THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW

ELEVENTH EDITION

Editor
John Riches

THE LAWREVIEWS

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This article was first published in September 2022
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Published in the United Kingdom
by Law Business Research Ltd, London
Holborn Gate, 330 High Holborn, London, WC1V 7QT, UK

www.TheLawReviews.co.uk

ISBN 978-1-80449-105-8

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

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ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

BGP LITIGATION

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PREFACE

It is not so long ago that a member of the Diplomatic Body in London, who had spent some years of his service in China, told me that there was a Chinese curse which took the form of saying, 'May you live in interesting times.' There is no doubt that the curse has fallen on us.
Austen Chamberlain, March 1936

Undoubtedly, many periods in history may lay claim to be 'interesting times', and 2022 is one of them. A confluence of factors has changed the global landscape, not least the aftermath of the covid-19 pandemic, global supply chain disruption, the invasion of Ukraine and the global economy's transition to a post-covid world. There is also the looming prospect of climate change, which will only become more pressing. While there have been periods of high inflationary pressure before, never before have individuals, companies and jurisdictions been so globalised and interconnected. While good advisers should always ensure they are au fait with changes that may impact their clients, never before has it been as important for advisers to be scanning the horizon for upcoming legislative, tax, political and economic factors.

One interesting trend that has emerged over recent months is the migration of high net worth individuals (HNWIs) in response to economic and political uncertainty. Visual Capitalist have drawn up a global map showing predicted net emigration and immigration of individuals having wealth of over US$1 million.[1] While there are some foreseeable emigrations, with 2,800 HNWIs estimated to emigrate from Ukraine in 2022, 3,500 HNWIs to emigrate from Hong Kong and 15,000 HNWIs to emigrate from Russia, there are also some surprises. Eight hundred HNWIs are predicted to emigrate from Mexico, 2,500 from Brazil, 8,000 from India, 600 from Saudi Arabia, 1,500 from the UK, 10,000 from China and 600 from Indonesia.

On the immigration side, 800 HNWIs are projected to move to New Zealand in 2022, with 3,500 HNWIs to Australia in 2022, and Visual Capitalist report that approximately 80,000 millionaires have moved to Australia since the turn of the millennium. Meanwhile, Singapore is likely to attract 2,800 HNWIs, 4,000 to the United Arab Emirates, 2,500 to Israel and 2,200 to Switzerland. The US will likely attract 1,500 HNWIs, with Canada close behind in attracting 1,000 HNWIs. Finally, jurisdictions in Western Europe, which are maturing their limited tax regimes (Portugal, Italy and Greece), appear to be attracting HNWIs. Portugal is estimated to attract 1,300 HNWIs in 2022, with Greece not far behind

1 https://www.visualcapitalist.com/migration-of-millionaires-worldwide-2022/.

in attracting 1,200 HNWIs. Such a diverse diaspora shows that in 2022, HNWIs are still prepared to move to more attractive and favourable jurisdictions, and even to pay higher tax rates, in search of political and economic stability.

Meanwhile, other HNWIs are not necessarily emigrating, but instead taking advantage of remote working practices to split their time between jurisdictions, potentially becoming tax resident in a second or third country. This leads to increasing regulation and complexity, in both the tax and the automatic exchange of information spheres. The year 2021 saw the groundbreaking multinational agreement between 136 countries for a global minimum tax rate of 15 per cent for corporate entities to counteract tax avoidance and base erosion profit shifting. The intention is for this to commence in 2023, and it will apply to multi-national entities with an annual revenue exceeding €750 million. While the focus of this new regime is large corporate entities, the current drafting of the OECD's Global Anti-Base Erosion Model Rules (the 'Globe Rules') does in principle apply to trusts where they act as the ultimate holding entity of a multi-national group. The qualifying annual revenue threshold of €750 million under the Globe Rules will preclude their application to virtually all trusts owning businesses. However, it is conceivable that, in future, this threshold may be materially reduced – if so, it would not be the first time that trusts are caught up within reporting and regulatory regimes designed to apply primarily to corporate groups.

As expected, the global transparency agenda shows no signs of slowing down, and is instead evolving into ever-increasing areas. In such an arena, does asset protection for HNWIs become more important? While sanctions against targeted individuals are a useful tool against money laundering, terrorist financing and humanitarian crimes, indiscriminate blanket sanctions can harm innocent individuals. Individuals and families holding Russian passports, who did not hold an EU passport, and who were critical of the invasion of Ukraine, found themselves having to search for new trustees and trust management services after the EU brought in a blanket ban against Russian passport holders who did not also have an EU passport. Meanwhile, less than a year on from the Pandora Papers leak in October 2021, HNWIs looking for privacy are increasingly looking to 'mid-shore' as opposed to 'off-shore' jurisdictions for asset protection. Jurisdictions such as the United States and Singapore seem to feature increasingly as locations where families are looking to establish holding structures.

