

Private client law in Cyprus: overview

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TAXATION

Tax year and payment dates

1. When does the official tax year start and finish in your jurisdiction and what are the tax payment dates/deadlines?

Tax year

The tax year in Cyprus starts on 1 January and ends on 31 December.

Tax payment and deadlines

Provisional declaration of income. Any income that is not dealt with under the pay as you earn (PAYE) system is dealt with on a self-assessment basis. Individuals must submit, by 1 August, a provisional declaration of their income for the year to the tax authorities together with a remittance for half the estimated liability. The balance must be paid no later than 31 December.

Payment of the balance due. Different rules apply concerning the payment of the balance of the tax due on income, depending on the circumstances of the individual:

- Individuals who carry on a trade or profession with a turnover for the year of more than EUR70,000 must:
 - prepare audited annual financial statements and pay the balance of tax due on their income by self-assessment no later than 1 August of the following year; and
 - submit their final personal income tax returns no later than the following 31 December.
- Other individuals must file their personal income tax returns and pay any tax due no later than 30 June of the following year.

In both cases, tax paid late or underpaid will be subject to interest at 9% per annum from the due date.

Special contribution for defence tax (SDC tax). SDC tax is payable on a self-assessment basis on interest, dividends and rent received. The estimated liability on income received in the first six months of the year must be paid by 30 June, and the estimated liability on income received in the second six months must be paid by the end of the year.

Up to and including 15 July 2015, all Cyprus tax-resident individuals were subject to SDC tax. With effect from 16 July 2015 the SDC (Amendment) Law, Law 119(I) of 2015 introduced an exemption for individuals who are resident but not domiciled in Cyprus. The exemption aims to encourage foreign nationals to use Cyprus as a base for their investments.

Domicile and residence

2. What concepts determine tax liability in your jurisdiction (for example, domicile and residence)? In what context(s) are they relevant and how do they impact on a taxpayer?

Tax liability is based on residence. Resident individuals and companies are liable to Cyprus tax on worldwide income. Non-residents are liable for Cyprus tax on Cyprus-source income.

Cyprus treats the concepts of residence and domicile in the same way as other common law countries.

Domicile

Domicile is a general legal concept and is distinct from nationality or residence. Generally, a person's domicile is the place that person considers their permanent home. Domicile is the determining factor as to whether Cyprus succession law applies in a particular case (*see Questions 24 to 26*).

Residence

Individuals are considered to be resident if they are present in Cyprus for more than 183 days in the relevant year. Days of departure and arrival are treated as follows:

- The day of departure from Cyprus counts as a day of residence outside Cyprus.
- The day of arrival in Cyprus counts as a day of residence in Cyprus.
- Arrival in and departure from Cyprus on the same day counts as one day of residence in Cyprus.
- Departure from and return to Cyprus on the same day counts as one day of residence outside Cyprus.

Residence determines liability to most forms of taxation in the private client context (*see Question 6, Taxable income*).

Companies

For companies, the test of residence and liability to Cyprus tax is based on the locus of management and control.

Taxation on exit

3. Does your jurisdiction impose any tax when a person leaves (for example, an exit tax)? Are there any other consequences of leaving (particularly with regard to individuals domiciled in your jurisdiction)?

As an EU member state, Cyprus does not impose any restrictions on the freedom of movement of EU citizens, or on citizens of other countries leaving Cyprus.

Temporary residents

4. Does your jurisdiction have any particular tax rules affecting temporary residents?

For tax purposes, residence is dealt with on a year-by-year basis. EU citizens and their dependants have the right to live in Cyprus. Nationals of other countries who have lived legally in Cyprus for a continuous period of five years have a right of permanent residence.

In 2013, Cyprus introduced schemes allowing purchasers of property to obtain permanent residence permits, and individuals of good character investing substantial sums in Cyprus (EUR 2.5 million and above) and their dependants to obtain Cyprus citizenship, on an accelerated basis.

Taxes on the gains and income of foreign nationals

5. How are gains on real estate or other assets owned by a foreign national taxed? What are the relevant tax rates?

Capital gains tax (CGT) is charged at 20% on gains from the disposal of:

- Immovable property in Cyprus.
- Shares in companies (but not companies listed on a recognised stock exchange) owning immovable property in Cyprus to the extent that the gain is derived from an appreciation in value of the immovable property.

All other gains are exempt from CGT.

CGT is not charged on gains that are subject to corporation tax. As with corporation tax, CGT is paid by reference to the calendar year, under a self-assessment system.

A gain on the disposal of immovable property in Cyprus is calculated by deducting from the sale price (or the market value in certain circumstances, such as where the revenue authorities do not accept that the sale price was an arm's length price):

- The acquisition cost, including expenses (or market value as at 1 January 1980 if the asset was acquired before that date).
- Expenditure that is wholly and exclusively incurred to enhance the asset's value.
- Sale expenses, interest on loans and immovable property tax.

These costs and expenses are adjusted by indexation to take account of inflation. The taxpayer can offset, against gains, capital losses on chargeable assets that were incurred in the current year or that have been brought forward from previous years.

Gains on disposals of shares in companies that own immovable property in Cyprus are calculated by first deciding the amount of the share disposal proceeds that are attributable to immovable property in Cyprus. The taxable gain is then calculated as above.

