

Private client law in Bermuda: 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?

The official financial year runs from 1 April to 31 March.

Bermuda does not assess any taxes on income, profits, dividends, gifts or capital gains. There are, therefore, no relevant tax payment dates or deadlines.

Bermuda maintains an exempted undertaking regime under which certain companies, partnerships and other entities can apply to the Minister of Finance for a guarantee that they will remain exempt from the payment of the taxes listed above should any one or more of those taxes ever be introduced in Bermuda. At present the guarantee is granted and is effective up until 31 March 2035. It has been extended in the past.

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?

Domicile

Domicile does not play any significant role in determining tax liability in Bermuda.

Residence

While certain taxes payable in Bermuda are clearly linked to residence (for example payroll tax and land tax) these are not significant considerations in the private client context (see Question 5).

Other

Not applicable.

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)?

Bermuda does not impose any form of exit or repatriation tax on an individual when he leaves the jurisdiction, whether temporarily or permanently.

Temporary residents

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

Bermuda does not impose any particular or special tax rules on temporary residents.

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?

There are no taxes assessed on capital gains on real estate or other assets owned by foreign nationals. There is, however, a land tax, which is assessed on Bermuda real estate semi-annually. The tax is linked to the notional annual rental value of each property and is payable by a foreign national owner of real estate in Bermuda.

The rates for land tax are as follows:

- Up to BM\$11,000: 0.6%.
- Over BM\$11,000 to BM\$22,000: 1.2%.
- Over BM\$22,000 to BM\$33,000: 2.4%.
- Over BM\$33,000 to BM\$44,000: 4.8%.
- Over BM\$44,000 to BM\$90,000: 9.6%.
- Over BM\$90,000 to BM\$120,000: 19.2%.
- Over BM\$120,000: 23%.

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

There are no taxes assessed on income received by foreign nationals and no withholding tax.

Inheritance tax and lifetime gifts

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

Inheritance

There is no direct tax on inheritance in Bermuda. However, stamp duty is assessable on the value of the deceased's property in Bermuda (that is, the Bermuda estate). The value of the estate must be disclosed on oath on any application for a Grant of Probate or Letters of Administration to the Supreme Court of Bermuda (as defined in the Stamp Duties Act 1976), and is liable to be assessed for stamp duty on the issue of the grant (for stamp duty rates, see Question 8).

Stamp duty can be avoided if:

- The estate comprises assets that are entirely exempt from stamp duty.
- An application for a Grant of Probate or Letters of Administration can be avoided (for example, by holding assets in joint tenancy with others with the intention that those assets remain in the ownership of the surviving joint tenant owners (*see Question 36*)).

Lifetime transfers/gifts

There is no direct tax on lifetime transfers, or gifts of property or assets in Bermuda. However, stamp duty is assessable on the value of the Bermuda property transferred. The stamp duty is payable within a certain period of the date of the document of transfer (usually 30 days).

Voluntary transfers of interests in Bermuda real estate and shares in privately held local companies (that is, Bermuda companies that do not hold taxation exemption certificates, nor are listed on the Bermuda Stock Exchange) are generally assessed to stamp duty based on the value (*ad valorem*) of the interest being transferred.

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

Tax rates

On death. The stamp duty rates on the issuance of a Grant of Probate or Letters of Administration (that is, following death) are as follows (*Head 2, Schedule to the Stamp Duties Act 1976*):

- Up to BM\$100,000: nil.
- Over BM\$100,000 to BM\$200,000: 5%.
- Over BM\$200,000 to BM\$1 million: 10%.
- Over BM\$1 million to BM\$2 million: 15%.
- Over BM\$2 million: 20%.

Lifetime transfers/gifts. Stamp duty on lifetime transfers of Bermuda property, other than cash (including BM\$), is assessed on the true (that is, open market) value of the property (*Head 17, Schedule to the Stamp Duties Act 1976*):

- Up to BM\$100,000: 2%.
- Over BM\$100,000 to BM\$500,000: 3%.
- Over BM\$500,000 to BM\$1 million: 4%.
- Over BM\$1 million to BM\$1.5 million: 6%.
- Over BM\$1.5 million: 7%.

Stamp duty on lifetime transfers of non-Bermuda property is also assessed on the open market value of the property transferred, at a rate of 1% (*Head 17, Schedule to the Stamp Duties Act 1976*).

