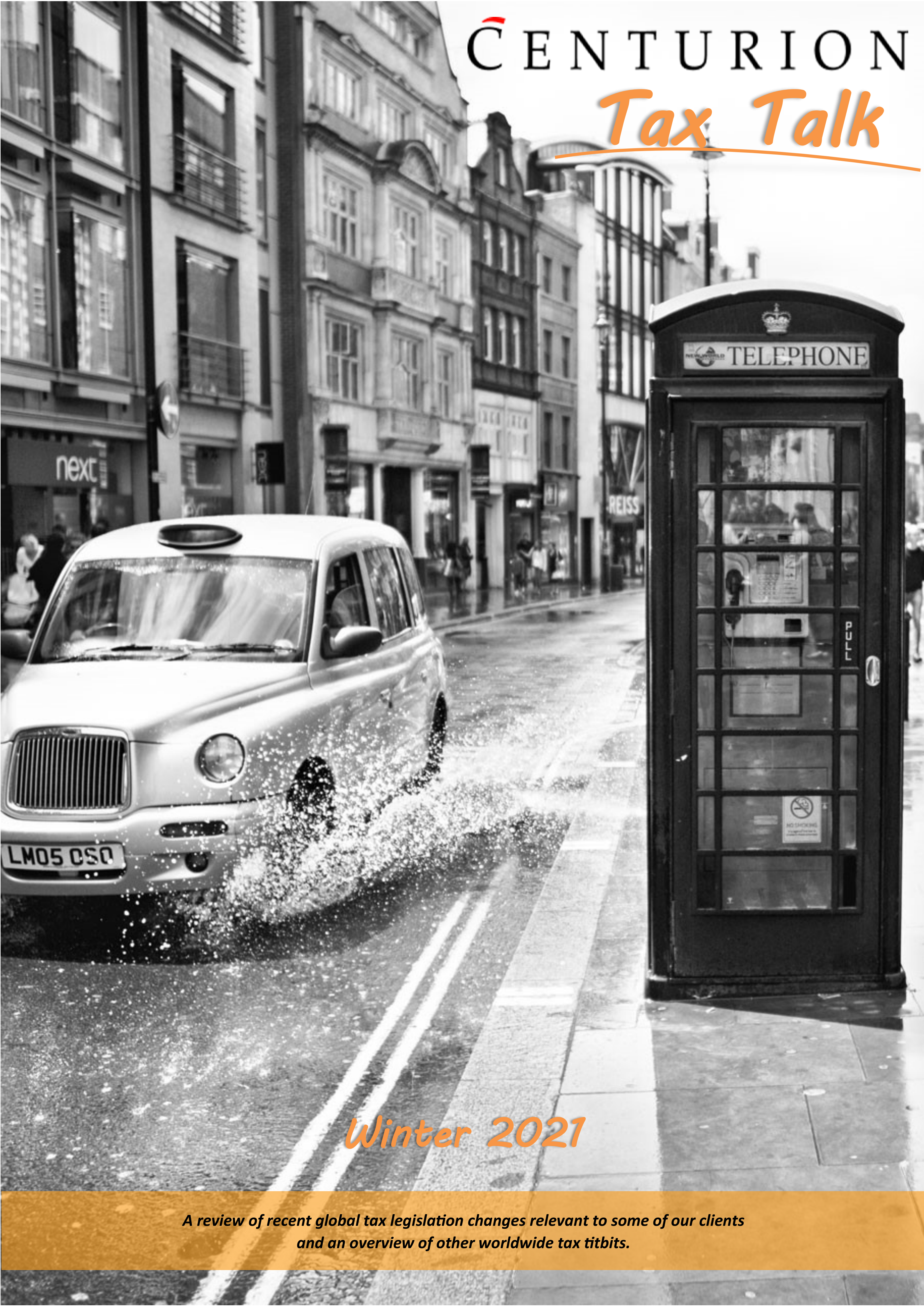
CENTURION

Tax Talk



Winter 2021

A review of recent global tax legislation changes relevant to some of our clients and an overview of other worldwide tax titbits.

Thinking of establishing a presence in the UK? An overview of life after Brexit

Post-Brexit Immigration

One year after UK decided to exit the European Union (EU), UK has now officially completed its transition period and is finally free from EU rules. "Post-Brexit" UK comes with significant changes to the immigration system where there will no longer be free movement for EU citizens who want to come to live and work in the UK. The introduction of a points-based system (PBS), applicable as from 1st of January 2021 to anyone, EU and non-EU individuals alike, wishing to live and work in the UK, aims at favouring the individual's skills over which country they come from. Thus points will be awarded for key requirements, such as level of English or job offer from an approved employer, and individuals who have obtained an acceptable number of points (deemed to be 70 or higher) will be allocated a visa.

