IRC § 2106(b); Treas. Reg. § 20.2106-1(b) (1995).) If, however, the mortgage is non-recourse, the non-resident alien has no personal liability for the indebtedness, and only the equity value of the real property is includible in the non-resident alien's gross estate. (*Estate of Johnstone v. Comm'r*, 19 T.C. 44 (1952), *acq.*, 1953-1 C.B. 5.) This eliminates the need to disclose the value of the non-resident alien's assets outside the United States. (IRC § 2106(b).)

To protect U.S. real property from Federal estate tax, non-residents often acquire such property through non-U.S. corporations. Assuming the company is properly organised and maintained, the non-resident shareholder will be treated at death as owning shares of the non-U.S. company, which is a non-U.S. *situs* asset and not subject to Federal estate tax. Holding U.S. real estate in such a structure may have state and local tax consequences.

If a non-resident alien already directly owns U.S. real property in the United States, it may be possible for him or her to transfer the property into a non-U.S. corporation to obtain estate tax protection. However, if the property has appreciated in value, the non-resident will generally be taxed on the gain under the U.S. Foreign Investment in Real Property Tax Act ("FIRPTA") as if the non-resident had sold the property for its fair market value. The FIRPTA tax is generally collected by requiring the transferee to deduct and withhold from the purchase price a tax equal to 15% of the amount realised on such disposition. If the amount withheld exceeds the amount of tax actually due, the non-resident may apply for a refund of the overpayment. Where the non-resident has transferred the property to a non-U.S. corporation, the non-resident is responsible for paying the withholding tax. The non-resident may apply to the IRS in advance of the transfer for a withholding certificate, which will specify the actual amount of tax (if any) that is required to be paid on the transfer.

5 Taxation of Corporate Vehicles

5.1 What is the test for a corporation to be taxable in your jurisdiction?

Corporations that are incorporated under U.S. law (domestic corporations) are treated as U.S. residents for Federal income tax purposes and are generally taxed on their worldwide income at a 21% tax rate. However, the effective tax rate is often lower due to tax credits, deductions and exemptions. Domestic corporations may take a credit against foreign taxes paid and can sometimes defer paying U.S. tax on foreign source profits so long as those profits are not brought back into the United States.

A non-U.S. corporation is subject to Federal income taxation at the same rates as a domestic corporation on its "taxable income which is effectively connected with the conduct of a trade or business within the United States". (IRC § 882(a)(1).) The U.S. also imposes a 30% branch profits tax on a foreign corporation's U.S. branch earnings and profits for the year, as if the U.S. profits were earned by and taxed to a U.S. corporation, which then paid the profit as a dividend to its foreign corporate shareholder. In addition, certain U.S. source "fixed and determinable" income which is not effectively connected income is subject to a 30% tax that is generally collected by the U.S. payor of such income. (IRC § 881.)

U.S. states and localities may impose tax on a foreign corporation's U.S. business income if there is sufficient physical and economic contact between the corporation and the taxing jurisdiction. Income tax treaties may specify the manner in which U.S. taxes apply to foreign corporations entitled to such treaty benefits and may reduce the tax rate for U.S. source income.

5.2 What are the main tax liabilities payable by a corporation which is subject to tax in your jurisdiction?

In addition to income taxes (see question 5.1), corporations may be subject to a variety of other taxes at the Federal, state and local levels, including state and local property taxes and sales taxes.

5.3 How are branches of foreign corporations taxed in your jurisdiction?

U.S. branches of foreign corporations are not treated as separate entities for Federal income tax purposes. The income of such a branch is taxed as if earned directly by the foreign corporation. The U.S. source profits of such a branch may also be subject to the additional 30% branch profits tax described in question 5.1.