Tax free allowance

Property passing on death attracts no stamp duty on the first BM\$100,000 (*see above, Tax rates*).

Exemptions

Stamp duty is not assessed on the value of the following classes of assets passing on death:

- Bequests to surviving spouses.
- Bequests to registered charities (registered as charities under the Charities Act 1978) or to such other bodies or organisations that the Minister of Finance determined to be charitable.

- The value of a deceased's interest in Bermuda real estate that was designated exempt from stamp duty under section 47A of the Stamp Duties Act 1976.
- Assets comprised within a deceased's estate that are not "Bermuda property" as defined in the Stamp Duties Act 1976.

Techniques to reduce liability

A taxpayer can reduce (and in some cases eliminate) liability to stamp duty arising on the issuance of a Grant of Probate or Letters of Administration in respect of his estate by using one or more of the following techniques:

- Obtaining a Primary Family Homestead Certificate in respect of the taxpayer's interest in Bermuda real estate.
- Lifetime transfers/gifts to individuals, whether outright, in part, for life or to be held jointly.
- Lifetime transfers/gifts to trusts.
- Leverage, that is, securing debt against a particular asset to reduce the equity held in that asset. For example, stamp duty is only assessed against the equity (market value less secured debt) of a deceased's interest in Bermuda real estate.

While lifetime transfers/gifts of some types of assets attract stamp duty the rates applicable to those transfers are considerably lower than the rates that might be assessed if those assets pass on death (*see above, Tax rates*). The fundamental question faced by individuals is whether to:

- Pay some stamp duty in their lifetime and have their estate avoid a larger stamp duty charge following their death.
- Pay nothing now and have their estate suffer the larger assessment following their death.

Other

There are no other ways to reduce liability.

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

There are no direct inheritance or gift taxes in Bermuda but stamp duty may be assessed on the value of Bermuda property, irrespective of the deceased's nationality, residence or domicile (*see Questions 7 and 8*).

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

Stamp duty is assessed on the value of Bermuda property transferred to Bermuda trusts. The rates applicable to transfers of property to Bermuda trusts have been amended in the last few years, and are now (*Head 40, Schedule to the Stamp Duties Act 1976*):

- Up to BM\$50,000: nil.
- Over BM\$50,000 to BM\$200,000: 5%.
- Over BM\$200,000 to BM\$1 million: 10%.
- Over BM\$1 million: 15%.

See also *Questions 7 to 8*.

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

Individuals not holding Bermudian status (non-Bermudians) must be granted a Licence to Acquire Land in Bermuda by the Minister responsible for Immigration in Bermuda before they can lawfully purchase and hold Bermuda real estate. A non-Bermudian can acquire Bermuda real estate by inheritance but must, within prescribed periods, either sell the Bermuda real estate or obtain a Licence to Acquire Land to lawfully retain legal and beneficial ownership of that real estate.

There are prescribed fees for the application to obtain a Licence to Acquire Land, which are relatively modest. There is also a fee payable on the issuance of Licence to Acquire Land on purchase, which is significant, but only a nominal fee payable on acquisition by inheritance:

- Fees for dwelling houses: 8% of the higher of the purchase price or market value (12.5% from 30 September 2014). This was recently reduced from 25%.
- Fees for condominiums (flats within buildings containing a number of individually owned flats or houses): 6% (8% from 30 September 2014). This was recently reduced from 18%.

The reductions were made in an effort to stimulate the market for higher end luxury real estate in Bermuda, which has been somewhat depressed in recent years.

Foreign nationals owning Bermuda real estate under Licence must also pay Land Tax (*see Question 5*).

In addition to the licence fees, stamp duty is assessed on the conveyance of Bermuda real estate (*Stamp Duties Act 1976*):

- Up to BM\$100,000: 2%.
- Over BM\$100,000 to BM\$500,000: 3%.
- Over BM\$500,000 to BM\$1 million: 4%.
- Over BM\$1 million to BM\$1.5 million: 6%.
- Over BM\$1.5 million: 7%.

See also *Questions 7 and 8*.

Wealth taxes

There are no wealth taxes assessed in Bermuda.

Other

There are no other relevant taxes.