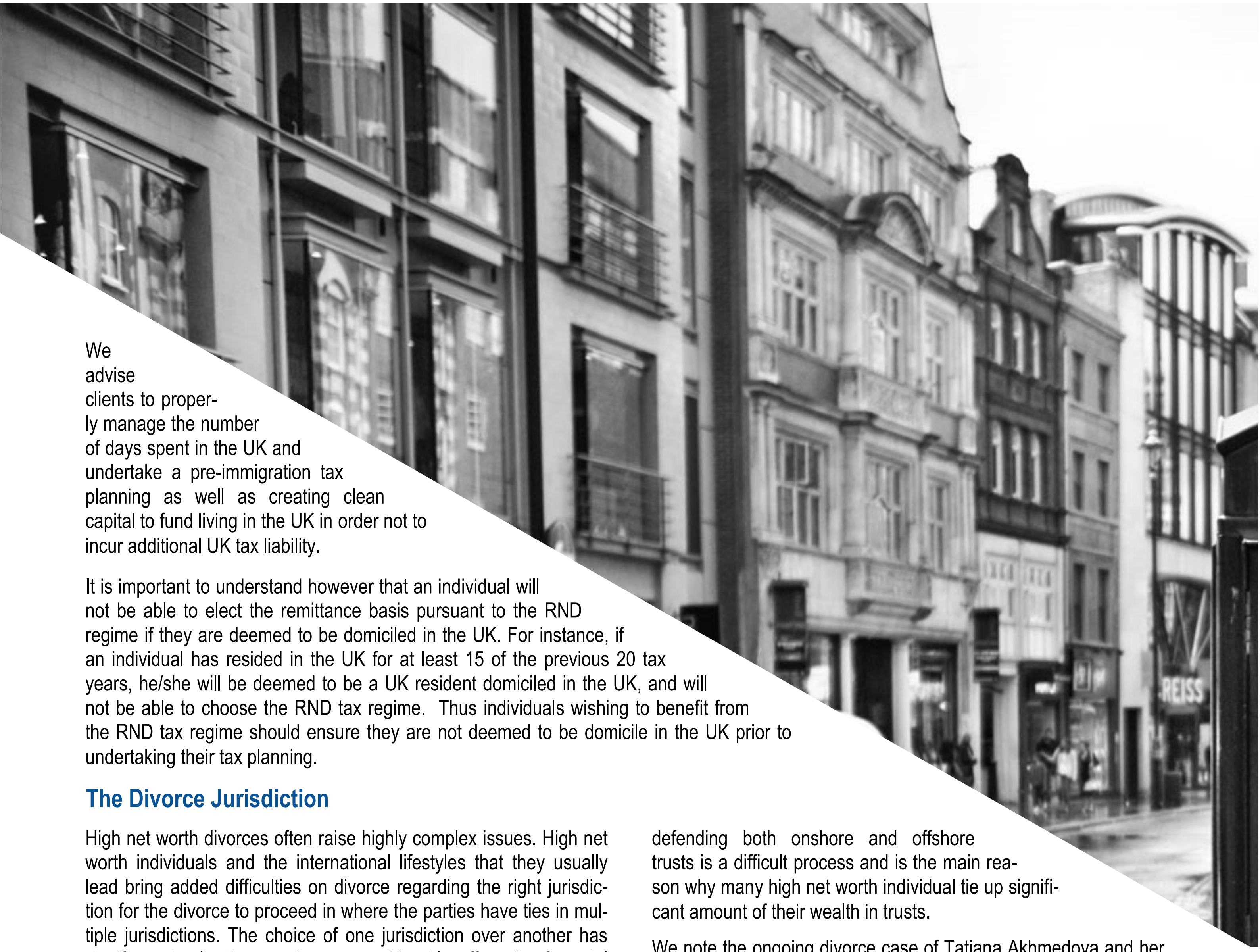
As alarming as that may seem to individuals wishing to relocate to the UK, there are alternative routes available without them having to comply with the visa/immigration requirements. For instance the EU Settlement Scheme allows EU, EEA and Swiss nationals, together with their families, to live in the UK with pre-settled or settled status for up to 5 years, provided that they are in the UK on or before 31 December 2020 and the application for pre-settled or settled status is made before 30 June 2021. Another option available for high-net-worth individuals wishing to immigrate to the UK is through the Tier 1 (Investor) visa which allows temporary residency in the UK for the investor and their family for around 3 years and can be extended for 2 additional years. Individuals can then apply for a settled status or obtain an "indefinite leave to remain" in the UK.