The Capital Gains Tax (Amendment) (No 2) Law of 2015, Law 117(I) of 2015 exempts gains on disposal of property (whenever the disposal may occur) that was acquired by the alienator on an arm's length basis within the period beginning on 16 July 2015 and ending on 31 December 2016. The exemption does not apply to property acquired under the foreclosure process prescribed in Part VIA of the Transfer and Mortgage of Immovable Property Law.

6. How is income received by a foreign national taxed? Is there a withholding tax? What are the income tax rates?

Taxable income

Income tax treatment depends on whether or not the individual is resident in Cyprus for tax purposes (*see Question 2, Residence*). There is no distinction between Cypriots and foreign nationals in this context.

Residents must pay income tax on their worldwide income, whether that income is remitted to Cyprus or not.

Non-residents are subject to income tax on income accruing or arising from sources in Cyprus concerning:

- Profits or other benefits from:
 - a permanent establishment (that is, a fixed place of business through which its business is wholly or partly carried on) situated in Cyprus;
 - any office or employment exercised in Cyprus.
- Pensions from past employment exercised in Cyprus.
- Rent from property situated in Cyprus.
- Consideration received in respect of any goodwill in respect of a trade carried out in Cyprus, reduced by the cost of that goodwill.
- Gross income that an individual derives from the exercise in Cyprus of any profession or other occupation. This includes the remuneration of public entertainers and the gross receipts of any theatrical, musical or other group of public entertainers.

Withholding taxes

The only withholding taxes apply to:

- Rental payments made to non-residents concerning films shown in Cyprus. These are subject to withholding tax at 5% of the gross payments.
- Royalties or any other payments to non-residents for intellectual or industrial property rights. These are liable to a 10% withholding tax, subject to relief under any applicable double taxation treaty. No tax needs to be withheld if the rights are used exclusively outside Cyprus.

Tax rates

Income tax is charged at progressive rates, according to each band or tranche of income. The current rates are:

- Up to EUR19,500: nil.
- EUR19,500 to EUR28,000: 20%.
- EUR28,000 to EUR36,300: 25%.
- EUR36,300 to EUR60,000: 30%.
- Above EUR60,000: 35%.

Husband and wife are taxed separately.

For the first three calendar years following the start of their employment, individuals taking up residence and employment in Cyprus are entitled to an annual allowance of the lower of:

- EUR8,543.
- 20% of their remuneration.

For individuals taking up employment in Cyprus whose remuneration exceeds EUR100,000 per annum, a 50% deduction is allowed for the first ten years of employment.

Individuals receiving pensions from overseas may choose between taxation on the normal basis or opt for an alternative basis, with the first EUR3,420 being exempt from tax and the remainder taxed at 5%. The choice can be made each year.

Interest, dividends and profits from the sale of securities are exempt from tax. Interest and dividends (but not profits from the sale of securities) are subject to SDC tax at 30% and 17% respectively. Where interest is earned in the ordinary course of business or closely connected to the ordinary course of business of an individual, the progressive tax rates of income tax set out above apply.

Rental income is subject to:

- Income tax on 80% of the gross rent received.
- SDC tax at 3% on 75% of the gross rent received.

Companies, partnerships, and national and local government bodies must deduct SDC tax from rents they pay, and pay it over within the following month. In all other cases, the landlord must pay the SDC tax at the end of each half-year.

Inheritance tax and lifetime gifts

7. What is the basis of the inheritance tax or gift tax regime (or alternative regime if relevant)?

The Estate Duty (Amending) Law of 2000 abolished any form of succession tax on the deaths of persons domiciled in Cyprus occurring on or after 1 January 2000 (*see Question 2, Domicile*).

8. What are the inheritance tax or gift tax rates (or alternative rates if relevant)?

Not applicable (*see Question 7*).

9. Does the inheritance tax or gift tax regime apply to foreign owners of real estate and other assets?

Not applicable (*see Question 7*).

10. Are there any other taxes on death or on lifetime gifts?

There are no taxes on death or on lifetime gifts.

Taxes on buying real estate and other assets

11. Are there any other taxes that a foreign national must consider when buying real estate and other assets in your jurisdiction?

Purchase and gift taxes

The principal ancillary costs of acquiring immovable property in Cyprus are the transfer fee charged by the Department of Lands and Surveys, and stamp duty. These apply equally to resident and non-resident purchasers of any nationality.

Transfer fee. The transfer fee is charged on each tranche of the value of the property at progressive rates:

- Up to EUR85,430: 3%.
- EUR85,430 to EUR170,860: 5%.
- Above EUR170,860: 8%.

Therefore, the transfer fee on a property with a value of EUR500,000 is EUR33,166.

In order to stimulate the property market, the fee charged on transfers of immovable property until 31 December 2016 will be reduced by half. The reduction does not apply to property acquired under the foreclosure process prescribed in Part VIA of the Transfer and Mortgage of Immovable Property Law.

Stamp duty. The following rules apply to stamp duty:

- For transactions with a consideration up to EUR5,000 no stamp duty is payable.
- For transactions with a consideration in excess of EUR5,000 but not exceeding EUR170,000, stamp duty of EUR1.50 for every EUR1,000 or part thereof is payable.
- For transactions with a consideration in excess of EUR170,000, stamp duty of EUR2 for every EUR1,000 or part thereof is payable.
- The maximum stamp duty payable on a contract is EUR20,000.
- Where no amount of consideration is specified in the contract, the stamp duty is EUR35.
- For a transaction which is evidenced by several documents, stamp duty is payable on the main contract and ancillary documents are charged at a flat rate of EUR2.
- Stamp duty of EUR430 is payable on the creation of a trust under the International Trusts Law (*see Question 30*).