6 Tax Treaties

6.1 Has your jurisdiction entered into income tax and capital gains tax treaties and, if so, what is their impact?

The U.S. has income tax treaties with the following countries: Armenia; Australia; Austria; Azerbaijan; Bangladesh; Barbados; Belarus; Belgium; Bulgaria; Canada; China; Cyprus; Czech Republic; Denmark; Egypt; Estonia; Finland; France; Georgia; Germany; Greece; Hungary; Iceland; India; Indonesia; Ireland; Israel; Italy; Jamaica; Japan; Kazakhstan; Korea; Kyrgyzstan; Latvia; Lithuania; Luxembourg; Malta; Mexico; Moldova; Morocco; the Netherlands; New Zealand; Norway; Pakistan; the Philippines; Poland; Portugal; Romania; Russia; the Slovak Republic; Slovenia; South Africa; Spain; Sri Lanka; Sweden; Switzerland; Tajikistan; Thailand; Trinidad; Tunisia; Turkey; Turkmenistan; Ukraine; ex-states of the Union of Soviet Socialist Republics (USSR); the United Kingdom; Uzbekistan; and Venezuela.

The primary purpose of U.S. income tax treaties is to avoid double taxation and prevent fiscal evasion. There are two primary forms of double tax relief, the "exemption method", whereby a country exempts its residents from tax on income from outside the country and the "credit method", whereby a country includes foreign source income in its tax base but allows a credit for taxes paid to other countries. The U.S. currently favours the credit method.

6.2 Do the income tax and capital gains tax treaties generally follow the OECD or another model?

The U.S. has a model income tax treaty that generally follows the OECD and U.N. Model Treaties, with some exceptions and modifications.

6.3 Has your jurisdiction entered into estate and gift tax treaties and, if so, what is their impact?

The U.S. has estate tax treaties with Australia, Belgium, Finland, Greece, Ireland, Italy, the Netherlands, Norway, South Africa and Switzerland. The U.S. has a separate gift tax treaty with Australia. Additionally, the U.S. has combined estate and gift tax treaties with Austria, Denmark, France, Germany, Japan, Sweden and the United Kingdom.

The primary purpose of U.S. estate and gift tax treaties is to avoid double taxation with respect to inheritance, estate and gift taxes. The treaties usually have a set of "tie breaker" rules to determine whether an individual is a fiscal resident of one country or the other. Older treaties generally avoid double taxation by providing *situs* rules for categories of assets and granting primary tax jurisdiction to the *situs* country. Newer treaties generally provide that the *situs* country may impose its tax on real property and certain business property located in that country and owned by a resident of the other country, but not on intangible personal property even if such property has a *situs* in that country. Importantly, the U.S. generally reserves the right to impose tax on the worldwide assets of U.S. citizens, although the U.S. tax may be offset by a credit for taxes paid to the other country.

6.4 Do the estate or gift tax treaties generally follow the OECD or another model?

The estate and gift tax treaties generally follow the OECD Model Estate and Gift Tax Treaty or the U.S. Model Estate and Gift Tax Treaty published by the Treasury Department.

7 Succession Planning

7.1 What are the relevant private international law (conflict of law) rules on succession and wills, including tests of essential validity and formal validity in your jurisdiction?

The two main choice of law principles in a testamentary context, including with respect to validity, testamentary capacity, revocation and construction of the instrument, are that generally (i) the law of the *situs* of real property governs the validity and effect of a disposition of real property (RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 239.), and (ii) the law of the testator's last domicile governs the validity and effect of the disposition of personal property, tangible and intangible, wherever situated. (RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 263.) Although it is possible for a court to apply *renvoi*, U.S. courts in the jurisdictions of domicile and *situs* generally will apply their own local law to the respective disposition of personal and real property, unless another jurisdiction clearly has a stronger interest in the matter.

7.2 Are there particular rules that apply to real estate held in your jurisdiction or elsewhere?

As referred to above, dispositions of real estate are generally governed by the law of the *situs* of the real property.

7.3 What rules exist in your jurisdiction which restrict testamentary freedom?

With the limited exception of certain laws designed to protect a surviving spouse with respect to his or her interest in certain retirement accounts which had belonged to a decedent, U.S. Federal law does not provide forced heirship laws for a decedent's surviving spouse or descendants or otherwise restrict testamentary freedom.

