CELEBRATING 5 YEARS OF THE PRIVATE CLIENT GLOBAL ELITE MEMBERSHIP

THE MONTH

SEPTEMBER 2024

ALL CHANGE:
POLITICAL EFFECTS ON PRIVATE CLIENT

CONTENTS.

WELCOME.

RHIANNON WINTER VAN ROSS

VP, Private Client & Global Memberships, ALM

Welcome to The Month

A monthly magazine with key takeaways, highlights and content driven by our community.

As we celebrate the five-year anniversary of our Private Client Global Elite, I want to take a moment to express my deep gratitude to each of you. Your engagement and contributions have been instrumental in shaping this vibrant community into what it is today—a global network of like-minded professionals who are not only leaders in their fields but also deeply committed to the values of collaboration and connection.

For our September edition, we have chosen the theme of 'All Change: Political Effects on Private Client'. In this issue we explore the critical intersection of the political climate and the private client legal landscape. In an era marked by rapid political shifts and evolving regulations, the role of the private client lawyer has never been more crucial.

This issue will dive into how changes in legislation, taxation, and international relations impact our clients' needs and our practice. From navigating complex estate planning to addressing concerns around wealth preservation, our ability to adapt to these changes is vital.

As we share insights and strategies, The Month is a tool that we hope sets a collaborative environment that empowers us to support our clients effectively in these uncertain times. Together, we can rise to the challenges ahead and ensure that we provide the best possible guidance.

Grab a cup of coffee, turn off your emails and catch up with what's going on in your community.

We hope you will find this a useful and enjoyable read. If you are ever

interested in including any content then please do get in touch with Francesca Ffiske (**fffiske@alm.com**) and Abigail Harris (**aharris@alm.com**)

All my best,

Rhiannon

2024 - 2025 CALENDAR.

Private Client Exchange France
3 - 4 October 2024 - Château Saint-Martin & Spa, Cote D'Azur, France

An Evening with Friends Miami
23 October 2024 - Beach Bar at Soho Beach House, Miami, US

Minds of the Future
23 - 25 October 2024 - The Lygon Arms, Broadway, UK

International Private Client Forum
13 - 16 November 2024 - Villa d'Este, Lake Como, Italy

Private Client Exchange UK
28 - 29 November 2024 - Cliveden House, Berkshire, UK

Private Client Global Elite Lunch Dubai
9 January 2025 - The Guild, Dubai, UAE

Private Client Global Strategy Forum
22 - 24 January 2025 - The Gleneagles Hotel, Auchterarder, Scotland

Trust & Estates Litigation Forum
5 - 7 February 2025 - La Mamounia, Marrakesh, Morocco

Private Client Global Elite Dinner
26 February 2025 - The Twenty Two, London, UK

Private Client Forum Americas
12 - 14 March 2025 - Banyan Tree, Playa Del Carmen, Mexico

Private Client Exchange Switzerland
27 - 28 March 2025 - Guarda Val, Lenzerheide, Switzerland

Private Client Women's Day
6 March 2025 - Hotel Cafe Royal, London, UK

Minds of the Future Day
10 April 2025 - Hotel Cafe Royal, London, UK

Private Client Exchange Italy
27 - 28 April 2025 - Villa La Massa, Chianti, Italy

Private Client Exchange Bermuda
12 - 13 May 2025 - Hamilton Princess & Beach Club, Bermuda

Private Client Exchange France
2 - 3 October 2025 - Château Saint-Martin & Spa, Cote D'Azur, France

International Private Client Forum
12 - 15 November 2025 - Villa d'Este, Lake Como, Italy

Please note that events in GOLD are residential events which include our delegates' accommodation within their membership. Please note: All dates and locations are subject to change

CHRISTINA LAMB AWARDED HONORARY FELLOWSHIP FROM UNIVERSITY COLLEGE OXFORD

Congratulations to Christina Lamb OBE from Private Client Global Elite

We are thrilled to announce that Christina Lamb OBE, a former keynote speaker at Villa d'Este, has been awarded the prestigious Chesney Gold Medal by the Royal United Services Institute. This honor recognizes her lifetime contribution to international defense and security, joining the ranks of past recipients like Winston Churchill and Henry Kissinger.

Christina is one of Britain's leading foreign correspondents and bestselling authors, known for her extensive reporting from global conflict zones. Her accolades include 15 major journalism awards, including five-time Foreign Correspondent of the Year, and the Prix Bayeux for war reporting. Currently Chief Foreign Correspondent for The Sunday Times, she is renowned for highlighting the impact of war on women.

Christina has authored nine books, including I Am Malala and Our Bodies, Their Battlefield, and her work continues to inspire audiences worldwide through her writing, speaking engagements, and involvement with organizations like the Institute of War and Peace Reporting.

Find out more about Christina on LinkedIn.

IN CASE YOU MISSED IT: WHAT DOES THE NEXT FEDERAL ELECTION MEAN FOR PRIVATE CLIENTS?

By **Margaret O'Sullivan**
Managing Partner
O'Sullivan Estate Lawyers

Election fervour and fever continues to escalate south of the border and Canada will soon follow. Our last federal election was September 20, 2021, and constitutional and statutory provisions require that the next federal election must be held no more than 5 years after a preceding election and by the third Monday in October in the 4th calendar year after the date of the previous election, which means on or before October 20, 2025.