Regardless of which route (i.e. the EU Settlement Scheme route or the Tier 1 (Investor) visa route) an individual may decide to opt for, there is scope to apply for British Citizenship provided that the individual stayed in the UK for 12 months after obtaining settled status via the first route or indefinite leave to remain in the UK via the second route. The UK Government has also announced the introduction of a visa for British National (Overseas) citizens (BNOs) thus creating one additional route for Hong Kong residents wishing to work or study in the UK. BNOs will subsequently be able to apply for settled status after 5 years of residence in the UK and will be eligible for British citizenship after 12 additional months.

UK Non-Domiciled Taxation

One of the regimes thankfully not impacted by Brexit is the Resident Non-Domiciled (RND) tax regime. The remittance basis is an alternative tax treatment under the RND tax regime which is available to non-domiciled individuals who are resident in the UK and have foreign income and gains. As opposed to the usual arising basis where UK tax residents are taxable on their worldwide income and gains, under the remittance basis, RND individuals are subjected to UK tax only on UK sourced income and gains, together with foreign income and gains which are remitted to the UK. Under the RND tax regime therefore, property remitted to the UK by either a spouse, minor children, minor grandchildren, a company controlled by that individual or the trustees of a trust of which they are a beneficiary, or a body connected with such a trust, will also be taxed.

Thus with efficient tax planning, the RND tax regime offers significant tax advantages to individuals holding assets and cash outside the UK and is one of the reasons why UK remains a sought-after jurisdiction for high-net-worth individuals looking to relocate. Because of the advantages that the RND tax regime offers, individuals may consider becoming a UK tax resident. The number of days spent in the UK will therefore be a key factor for immigration purposes in determining UK residency.



We advise clients to properly manage the number of days spent in the UK and undertake a pre-immigration tax planning as well as creating clean capital to fund living in the UK in order not to incur additional UK tax liability.

It is important to understand however that an individual will not be able to elect the remittance basis pursuant to the RND regime if they are deemed to be domiciled in the UK. For instance, if an individual has resided in the UK for at least 15 of the previous 20 tax years, he/she will be deemed to be a UK resident domiciled in the UK, and will not be able to choose the RND tax regime. Thus individuals wishing to benefit from the RND tax regime should ensure they are not deemed to be domicile in the UK prior to undertaking their tax planning.

The Divorce Jurisdiction

High net worth divorces often raise highly complex issues. High net worth individuals and the international lifestyles that they usually lead bring added difficulties on divorce regarding the right jurisdiction for the divorce to proceed in where the parties have ties in multiple jurisdictions. The choice of one jurisdiction over another has significant implications and may considerably affect the financial consequences. London is often hailed as ‘the divorce capital of the world’ because of its ability to bring about a fair financial result on divorces where other jurisdictions may be provide far less generous financial provision. The rules to establishing jurisdiction are complex. Whether someone is entitled to have their divorce heard under the Family Division of the High Court of England and Wales will depend on where the parties are domiciled and what their habitual residence is.

Another added difficulty in high net worth divorces is that assets are often held in complex structures, often involving trust. Attacking and defending both onshore and offshore trusts is a difficult process and is the main reason why many high net worth individual tie up significant amount of their wealth in trusts.

We note the ongoing divorce case of Tatiana Akhmedova and her oligarch ex-husband Farkhad Akhmedov under the Family Division of the High Court of England and Wales, where the largest divorce award, an approximate sum of GBP 435 million, is reported to have been ordered by the English court. However, some four years after, the ex-wife has recovered only GBP 5 million, mainly because the ex-husband has dissipated many of his assets through the combined use of trust structures, shell companies and transferring beneficial ownership to his son.