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

Bermuda trusts are commonly used as tax advantageous real estate holding structures. While it is technically possible for non-Bermudians to hold Bermuda real estate via Bermuda trusts, a Licence to Acquire Land must still be obtained for the trust to lawfully hold the Bermuda real estate (*see Question 11*). The grant of that Licence is discretionary and current policy appears not to favour applications made by trustees to acquire and hold Bermuda real estate for non-Bermudians and to favour applications made by the non-Bermudians themselves.

Taxes on overseas real estate and other assets

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

Residents of Bermuda are not taxed in Bermuda on their non-Bermuda located assets. Those assets may, however, be taxed in the jurisdiction(s) in which they are located or held.

International tax treaties

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

The US-Bermuda Tax Convention

Bermuda's principal tax treaty is the US-Bermuda Tax Convention 1986, which covers three main areas:

- Relief from excise taxes of certain insurance enterprises so that insurance profits are not taxable in the other country, unless the profits of the enterprise are attributable to a permanent establishment located in the other country.
- Deductions for certain convention expenses incurred in Bermuda by those from the US.
- Mutual assistance in tax matters, which provides for the:
 - prevention of tax fraud;
 - evasion of taxes by US taxpayers and for the development of appropriate measures to develop the framework for the provision of that assistance.

Importantly, the US-Bermuda Tax Convention contains a specific exception to the exchange of information rules, which applies to information protected by banker/customer confidentiality laws (in civil matters) and attorney/client privilege (in civil and criminal matters), which cannot be exchanged. The request for information by the US must relate specifically to tax fraud or evasion of taxes by a US taxpayer.

Double taxation agreements

To date, Bermuda has entered into four double tax agreements with:

- Bahrain.
- Qatar.
- US.
- The Seychelles.

Tax information exchange agreements

To date, Bermuda has negotiated 41 tax information exchange agreements, including agreements with:

- Argentina.
- Australia.
- Belgium.
- Brazil.
- Canada.
- Denmark.
- Finland.
- France.
- Germany.

- The Netherlands.
- India.
- Ireland.
- Italy.
- Japan.
- Mexico.
- China.
- South Africa.
- Sweden.
- UK.
- US.

In furtherance of the international goal of co-operation in tax matters and the elimination of harmful tax practices, Bermuda signed a Model 2 Intergovernmental Agreement with the UK on 25 November 2013 and another with the US on 19 December 2013, to implement the US Foreign Account Tax Compliance Act (FATCA), providing for the reporting of all financial accounts held by UK and US persons respectively.

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 neither a requirement nor essential for an owner of assets in Bermuda to make a will in Bermuda, but it is advisable. A will is often an important and effective tool in carrying out estate planning. In the absence of a will, assets located in Bermuda will pass according to the provisions of the Succession Act 1974, which sets out various intestacy trusts for beneficiaries (*see Question 28*).

Wills executed outside of Bermuda may be effective in Bermuda and can be admitted to probate in Bermuda, or a foreign grant of probate (for example, a grant issued out of the Probate Courts of the UK) can be resealed in Bermuda, conferring on the foreign executors (or administrators) the right to administer the deceased's Bermuda estate (*see Question 18*). This will often comprise an interest in Bermuda real estate, shares in Bermuda companies, or bank deposits with local banks.

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 formalities for making a will are:

- The testator must be of sound disposing mind, that is, have the requisite testamentary capacity, which is the ability to:
 - identify those persons he should consider when disposing of an estate;
 - understand the nature of his act (when executing the will);
 - understand the extent of his estate.
- The testator must be aged 18 years or older.
- The will must be in writing.
- The testator must sign his will (or make his mark on the will if he is illiterate) in the presence of two independent witnesses.

- The independent witnesses must be 18 years or older and be of sound mind.
- The independent witnesses must see the testator sign and then sign the will themselves in the presence of the testator.

Persons named in a will as beneficiaries or the spouses of those persons should not witness the execution of that will. If this occurs, the will, in the absence of any other defect in execution, will remain valid but the gift to the beneficiary who witnessed the will, or whose spouse witnessed the will, will be held void.

Wills written entirely in the testator's own handwriting and signed by him at the end (a holographic will) will be valid under Bermuda law but should be avoided, as most lay people would not appreciate the complexities of drafting a comprehensive and effective will.