Interestingly, current opinion polls, when compared with more than 50 years of public opinion data show that Canadians have never been as critical of the three major federal party leaders as they are today.

Equally important, polls show a majority believe that there has been a decline in recent years on such issues as the economy, healthcare, and taxation, as well as national unity, public safety, and

Canada's international reputation.

How do the two major parties' policies differ on some of the key issues that affect private clients, including tax policy?

Carbon Tax

The Conservatives oppose a carbon tax and have spearheaded the "Axe the Tax" campaign to get rid of it which has galvanized a lot of support, particularly in oil and gas-rich Western Canada.

The Liberals support and defend the carbon tax.

Income Tax

The Conservatives: income tax cuts, cap government spending, bring down interest rates and inflation.

The Liberals: income tax increases because wealthy Canadians have to pay their "fair" share.

It is interesting to note that since 2015, federal spending has increased by 85%, the two biggest areas are 1) interest charges on the federal debt and 2) the size of government. The federal civil service has mushroomed by more than 40% since 2015, but the population has increased only 14%.

Federal government jobs are well-paying jobs, include benefits, and most importantly a pension—an entitlement that has been on the wane in Canada since the 1980s and 1990s.

With regard to capital gains tax, as you know, the government has proposed legislation raising the inclusion rate to 66.6% versus 50% for corporations and trusts, and for the portion of capital gains that exceed $250,000 in a year for individuals, realized on or after June 25, 2024.

The Liberals: necessary so that the wealthy don't have an advantage, and as Canadian Deputy Prime Minister and Minister of Finance Chrystia Freeland said in the House of Commons in introducing the proposed legislation on June 10, 2024, the increase "ensures that the very wealthiest pay their fair share".

The Conservatives: opposed to the capital gains tax increase and they voted against it on the basis that the increase negatively impacts doctors, farmers, and small business owners, many of whom are incorporated, that higher taxes hurt the broader economy and ultimately workers and consumers, and that it is a "job killer".

They said that if elected, they would launch a "tax reform task force" within 60 days of forming a government to design a program to "lower taxes on work, hiring and making stuff".

Immigration

Canada added about 450,000 new permanent residents in 2023. The government has been criticized for the huge surge in numbers - our population growth at 3.2% annually is faster than any Group of Seven nation, China, or India. In fact, this was the highest growth rate since 1957.

But there is nowhere near enough housing stock to accommodate this level of immigration. This has pushed rent into the stratosphere; there are even bidding wars

for rental housing with some renters paying 60% of their monthly income (and more) on housing.

The government has now had to pull back on the number of new immigrants due to heavy criticism that their policy has only made Canada's housing crisis and inflation worse.

The Liberals: in response to criticism have touted a renewed approach to immigration such as an intake cap on international student permit applications.

The Conservatives: would link Canada's immigration levels to the number of new homes being built.

Foreign purchasers of residential real estate

There is a moratorium on foreign ownership of residential housing. The government introduced the measure to try to deal with the housing crisis and make housing more affordable for Canadians.

Originally for 2 years, the measure was set to expire on January 1, 2025. It has now been extended for 2 more years to January 1, 2027. Foreign purchasers will continue to be prohibited from purchasing residential property in Canada.

Housing affordability is a hot-button issue and speculation is that the extension, which came as a surprise, was to deflect criticism from the Conservatives that the Liberals were not doing enough to solve the housing crisis.

The Conservatives have blamed the Liberals for creating the housing crisis by too much immigration in the face of not enough housing stock.

The next Canadian federal election will raise fundamental issues on the future direction of the country and economic and tax policy will be key. Multiple crises—housing, immigration, inflation, income and wealth inequality, and productivity—have all created uncertainty and anxiety.

Canada will be at a crossroads and Canadians will need to critically evaluate and choose how to best balance two fundamental paths—the redistribution of wealth and the creation of wealth.

CHANGES TO THE UK'S SPECIAL TAX REGIME FOR FOREIGN INCOME AND GAINS

CHANGES EFFECTIVE FROM 6 APRIL 2025

By **Helen McGhee**

Partner

Joseph Hage Aaronson LLP

	Current Regime	Budget March 2024 (Conservatives)	April 2024 Labour	Policy Paper 29 July 2024 (Labour)
Who can benefit from the special regime – for income tax and CGT.	UK residents with a common law foreign domicile who are not deemed UK domiciled.	New arrivers - those who have been non-UK resident for a continuous 10-year period - in their first 4 tax years of residence.	Labour supported the changes announced at Spring Budget.	No change.
Special regime for foreign income and gains (FIG).	The remittance basis ("RB"). Foreign domiciled UK residents can claim the RB such that they are only taxable on foreign income and gains when remittances are made. Where a claim is made the individual cannot benefit from the personal allowance or CGT annual exemption. After specified periods of UK residence a Remittance Basis Charge – the amount determined by years of prior residence – will be payable.	The 4-year FIG regime. Where a claim is made foreign income, and gains are exempt from UK tax regardless of whether they are remitted to the UK or not. No charge payable to benefit from the regime. However, an individual benefitting from the regime cannot also benefit from the personal allowance and CGT annual exemption. After the 4 years the individual is subject to worldwide tax on income and gains.	Again Labour supported the changes announced at Spring Budget. Said they would consider a specific incentive for UK investment within the 4-year period.	Broadly, no change with respect to support for 4-year FIG regime. Nothing further said about the incentive for investment in the UK within the 4-year period. Did say that the government would review some other key areas of the previously announced reforms to ensure that "the new regime is both fair and as competitive as possible".
Overseas Workday Relief (OWR)	Special regime for the first three years of residence such that an individual carrying out employment duties in the UK and overseas can claim the RB on the overseas portion of the income. Complex rules that are poorly understood in general.	Further consultation promised. Broadly, from 2025/26 to benefit the individual would have to also be eligible for the new 4-year FIG regime. OWR will only be available for the first three tax years. For that period OWR will provide a complete exemption from UK tax for the portion of the employment income that can be attributed to overseas duties.	Silent.	States that a form of OWR will be retained and that officials will engage with stakeholders on the design principles for this tax relief. Engagement to happen in August with an announcement in the 30 October 2024 Budget.