Furthermore, in recognition of the increasing trend for transparency in real estate holdings, the UK has introduced 'The Register of Overseas Entities'. While the UK has a Land Registry that is a public register of the owners of all registered land in the country, it only requires information on the legal owner, which can be a nominee, trustee, company or another corporate entity. This new register will require any non-UK entity (e.g., a non-UK company that owns UK land) to register the beneficial owner of the land at UK Companies House. This law will have retrospective effect in England and Wales for any property bought since January 1999 and in Scotland from 2014; the anticipated commencement date is likely to be in early 2023. This latest transparency initiative uses the principles that apply to beneficial ownership of UK companies, which have been obliged to register their beneficial owners since April 2016. There are limited exemptions from registering, namely (1) the interests of national security; (2) the interest of the economic wellbeing of the UK; and (3) to prevent or detect serious crime. The way in which trustee owners of UK property register is far from straightforward; there will be an obligation to update the register annually where changes in ownership occur.

Meanwhile, the UK's trust register legislation has been updated to extend the reporting period from 30 to 90 days, and to exclude some low-risk trusts from registration, including life insurance trusts with death-only benefits, and bank accounts for those who are not sui iuris, (i.e., minors or those who do not have mental capacity). However, despite the removal of these low-risk trusts from the requirement to register, bare trusts and nomineeships will now be required to register by September 2022, which will affect a number of clients. The minister responsible for the amendments to the trust register, Baroness Penn of the House of Lords, explained that they had been implemented to ensure that the trust register 'strikes the right balance between the public interest in tackling money laundering and the right to privacy for those who use trusts for legitimate purposes'.[2]

The UK trust register information is currently only available to law enforcement agencies upon request. However, under the new amendments, which will take effect from 1 September 2022, any third party who can demonstrate a 'legitimate interest' will be able to request information on the register. Such a 'legitimate interest' requires the requester to be investigating a 'specified specific instance of money laundering or terrorist financing', and it must be 'reasonable for the requester to have that suspicion, among other requirements'.[3] In an encouraging understanding of the use of trusts for legitimate purposes, Baroness Penn further added that:

> *We believe that placing the information held on the trust register in the public domain would infringe the privacy rights of individual beneficial owners, the vast majority of whom are not involved in money laundering activities. However, we recognise that, for the register to be an effective anti-money laundering tool, the information must be made available to those who are at the forefront of anti-money laundering investigations.*[4]

The transparency regime is now slowly turning its gaze on cryptocurrency, with reports that some sanctioned individuals are using cryptocurrency to obscure their identity. Under the French implementation of the EU's Fifth Anti-Money Laundering Directive (5AMLD) in early 2020, any cryptocurrency firm with French clients or which operates in France must register with the French regulator, the Autorité des Marchés Financiers (the AMF) and the KYC limit for cryptocurrency transactions was reduced from €1000 to €0. It will be interesting to see whether 5AMLD will be extended or updated to require a public or semi-public register in relation to the beneficial owners of cryptocurrency in the future. Across the Atlantic in the US, the new Corporate Transparency Act comes into effect later in 2022 or latest in early 2023. This will require all domestic and non-US corporate entities to register their information and that of their legal and beneficial owners with the US Treasury Department and it is estimated that it will affect over 20 million businesses. There are currently no plans for the registers (which will be maintained at state level) to be made public.

2 *Hansard*. HL. Deb. Vol. 818, col. 388GC, 8 February 2022.

3 HMRC Internal Manual Trust Registration Service Manual, TRSM60020 – Third party access requests: contents: legitimate interest requests.

4 *Hansard*. HL. Deb. Vol. 818, col. 391GC, 8 February 2022.

What seems clear is that the plethora of initiatives that impact the private wealth arena continues to increase exponentially. These are interesting times and advisers need to remain alert to ensure they can give rounded advice that affects clients of all shapes and sizes.

John Riches
RMW Law LLP
London
July 2022

Chapter 24

SINGAPORE

Sim Bock Eng, Aw Wen Ni and Alvin Lim[1]

I INTRODUCTION

The lure of Singapore lies largely in its political and social stability, good educational system, transparency, efficiency, ease of doing business and good geographical location within Asia. In recent times, these are further augmented by its reputation as an attractive wealth management hub in Asia and the various tax and other incentive schemes it provides for high net worth families, businesses and individuals.