Many states provide by statute that a surviving spouse may elect to take an "elective share" of a decedent's estate. Generally this right allows the surviving spouse to elect to receive a portion of a decedent's estate instead of taking under the decedent's last will and testament. Many states provide that the surviving spouse may elect to receive ⅓ of the decedent's estate if the decedent is survived by issue or ½ of the decedent's estate if the decedent is not survived by issue. The laws vary state by state particularly as to the assets of the decedent that are subject to the elective share right. Many states provide that transfers for less than full and adequate consideration, including transfers in trust, are included in the assets subject to the elective share right. Generally a surviving spouse may waive his or her elective share rights by contract. States that follow the community property system, such as California, in which each spouse owns ½ of the community property, generally do not have an elective share statute.

With the exception of Louisiana, generally states do not provide forced heirship rights to a decedent's descendants.

8 Trusts and Foundations

8.1 Are trusts recognised/permitted in your jurisdiction?

Yes, trusts are recognised and permitted under U.S. law. Trusts in the United States are generally governed by state (not Federal) law. Trust laws vary from state to state; however, more than half of the states have enacted (with variations) the Uniform Trust Code, which is intended to bring more uniformity to trust laws among the states.

8.2 How are trusts/settlors/beneficiaries taxed in your jurisdiction?

For Federal tax purposes, a trust is classified as a domestic (U.S.) trust or a foreign trust. A trust is "foreign" if it fails to satisfy either or both of a "Court Test" and a "Control Test". (IRC § 7701(a)(31)(B).) A trust will fail the Court Test if no court within the United States is able to exercise "primary supervision" over the trust's administration. A trust will fail the Control Test if U.S. persons do not have the authority to control all "substantial decisions" of the trust. If a trust satisfies both tests, then it is a domestic trust. (See IRC § 7701(a)(30)(E) and Treas. Reg. § 301.7701-7. As used in this context, the term "US person" includes individuals who are citizens or residents of the United States, U.S. partnerships and corporations, and estates and trusts (other than foreign estates and trusts).)

Federal income tax rules also distinguish between "grantor trusts" and "non-grantor trusts".

A "grantor trust" is not treated as a separate taxable entity. Instead the settlor (or "grantor") of the trust is treated as directly owning all of the trust's assets for Federal income tax purposes. Distributions from a grantor trust to beneficiaries other than the grantor are generally treated as gifts by the grantor to the beneficiaries. Since the receipt of a gift is usually not taxable to the donee, U.S. beneficiaries who receive distributions from a grantor trust are not subject to Federal income tax on the amount received if they comply with certain U.S. tax reporting requirements. (See IRS Form 3520, *Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts*, and the Instructions thereto.)

A trust funded by a foreign person will qualify as a grantor trust if the trust deed provides that:

- the power to revest title to the trust property absolutely in the foreign grantor is exercisable solely by the grantor without the approval or consent of any other person (or with the consent of a "related or subordinate party" who is subservient to the grantor, as determined under Federal tax law); or
- the only amounts distributable from the trust during the foreign grantor's lifetime are amounts distributable to the grantor or the grantor's spouse. (IRC § 672(f)(2)(A)(i) and (ii).)

In general, any trust that is not a grantor trust is a non-grantor trust. A non-grantor trust is treated as a separate taxable entity, and is generally subject to Federal income tax in the manner of a non-U.S. individual that is not present in the United States as any time. (IRC § 641(b).) Non-grantor trusts are subject to the same ordinary income tax rates as individuals; however, the income thresholds are compressed and the maximum Federal income tax of 37% is reached at a much lower level of taxable income.