Stamp duty must be paid within 30 days from the date of execution of the relevant documents or, if they are executed abroad, within 30 days after they are received in Cyprus. If stamp duty is paid late, a surcharge of approximately 10% of the unpaid amount is payable if payment is made within six months after the due date. Otherwise the surcharge is twice the unpaid amount.

Annual taxes

Immovable property tax is payable on 30 September each year. It is calculated on the basis of the market value as at 1 January 1980 of immovable property that the taxpayer owned on the preceding 1 January.

For 2014, the rates applied to each successive tranche of the 1980 value are as follows:

- For the first EUR40,000 (EUR0 to EUR40,000): the rate is 0.6%.
- For the next EUR80,000 (EUR40,000 to EUR120,000): the rate is 0.8%.
- For the next EUR50,000, (EUR120,000 to EUR170,000): the rate is 0.9%.
- For the next EUR130,000, (EUR170,000 to EUR300,000): the rate is 1.1%.
- For the next EUR200,000, (EUR300,000 to EUR500,000): the rate is 1.3%.
- For the next EUR300,000 (EUR500,000 to EUR800,000): the rate is 1.5%.
- For the next EUR2.2 million (EUR800,000 to EUR3 million): the rate is 1.7%.
- For the surplus above EUR3 million: the rate is 1.9%.

Owners of property with a 1980 value of EUR12,500 or less are exempt. Above this threshold, tax is payable on the entire value, including the first EUR12,500.

The government has announced that it intends to rebase the tax for 2015 and subsequent years onto current values.

Council and other service charges, such as water and sewage charges, are also payable. They are much lower than in most European countries.

Wealth taxes

There are no wealth taxes in Cyprus.

Other

There are no other relevant taxes to consider.

12. What tax-advantageous real estate holding structures are available in your jurisdiction for non-resident individuals?

Natural persons, companies, partnerships or trusts can hold property in Cyprus. The choice of structure depends on the taxpayer's objectives. A Cyprus holding company can be a tax-efficient structure. A Cyprus International Trust (*see Question 30*) can hold real property situated in Cyprus and is a highly advantageous (tax-neutral) structure.

Property can be held either absolutely or in shares. The Cyprus government, and the Greek and Turkish religious institutions, such as the Greek Orthodox Church and the Muslim Evkaf, can also own property.

Taxes on overseas real estate and other assets

13. How are residents in your jurisdiction with real estate or other assets overseas taxed?

Income from overseas assets is taxed in the same way as income from assets in Cyprus. Relief for tax paid overseas is available either under a double tax treaty or, if there is no treaty, in the form of unilateral relief from Cyprus tax (*see Question 14*).

Capital gains on overseas assets are exempt from tax. If a double tax treaty provides that capital gains are taxable only in the country of residence of the taxpayer (as some of Cyprus's older treaties do) this can exempt the gain from taxation altogether.

International tax treaties

14. Is your jurisdiction a party to many double tax treaties with other jurisdictions?

Cyprus has concluded double taxation treaties with more than 50 jurisdictions (including the following EU jurisdictions:

Austria, Belgium, Germany, Greece, Malta and the UK, and jurisdictions outside the EU, such as China, India, the Russian Federation and the US). Treaties are under negotiation, or awaiting ratification, with many other jurisdictions (including Brazil, Iran and The Netherlands).

All double taxation treaties provide relief from double taxation by applying the credit method to the taxation of dividends and interest. Tax paid or payable in the other country reduces the liability of Cyprus residents for Cyprus income tax and SDC.

The Cyprus tax authorities will also grant unilateral relief from Cyprus tax on income received from a foreign country with which Cyprus has no double taxation treaty. This relief applies up to the amount of tax paid in the foreign country, and is granted by exemption, credit or deduction.

Cyprus's double taxation treaty network allows international transactions to be structured in a number of tax-efficient ways, particularly when combined with a Cyprus holding company and other fiscally beneficial entities.

WILLS AND ESTATE ADMINISTRATION

Governing law and formalities

15. Is it essential for an owner of assets in your jurisdiction to make a will in your jurisdiction? Does the will have to be governed by the laws of your jurisdiction?

It is strongly advisable for an owner of assets in Cyprus, particularly real property, to make a will in Cyprus. Cyprus law governs the disposal of immovable property in Cyprus, including restrictions regarding the statutory portion (*see Question 24*).

16. What are the formalities for making a will in your jurisdiction? Do they vary depending on the nationality, residence and/or domicile of the testator?

The testator must have testamentary capacity. The will is not valid unless it is in writing and executed in the following manner (*section 23, Wills and Succession Law (WSL)*):

- Signed by the testator.
- Signed by some other person:
 - on the testator's behalf;
 - in the testator's presence; and
 - under the testator's direction.
- The signature must be made or acknowledged by the testator in the presence of two or more witnesses present at the same time.
- The witnesses must witness and sign the will in the presence of the testator and of each other, but an attestation clause is unnecessary.
- If the will consists of more than one sheet of paper, each sheet must be signed or initialled by or on behalf of the testator and the witnesses.

Any will made in Cyprus must comply with these requirements, irrespective of the nationality, residence or domicile of the testator.

Law 96(I) of 2015 amends the WSL by inserting a new section 23A giving the court discretion to overlook or amend any grammatical or numeric errors in a will, provided that it has been presented with persuasive evidence by an interested party and that it considers it equitable to do so.