In 2020, amid the covid-19 pandemic, Singapore's assets under management (AUM) grew by 17 per cent year-on-year to reach S$4.7 trillion,[2] ahead of the 11 per cent growth for the global asset management industry. A total of 78 per cent of this AUM was sourced from outside Singapore,[3] a testament as to the popularity of Singapore as a fund management location.

II TAX

Singapore has a relatively straightforward tax regime. Singapore taxes income that is accrued in, derived from or received in Singapore. For individuals, other than personal income tax, there is no gift tax, estate tax, inheritance tax or capital gains tax. For corporations, there is a flat corporate tax rate with various tax incentives in place. Most tax incentives have a sunset date and are generally reviewed and if appropriate, renewed every five years.

i Individual income tax

Though individual income tax is chargeable on income accrued in or derived from Singapore, or received in Singapore, foreign-sourced income received by individuals in Singapore is generally exempt from Singapore tax. Income derived from investments such as interest from debt securities and qualifying distributions from real estate investment trusts by individuals are also generally exempt from Singapore income tax in the hands of an individual.

Singapore has a preceding year basis of taxation; that is, income earned in 2022 is taxed in the year of assessment 2023. A resident individual taxpayer is taxed at a graduated margin tax rate depending on the quantum of chargeable income.[4]

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1 Sim Bock Eng, Aw Wen Ni and Alvin Lim are partners at WongPartnership LLP.

2 https://www.mas.gov.sg/-/media/MAS-Media-Library/publications/singapore-asset-management-survey/Singapore-Asset-Management-Survey-2020.pdf.

3 ibid.

4 https://www.iras.gov.sg/taxes/individual-income-tax/basics-of-individual-income-tax/tax-residency-and-tax-rates/individual-income-tax-rates.

Income tax rates

As announced at the Singapore Budget 2022, the top marginal personal income tax rate will be increased from the Year of Assessment 2024.[5] This is reflective of the Singapore government's desire to achieve greater progressivity in the personal income tax structure. Currently, the highest tax bracket of 22 per cent applies to chargeable income in excess of S$320,000. Two additional tax brackets with higher rates of tax will be introduced. The amount of chargeable income in excess of S$500,000 and up to S$1 million will be subject to tax at a rate of 23 per cent. The amount of chargeable income in excess of S$1 million will be subject to tax at a rate of 24 per cent.

Gift and succession taxes

There is no gift tax, estate tax or inheritance tax in Singapore.

Capital gains tax

There is no capital gains tax in Singapore. Whether a gain on the disposal of an asset is capital in nature (and hence not taxable) or income in nature (which is taxable) depends on the circumstances of each case. Relevant factors in the determination include the intention at the time of acquisition, the length of time of ownership of the asset, frequency of similar transactions, nature of the assets, any improvements made to the asset, means of financing the acquisition and the circumstances of the disposal.

Stamp duties

Stamp duties ranging from 0.2 per cent for transfer of shares and up to 4 per cent for transfer of immovable properties are chargeable on the execution of documents transferring interests in Singapore immovable property, shares of Singapore-incorporated companies and shares of foreign-incorporated companies that are registered in a Singapore branch register. These stamp duties are, however, not payable on the transmission of Singapore immovable property or shares if such transmission is in accordance with a distribution under a will or the laws of intestacy, or is transferred to a spouse pursuant to an order of court made in divorce proceedings.

Transfer of immovable residential properties

Singapore is a city-state and is land scarce. As with other countries, there are fiscal restrictions on the transfer of immovable properties in Singapore – the primary tool being stamp duties. Stamp duties for transfer of residential real properties in Singapore have been revised on a few occasions in the last 10 years as a cooling measure to deal with the increasing prices of residential properties in Singapore, with the last revision on 16 December 2021.[6]

Singapore imposes additional stamp duties (for buyer and seller) on the transfer of residential properties, which are differentiated based on whether the buyer is a Singaporean, a foreigner or an entity, whether the buyer is acquiring his first property, and the time period the seller has owned the property.

5 https://www.mof.gov.sg/singaporebudget/budget-2022/budget-statement/f-build-a-fairer-and-more-resilient-tax-system#emPersonalemem-Income-Taxem.

6 https://www.iras.gov.sg/docs/default-source/stamp-duty/absd-fact-sheet.pdf?Status=Master&sfvrsn=f55f6050_2.

There are free trade agreements between Singapore and countries such as the United States of America, Liechtenstein and Switzerland, which allow nationals of such countries to be accorded the same stamp duty treatment as Singapore citizens.

In the latest revision, additional buyer stamp duty of 35 per cent has been imposed on any transfer of residential property into a living trust, where the transfer occurs on or after 9 May 2022.[7] The additional buyer stamp duty is refundable under certain conditions.

ii Corporate tax

A corporation, whether tax resident or not, is subject to income tax in Singapore for any income that is accrued in or derived from Singapore or is received in Singapore from outside Singapore. The corporate tax rate in Singapore is 17 per cent.