The U.S. tax rules for non-grantor trusts (U.S. or foreign) are designed to (a) allocate the taxable income of the trust between the trust and its beneficiaries, and (b) ensure that such income is taxed only once. The principal mechanism for achieving these objectives is the concept of "distributable net income" ("DNI"). (IRC § 643(a).) For U.S. trusts, DNI is similar to, but not identical to, the trust's fiduciary accounting income. For U.S. trusts, DNI includes, among other things, interest and dividends, but usually does not include gains allocable to corpus. Importantly, however, DNI for foreign trusts includes such gains. (IRC § 643(a)(6).)

A U.S. beneficiary who receives a distribution from a non-grantor trust will generally include in his or her taxable income the amount of the trust's DNI that is distributed (or required to be distributed) to the beneficiary. (IRC § 652 and § 662.) In addition, the character of the DNI received by the trust (such as interest or dividends or tax-exempt income) passes through to the beneficiary. DNI attributable to interest and dividends is taxable to an individual U.S. beneficiary as ordinary income at rates up to 37%, whereas long-term capital gains are generally taxable at a flat 20% rate (in each case, with the additional 3.8% Medicare tax on net investment income).

If and to the extent that a non-grantor trust does not distribute (and is not required to distribute) DNI, such DNI is taxable to the trust (although as stated above only certain U.S. source income is taxable to a foreign trust). See question 2.5, section 2.5.2.

8.3 How are trusts affected by succession and forced heirship rules in your jurisdiction?

With the limited exception of certain laws designed to protect a surviving spouse with respect to his or her interest in certain retirement accounts which had belonged to a decedent, U.S. Federal law does not provide forced heirship laws for a decedent's surviving spouse or descendants.

Many states provide by statute that a surviving spouse may elect to take an "elective share" of a decedent's estate. Generally this right allows the surviving spouse to elect to receive a portion of a decedent's estate instead of taking under the decedent's last will and testament. Many states provide that the surviving spouse may elect to receive ⅓ of the decedent's estate if the decedent is survived by issue or ½ of the decedent's estate if the decedent is not survived by issue. The laws vary state by state particularly as to the assets of the decedent that are subject to the elective share right. Many states provide that transfers for less than full and adequate consideration, including transfers in trust, are included in the assets subject to the elective share right. Generally a surviving spouse may waive his or her elective share rights by contract. States that follow the community property system, such as California, in which each spouse owns ½ of the community property, generally do not have an elective share statute.

With the exception of Louisiana, generally states do not provide forced heirship rights to a decedent's descendants.

8.4 Are private foundations recognised/permitted in your jurisdiction?

In the United States, a "foundation" generally refers to a trust or corporation that is organised and operated exclusively for charitable purposes. This type of foundation is organised under state law and typically applies for exemption from Federal, and if appropriate, state, income taxes.

Private non-charitable foundations are not generally created in the United States; however, private non-charitable foundations properly formed in other jurisdictions will be recognised in the United States.

8.5 How are foundations/founders/beneficiaries taxed in your jurisdiction?

See question 8.4.

8.6 How are foundations affected by succession and forced heirship rules in your jurisdiction?

See question 8.3.

9 Matrimonial Issues

9.1 Are civil partnerships/same-sex marriages permitted/ recognised in your jurisdiction?

Since June 26, 2015, same-sex marriage has been legalised nationwide in the U.S. (the United States Supreme Court ruled in a landmark case that state-level bans on same-sex marriage are unconstitutional in *Obergefell v. Hodges*, 576 U.S. __ (2015)) and same-sex couples now have the same legal rights as married heterosexual couples.

9.2 What matrimonial property regimes are permitted/ recognised in your jurisdiction?

The common law property system is currently present in 42 of the U.S. states and the District of Columbia. The three most important forms of common law joint ownership in the U.S. today are (i) joint tenancy with right of survivorship, (ii) tenancy in common, and (iii) tenancy by the entirety.

A joint tenant holds an undivided interest in real or personal property subject to the joint tenancy and has the right to use and possess the entire property at any time, subject to the same right of other co-tenants. The most important feature of the joint tenancy, however, is the right of survivorship. Upon the death of one joint tenant, that tenant's interest vests in the remaining tenants by operation of law.