Redirecting entitlements

17. What rules apply if beneficiaries redirect their entitlements?

An heir can renounce the estate. In that case he will have no liability for the deceased's debts and will receive no benefit from the estate.

The heir must:

- Make a declaration in the prescribed form.
- File the declaration within three months of the date on which he became aware of:
 - the death of the deceased; and
 - the fact that he was an heir to the deceased.

As there are no succession taxes in Cyprus, this renunciation has no tax implications.

Validity of foreign wills and foreign grants of probate

18. To what extent are wills made in another jurisdiction recognised as valid/enforced in your jurisdiction? Does your jurisdiction recognise a foreign grant of probate (or its equivalent) or are further formalities required?

Validity of foreign wills

Wills executed in a foreign country, complying with the formalities required by the Wills and Succession Law and deposited with a Probate Registry in Cyprus are recognised by the Cyprus courts. The courts also recognise wills that meet the requirements of the Hague Convention.

Any other will is not accepted, and any property in Cyprus will devolve and will have to be administered according to the laws of intestacy.

Validity of foreign grants of probate

There is special provision (*Probates (Re-Sealing) Law*) for persons who both:

- Die in the UK or in any British Dominion or Commonwealth country.
- At the time of death, had property in Cyprus.

If probate is granted by a relevant court of a Commonwealth country, it may be re-sealed in Cyprus and the Cyprus court does not enquire further into the validity of the underlying will, and appoints an administrator to administer the estate in Cyprus.

The intended administrator must accompany his application to the court with copies of:

- Either the grant of probate and will, or the grant of letters of administration. The issuing court must certify the grant as a true copy.
- A power of attorney given to the foreign executor or administrator.

On completion of the administration, the administrator must file with the court:

- Final accounts of his administration.
- A declaration by the foreign executor or administrator that the administration in Cyprus was carried out to that executor or administrator's satisfaction.

Grants of probate issued in certain other countries can be registered in Cyprus under relevant international conventions or bilateral agreements.

For deaths after 17 August 2015, the new uniform European Certificate of Succession, under the EU Succession Regulation, will be recognized without further formalities.

Death of foreign nationals

19. Are there any relevant practical estate administration issues if foreign nationals die in your jurisdiction?

The key issue is whether the deceased left movable or immovable property in Cyprus. In that case, the usual issues apply (*see Questions 24 to 26*).

Administering the estate

20. Who is responsible for administering the estate and in whom does it initially vest?

Direct succession does not take place in Cyprus. The rights and liabilities attaching to the estate of the deceased are vested in the personal representatives (that is, the administrator of his estate or the executor of his will). The duty of the personal representatives is to pass the rights and liabilities to the heirs. The executor and the administrator derive their powers over the deceased's estate from different sources:

- **Executor.** The executor derives his powers from the deceased's will. The estate is vested in him at the time of the deceased's death.
- **Administrator.** The administrator derives his powers from the order of the court appointing him. At that stage, the estate vests in the administrator. However, the vesting operates as from the date of the deceased's death.

On the grant of probate or administration, the personal representative takes the place of the deceased for legal purposes and acquires all the deceased's rights and obligations. He can sue and be sued in all matters concerning the deceased's estate and his administration of it. Pending the grant of administration, the estate vests temporarily in the court, and for small estates, the court can make an order for summary administration. In that case, the probate registrar or any other public officer that the court may appoint will act as the administrator.

21. What is the procedure on death in your jurisdiction for tax and other purposes in relation to:

- **Establishing title and gathering in assets (including any particular considerations for non-resident executors)?**
- **Paying taxes?**
- **Distributing?**

Establishing title and gathering in assets

The personal representative must submit to the tax authorities a statement of assets and liabilities of the deceased within six months of the date of his appointment (*Administration of Estates Law, Cap.189 (AEL)*).

Procedure for paying taxes

If there is any liability for unpaid income tax or other forms of tax it must be settled by the personal representative to obtain a tax clearance certificate.

Distributing the estate

After paying any income tax that the deceased owed, and obtaining a clearance certificate from the Inland Revenue, the personal representative can:

- Transfer the immovable properties into the names of the legal heirs.
- Gather any funds of the deceased in bank accounts and distribute them to the heirs.

No transfer fees are payable on the distribution and there are no inheritance taxes in Cyprus (*see Question 7*).

22. Are there any time limits/restrictions/valuation issues that are particularly relevant to an estate with an element in another jurisdiction?

There are no features that are particularly relevant to an estate with a foreign element.

23. Is it possible for a beneficiary to challenge a will/the executors/the administrators?

The court has wide powers to resolve issues arising in connection with estates under section 53 of the Administration of Estates Law. Personal representatives, creditors, beneficiaries, next of kin and persons claiming through creditors or beneficiaries can apply to the court by originating summons for the determination of any of the following issues:

- Any question affecting the rights or interests of the person claiming to be creditor, beneficiary, next of kin or heir at law.
- The identification of any class of creditors or beneficiaries.
- An account provided by the personal representatives.
- Payment into court of funds held by the personal representatives.
- Direction of the executors to do, or to refrain from doing, any particular act.
- Approval of any sale, purchase, compromise or other transaction.
- Determination of any question arising in the administration of the estate.

Article 9 of Law 66(I) of 2012, which sets out limitation periods, provides that no action can be commenced questioning the validity of a will, or in relation to the estate of a deceased person, or any portion or part thereof or bequest, after eight years from the date of death. In the event that the claimant was absent from Cyprus, the limitation period will not be deemed to be complete unless one year has elapsed from the time that the claimant returned to Cyprus or became aware of the death (or, with reasonable diligence, could have become aware of the death).