Double taxation and international tax treaties

Singapore is party to 96 comprehensive tax treaties that serve to relieve double taxation of income.[8] There are also eight limited tax treaties covering shipping or air transport for countries such as the United States, Brazil and Hong Kong.[9]

Tax exemption schemes

New startup companies incorporated in Singapore[10] are eligible for a tax exemption scheme for their first three consecutive years of assessment (YA). For YA 2020 onwards, qualifying companies would receive a 75 per cent exemption on the first S$100,000 of normal chargeable income and a further 50 per cent exemption on the next S$100,000 of normal chargeable income.[11]

All other companies may be eligible for a partial tax exemption. For YA 2020 onwards, this would be a 75 per cent exemption on the first S$10,000 of normal chargeable income and a further 50 per cent exemption on the next S$190,000 of normal chargeable income.[12]

Corporate tax incentives

There are also corporate tax incentives to encourage businesses to upgrade their capabilities and expand the scope of their operations in Singapore. Two such incentives are the pioneer certificate incentive and the development and expansion incentive.[13]

These incentives allow companies that are prepared to make significant investments in contribution to the economy or in advancement of capabilities towards globally leading industries to enjoy a corporate tax exemption or a concessionary tax rate of 5 per cent or 10 per cent on income derived from qualifying activities for periods of up to five years.

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7 https://www.mof.gov.sg/news-publications/press-releases/additional-buyer-s-stamp-duty-(absd)-for-residential-properties-transferred-into-a-living-trust.

8 https://www.iras.gov.sg/taxes/international-tax/list-of-dtas-limited-dtas-and-eoi-arrangements?pg=1&mpp=96&indexcategories=DTA.

9 ibid.

10 The tax exemption is not available to companies whose principal activity are that of investment holding and companies that undertake property development for sale, investment, or both.

11 https://www.iras.gov.sg/taxes/corporate-income-tax/basics-of-corporate-income-tax/corporate-income-tax-rate-rebates-and-tax-exemption-schemes.

12 ibid.

13 https://www.edb.gov.sg/en/how-we-help/incentives-and-schemes.html.

Minimum effective tax rate for multinational enterprises

In the Singapore Budget 2022, the government announced that it is exploring a top-up tax called the minimum effective tax rate in response to the minimum effective tax rate under the Organisation for Economic Co-operation and Development Pillar Two Anti-Base Erosion Rules of the Base Erosion and Profit Shifting Project (the BEPS 2.0 Project).

This new tax that is being studied will 'top up' a multinational enterprise (MNE) group's effective tax rate in Singapore to 15 per cent. Plans to impose this 'top-up tax' come as Singapore recognises the need to update its corporate tax system, to account for global tax developments relating to the BEPS 2.0 Project.[14]

III SUCCESSION

i Introduction to succession in Singapore

Singapore, despite extensive commercialisation and globalisation of its businesses, is culturally still very Asian. This encompasses various values such as filial piety, respect and civility. There is also the tendency to avoid direct conflict.

Thus, much succession planning, wealth preservation and family office set ups are driven by the patriarch or matriarch. While there is a trend of the patriarch or matriarch involving or consulting the subsequent generations, the role of these subsequent generations tends to be facilitative, such as doing the initial research and introducing the latest and appropriate structures. They remain respectful of and align themselves with the indication of the earlier generations, in particular in their presence, and leave decisions to the patriarch or matriarch.

Culturally, Asians tend to favour keeping families together and assets within the family.

ii Succession law in Singapore

Testamentary freedom

The general rule under Singapore law is that testamentary freedom is unrestricted, except for Muslims who are domiciled in Singapore. There are no restrictions on the manner by which non-Muslims in Singapore may choose to provide for their succession.

The rule as to testamentary freedom for non-Muslims is subject to the provisions of the Inheritance (Family Provision) Act 1966, which allows the court to provide reasonable maintenance to the deceased's dependants out of the deceased's net estate. 'Dependant' is defined as a spouse, a child (of any gender or age) who is by reason of physical or mental incapacity incapable of maintaining himself or herself, an infant son or an unmarried daughter.

Funds held through a deceased's Central Provident Fund account (applicable to Singapore citizens and permanent residents) cannot be disposed of via a will, but only through the appropriate instrument of nomination.