Like the joint tenancy, the tenancy in common may be created in both real and personal property. In addition, the tenant in common has an undivided interest in the property and has the right to use the entire property (subject to the rights of the other co-tenants to do the same). Unlike the joint tenancy (and the tenancy by the entirety, discussed below), the tenancy in common does not contain a survivorship feature. Upon the death of one tenant in common, the deceased's interest descends to the deceased's heirs or passes under the deceased's will.

A tenancy by the entirety is similar in many respects to a joint tenancy except that only spouses may be the tenants. Although a tenancy by the entirety is recognised in some U.S. states, it has been abolished in the majority of jurisdictions. The tenancy by the entirety cannot be terminated by either spouse acting alone during the continuance of the marriage. Furthermore, the tenancy by the entirety is not subject to either voluntary or involuntary partition during the continuance of the marriage, and even a legal separation (as opposed to divorce) generally does not affect its status. A tenancy by the entirety can only be terminated by (i) the death of a spouse, (ii) a divorce, or (iii) a conveyance made by both spouses to a third party.

Eight U.S. States and Puerto Rico recognise the system of community property: Arizona; California; Idaho; Louisiana; Nevada; New Mexico; Texas; and Washington. One state, Wisconsin, has elements of both the common law property and the community property systems. In addition, at least one common law state, Alaska, has adopted an elective form of community property. The community property system is founded on the theory that marriage is a conjugal partnership and that a husband and wife should share equally in the fruits of their common labour at the termination of the marriage by death or divorce. Under community property law, all property acquired by a spouse during the marriage (other than inheritances and gifts) is owned jointly by the spouses and would be divided between the spouses in the event of divorce.

9.3 Are pre-/post-marital agreements/marriage contracts permitted/recognised in your jurisdiction?

Married couples are free within progressively broader limits to alter by agreement the marital property rules otherwise applicable to them and their property. The provisions of an express contract may apply to a married couple for their entire marital life, no matter where they live or own property, subject only to the limitation that they not violate public policy.

9.4 What are the main principles which will apply in your jurisdiction in relation to financial provision on divorce?

The treatment of financial division upon divorce will be determined by whether the marital property is governed by common law or community property.

Common law generally requires that property acquired during marriage be divided under an equitable distribution regime. Equitable distribution would include factors such as each party's earnings, earning capacity, contribution to the marriage and lifestyle support and maintenance.

As a general rule, upon termination of the marriage in a U.S. community property jurisdiction, whether by death or divorce, each spouse is entitled to his/her separate property and one-half of the community property.

10 Immigration Issues

10.1 What restrictions or qualifications does your jurisdiction impose for entry into the country?

The basic requirements to qualify for nationalisation are set out in 8 U.S.C. Sections 1421 to 1458. Broadly, the requirements provide that an applicant for naturalisation must: (i) have permanent resident (green card) status; (ii) be at least 18 years of age at the time of the application; (iii) have resided continuously in the United States as a permanent resident or conditional resident for at least five years, or for at least three years if married to and living with an American citizen spouse; (iv) have been physically present in the United States at least half the days during the required five years (or three years) of continuous residence; (v) demonstrate knowledge of the English language; (vi) pass a civics examination; (vii) be of good moral character; and (viii) be attached to the principles of the U.S. Constitution and have no history of avoidance of U.S. military service.

10.2 Does your jurisdiction have any investor and/or other special categories for entry?

Under the EB-5 visa, an individual must invest at least $1,000,000 in a U.S. business (or $500,000 if the business is located in a rural area or high unemployment area) and must take an active role in that business (the investor may be actively involved in managing the business or a passive limited partner in the business). The investment must create at least 10 permanent full-time jobs for U.S. workers.

EB-2 and EB-3 visas are employment-based second preference visas for members of a profession holding an advance degree or its equivalent or for extraordinary ability.