	Budget March 2024 (Conservatives)	April 2024 Labour	Policy Paper 29 July 2024 (Labour)
Transitional provision 1: Income tax reduction	Specific relief announced for UK resident foreign domiciled individuals who had been eligible for the RB and would be subject to tax on the worldwide basis from 2025/26. For tax year 2025/26 only the amount of foreign income taxable was to be reduced by 50%.	Labour does not support this proposal and will not introduce it.	No change to the earlier decision to not introduce this transitional provision.
Transitional provision 2: CGT rebasing	Available to individuals who have claimed the RB and are neither UK domiciled, nor UK deemed domiciled by 5 April 2025. Rebasing to the 5 April 2019 value announced for assets held personally by such individuals.	Silent.	Support for rebasing for current and past RB users. The rebasing date may not be 5 April 2019. What date would be appropriate is being considered and will be announced at the 30 October 2024 Budget.
Transitional provision 3: Temporary Repatriation Facility (TRF)	Available to individuals where the foreign income or gains arose/ accrued in a tax year when the individual was taxed on the RB and the individual was UK resident in the relevant year. A fixed 12% rate would apply to all sums brought to the UK under this facility in tax years 2025/26 and 2026/27. It was understood that: 1. there would be no regard paid to what the amounts traced to; 2. no credit given for any foreign tax credit; and 3. the TRF would not apply to pre-6 April 2025 FIG generated within trusts and trust structures.	Concern expressed that the two tax year period will not be long enough and that there will remain sizable, stockpiled FIG overseas and a huge disincentive to bring it to the UK. Commitment to explore ways to encourage people to remit stockpiled FIG to the UK, so that the legacy of the RB rules can be ended.	Commitment to the TRF again made clear. Stated that the reduced rate and length of time that the TRF will be available for will be set to make use as attractive as possible. Commitment to consider ways to expand the scope of the TRF, such as including stockpiled income and gains within overseas structures within the remit. Details to be confirmed in the 30 October 2024 Budget.

	Current Regime	Budget March 2024 (Conservatives)	April 2024 Labour	Policy Paper 29 July 2024 (Labour)
Non-UK resident trusts – the trust protections.	Provided additions are not made to the trusts, UK resident foreign domiciled settlors who could benefit from non-resident trusts are only subject to tax if they receive distributions or benefits from the trust. As such, they are not subject to the UK anti-avoidance provisions in the same way they UK resident and UK domiciled individuals are. These favourable provisions are referred to as the "trust protections".	For income and gains arising/ accruing after 5 April 2025 the trust protections will not apply. Anyone who comes within the 4-year FIG regime will not be taxed under the anti-avoidance provisions on foreign income or any gains arising within the trust structure whilst the 4-year FIG regime applies. Equally they will not be taxed on income or capital distributions received from the non-UK resident trust in that period. After that, or for those who do not qualify for the 4-year FIG regime, they will be subject to the full rigour of the anti-avoidance provisions. If they can benefit from the trust this means being subject to tax on all trust income on the worldwide basis and on the net trust gains each tax year.	Labour will follow the Conservative government plans.	No changes to the plans announced.
What is the IHT regime for individuals based on?	Foreign domiciled individuals – provided they are not deemed domiciled – are not subject to UK IHT with respect to their foreign situs assets.	An individual will be subject to UK IHT on foreign situs assets after ten years of UK residence. In addition, a ten-year tail was announced. This means that any individual caught within the UK IHT net will have to be non-UK resident for ten-years to be free of its clutches.	Labour will follow the Conservative government plans.	No changes to the plans announced. Stated that there will be further engagement with stakeholders in August.