Intestacy

Where an individual domiciled in Singapore dies without leaving a will or the will is invalid, the deceased's estate is subject to the provisions of the Intestate Succession Act 1967 (ISA). The deceased's assets (movable properties as well as immovable properties in Singapore)

14 https://www.mof.gov.sg/singaporebudget/budget-2022/budget-statement/f-build-a-fairer-and-more-resilient-tax-system#emPersonalemem-Income-Taxem.

will be distributed according to the rules of distribution under the ISA, which provide for distributions to the deceased's next of kin in different proportions based on the degree of closeness to the deceased.

Restrictions under Muslim law

In accordance with Section 111 of the Administration of Muslim Law Act 1966, no Muslim domiciled in Singapore may dispose of his property by will except in accordance with the provisions of the school of Muslim law professed by him. Under Muslim law, a Muslim is subject to two main restrictions: (1) he may not give away by will more than one third of his estate; and (2) he may not increase or reduce the share of any of his legal heirs as determined according to Muslim law.

iii Marital property

Singapore adopts a deferred community approach where the matrimonial assets are only divided once the marriage has been legally terminated – see Section 112 of the Women's Charter 1966.

Matrimonial assets

Only 'matrimonial assets' will be subject to division in the event of a breakdown of the marriage. Matrimonial assets are defined by Section 112(10) of the Women's Charter to be any asset of any nature acquired during marriage by one or both parties and any asset acquired by a party before marriage that was ordinarily used or enjoyed by the family during the marriage or has been substantially improved during the marriage by one or both parties. Gifts and inheritance, whether received before or during the marriage, are not subject to division unless they were substantially improved during the marriage by one or both parties to the marriage.

Interestingly, the recent case of *VOD v. VOC* [2022] SGHC(A) 6 illustrates that the context of how gifts are made in a matrimonial context will affect whether they form part of the matrimonial assets. In that case, at a customary tea ceremony during the wedding, the groom's father handed an *hongpao*,[15] containing a S$1 million cheque in the groom's name, to the groom in the bride's presence. In divorce proceedings some three years later, the couple disagreed whether the S$1 million gift formed part of the matrimonial assets. The High Court held that this *hongpao* was intended by the groom's father to benefit the couple, and not the groom alone. Amongst other things, the court found that the overt act of presenting the *hongpao* during a customary ceremony should be viewed objectively as a gift to the couple in the absence of evidence to the contrary and unless the nature of the gift suggested otherwise (there was none in that case).

Gifts between spouses are considered matrimonial assets. Matrimonial assets are divided between the parties based on parties' direct and indirect (including non-financial) contributions to the acquisition of the matrimonial assets.

It is noteworthy, in the event of a divorce, Section 132 of the Women's Charter empowers the court to set aside any disposition of assets made within the three years preceding the divorce application, if the disposition of the asset was made with the object to reduce the ability to pay maintenance or to deprive a spouse of any rights in relation to that property.

15 In Chinese culture, a hongpao is an auspicious gift of money packed into a red envelope.

Pre-nuptial and post-nuptial agreements

Pre-nuptial and post-nuptial agreements are permitted and have been recognised in Singapore. These agreements would be subject to the usual contractual principles such as intention to enter into a contract, consideration, absence of vitiating factors (i.e., misrepresentation, duress, undue influence and fraud). The terms of both pre-nuptial and post-nuptial agreements are subject to scrutiny by the Singapore court in accordance with the principles of fairness, justice and equity to both parties.[16] The court will then decide how much weight to accord to such an agreement.[17]

In *CLB v. CLC* [2021] SGHCF 17, the court observed that during the course of the 16-year marriage, the husband and wife had operated on a common understanding and practically managed their financial affairs in a way that did not seem fully consistent with the pre-nuptial agreement. As such, the court found that it would not be just and equitable to accord full weight to the pre-nuptial agreement. The court kept in mind that whether each asset was to be included in the pool of matrimonial assets would depend on the circumstances and the relevant facts surrounding each asset.

A pre-nuptial agreement that was entered into by foreign nationals and governed by foreign law may be upheld in Singapore. In *TQ v. TR* [2009] 2 SLR(R) 961, a Dutch citizen and Swedish citizen executed a pre-nuptial agreement which stated that there was to be no community of property, and married under Dutch law. The couple moved to Singapore and the marriage subsequently broke down. The Court of Appeal held that the pre-nuptial agreement was wholly foreign in nature, dealt with the parties' respective matrimonial assets only and was valid under Dutch law. Further, there was sufficient evidence which showed that the couple did not regard their marriage as being one that related to the concept of a community of property. In those circumstances, the Court of Appeal gave the pre-nuptial agreement the highest significance and made no orders as to the division of matrimonial assets.