The E-2 visa is available to principals of companies that are at least 50% owned by citizens of countries that have qualifying treaties with the U.S. The visa investor must be of the same nationality as the company itself. To qualify for an E-2 visa the applicant must have made a substantial equity investment in an active commercial U.S. business. Passive investments do not qualify for these purposes.

10.3 What are the requirements in your jurisdiction in order to qualify for nationality?

The basic requirements to qualify for nationalisation are set out in 8 U.S.C. Sections 1421 to 1458. Broadly, the requirements provide that an applicant for naturalisation must: (i) have permanent resident (green card) status; (ii) be at least 18 years of age at the time of the application; (iii) have resided continuously in the United States as a permanent resident or conditional resident for at least five years, or for at least three years if married to and living with an American citizen spouse; (iv) have been physically present in the United States at least half the days during the required five years (or three years) of continuous residence; (v) demonstrate knowledge of the English language; (vi) pass a civics examination; (vii) be of good moral character; and (viii) be attached to the principles of the U.S. Constitution and have no history of avoidance of U.S. military service.

10.4 Are there any taxation implications in obtaining nationality in your jurisdiction?

Once an individual becomes a U.S. citizen his or her worldwide income will become subject to Federal income tax and must be reported on a Federal income tax return. In addition, a U.S. citizen is subject to the Federal gift, estate and GST taxes on transfers of assets wherever they are located.

10.5 Are there any special tax/immigration/citizenship programmes designed to attract foreigners to become resident in your jurisdiction?

See question 10.2 above.

11 Reporting Requirements/Privacy

11.1 What automatic exchange of information agreements has your jurisdiction entered into with other countries?

U.S. income tax treaties generally contain provisions for the exchange of tax information with the other country and in some cases there is automatic reporting of tax information under the treaty. The U.S. has also entered into tax information exchange agreements with other countries and agreements to provide mutual legal assistance.

The U.S. Foreign Account Tax Compliance Act ("FATCA") imposes certain automatic U.S. tax reporting requirements on foreign financial institutions ("FFIs") that maintain accounts for customers that are U.S. citizens or resident aliens. FFIs that fail to comply with such reporting requirements are subject to a 30% withholding tax on U.S. source passive income, including dividends and the gross proceeds of sales of assets that produce U.S. source income.

Withholding may be imposed on U.S. source income of accounts maintained by certain passive non-financial foreign entities ("NFFEs") unless the NFFE certifies that it has no substantial U.S. owners or else identifies such owners.

Many countries have entered into Intergovernmental Agreements ("IGAs") with the U.S. to facilitate the implementation of FATCA for FFIs located in that country. (For a list, see https://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx.)

At this time the U.S. has not agreed to participate in the OECD Common Reporting Standard framework for the automatic exchange of information.

11.2 What reporting requirements are imposed by domestic law in your jurisdiction in respect of structures outside your jurisdiction with which a person in your jurisdiction is involved?

11.2.1 FinCEN Report 114

Report of Foreign Bank and Financial Accounts ("FBAR")

A U.S. person who has foreign bank accounts or other foreign financial assets in excess of $10,000 in a calendar year, or who has signature authority over such an account, is required annually to file FinCEN Report 114 (formerly TD F 90-22.1), known as the FBAR, to report the foreign accounts. An FBAR must also be filed by a U.S. beneficiary who has more than 50% of the present beneficial interest in, or who receives more than 50% of the current income of, a U.S. or foreign trust that holds a non-U.S. financial account.

The penalty for failure to file is $10,000. If the failure to file is wilful, the penalty for failure to file is the greater of $100,000 or 50% of the value of the account. If the failure to file is criminal, the monetary penalties are increased substantially and there may be a prison term.

11.2.2 IRS Form 8938

Statement of Foreign Financial Assets

A U.S. individual who holds interests in "specified foreign financial assets" (hereafter "SFFAs") having an aggregate value over U.S. $50,000 may be required to file Form 8938 with his or her tax return to provide certain information about his or her SFFAs. Form 8938 requires the U.S. taxpayer to report the "maximum value" of the SFFA during the taxable year.