The ability to apply to the court also extends to persons claiming to be entitled under the law, even though they may not be included in the will.

Succession regimes

24. What is the succession regime in your jurisdiction (for example, is there a forced heirship regime)?

The law of succession is incorporated in a number of enactments, the most significant of which are the:

- Wills and Succession Law (WSL).
- Administration of Estates Law.

The WSL deals with both wills and intestacy. The part dealing with wills is based on the English Wills Act of 1837. The part dealing with intestacy is based on the Italian Civil Code and reflects continental law (*see Question 28*).

Under the WSL, part of the deceased person's net estate (known as the statutory portion) must be reserved for close relatives who are alive at the time of the deceased person's death. Close relatives are the deceased person's:

- Spouse.
- Children, or where the children died in the deceased's lifetime, the descendants of those children.

The statutory portion is distributed according to the rules set out in the WSL (these also apply in the absence of a valid will or to any part of the estate that is not otherwise disposed of). The proportion of the net estate taken up by the statutory portion varies according to which relatives survive:

- A living child or a descendant of a child: the statutory portion is 75% of the estate's net value.
- A spouse or a parent, but not any children or their descendants: the statutory portion is 50% of the estate's net value.
- No surviving spouse, parent, child or descendant of a child: the statutory portion is reduced to nil and all the estate can be disposed of by will.

The statutory portion is paid in accordance with the intestacy rules (*see Question 28*).

The remaining amount of the net estate (known as the disposable portion) can be disposed of by will. A will that purports to dispose of more than the disposable portion of the testator's estate is valid. However, the disposition will be reduced proportionally so that it is limited to the disposable portion. The disposition will not be reduced where the testator leaves a surviving spouse but no children or descendants of children, and leaves more than the disposable portion, up to the value of his estate, to the surviving spouse.

Cyprus law does not recognise forced heirship claims against trust assets. The law relating to inheritance or succession in Cyprus or in any other country does not in any way affect any transfer or disposition of assets to a Cyprus International Trust or the validity of the trust (*International Trusts Law 1992 as amended*).

Forced heirship regimes

25. What are the main characteristics of the forced heirship regime, if any, in your jurisdiction?

The forced heirship regime is described above (*see Question 24*).

Avoiding the regime

Regaining testamentary freedom is usually straightforward. Individuals who enter Cyprus to take up permanent residence can establish a Cyprus International Trust under the International Trusts Law before becoming resident in Cyprus. If a Cyprus International Trust is not an option (for example, because the individual is a tax resident of Cyprus in the year preceding the year of creation of the trust) a local trust should provide a way around the forced heirship provisions, though without a Cyprus International Trust's other benefits.

Assets received by beneficiaries in other jurisdictions

The forced heirship regime takes into account assets received by beneficiaries in other jurisdictions. The forced heirship rights are mandatory on the forced heir.

Mandatory or variable

The forced heirship rights are mandatory on the forced heir.

Real estate or other assets owned by foreign nationals

26. Are real estate or other assets owned by a foreign national subject to your succession laws or the laws of the foreign national's original country?

Immovable property

Cyprus law, as the law where the property is sited (*lex rei sitae*), governs the disposal of immovable property in Cyprus. Therefore, the restrictions imposed by Cyprus law on the statutory portion apply regardless of the testator's domicile at the time of death.

Movable property

The law of the domicile of the testator at the time of his death governs the disposal of movable property, even where the testator was a Cypriot. Where the testator was domiciled in Cyprus at the time of his death, the rules set out in the Wills and Succession Law apply (see *Question 24*).

For information about the EU Succession Regulation on Practical Law Private Client, see *Practice note, EU Succession Regulation (Brussels IV)*.

27. Do your courts apply the doctrine of *renvoi* in relation to succession to immovable property?

This situation cannot arise as Cyprus law always governs the disposal of immovable property located in Cyprus (see *Question 26, Immovable property*).

INTESTACY

28. What different succession rules, if any, apply to the intestate?

The rules of intestacy apply if there is no valid will and to any part of the estate not disposed of by will (see *Question 24*). No distinction is made between movable and immovable property.

The persons entitled to succeed to the estate of a deceased person are divided into four classes:

- **First class.** This comprises the:
 - legitimate children of the deceased living at his death; and
 - descendants, living at the time of the death of the deceased, of any of the deceased's legitimate children who died in his lifetime.
- **Second class.** This comprises the father, mother, brothers and sisters of the deceased. It makes a distinction between the:
 - heirs living at the time of the death of the deceased; and
 - descendants of brothers or sisters who died in the deceased's lifetime.
- **Third class.** This comprises the ancestors (that is, grandparents and more remote lineal ancestors) of the deceased nearest in degree of kindred, living at the time of his death.
- **Fourth class.** This comprises the nearest relatives of the deceased living at the time of his death; up to the sixth degree of kindred (more remote relatives are excluded).

Distribution takes place after the deduction of the share of the surviving spouse (see *below*). The heirs of each class generally succeed equally. However, in the first and second classes the succession is *per stirpes*. This means that the heirs of the deceased will inherit equally and the descendants of each heir will inherit

their parent's share. In the third and fourth classes, the succession is *per capita*. This means that all the heirs of those classes will inherit equally. The persons of one class exclude persons of a subsequent class.