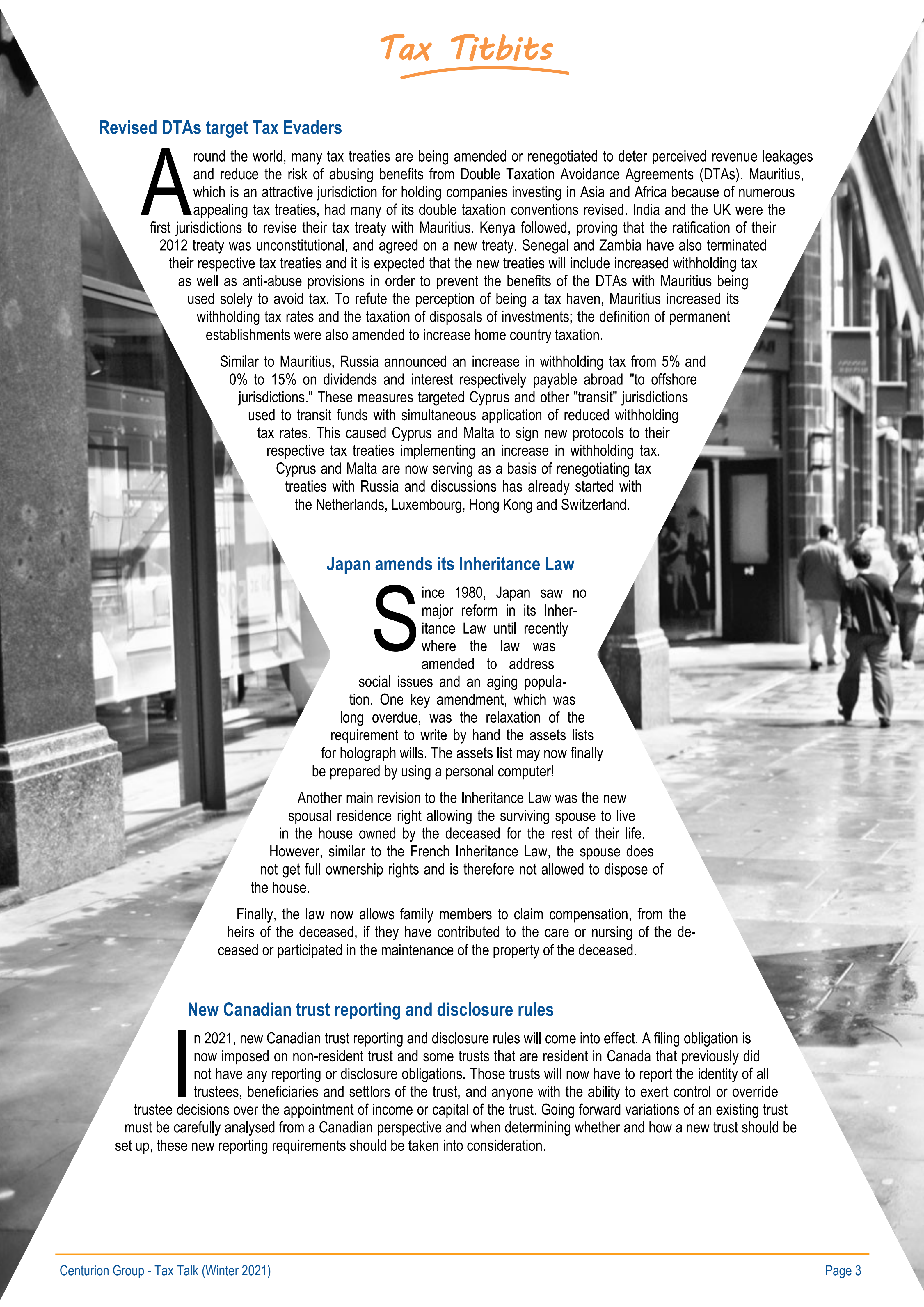
UK Real Estate

2020 saw UK residential property prices at a record high, which is almost unbelievable given the health and economic turbulences that the year witnessed. A closer look into this phenomenon shows that it was mainly due to the stamp duty holiday initiated to prevent the collapse of house prices. Experts believe that, while predicting the behavior of the UK property market is not a science, now that the uncertainties around Brexit are over and vaccination programmes have started, the best guess is that property prices will ‘level off’ in 2021, but a 2008-style collapse is very unlikely. Following the 2016 EU Referendum, it was noted that investors continued to acquire property in the UK, albeit with a higher degree of caution. That caution is now probably less attributable to the effects of Brexit but more due to the implications of the pandemic.

There is also widespread speculation that instead of prices moving up or down, there may alternatively be a “sideways” move, where attention will be diverted to property in the suburbs and the countryside. Irrespective of the behavior of the UK property market, experts agree that the post-Brexit UK property market offers strong long-term profit potential for international investors and high net worth individuals.

Get In Touch

Our Tax Planning team has a number of solutions for those contemplating a move to the UK or wishing to acquire residential real estate and is ready to advise and assist on various tax implications associated with different structures including trusts, pensions and funds.