Redirecting entitlements

17. What rules apply if beneficiaries redirect their entitlements?

Any beneficiary interested in any part of an estate is entitled to renounce, disclaim, assign or transfer the whole or any part of that interest. If an interest is renounced or disclaimed (as opposed to being assigned or transferred) the interest passes as if the person renouncing or disclaiming it had died before the testator. An interest that is assigned or transferred may attract stamp duty on the document of assignment or transfer (*see Questions 7 and 8*).

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

A will is to be treated as properly executed in Bermuda if it has been executed in accordance with the laws of the jurisdiction where either (*Wills Act 1988*):

- It was executed.
- At the time of its execution or of the testator's death, the testator was either:
 - domiciled or had his habitual residence in that jurisdiction; or
 - a national of that jurisdiction.

In addition, the Wills Act provides that the will is validly executed:

- If executed on board a vessel or aircraft and it conforms to the laws of the territory of registration or close connection of that vessel or aircraft.
- To the extent that it disposes of immovable property, and its execution complies with the laws where the immovable property is situated.
- So far as a will exercises a power of appointment, if the execution of the will conforms to the law governing the essential validity of the power of appointment.

Validity of foreign grants of probate

Foreign grants of probate, letters of administration, or letters testamentary issued out of the relevant probate courts of the following countries can be resealed in the Supreme Court of Bermuda:

- The UK.
- Any British possession, colony or dependency.

- A Commonwealth member nation.
- Any state of the US (including the District of Columbia).

Death of foreign nationals

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

Generally, there are no relevant practical estate administration issues if foreign nationals die in Bermuda. However, to the extent that a foreign national dies owning an interest in Bermuda real estate the disposal of that real estate under a will or by intestacy must be conducted according to certain time frames set out in the Bermuda Immigration and Protection Act 1956. If not, severe penalties may be imposed. For example, a non-Bermudian who acquires an interest in Bermuda land by inheritance must dispose of that interest or obtain a licence to retain it within three years of the date on which he acquired the interest. The period within which that interest must be disposed of or a licence obtained may be extended by the Minister responsible for immigration for a further three years. Failure to dispose of the interest or obtain a licence within these time frames could result in the imposition of a fine of up to BM\$1 million and/or imprisonment for up to five years.

Administering the estate

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

Responsibility for administering

Responsibility for administering an estate lies with the estate representatives. Where executors are named in a will and any one or more of them obtains a Grant of Probate the executors named in the Grant will be the estate representatives. The rules contained in the Non-Contentious Probate Rules 1974 will determine, in order of priority, who may apply for a Grant of Letters of Administration (with or without will annexed) if:

- No executors are named.
- The named executors fail or refuse to act.
- No valid will is in existence.

Vesting

The estate of a deceased in Bermuda vests automatically in his executors (if any) and they are able to pass good title to certain estate assets but not others (for example, not real estate) until their authority is confirmed by the issue of a Grant of Probate.

For intestate estates, the estate vests in the Registrar of the Supreme Court of Bermuda and on the issuance of a Grant of Letters of Administration it automatically transfers to and vests in the estate representatives.

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

Establishing title and gathering in assets

The procedure for establishing title and gathering in assets involves a thorough examination of the deceased's property and affairs, often in conjunction with the deceased's family and advisors.

A Grant of Probate or Letters of Administration may not be required in all cases to pass good title to estate assets to beneficiaries (see *Question 20*). In that case, however, those with control or possession of estate assets may not be willing to release those assets until proof of an estate representative's position (and

therefore title) is produced (that proof is almost always a Grant of Probate or Letters of Administration).

Grants can also be required where non-Bermuda property is involved although no estate stamp duty may be due (see *Question 13*).

The procedure and documents required to obtain a Grant of Probate or Letters of Administration are set out in the Non-Contentious Probate Rules (see *Question 20*).

Procedure for paying taxes

The assets of a deceased liable to attract stamp duty are disclosed in an affidavit of the estate representatives' lodged with the Supreme Court of Bermuda together with the estate representatives' application for a Grant of Probate or Letters of Administration.

If the Registrar of the Supreme Court agrees with the disclosure and calculation of the relevant stamp duty, he issues a Stamp Duty Certificate to the estate representatives together with the Grant. The estate representatives generally have 90 days to pay the stamp duty in full.