In the division of matrimonial assets, the determination as to custody care and control of children or the maintenance to be paid to the wife and the children, pre-nuptial and post-nuptial agreements are one of various other factors to be considered by the courts.[18] In its scrutiny of an agreement, the courts may also consider whether the parties sought legal advice and were provided with full disclosure of information relating to the matrimonial assets or other relevant information prior to entering into the agreement. There is a presumption that any provisions relating to the children, whether relating to their custody or maintenance, are not enforceable unless they are in the best interest of the children.[19]

Same-sex marriages

Same-sex marriages are neither permitted nor recognised in Singapore. Section 12(1) of the Women's Charter expressly provides that a marriage whether solemnised in Singapore or elsewhere between persons who at the date of the marriage are not respectively male and female is void. Parties to such a marriage thus do not have rights as spouses in the event of a breakdown of the relationship and in the event of the demise of the other party.

16 *Wong Kien Keong v. Khoo Hoon Eng* [2014] 1 SLR 1342.

17 *CLB v. CLC* [2021] SGHCF 17.

18 *Wong Kien Keong v. Khoo Hoon Eng* [2014] 1 SLR 1342.

19 *AUA v. ATZ* [2016] 4 SLR 674.

Children born out of wedlock

Children born out of wedlock are considered illegitimate, although they are legitimated by the subsequent marriage of their natural parents. Until they are so legitimated, they would have no right to inherit from their father in the event that he should die intestate. They would only be entitled to inherit from their biological mother if the biological mother has no surviving legitimate children.

Adopted children

Adopted children are deemed under the Adoption of Children Act to be legitimate children of their legal (adoptive) parents, and in the case of intestacy, will be entitled to their estate as if they were born to their adoptive parents in lawful wedlock. As the adoption legally severs all ties between the adopted children and their natural parents, they will have no right to inherit from their natural parents in the event that the natural parents should die intestate.

IV WEALTH STRUCTURING AND REGULATION

The dominant objectives for succession planning in Singapore include asset protection, the seamless transmission of wealth over generations, continuity of the family business and minimising family conflicts, and tax efficiency. The structure that is used for succession planning would naturally depend on the objectives and circumstances of the patriarch or the family.

i The trust structure

The prevalent structure in tax, wealth or succession planning in Singapore is the trust. This can be revocable or irrevocable, discretionary or fixed interest, depending on the objectives to be achieved.

The trust structure can be used to allow for consolidation of wealth, business continuity and yet allow for the distribution of economic benefits. For high net worth families in Asia who built their wealth in the current generation, a priority is the continuity of the family business. The trust allows the family business and wealth to be consolidated to generate income for current and future generations, and for management to remain with the professional managers or capable members of the family.

In Singapore, the trust is an effective structure for succession planning and can overcome the application of forced heirship rules which may apply for the settlor. Section 90(2) of the Trustees Act 1967 provides that no rule relating to inheritance or succession affects the validity of a trust or the transfer of any property to be held on trust if the person creating the trust or transferring the property had the capacity to do so under the law applicable in Singapore or the law of their domicile or nationality or the proper law of the transfer. It is also robust against challenges in divorce proceedings and creditor claims.

In *Shafeeg bin Salim Talib v. Fatimah bte Abud bin Talib* [2010] SGCA 11, the Singapore Court of Appeal opined that if the settlement of a Muslim's assets into a trust was completed during the deceased's lifetime, such assets would be treated as trust assets and not part of the estate and effects of the Muslim that would be subject to Islamic inheritance laws. The Singapore trust thus presents a considerable advantage in the planning for individuals subject to forced heirship.

The trust structure can also be modular and can be integrated with other structures that may be required by the family or to achieve tax efficiency. Frequently, the trust structure is

used with the family's own private trust company, a family office, an investment entity or a philanthropic arm. The structure can also be made tax efficient by utilising the tax incentives such as those under Sections 13N, 13O or 13U of the Income Tax Act 1947 (ITA).

A trust can be granted tax transparency, depending on the type of income received by the trust and the tax residency of the beneficiaries. If income tax has been imposed on the trust, distributions by the trustee will be regarded as capital and will not be subject to further Singapore income tax in the hands of the beneficiaries. If, however, a trust has been granted tax transparency, the distributions received by the beneficiaries from the trust may be subject to Singapore income tax, unless this is specifically exempted.

ii Succession planning and family offices

The city-state's many strengths in fund management, the ease of doing business, a stable political and regulatory environment, strong rule of law and a deep pool of financial, investment and wealth management talent has propelled its popularity as a place to base family offices.

Additionally, the Monetary Authority of Singapore (MAS) has adopted a 'light touch' regime with family offices. Family offices may generally avail themselves of an exemption from holding a capital market services (CMS) licence. Other entities that engage in the regulated activity of fund management would otherwise have to apply for a CMS licence with the MAS.