Tax Titbits

Revised DTAs target Tax Evaders

Around the world, many tax treaties are being amended or renegotiated to deter perceived revenue leakages and reduce the risk of abusing benefits from Double Taxation Avoidance Agreements (DTAs). Mauritius, which is an attractive jurisdiction for holding companies investing in Asia and Africa because of numerous appealing tax treaties, had many of its double taxation conventions revised. India and the UK were the first jurisdictions to revise their tax treaty with Mauritius. Kenya followed, proving that the ratification of their 2012 treaty was unconstitutional, and agreed on a new treaty. Senegal and Zambia have also terminated their respective tax treaties and it is expected that the new treaties will include increased withholding tax as well as anti-abuse provisions in order to prevent the benefits of the DTAs with Mauritius being used solely to avoid tax. To refute the perception of being a tax haven, Mauritius increased its withholding tax rates and the taxation of disposals of investments; the definition of permanent establishments were also amended to increase home country taxation.

Similar to Mauritius, Russia announced an increase in withholding tax from 5% and 0% to 15% on dividends and interest respectively payable abroad "to offshore jurisdictions." These measures targeted Cyprus and other "transit" jurisdictions used to transit funds with simultaneous application of reduced withholding tax rates. This caused Cyprus and Malta to sign new protocols to their respective tax treaties implementing an increase in withholding tax. Cyprus and Malta are now serving as a basis of renegotiating tax treaties with Russia and discussions has already started with the Netherlands, Luxembourg, Hong Kong and Switzerland.

Japan amends its Inheritance Law

Since 1980, Japan saw no major reform in its Inheritance Law until recently where the law was amended to address social issues and an aging population. One key amendment, which was long overdue, was the relaxation of the requirement to write by hand the assets lists for holograph wills. The assets list may now finally be prepared by using a personal computer!

Another main revision to the Inheritance Law was the new spousal residence right allowing the surviving spouse to live in the house owned by the deceased for the rest of their life. However, similar to the French Inheritance Law, the spouse does not get full ownership rights and is therefore not allowed to dispose of the house.

Finally, the law now allows family members to claim compensation, from the heirs of the deceased, if they have contributed to the care or nursing of the deceased or participated in the maintenance of the property of the deceased.

New Canadian trust reporting and disclosure rules

In 2021, new Canadian trust reporting and disclosure rules will come into effect. A filing obligation is now imposed on non-resident trust and some trusts that are resident in Canada that previously did not have any reporting or disclosure obligations. Those trusts will now have to report the identity of all trustees, beneficiaries and settlors of the trust, and anyone with the ability to exert control or override trustee decisions over the appointment of income or capital of the trust. Going forward variations of an existing trust must be carefully analysed from a Canadian perspective and when determining whether and how a new trust should be set up, these new reporting requirements should be taken into consideration.

Australian court ruling on Capital Gains Tax

The Federal Court of Australia recently supported the imposition of capital gains tax (CGT) on trustees distributing capital gains to non-resident beneficiaries, even where the gains were related to assets that were not taxable Australian property (TAP).

The court case shows a trustee from an Australian discretionary trust that made capital gains on the sale of shares that were not TAP and then distributed all of the capital gains to a non-resident beneficiary. The non-resident beneficiary argued that he was not liable to CGT, since the CGT event happened in relation to a CGT asset that is not TAP. The court however ruled that the capital gain that is received by a beneficiary because of a CGT event in relation to a CGT asset that is owned by a trust does not qualify as "a capital gain from a CGT event." This thus made the non-resident beneficiary liable for CGT on the capital gains on the sale of the shares. However, had the trustees distributed the shares to the non-resident beneficiary where the non-resident beneficiary himself held the shares that were disposed of and the capital gains were made directly by him, then the non-resident beneficiary would have been exempted from CGT.

This case reiterates the importance of the role of professional trustees in ensuring that beneficiaries' interests are looked after and that they do not incur unnecessary tax leakages due to poor asset management. A comprehensive approach is always advisable where the use of Australian versus non-Australian discretionary trusts should be carefully considered as well as any tax implications to ensure that beneficiaries are not taxed twice in the absence of DTAs with their respective jurisdictions.

David Rawson-Mackenzie founded Centurion Group in 1995, as a financial services company providing corporate, trust and fund services. David heads up tax advisory services for the Group.

Neermal Poonie re-joined Centurion in January 2021 having previously worked for one of its financial arm. He is currently an Executive Director of Centurion Administration Services and responsible for Business Development across the Group's different entities.

UK
33 St. James's Square
London SW1Y 4JS
Tel: +44 207 079 5853

Hong Kong
Room 902, Wilson House
19-27 Wyndham Street
Tel: +852 2117 0814

Mauritius
7th Floor, The CORE
62 Cybercity, Ebene
Tel: +230 454 7008

General Enquiries:
info@groupcenturion.com

Website:
www.groupcenturion.com

Contact Person:
Neermal Poonie
n.poonie@groupcenturion.com