Once paid in full the:

- Tax Commissioner's Office endorses the Stamp Duty Certificate to note payment in full.
- Certificate is then lodged with the Registrar of the Supreme Court as proof of payment of the requisite stamp duty.
- Registrar then issues a separate acknowledgement of payment in full of the stamp duty to the estate representatives.

Distributing the estate

The estate representatives are not obliged to distribute the estate until six months after the later of the grant of representation or one year after the deceased's death. If an application is made for a Grant of Probate or Letters of Administration after more than a year has elapsed from the death of the testator, however, the Registrar of the Supreme Court will require an explanation from those applying for the Grant as to why the application is being made more than a year after the testator's death.

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

This varies greatly depending on the other jurisdictions in question. The most significant time limits affecting the administration of an estate in Bermuda are those relating to a non-Bermudian holding an interest in Bermuda real estate at his death (see *Question 19*).

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

Generally, the beneficiaries of an estate can challenge the estate representatives on their administration of an estate. In addition, it is possible to challenge the interpretation of a clause or clauses in a will where they are ambiguous and open to interpretation. Such challenges are made via the commencement of proceedings in the Supreme Court.

The following individuals can also challenge the dispositive provisions of a will (or the intestacy trusts) on the basis that the will or intestacy trusts do not provide reasonable financial provision for the beneficiary bringing the challenge (*Succession Act*):

- A spouse.
- A former spouse who has not remarried.

- Children.
- Grandchildren, provided they were being maintained by the deceased.

An application under the Succession Act for reasonable financial provision must be commenced in the Supreme Court within a very short window: six months from when a grant of representation is first taken out. An application can be commenced out of time but only with the permission of the Supreme Court.

Challenging a will may be subject to forfeiture of a gift made under the will if an appropriately drafted and enforceable forfeiture provision is contained in the will.

SUCCESSION REGIMES

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

There is no forced heirship regime in Bermuda. The Succession Act may, however, determine entitlement to a deceased's estate that is left undisposed through whole or partial intestacy (*see Question 28*).

Forced heirship regimes

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

Avoiding the regime

There is no forced heirship regime in Bermuda (*see Question 24*).

Assets received by beneficiaries in other jurisdictions

Not applicable.

Mandatory or variable

Not applicable.

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?

Bermuda succession law applies to assets located in Bermuda (*see Question 15*).

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

There are no reported cases in Bermuda on the application of the doctrine of *renvoi* in relation to succession to immovable property.

INTESTACY

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

The Succession Act 1974 determines the order of succession to the real and personal estate of a deceased on a whole or partial intestacy. The Succession Act 1974 sets out various intestacy trusts on which assets of the deceased left wholly or partially undisposed of (by will) for the deceased's family, starting with the spouse then children and so on through the deceased's lineal descendents. Descendents closest in familial degree are preferred to those in more distant familial degree.

The surviving spouse of an intestate (if any) has an absolute entitlement to any "personal chattels" (as defined in the Succession Act 1974) of the deceased.

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

Certain individuals can challenge the dispositive provisions under the intestacy rules on the grounds that they do not provide reasonable financial provision for the beneficiary bringing the challenge (*see Question 23*).

TRUSTS

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

Type of trust and taxation

The general principles of Bermuda trust law are derived from English common law and equity and have developed, to a large degree, alongside English trust law. Part of Bermuda's trust law is now codified by statute and where Bermuda trust law has diverged from English trust law it has been almost exclusively as a result of this legislation, such as the Trustee Act 1975 and in particular, the Trusts (Special Provisions) Act 1989, which provides for the validity and establishment of non-charitable purpose trusts, a concept that (barring some exceptions) is not recognised under English trust law.

The types of trust established under Bermuda law vary greatly, but the most common forms are:

- Discretionary trust.
- Charitable trusts.
- Accumulation and maintenance trust.
- Insurance trust.
- Employees benefit trust.
- Pension trust.
- Purpose trust (for non-charitable purposes).
- Unit trust.

Bermuda does not impose any taxes on income, profits, dividends, gifts or capital gains earned, received or derived by trusts.