It is not unsurprising that the number of family offices in Singapore has grown exponentially to 400 in 2020 compared to 200 in 2019.[20] In the first four months of 2022, the MAS has approved more than 100 applications for tax exemptions for family office set-ups here.[21]

Tax incentives for trusts and family offices

There are various income tax incentives for trusts and family offices in Singapore. These include incentives under Section 13F of the ITA for foreign trusts, Section 13N of the ITA for locally administered trusts, and Sections 13O and 13U of the ITA for funds managed by family offices. The designated income or relevant income as specified by the respective provisions earned by the fund is exempt from any tax in Singapore.

Section 13O and 13U exemptions are particularly popular in family offices. Section 13O, also known as the Singapore Resident Fund Scheme, provides for an exemption of income of a company incorporated and resident in Singapore arising from funds managed by a fund manager in Singapore. Section 13U, also known as the Enhanced-Tier Fund Tax Exemption Scheme, provides for an exemption of income arising from funds managed by a fund manager in Singapore.

With effect from 18 April 2022, funds with S$10 million worth of assets and which are committed to increase the fund size to S$20 million in two years' time, may qualify for the Section 13O tax exemption.

For families with larger AUM, Section 13U provides tax exemptions over a wide range of income. This requires a minimum fund size of S$50 million at the point of application.

20 https://www.businesstimes.com.sg/wealth-investing/why-the-affluent-are-setting-up-family-offices-in-singapore.

21 https://citywireasia.com/news/mas-approves-more-than-100-family-office-applications-in-four-months/a2388579.

The family is generally able to invest in most private equity and bankable assets, though for both Section 13O and Section 13U, the fund is required to invest at least 10 per cent of the AUM or S$10 million, whichever is lower, in local investments. Local investments include equities listed on Singapore-licensed exchanges, qualifying debt securities, funds distributed by Singapore-licensed fund managers, and private equity investments into non-listed Singapore-incorporated companies with operating businesses in Singapore.

iii Transparency and reporting

Singapore in its strong support for transparency, understands the needs of the family for privacy. This balance is achieved by requiring the maintenance of various records and registries which may not necessarily be public information. There is no register for trusts in Singapore, and no publicly accessible register of the ultimate beneficial owners of companies.

All companies incorporated in Singapore, foreign companies and all limited liability partnerships registered in Singapore (unless exempted) are, however, required to maintain a Register of Registrable Controllers,[22] and submit this information to the Accounting and Corporate Regulatory Authority.[23]

Singapore supports the movement towards transparency to combat money laundering, terrorist financing and tax evasion. Singapore has amended its tax laws and implemented the Common Reporting Standard (CRS) and the Foreign Account Tax Compliance Act (FATCA) reporting regimes. The CRS is an internationally agreed standard for the automatic exchange of financial account information between jurisdictions for tax purposes, to better combat tax evasion and ensure tax compliance.

Singapore has committed to implement the CRS and has been exchanging financial account information with partner jurisdictions since September 2018. The CRS Regulations in the Income Tax Act requires and empowers all Reporting Singapore Financial Institutions (defined in the Income Tax (International Tax Compliance Agreements) (Common Reporting Standard) Regulations 2016) to put in place necessary processes and systems to collect such financial account information from their account holders. Reporting Singapore Financial Institutions will then need to report to Inland Revenue Authority of Singapore (IRAS) the financial account information relating to tax residents of Singapore's exchange partners.

22 The term controller refers to an individual or legal entity that has a 'significant interest' or 'significant control' over the company. A controller with 'significant interest' is a person who holds 25 per cent or more of the shares, holds 25 per cent or more of the voting power or has a right to 25 per cent or more of the capital or profits in a company without share capital. A controller with 'significant control' is a person who can appoint or remove directors with a majority of voting rights, holds over 25 per cent of the voting rights or has significant influence or control over the company.

23 https://www.acra.gov.sg/compliance/register-of-registrable-controllers#:~:text=Entities%20Exempted%20from%20maintaining%20RORC&text=Exempted%20entities%20will%20have%20to,by%20taking%20the%20steps%20below.&text=Log%20in%20to%20BizFile%2B.,proceed%20to%20submit%20the%20transaction.

V OUTLOOK AND CONCLUSIONS

Singapore's attraction as a wealth management hub is reflected in the increasingly affluent residents in Singapore. The number of ultra high net worth individuals in Singapore – defined as those with net assets of at least US$30 million – rose 8.6 per cent to 4,206 in 2021. The number of high net worth individuals in Singapore – defined as those with net worth of at least US$1 million – rose by 6 per cent to over 526,000 in 2021.[24]

Despite the recent introduction of more stringent requirements for the establishment of family offices in Singapore, Singapore remains a preferred destination for funds management. Family offices are becoming an increasingly prominent, and important, aspect of the wealth planning landscape in Singapore, with growing conversations on how these should be structured and how they can be utilised to achieve tax efficiency.