	Current Regime	Budget March 2024 (Conservatives)	April 2024 Labour	Policy Paper 29 July 2024 (Labour)
What is the special IHT regime for foreign assets owned directly by individuals?	Foreign domiciled individuals – provided they are not deemed domiciled – are not subject to UK IHT with respect to their foreign situs assets.	An individual will be subject to UK IHT on foreign situs assets after ten years of UK residence. In addition, a ten-year tail was announced. This means that any individual caught within the UK IHT net will have to be non-UK resident for ten-years to be free of its clutches.	Labour will follow the Conservative government plans.	No changes to the plans announced. Stated that there will be further engagement with stakeholders in August.
What is the IHT system for trusts based on?	Domicile based system.	Move to a residence-based system.	Labour will follow the Conservative government plans.	No change.
What is the special IHT regime for trusts?	The excluded property regime. Trust property settled whilst an individual has a foreign common law domicile and is not deemed UK domiciled is outside the scope of UK IHT provided it is foreign situs.	For trusts settled after 6 April 2025 the end of the use of excluded property trusts to keep property outside of the UK IHT net. The IHT position of trusts under the new regime will mirror the position of the settlor. That is, it seems that when the settlor is outside the scope of IHT so is the trust and when the settlor is within the scope to IHT (including the ten-year tail period) the trust will be too. This means that the IHT relevant property regime will apply to most trusts. In addition the Gift with Reservation of Benefit (GROB) IHT anti-avoidance provisions will apply where the settlor is a beneficiary of the trust. This means that, if the situation continues, the value of the trust property will also be subject to tax on the death of the taxpayer.	Labour appeared to support the plans for trusts created after 5 April 2025.	The policy paper says: "The government intends to change the way IHT is charged on non-UK assets which are held in such trusts, so that everyone who is in scope of UK IHT pays their taxes here.

	Current Regime	Budget March 2024 (Conservatives)	April 2024 Labour	Policy Paper 29 July 2024 (Labour)
IHT and pre-6 April 2025 excluded property trusts	Outside the scope of UK IHT provided it is foreign situs.	All trusts set up prior to 6 April 2025 by foreign domiciled individuals who are not UK deemed domiciled will be grandfathered for IHT purposes. That is, they would be outside the scope of UK IHT provided that when a chargeable event takes place the trust only includes excluded property. This also means that GROB will not apply, as well as the trust IHT relevant property regime - when the settlor can benefit from the trust.	Labour will include all foreign assets held in a trust within the scope of UK IHT, whenever they were settled, so that nobody living here for longer than ten years can avoid paying UK inheritance on trust property settled.	Grandfathering still appears to be ruled out. However, there is a recognition that trusts were established and structured to reflect the current rules. Stated that the government "is considering how these changes can be introduced in a manner that allows for appropriate adjustment of existing trust arrangements, while ensuring that the treatment of all long-term residents of the UK is the same for IHT purposes." As such, there will be transitional arrangements for affected settlors. Consultation in August and the detail will be published at the 30 October 2024 Budget.
Review of anti-avoidance legislation	Not applicable.			Review of offshore anti-avoidance legislation announced. Seems to apply to income tax and CGT anti-avoidance legislation. However, specific mention made of the Transfer of Assets Abroad and Settlements legislation. Said to be to modernise the rules and ensure they are fit for purpose. The following are stated intentions: 1. Remove ambiguity and uncertainty in the legislation. 2. Make the rules simpler to apply in practice. 3. Ensure these anti-avoidance provisions are effective. Not expected to result in any changes before the 2026/27 tax year.

LIECHTENSTEIN SUB-FOUNDATION

By **Dr. Michael Nueber, LL.M.**
Partner
NUEBER KONZETT Rechtsanwälte

and **Dr. Philipp Konzett, LL.M.**
Partner
NUEBER KONZETT Rechtsanwälte

The Austrian private foundation has become less attractive due to various legislative changes and recent supreme court judgements. At the same time, however, important family businesses are still structured via private foundations. The founding families often complain that they lack any influence over the administration of the foundation, leading to alienation between the foundation/the foundation board and the beneficiaries. This situation often becomes intrinsic from the death of the original founder at the latest.

'The Liechtenstein sub-foundation offers an effective means of separating family lines and gaining more influence over the administration of the foundation.'

In practice, the establishment of a Liechtenstein sub-foundation has proven to be an effective means of defusing the situation outlined above. The Liechtenstein foundation offers founders and beneficiaries considerably more opportunities to exert influence and have a say than their Austrian counterpart. For

example, it is possible to set up an advisory board made up exclusively of family members, which has approval and consultation rights that would not be possible in this constellation in Austria.

In the case of a sub-foundation, the Austrian private foundation acts as the founder of a new - Liechtenstein - foundation. In addition, other persons can also act as founders and thus also exercise all founder rights within the framework of the Liechtenstein foundation. For this to be possible, the establishment of a sub-foundation and the addition of further founders must be provided for in the foundation declaration of the Austrian private foundation. However, as long as a founder has a right to make changes, this can also be subsequently included in the foundation declaration of the Austrian private foundation.

According to the Austrian Supreme Court, the purpose of the sub-foundation must be congruent with that of the founding foundation. It is therefore easiest to adopt the purpose of the Austrian private foundation in the Liechtenstein foundation. At the same time, the beneficiaries of the sub-foundation do not necessarily have to be identical to those of the Austrian private foundation. For example, the Liechtenstein sub-foundation can also be used to separate family lines in the Austrian private foundation and allocate ‘separate’ sub-foundations.

The question often arises as to which assets are suitable for transfer to a Liechtenstein sub-foundation. As a rule of thumb, all ‘bankable assets’ are well suited for transfer to a sub-foundation and all other assets, such as real estate, are not.