As with estates, there are certain documents relating to trusts that may be assessed to fixed amounts of stamp duty (*see Questions 7 and 8*). Exemptions to the assessment of stamp duty have been carved out for trust documents relating to the transfer or disposition of assets that are not Bermuda property (as defined in the Stamp Duties Act 1976). This ensures that Bermuda-based trusts for the benefit of non-Bermudians (who would normally not hold Bermuda property in any event) maintain a competitive advantage (in terms of costs of administration and taxation of trust funds) over trusts in other jurisdictions.

Residence of trusts

The residence of a trust is generally determined by its governing law.

Where the governing law of a trust is stated to be that of Bermuda, the courts of Bermuda will have jurisdiction in relation to that trust, irrespective of whether that trust has any or no significant connection to Bermuda whether (*section 5, Trusts (Special Provisions) Act 1989*):

- Through trusteeship.
- The composition of its trust fund.

- The nationality or residence of the settlor, or his connection with Bermuda.

If the written terms of the trust are silent on the governing law, the trust is governed by the written terms of the trust (*section 6, Trusts (Special Provisions) Acts 1989*). In determining that connection, the following factors must be taken into account (*section 6*):

- The place of residence or business of the trustee.
- The location (*situs*) of the trust property.
- The place of administration of the trust.
- The objects of the trust and the places where they are to be fulfilled.

The Supreme Court of Bermuda has jurisdiction over a trust where any of the following circumstances exist:

- A trustee is resident in Bermuda.
- Trust property is situated in Bermuda.
- The administration of the trust is carried on in Bermuda.
- The court thinks it appropriate to exercise jurisdiction over that trust.

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

Bermuda recognises trusts that are governed by another jurisdiction's laws.

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

There are no tax consequences to the trustees of a foreign trust becoming resident in or leaving Bermuda. There may be some nominal fixed stamp duties to pay on documents relating to the:

- Retirement of foreign trustees of trusts in favour of either Bermudian or Bermuda resident trustees.
- Appointment of foreign trustees in place of Bermudian or Bermuda resident trustees.

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?**
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Purpose trusts

Bermuda was a leader in the enactment of legislation to permit trusts for non-exclusively charitable purposes (Purpose Trusts) and the development and promulgation of the use of Purpose Trusts, particularly in the commercial context. The legislation providing for the establishment of Purpose Trusts is the Trusts (Special Provisions) Act 1989. Purpose Trusts can be found in use in many commercial transactions and arrangements, including:

- Aircraft and other asset financing.
- Asset ring-fencing.
- Liability ring fencing.
- Private trust company structures.

Perpetuities and accumulations

Bermuda abolished the rules against perpetuities and accumulations for trusts formed after 1 August 2009, except to the extent that those rules apply to interests in land in Bermuda (*Perpetuities and Accumulations Act 2009*). The rule against perpetuities and accumulations continues to apply to trusts formed before 1 August 2009, although it is possible to bring an application to the Supreme Court of Bermuda to extend or remove the applicable trust period.

Beneficiaries' rights to information

The Supreme Court of Bermuda has inherent jurisdiction to supervise the administration of a trust. Alongside the beneficiary's right to hold a trustee to account for the management and investment of the trust this might be thought to make it quite difficult to restrict a beneficiary's right to request and obtain information on the administration, management or investment of the trust fund by express provision in the trust deed.

It was held on appeal, however, that a carefully worded and rather restrictive (from the perspective of the beneficiary) trust information disclosure clause was valid, obstructing a beneficiary's path to obtaining information without the assistance of either a protector or the courts (*In The Matter of a Trust [2013] SC (Bda) 16 Civ (12 March 2013)*). The Court of Appeal granted leave to appeal the decision in this case to the Judicial Committee of the Privy Council in London. However, it is not currently known if the appeal will be pursued.

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?

A trust validly created under the laws of Bermuda can only be set aside in accordance with the laws of Bermuda, irrespective of the laws or judgments of other jurisdictions, including those related to heirship rights and personal relationships (including divorce) (*section 11, Trusts (Special Provisions) Act 1989*).

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 following general rules apply:

- The assets of a trust are not available to satisfy the claims of a creditor of the settlor or any beneficiary of the trust.
- Any assets transferred to a trust are not available to satisfy the claims of a creditor of the person who made the transfer of assets to the trust.