The penalty for failure to file is $10,000. Additional penalties can be imposed for continuing non-compliance.

11.2.3 IRS Form 3520

Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts

A U.S. beneficiary who receives during any taxable year, directly or indirectly, any distribution from a non-U.S. trust must file Form 3520 with the IRS to report the name of the trust, the amount of distributions received from the trust and the U.S. income tax treatment of the distributions. For this purpose, "distributions" may include indirect, deemed and constructive distributions.

A U.S. beneficiary who fails to report distributions will be subject to a penalty equal to 35% of the unreported distributions. Additional penalties may be imposed for continuing non-compliance. The IRS may waive any penalty if the failure to file was due to reasonable cause and not due to wilful neglect.

In addition, a U.S. person who receives a gift from a foreign individual or estate must file Form 3520 to report the gift if the aggregate gift from such person (and any related persons) exceeds $100,000 during the calendar year.

11.2.4 IRS Form 3520-A

Annual Information Return of Foreign Trust with a U.S. Owner

A foreign grantor trust with a U.S. "owner" must file Form 3520-A annually. The U.S. owner is responsible for ensuring that the foreign trust files Form 3520-A and provides any required statements to its U.S. owners and U.S. beneficiaries.

If the foreign trust fails to file a timely or complete return, the trust's U.S. owner will be subject to a penalty equal to the greater of $10,000 or 5% of the gross value of the trust's assets treated as owned by the U.S. owner. Additional penalties may be imposed for continuing non-compliance. The IRS may waive any penalty if the failure was due to reasonable cause and not due to wilful neglect.

11.2.5 IRS Form 8621

Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund

A U.S. person is required to file Form 8621 annually to report a direct or indirect interest in a PFIC, even if the U.S. person has not received a distribution from, or disposed of any stock in, the PFIC in such year.

11.2.6 IRS Form 5471

Information Return of U.S. Persons With Respect To Certain Foreign Corporations

Form 5471 must be filed by certain U.S. citizens and residents who are officers, directors, or shareholders in certain foreign corporations. The penalty for failure to file is $10,000. Additional penalties can be imposed for continuing non-compliance.

11.2.7 IRS Form 5472

Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business

A 25% foreign-owned U.S. corporation, and a foreign corporation engaged in a U.S. business, may be required to file Form 5472 to report certain transactions with related parties.

A U.S. limited liability company with a single foreign owner is treated for U.S. Federal tax purposes as a disregarded entity unless the LLC elects to be treated as a corporation. As of the 2017 tax year, such foreign-owned LLCs are required to obtain a U.S. taxpayer identification number and file Form 5472 to disclose any reportable events between the LLC and the foreign owner. Information obtained by the IRS from such filings could be transmitted by the IRS to the foreign owner's country of residence to satisfy the U.S.'s information exchange obligations under an IGA with the other country.

11.2.8 Foreign Account Taxpayer Compliance Act ("FATCA")

See question 11.1 above.

11.3 Are there any public registers of owners/beneficial owners/trustees/board members of, or of other persons with significant control or influence over companies, foundations or trusts established or resident in your jurisdiction?

Presently, neither the Federal Government nor the individual states require the maintenance of a public register of persons having a beneficial interest in, or significant control over, private trusts and companies, although there have been legislative proposals to require that private lists be maintained by local authorities.

The U.S. Securities and Exchange Commission provides an online search tool called EDGAR which allows individuals to research corporate information on public companies, including a company's financial information and operations.

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Cadwalader's Private Client Group is a team of experienced professionals who work collaboratively to develop customised solutions that address complex issues involving the governance and transfer of wealth in a tax efficient manner. The core of the practice is domestic and cross-border tax planning. This encompasses planning for U.S. and multinational individuals and families, closely-held family companies and charitable organisations. Through creative and innovative tax planning, our team develops strategies that preserve wealth for future generations while respecting family relationships.