KINGSLEY NAPLEY'S 'INHERITANCE TAX OLYMPICS'

By **Sophie Voelcker**
Partner
Kingsley Napley

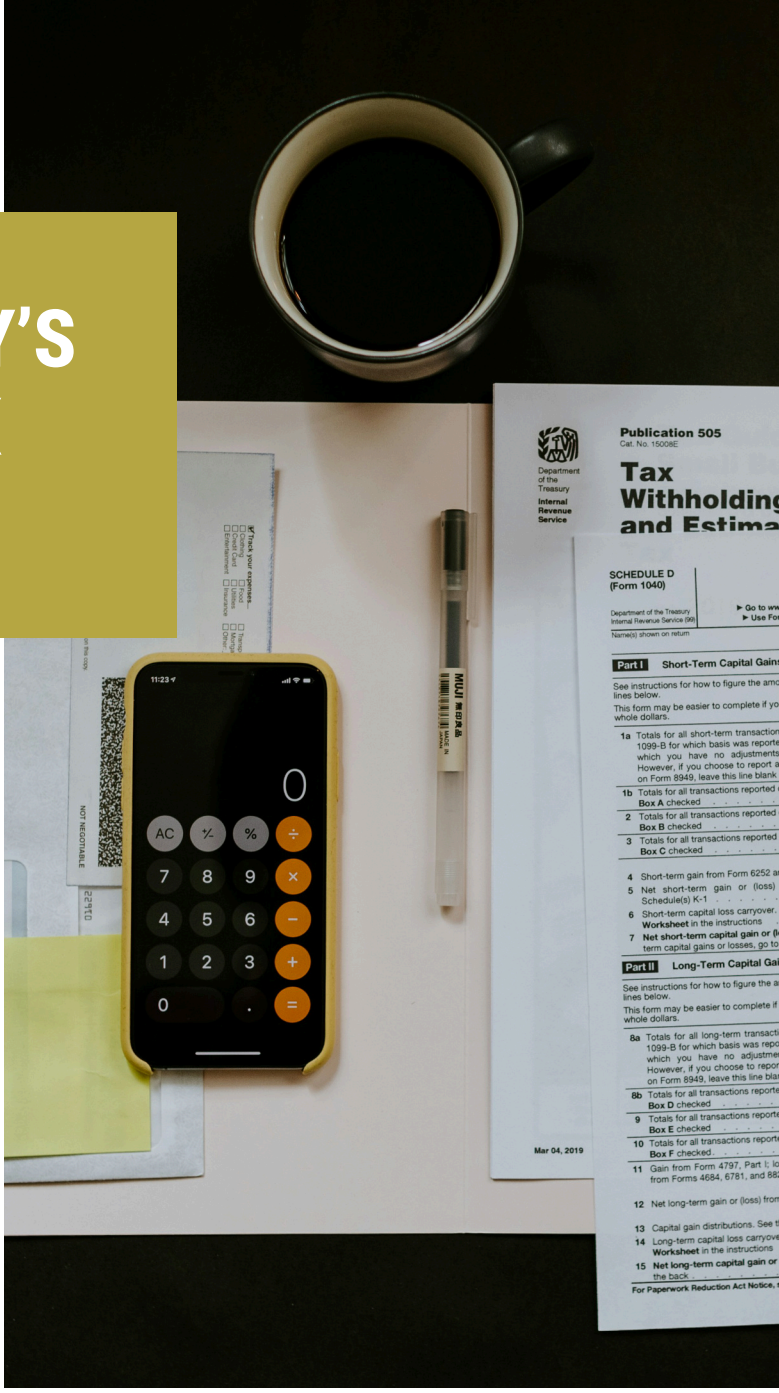
Where people pay the most inheritance tax by local authority

An analysis by law firm Kingsley Napley of HMRC inheritance tax data (just released for tax year 2021-22) shows the geographical dispersal of estates hit by inheritance tax bills. Kingsley Napley names the top ten regions and shows who shares the medals that no one wants to win.

Based on the latest HMRC statistics of inheritance tax paying estates, Kingsley Napley can reveal:

Chichester takes the gold for the number of estates affected (153) and sees its departed residents' estates paying one of the top ten largest amounts to HMRC in the country.

Esher and Walton is awarded silver, by number of estates on which tax was due.



Finchley and Golders Green claimed bronze.

However, by total amount of inheritance tax paid, unsurprisingly Kensington glistens by contributing £103m to the government's coffers.

It appears that the estates of those who lived in Hampstead and Kilburn; Finchley and Golders Green; Richmond Park; South West Surrey and Chichester, were some of the biggest contributors to the country's

IHT tax take during 2021-22, both in value and volume of affected estates.

In contrast, in the previous tax year (2020-21), Esher and Walton won gold, by volume of estates on which IHT was payable (160), followed by Twickenham with silver and Finchley and Golders Green with bronze. Notably, Twickenham not only failed to make the podium but barely scraped into the top 25 in 2021/22.

"Our latest ranking shows that house prices and the socio-economic demographics of a region are driving up the local IHT costs, so it is perhaps no surprise to see the South East take the medals.

"We are advising an increasing number of clients who are looking at reducing their estates for IHT purposes and making use of available IHT exemptions pre 30 October: namely use of the IHT nil rate band, annual exemption, regular gifts out of excess income, gifts of business or agricultural property or potentially exempt transfers. Otherwise they are advised to just spend!"