The estate of an individual who dies leaving no spouse and no relative within the sixth degree of kindred will become the property of the Republic of Cyprus.

The share of the net value of the estate (that is, after the debts and liabilities of the estate have been discharged) allocated to the surviving spouse varies according to the number and nature of other relatives surviving the deceased, as follows:

- Where the deceased has left a child or descendant of a child, the surviving spouse's share is equal to the share of each child.
- Where the deceased has left no child or descendant, but has an ancestor or descendant of an ancestor within the third degree of kindred as set out in Schedule II of the Wills and Succession Law (WSL), the surviving spouse is entitled to 50% of the net estate.
- Where the deceased is survived by an ancestor or descendant of the fourth degree of kindred, but no closer relative, the surviving spouse's share is 75% of the net estate.
- Where there is no surviving relative within the fourth degree of kindred or closer, the surviving spouse is entitled to the entire net estate.

When more than one lawful wife survives the deceased, the share given to the wife will be divided equally between the wives (*section 44, WSL*).

Property that the surviving spouse has received from the deceased under a marriage contract is not taken into account in calculating the surviving spouse's entitlement (*section 45, WSL*).

29. Is it possible for beneficiaries to challenge the adequacy of their provision under the intestacy rules?

It is not possible for beneficiaries to challenge the adequacy of their provision under the intestacy rules.

TRUSTS

30. Are trusts (or an alternative structure) recognised in your jurisdiction?

Type of trust and taxation

Trusts are a well-established concept in Cyprus. The Trustee Law of 1955 (*Cap 193*), which mirrors the UK's Trustee Act 1925, is the basic law dealing with the trust relationship. The International Trusts Law of 1992 is based on the Trustee Law 1955 and governs international trusts. International trusts are defined as trusts in respect of which:

- Neither the settlor nor any of the beneficiaries was resident in Cyprus for the tax year preceding the year of establishment of the trust.
- There is at least one trustee resident in Cyprus at all times.

In 2012, the International Trusts Law of 1992 was subject to major reform and modernisation, giving Cyprus the most modern and beneficial trust regime in Europe and possibly the world.

Both domestic and international trusts are effectively treated as transparent vehicles for income tax purposes (that is, tax is levied on the trust as a proxy for the beneficiaries, as if its income were income of the beneficiaries). Trustees are required to:

- Make returns to the Inland Revenue.

- Pay any tax due on the trust income.
- Supply details of trust beneficiaries and accounts.

Following the 2012 amendment to the International Trusts Law of 1992, Cyprus International Trusts can have Cyprus tax residents as beneficiaries. Resident beneficiaries will be subject to taxation in Cyprus at normal rates on income earned from the trust.

The instrument creating an international trust is subject to stamp duty of EUR430 (*section 12(2), International Trusts Law*).

Applicable law

The laws of Cyprus govern trusts settled in Cyprus. However, the law applicable to an international trust can be expressly changed to a foreign law provided that the new law recognises the validity of the trust and the interests of the beneficiaries (*section 9, International Trusts Law*). A trust established in a foreign jurisdiction can, under its terms, select Cyprus law provided that this complies with the law of the foreign jurisdiction.

Residence of trusts

As a trust is not a legal entity, its residence is regarded as the place of residence of the trustees. In the case of local trusts, the Trustee Law gives a court the power to appoint a new trustee where a trustee remains out of Cyprus for more than one year. It is therefore unlikely that a court would appoint a non-resident trustee.

The Cyprus International Trusts Law requires that at least one trustee is a resident of Cyprus.

Registration of trusts

Professional corporate and fiduciary service providers must:

- Identify and verify the main protagonists of trusts governed by Cyprus law that they establish or administer.
- Keep accurate and up-to-date information and documentation regarding the trustee, the settlor, the beneficiaries, any protector or class of beneficiaries, fund manager, accountant, tax consultant, and any other person exercising effective control over the trust, as well as on the activities of the trust.

The bodies responsible for supervising service providers (the competent authorities) are:

- Cyprus Securities and Exchange Commission.
- Cyprus Bar Association.
- Institute of Certified Public Accountants of Cyprus.

The competent authorities must maintain registers of trusts subject to Cyprus law, containing the following information:

- The name of the trust.
- The name of the trustee at all relevant times.
- The date of creation of the trust.
- The date of any change in the law governing the trust.
- The date of termination of the trust.

The service provider must submit this information to the relevant competent authority within 15 days of the establishment of a trust. Subsequent changes in any relevant information, including termination of the trust or a change in the governing law from Cyprus law, must be notified within 15 days.

In the event of termination of the trust or a change in the governing law from Cyprus law, the register will indicate that the trust has been terminated and the information on the trust will be kept for five years.

The trust registers to be maintained by each competent authority are not publicly available or accessible and are only available for inspection by other authorities.

31. Does your jurisdiction recognise trusts that are governed by another jurisdiction's laws and are created for foreign persons?

Cyprus law recognises trusts created for foreign persons that are governed by the law of another jurisdiction, provided that the relevant domestic legal requirements are met (*see Question 30*).

32. What are the tax consequences of trustees (for example, of an English trust) becoming resident in/leaving your jurisdiction?

There are no specific statutory provisions in Cyprus tax legislation regulating the migration of trusts to or from Cyprus.

Provided that no immovable property in Cyprus is involved, the migration of trusts in itself does not give rise to any exit or similar taxes.

Trustees who are managed and controlled in Cyprus will be subject to income tax in Cyprus on their trustee fees.