Through partnerships with the public and private sector, the Singapore government has been continuously developing knowledge and expertise to enhance the family office ecosystem and strengthen Singapore's competitiveness as a wealth management hub.

The challenge lies in whether this growth of family offices and wealth in Singapore can be translated into growth in the business set up in Singapore which potentially can create more employment opportunities and contribute more substantively to the economy of Singapore.

The emphasis in programmes such as the Global Investor Programme (GIP) run by the Economic Development Board, goes some way to achieving this. The GIP provides applicants and the immediate family with permanent residence status in Singapore, with investments in business in Singapore or the set-up of a family office with AUM of at least S$200 million. Likewise, the change in the Section 13O and 13U of the ITA requirements now requires more investment professionals or investment professionals who are not family members. It would not be unexpected if family offices with larger business footprints may in the future receive better consideration.

24 https://www.businesstimes.com.sg/wealth-investing/robust-increase-in-ultra-wealthy-individuals-in-singapore-and-globally-in-2021.

Appendix 1

ABOUT THE AUTHORS

SIM BOCK ENG

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Sim Bock Eng is the head of the specialist and private client disputes practice and a partner in the private wealth practice.

Her main practice areas are in private wealth and in civil litigation, which include family, matrimonial law, succession trusts and probate law, banking and finance, property and employment.

She has over 20 years of experience in trust, estate and family laws – both front-end as well as litigation. She regularly advises ultra high net worth individuals and families on succession and estate planning and business continuity. She has represented local and international banks, financial institutions and private investors in a wide variety of on-shore and off-shore matters including acting for the trustees of the Lehman-linked minibond in the Global Financial Crisis, acting for Deutsche Bank in defending one of the biggest private client claims in the history of Singapore and acting for an international bank implicated in the Olympus saga when Olympus Corporation used funds from various mergers and acquisitions to fund its losses for more than 20 years. She is recognised as one of the leading probate, trusts and private wealth management lawyers in Singapore and has been involved in several landmark decisions.

She is the immediate past chair of the Society of Trust and Estate Practitioners (Singapore) and the course co-ordinator for probate in the preparatory course leading to Part B of the Singapore Bar Examinations.

AW WEN NI

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Aw Wen Ni is a partner in the specialist and private client disputes practice and in the private wealth practice.

She is a litigator who is involved in high-value and complex disputes. Other than having an active practice in general commercial litigation, banking and finance litigation, Wen Ni is also experienced in advising clients on contested probate and estate matters, proceedings under the Mental Capacity Act and contentious proceedings with respect to the clients' significant assets.

Wen Ni has been involved in contentious estate and Mental Capacity Act proceedings where the value of the estate exceeds more than S$200 million. Wen Ni also successfully defended Deutsche Bank in the largest private claim (exceeding US$250 million) in Singapore.

Wen Ni also advises ultra high net worth individuals on succession planning which includes the setting up of trust and family offices in Singapore and applying for the relevant tax exemption schemes.

ALVIN LIM

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Alvin Lim is a partner in the specialist and private client disputes practice and private wealth practice.

His main practice areas include private wealth, healthcare and medical law, and dispute resolution with a particular focus on the mentioned areas.

Alvin has an active private wealth practice and has been recognised as a recommended lawyer in the private wealth practice in *The Legal 500: Asia Pacific 2019* rankings. He advises both institutional and individual clients on succession planning and wealth structuring. He has acted for trustees in court proceedings to rectify trust deeds and obtain directions on the administration of trust assets and foreign tax regimes. He has also obtained court declarations on the legal and beneficial ownership of property and applied for injunctive relief on trust related matters.

Alvin also has a breadth of experience in healthcare and medical law. Alvin has acted for the Singapore Medical Council in disciplinary proceedings against errant medical practitioners for breach of ethical guidelines. These cases involved complex and novel medical issues, from the surgical viability of tumour resection, to treatment that was carried out outside the context of a clinical trial, and constitutional issues in relation to a medical practitioner's freedom of speech. He has also acted for pharmaceutical companies, in claims involving infringement of intellectual property rights and breach of contract.

In addition, Alvin has litigated a wide range of commercial matters and multi-jurisdictional disputes. These include disputes relating to cross-border investments, shareholding and directorships, company law, and financial instruments involving loan facilities, bonds, options and forex trading.

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ISBN 978-1-80449-105-8