Tax Receipts By Volume 2021/22 (source HMRC):

Rank	Parliamentary Constituency	Number	Amount (£ million)
1	Chichester	153	47
2	Esher and Walton	150	45
3	Finchley and Golders Green	148	59
4	Richmond Park	145	55
5	South West Surrey	140	49
6	Chesham and Amersham	131	35
7	Ruislip, Northwood and Pinner	127	28
8	Hampstead and Kilburn	123	81
9	Chipping Barnet	121	27
10	Hornsey and Wood Green	121	33

Tax Receipts By Value 2021/22:

Rank	Parliamentary Constituency	Amount (£ million)	Number
1	Kensington	103	92
2	Hampstead and Kilburn	81	123
3	Chelsea and Fulham	76	106
4	South West Hertfordshire	61	113
5	Finchley and Golders Green	59	148
6	Richmond Park	55	145
7	Cities of London and Westminster	51	77
8	South West Surrey	49	140
9	Chichester	47	153
10	Windsor	46	78

Tax Receipts By Volume 2020/21:

Rank	Parliamentary Constituency	Number	Amount (£ million)
1	Esher and Walton	160	50
2	Twickenham	158	40
3	Finchley and Golders Green	157	44
4	Richmond Park	156	79
5	Chichester	143	39
6	South West Surrey	136	37
7	Mole Valley	136	32
8	Hampstead and Kilburn	129	74
9	Epsom and Ewell	128	28
10	Reigate	121	38

Tax Receipts By Value 2020/21:

Rank	Parliamentary Constituency	Amount (£ million)	Number
1	Kensington	108	92
2	Cities of London and Westminster	84	91
3	Richmond Park	79	156
4	Chelsea and Fulham	75	99
5	Hampstead and Kilburn	74	129
6	Lewes	53	114
7	Esher and Walton	50	160
8	The Cotswolds	49	100
9	Wimbledon	46	120
=10	Finchley and Golders Green	44	157
=10	East Surrey	44	106

CAN A STEPCHILD BENEFIT FROM A FAMILY TRUST? THE CASE OF MARCUS V MARCUS

Authors, **Emilia Piskorz** and **Emily Bueno** working with **Mark Keenan**, *Senior Partner* in **Mishcon Private**.

It is now widely accepted that families are not necessarily nuclear in nature and can (for example) include children who are not related by blood. Family trusts and wills, however, have been slow to evolve with mainstream society's acceptance largely because of the historic drafting of many trust deeds and wills. As a result, there has been an increase in court cases about which relations can benefit from family wealth.

Marcus v Marcus [2024] PT – 2023 - 000541 is the most recent such case, where a schism between brothers ended up in an application before the Court, for it to determine whether one of the brothers was the product of an infidelity (and therefore not the biological child of the settlor of the trust) and, if so, whether the word "children" in the trust deed included "step-children".

Marcus v Marcus – the background

Edward and Jonathan Marcus were brought up by Stuart and Patricia Marcus. Stuart was a very successful toy and game manufacturer, who settled a large portion of his wealth onto trust for his "children". In 2010, Patricia told Edward that his true father was Sydney Glossop, a partner in a

Norwich law firm. Stuart (who died in 2019) did not know his wife had been unfaithful and created the trust in 2003 believing that he was Edward's biological father. In 2023, Patricia told Jonathan about Edward's parentage.

Marcus v Marcus – the claim

Shortly thereafter, Jonathan issued a claim that resulted in the Court determining two issues:

1. On the balance of probabilities is Edward Stuart's biological son?

2. Does the word "children" in the trust deed include "step-children"? – i.e. could Edward benefit from the trust?

Whilst DNA evidence, accepted by the judge, concluded that it was more likely than not that Edward and Jonathan were half-brothers, this did not settle the first issue. This is because Edward proposed that it was Jonathan, rather than him, who was not Stuart's biological son.

This meant Patricia's and Edward's witness evidence – which had been tested under cross-examination at trial – needed to be assessed by the judge. Patricia explained that her infidelity with the, much older, Mr Glossop was a one-off encounter. Edward (who is older than Jonathan) recalled that from about the age of five the family home received visits by a "white haired old man". The judge accepted Patricia's evidence and concluded that, on the balance of probabilities, Edward was not Stuart's biological son.

Therefore, the second issue needed to be determined, i.e. the meaning of "children" in the trust deed. A strict test of construction was applied, the Court being required to assess what a reasonable person, having all the background knowledge available to the parties to the claim, would have understood the language to mean. The judge concluded that the term "children" in a trust deed or will would not normally include stepchildren unless the context indicated otherwise. Looking at the context in this case, particularly that Stuart believed Edward was his biological child, the judge ruled that the word "children" does include "step-children", meaning Edward is a beneficiary of a valuable family trust.

Key takeaways

In Marcus v Marcus a stepchild was considered to fall within the definition of "children". But even where a stepchild is treated as a child of the settlor or testator, that child may not benefit from a family trust or will.

Looking more widely, there is legal uncertainty about whether all children born by a surrogate or as a result of fertility treatment using donated gametes fall within the traditional definitions of "children", "issue" and "descendent". This is an area of law requiring development.