33. If your jurisdiction has its own trust law:

- Does the law provide specifically for the creation of non-charitable purpose trusts?
 - Does the law restrict the perpetuity period within which gifts in trusts must vest, or the period during which income may be accumulated?
 - Can the trust document restrict the beneficiaries' rights to information about the trust?
-

Purpose trusts

As far as local trusts are concerned, only charitable purpose trusts and analogous fixed category non-charitable purpose trusts, (for example, for the maintenance of family tombs), are permitted. A Cyprus International Trust can be a purpose trust, provided that the document creating the trust specifies the event or events on which the trust terminates and provides for the disposition of net assets on termination.

Perpetuities and accumulations

As far as local trusts are concerned, the perpetuity periods of Cyprus trusts are based on the old English equity principles, so that no trust, except for charitable trusts, can continue in perpetuity. Trusts endure for either the period of the life or lives in being, plus 21 years, or, where there is no life in being, merely for 21 years. The accumulation period of a trust can be extended to include the entire perpetuity period.

A Cyprus International Trust can remain in force in perpetuity, regardless of any statutory provision of Cyprus or any other country to the contrary. The income of an international trust can be accumulated for the entire duration of the trust.

Beneficiaries' rights to information

Under the general law, trustees have an equitable duty to provide beneficiaries with trust information, including the terms of the trust, particulars of the trust property and how it is invested and the accounts of the trust.

Section 11 of the International Trusts Law as amended empowers (but does not compel) the trustees to provide a beneficiary with financial statements or any documents or information relating to their receipts and payments which form part of those accounts if the beneficiary has requested them and if, in the trustees' opinion,

disclosure is necessary and in the best interests of the trust. Disclosure is limited to the accounts and the underlying documents and information concerning receipts and payments.

Except as described above, and subject to the terms of the instrument creating the trust, the trustee, protector, enforcer or any other person may not divulge any documents or information which disclose the name of the settlor or any of the beneficiaries or which relate to the trustees' deliberations regarding the exercise or proposed exercise of their powers and the discharge of their duties, or which relate to the financial position of the trust, except in accordance with a court order requiring disclosure.

34. Does the law in your jurisdiction recognise claims against trust assets by the spouse/civil partner of a settlor or beneficiary on the dissolution of the marriage/partnership?

The general position is that Cyprus law does not recognise such claims in the context of validly constituted trusts where such claims are contrary to Cyprus law.

35. To what extent does the law of your jurisdiction allow trusts to be used to shelter assets from the creditors of a settlor or beneficiary?

The Cyprus International Trust is an extremely powerful asset protection tool, for the following reasons:

- Regardless of any bankruptcy or liquidation laws in Cyprus or in any other country, whether the trust is voluntary and without consideration, or made for the benefit of the settlor or his family members, the trust is not void or voidable. This is the case unless it is proved to the court that the trust was made with intent to defraud persons who were creditors of the settlor at the time when the payment or transfer of assets was made to the trust (*International Trusts Law*). The burden of proof of the settlor's intent to defraud lies with the person who is seeking to annul the transfer.
- Any action for avoidance of the trust must have begun within two years from the date of transfer or disposal of the assets to the trust.
- Cyprus is not a party to the arrangements set out in sections 426(4) and (5) of the Insolvency Act 1986, under which British courts and the courts of certain other jurisdictions are required to assist each other in insolvency cases. This gives Cyprus a distinct advantage over many other Commonwealth countries, in particular the Caribbean islands and Bermuda.
- The Charitable Uses Act 1601 (also known as the Statute of Elizabeth), which invalidates arrangements made to hide assets from future creditors, is expressly excluded in Cyprus.

The Amending Law of 2012 strengthens these defences by explicitly providing that any question relating to the validity or administration of an international trust or a disposition to an international trust will be determined by the laws of Cyprus without reference to the law of any other jurisdiction. It also makes clear that the powers and duties of the trustees and of any protectors of the trusts are governed exclusively by Cyprus law.

Furthermore, it provides that dispositions to a trust cannot be challenged on the grounds that they are inconsistent with the laws of another jurisdiction, for example regarding family and succession issues, or on the grounds that the other jurisdiction does not recognise the concept of trusts.

Finally, the Amending Law of 2012 entrenches jurisdictional protection by providing that an international trust containing a choice of law clause in favour of Cyprus law is fully protected from

unfounded foreign judicial claims as a matter of public policy and order.

CHARITIES

36. Are charities recognised in your jurisdiction?

Charities are recognised in Cyprus and charitable status provides a wide range of tax benefits and exemptions. The Ministry of Finance publishes a list of qualifying charities on its website. Charitable status is not defined in any law or regulations and the Ministry does not publish the criteria it applies in determining whether an organisation qualifies.

37. If charities are recognised in your jurisdiction, how can an individual donor set up a charity?

The most common forms of charity in Cyprus are:

- Private company limited by guarantee.
- Local Trust.
- International Trust.

The key step is obtaining charitable status, which is granted by the Ministry of Finance. The Ministry does not publish the criteria it applies when granting charitable status, but they appear to be the following:

- The body concerned must be non-profit making.
- The body concerned must not engage in commercial activities or compete with businesses.
- The body concerned can rent out any real property it owns, but must not sell, invest or develop real property (however, exemptions may be given depending on the circumstances of the case).
- The board members of the body concerned must not be paid for serving on the board, although payment for other services they provide may be permissible.
- Relatives of board members must not hold paid employment in the organisation, and there should be no other similar potential conflicts of interest.
- The body concerned must spend a significant part of its income each year (typically 75% to 80%).
- The charitable organisation's constitution must provide that on dissolution, assets are to be transferred to an approved organisation with similar purposes.