By **Basil Dixon**
Partner
Payne Hicks Beach

CHANGES TO THE TAXATION OF NON-DOMICILIARIES

The taxation of non-domiciliaries has been in a state of almost constant change since 2008 but the announcement on 6 March by the then Chancellor that he was abolishing the remittance basis and effecting other wholesale reform of what is sometimes called the "non-dom tax regime" came as a surprise to most people. What came as less of a surprise was the reaffirmation by the Labour Government, shortly after taking power, of its intention to finish what Jeremy Hunt began and to bring to an end the income tax, capital gains tax ("**CGT**") and inheritance tax ("**IHT**") advantages non-domiciliaries have enjoyed up until now.

Much remains unclear and the full extent of the changes will not be announced until the Autumn Budget on 30 October although, from the short policy paper published on 29 July, it appears that many of the measures announced by the Conservative Government in March 2024 will be adopted. There are, however, some material differences between the Conservative and Labour plans and critically, whilst the Conservatives proposed to retain the IHT advantages offered by existant excluded property trusts, no such grand-fathering arrangements are contemplated by the Labour Government.

The timetable for the implementation of the changes is highly ambitious with the Government looking at having the new rules take effect from 6 April 2025.

From what is known the top ten points to note are as follows.

The new "FIG" regime and the removal of trust protections for income tax and CGT

1. The remittance basis will be abolished and replaced by a new regime which will provide 100% relief on all foreign income and gains ("**FIG**") arising to new arrivers in their first four years of UK tax residence (even if remitted to the UK), provided they have not been UK tax resident in any of the 10 consecutive tax years prior to their arrival. UK residents who are unable to benefit from the FIG regime will be subject to income tax and CGT on their worldwide income and gains (arising to them individually or through offshore trusts they have settled).

2. Domicile as a connecting factor for UK tax purposes will cease to have any relevance from 6 April 2025. From that point onwards exposure to UK tax will be determined solely by reference to residence (applying the Statutory Residence Test).

3. From 6 April 2025, the income tax and CGT protections introduced in 2017 under the protected settlement regime for settlor-interested offshore trusts will be abolished with UK resident settlors being charged to income tax and CGT on income and gains arising in their offshore trusts from that date, to the extent they fall outside the FIG regime.

4. A form of Overseas Workday Relief will be retained under the new regime.

Transitional provisions for income tax and CGT

5. From 6 April 2025, current and past remittance basis users will be able to rebase foreign capital assets when they dispose of them. A rebasing date will be announced in the Autumn Budget.

6. FIG that arose before 6 April 2025 but which was protected by the remittance basis will continue to be taxed if remitted. A new "Temporary Repatriation Facility" will be available for individuals who have been taxed on the remittance basis, under which it will be possible to remit untaxed pre-April 2025 FIG at a reduced tax rate. The Temporary Repatriation Facility may be expanded to included stock-piled income and gains which have arisen in offshore structures.

7. The policy announced by the Conservative Government, providing a 50% reduction in foreign income subject to tax for individuals who lose access to the remittance basis in the first year of the new regime, will not be introduced.

IHT for individuals and trusts

8. IHT is currently charged by reference to domicile. This will be replaced by a new residence-based system from 6 April 2025. The new rules will affect individuals and trusts.

9. Detail on how the new IHT rules will work is very limited but it appears that, from 6 April 2025, an individual's worldwide assets will fall within the scope of IHT once that individual has been UK resident for 10 or more tax years with this exposure to IHT continuing for 10 tax years even after the individual has left the UK (the "**ten year rule**"). We will need to wait until 30 October to see whether the new regime will catch those who are

already non-UK resident but who would be caught by the ten year rule.

10. It also appears that, from 6 April 2025, material changes will be made to the law governing access to the IHT protections enjoyed by “excluded property trusts”. From that date, the exposure of a trust to IHT will match the UK tax status of its settlor, meaning that trusts established by someone who falls to be caught by the ten year rule will be fully within the IHT regime. This is very significant and will bring value held under a huge number of trusts within the scope of the IHT rules for the first time. In a key departure from the policy announced by the Conservative there will be no grand-fathering of existing trusts although some transitional provisions to allow individuals to make appropriate adjustments to their existing trust arrangements may be introduced.

Whilst much is unknown what we can be certain of is that change is coming and that that change will be material. The window of opportunity to react appropriately and to plan properly is fast-closing and by the time of the Budget, will be narrower still. Non-domiciliaries would be well advised to start to consider the potential impact of the changes on their affairs and to put in place plans which can be enacted once we now exactly what the Government is planning.

MARCUS PARKER'S CAREER STORY

By **Marcus Parker**
Partner, Trust and Probate Litigation
Stewarts Law

Marcus has more than 25 years' experience as both an English lawyer and a Cayman-based professional trustee. The main part of Marcus's practice involves managing disputes involving wealthy global families and their associated structures. Marcus has experience of dealing with litigation in England, the Cayman Islands, British Virgin Islands, Bermuda, Hong Kong, the Isle of Man, Monaco, New Zealand and the US. In his career story he recounts his work in Cayman and why he returned to the UK to join Stewarts, and shares lessons from his practice.

I joined Stewarts as a partner in the Trust and Probate Litigation team in October 2022. I knew James Price and the rest of the team very well as I had instructed them on a complex piece of litigation involving the Libyan Investment Authority while I was a professional trustee in the Cayman Islands. I liked them so much that I joined them!