Audited financial statements must be submitted to the Ministry every year.

38. What are the benefits for individuals when setting up charitable organisations?

Income of approved charities is exempt from income tax and donations to approved charities are deductible for income tax. Disposals to an approved charity are exempt from capital gains tax and no immovable property tax is chargeable on property owned by an approved charity.

There are a few overseas charities on the list of approved charities, so it appears that in principle they should be able to access these benefits by seeking approval.

OWNERSHIP AND FAMILIAL RELATIONSHIPS

Co-ownership

39. What are the laws regarding co-ownership and how do they impact on taxes, succession and estate administration?

The concept of joint ownership of property does not exist in Cyprus law. Co-owners can hold property in specified shares. On the death of a co-owner, his share in the property will devolve in accordance with his will or the rules of intestacy.

Familial relationships

40. What matrimonial regimes in trust or succession law exist in your jurisdiction? Are the rights of cohabitants/civil partners in real estate or other assets protected by law?

A share in the statutory portion and the undisposed portion of a deceased spouse is available to the surviving spouse (see *Questions 24 and 28*).

The law does not protect the rights of cohabitants or civil partners in property or other assets.

41. Is there a form of recognised relationship for same-sex couples and how are they treated for tax and succession purposes?

There is no form of recognised relationship for same-sex couples.

42. How are the following terms defined in law:

- Married?
- Divorced?
- Adopted?
- Legitimate?
- Civil partnership?

Married

This means a person who has duly and legally completed a wedding ceremony (whether civil or religious). The term married is not statutorily defined. Cyprus does not recognise same-sex marriages.

Divorced

This describes an individual whose marriage has been legally dissolved by a judgment of a court of competent jurisdiction.

Adopted

This means a person who has been adopted under an adoption order recognised by Cyprus law, particularly the Adoption Law of 1995.

Legitimate

This means a child born in lawful wedlock. However, for most purposes there is no distinction between legitimate and illegitimate children since Cyprus is a signatory to the European Convention on the Legal Status of Children Born out of Wedlock, which was ratified by Law 50 of 1979. Article 9 of the Convention provides that a child born out of wedlock will have the same right of succession to the estate of its father and its mother and of a member of its father's or mother's family as if it had been born in wedlock. The Wills and Succession Law (WSL) is not applied in the event of inconsistency with any obligation imposed by treaty (*section 54, WSL*).

Civil partnership

Civil partnerships are not recognised in Cyprus.

Minority

43. What rules apply during the period when an heir is a minor? Can a minor own assets and who can deal with those assets on the minor's behalf?

The personal representative can transfer immovable properties into the name of minor heirs and can deposit funds in bank accounts opened in their name. Thereafter, disposal of the immovable properties or of the funds in the name of the minor heir can be effected only with the court's leave. To obtain leave, the applicant must prove to the court's satisfaction that the disposal is for the minor's benefit.

Capacity and power of attorney

44. What procedures apply when a person loses capacity? Does your jurisdiction recognise powers of attorney (or their equivalent) made under the law of other jurisdictions?

A person who is not of sound mind, memory, and understanding or who has not reached the age of 18 years cannot make a valid will (*section 22, Wills and Succession Law* and *section 42, Administration of Estates Rules 1955*).

PROPOSALS FOR REFORM

45. Are there any proposals to reform private client law in your jurisdiction?

A new law is passing through the legislative process that will amend the Foundations Law, and provide a new, modern framework for the establishment of foundations as an alternative to trusts.

ONLINE RESOURCES

The Government Printing Office

W www.mof.gov.cy/mof/gpo/gpo.nsf/dmlindex_en/dmlindex_en?OpenDocument

The website of the Government Printing Office contains details of laws and law reports available for purchase and instructions on how to order them.

This website is not necessarily complete or up-to-date.

The Office of the Law Commissioner

W www.olc.gov.cy

The website of the office of the Law Commissioner contains unofficial translations into English of selected items of legislation. The translations are for guidance only. The official language text (usually Greek) is the definitive text.

This website is not necessarily complete or up-to-date.

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Recent transactions

- Asset acquisition and advice on ownership structures for ultra-high net worth individuals.
- Advising international investment funds on acquisition of assets in Cyprus.
- Advising leading global organisations on the Cyprus law and tax aspects of internal reorganisations.
- Advising a multinational private equity and venture capital company on establishing carried interest schemes and other senior management incentives.

Languages. Greek, English, Spanish

Professional associations/memberships. STEP; International Academy of Estate and Trust Law.

Publications

- Trusts and Trustees.
- World Trust Survey, *Oxford University Press*.
- Planning and Administration of Offshore and Onshore Trusts, *Tottel Publishing*.
- European Cross- Border Estate Planning, *Sweet & Maxwell*.
- International Succession, *Oxford University Press*.

Professional qualifications. Cyprus, 1968

Areas of practice. Immovable property; wills; succession and probate; foreign investment in Cyprus.

Recent transactions

- Property aspects of EUR500 million property development joint venture.
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- Property aspects of EUR500 million property development joint venture.

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Publications

- Handbook of Cyprus Laws, *Nomiki Bibliothiki*.
- Neocleous's Introduction to Cyprus Law, *Andreas Neocleous & Co LLC*.