Having started my career as a non-contentious tax and trust lawyer, in 2010 I established a boutique private client firm, New Quadrant Partners. Created with four other partners from my former firm Payne Hicks Beach, it was a great entrepreneurial experience and as we started on day one with 13 people on our payroll it was quite an undertaking. I left a few years later (but remained good friends) to became a professional trustee in the Cayman Islands for eight years before returning to the UK to focus on contentious trust work, most of it with an offshore angle.

Cayman practice and return to the UK

Since the late 2000s I have been working with a number of clients in the Cayman Islands and would visit the island often. In 2013, after enduring another miserable English winter and an interminable commute, I resolved to move permanently

to somewhere hot and sunny. My intent was to become a trustee but focused on difficult and contentious trusts.

I first set up a Cayman office for a Swiss-based trust company Summit Trust and then joined Genesis Trust. We became the go-to and Court-appointed trustee for difficult situations and dealt with a broad variety of high profile and high value disputes involving some really fascinating characters.

Eight years later, the Covid-19 pandemic unexpectedly put paid to island life. Mine is a blended family with five kids now aged between 17 and 30, plus a very recent granddaughter and a dog Dave (more below on Dave!). During lockdown in Cayman we only had one of the kids with us, and she was about to go to a UK boarding school. Not knowing how long we would be stuck (it turned out that five months would pass without any flights on or off the island), we resolved one Sunday afternoon to return to the UK. We did so while sitting on our balcony overlooking a beach that it was illegal to sit on, and a sea it was illegal to swim in, as a police helicopter flew overhead to catch the curfew breachers…

We had to readjust to life in the UK (especially to paying income tax again!) but this was fun as we had missed seasons and the sheer variety of things to do in the UK compared to Cayman. My wife Emma and I were also very happy to actually see more of our children! I knew we would remain regular visitors to the Cayman Islands in any case as much of my work still has a Cayman element.

One vital addition to our family was Dave, our rather fluffy and adorable Cavapoo. He has become a bit of a LinkedIn sensation pulling in more likes and impressions than I ever can to the point that when I meet people they always ask me how Dave is first!

Working life at Stewarts: Over the past few years my practice has developed to almost exclusively manage a number of high profile and high value global trust and family disputes. It's been the most exciting and rewarding part of my career to date and I have relished the challenge.

As well as working on a number of global trust disputes, a key part of my role is to develop new business for the firm, not only in trusts but also for other teams. I have always loved the thrill of developing business and Stewarts kindly offered me a different kind of role which enables me to spend time doing this. I also have the opportunity to travel often, as most of my key contacts are in offshore jurisdictions.

It is amazing to be part of one of the best (I think the best but am being modest) trust disputes teams in the world. We are consistently top ranked in the legal directories and in the last year we won both of the top awards (from both STEP and Chambers and Partners) for the best Trust and Probate Disputes Team. I think this recent quote from Legal 500 sums up our team perfectly: "a great combination of powerful intellect, experience in the field, tactical thinking and personable individuals make this team unique".

The pandemic of course added some normality to flexible working, and that to

my mind has been the good that has come out of a terrible situation. I think it helps to ensure an essential life balance to combat the everyday stresses of work, travel, parenthood and life as a whole. I also think flexibility stimulates creativity and in my experience just getting up and going for a walk helps you to think through and find solutions to problems. If you can't find me, that's probably what I'm doing.

I can honestly say Stewarts is the firm I have enjoyed working at the most and this is the job I have most enjoyed doing. Everyone here is a delight to deal with – they are extremely collaborative, supportive and really great lawyers, and we have lots of fun. The difference between a good and great job is all about the people, and Stewarts really excels at hiring, maintaining and promoting the right people.

Career lessons: Listening is a hugely important skill that many forget in their desire to always be talking. Being respectful to colleagues is hugely important and trying to remain friends with ex-colleagues should be the aim when moving to other opportunities. I regularly get work from people I worked with 15 or 20 years ago.

On the business development front always, always (deliberately said it twice) leave any interaction with a plan to further develop the relationship. Send regular follow up messages, connect that contact with a colleague, share some knowledge with them or organise another meeting/event/interaction (the more unique the better). Above all be a person that others want to spend time with, can be trusted and is responsive and helpful.

Outside of work: If I wasn't a lawyer, my goal would have been to become a pilot, but I had poor eyesight which disqualified me. I still have a love of flying and a (peculiar?) hobby of buying used airplane parts. My favourite part is the rear exhaust from a retired and dismantled BA 747 (imagine Emma's surprise when that turned up). It is now a feature in our garden.

My other love (well apart from Dave!) is interior design. I think I have a good eye and our recent acquisition of a early 1900s home in Cheltenham has allowed me to develop a unique style which I like to call "Edwardian funk". If you have been on a Zoom call with me, you will have experienced a small part of this in my background. I also spend a lot of time in the garden cooking large hunks of meat over a wood fire on my asado grill!

In conclusion, my career has been a journey of growth and learning, centered on trust disputes across various international jurisdictions. Founding a boutique private client firm and working as a professional trustee in the Cayman Islands have given me valuable experience in both starting and managing businesses. Returning to the UK during the pandemic also gave me the chance to focus on what matters most—my family—while pursuing new opportunities at Stewarts. I'm fortunate to work with a talented and supportive team, and this has reinforced the importance of collaboration and staying adaptable. Through it all, I've learned the value of balancing work, family, and personal growth, and I remain grateful for the opportunities that have shaped my journey.

MEET THE TEAM.

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