However, an "eligible creditor" can bring proceedings within six years of any transfer made with the "requisite intention" (generally meaning an intention to put those assets beyond the reach of creditors) to set aside the transfer (*Part IV A, Conveyancing Act 1983; for definitions of eligible creditor and requisite intention see Part IV A*). It is necessary to prove, on the balance of probabilities, that when a transferor transferred assets to a trust, he did so with the requisite intention. If the creditor bringing the action was not, at the time of the transfer, a person to whom the transferor owed any obligation, the court must be satisfied that the creditor was reasonably foreseeable by the transferor as a person to whom the transferor may owe an obligation in the future.

CHARITIES

36. Are charities recognised in your jurisdiction?

Charities are legally recognised under Bermuda law and can take varying forms such as charitable trusts and companies limited by guarantee. The law of Bermuda follows very loosely the law of the UK and many other common law jurisdictions in defining what is considered charitable (for example, relief of poverty and promotion of education). Many trusts and companies limited by guarantee are established in Bermuda for charitable purposes. However, not all can solicit donations and funds from the public. Only charitable organisations that are registered as charities under Bermuda's Charities Act 1978 (Registered Charity) can solicit donations and funds from the public. A Registered Charity is subject to oversight by the Charity Commissioners of Bermuda and must make certain annual filings, such as financial statements and re-registration as a charity.

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

Individuals can select among a number of structures to establish a charity. However, the two most commonly used structures are charitable trusts and companies limited by guarantee (*see Question 36*).

There is a central public register of registered charities that is maintained by the Registrar General for Bermuda and is open to public inspection. Currently, there are over 400 registered charities entered in the Register in Bermuda. Private charitable organisations established in Bermuda are not required to be registered and consequently are not subject to the same disclosure and filing requirements as registered charities. The total number of private charitable organisations established in Bermuda is nearly impossible to determine. However, it is believed that there are hundreds and in some are quite substantially funded. These private charities rely almost entirely on private benefactors (who are often the promoters) and generating income from endowments to fund their charitable purpose as they are not permitted to solicit donations or funds publicly unless registered.

Anyone wishing to register a charitable organisation in Bermuda as a registered charity must complete the requisite application form. The form discloses particulars of the organisation including its main charitable purposes, its proposed fund-raising activities and how it is proposed to apply the funds. The form is submitted to the Office of the Registrar General for Bermuda and is considered by the Charity Commissioners of Bermuda for approval. The Charity Commissioners are the regulatory body for registered charities in Bermuda.

Charities law in Bermuda is currently under review and comprehensive changes to the law and the regulation of charitable organisations are being proposed. It is anticipated that these changes may be implemented in late 2015.

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

In addition to the public benefit that charities provide there are certain benefits for individuals in establishing charitable organisations in Bermuda. In many cases any Bermuda property transferred to a registered charity (voluntarily or for value) will not attract any stamp duty on the transfer instrument. Private charitable organisations can also avail of these exemptions provided that they first obtain a ruling from the Ministry of Finance confirming that they are charitable. It is also possible for foreign

charitable organisations to obtain these rulings from the Minister of Finance for gifts of property situated in Bermuda by will to foreign charitable organisations.

Bermuda charitable organisations can also avail of favourable status in other jurisdictions (such as the US) by partnering with charitable organisations in other jurisdictions or establishing related charitable entities in those jurisdictions.

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?

Overview of co-ownership

Generally, property in Bermuda can be held in varying forms of co-ownership, such as:

- Joint tenancy.
- Tenancy-in-common.
- Life interests with attendant interests in remainder.

Each form of co-ownership brings different implications for estate planning and ultimately determines the likelihood of stamp duty being assessed on the value of that property on the issuance of a Grant of Probate or Letters of Administration. Generally, co-ownership by way of joint tenancy is the most effective form of co-ownership in terms of avoiding estate stamp duty.

Joint tenancy

Joint tenancy is effective in avoiding estate stamp duty, primarily because when one joint tenant owner of a property dies leaving a surviving joint owner or owners, the title (both legal and beneficial) of the deceased's joint interest passes automatically to the survivor(s) without the need to obtain a Grant of Probate or Letters of Administration. If, however, the deceased joint tenant owner leaves other assets within his estate requiring a Grant of Probate or Letters of Administration to pass title to the beneficiaries, the extent of any property owned in joint tenancy with others must be disclosed in the application for the grant, the value of which is taken to be the market value of the property at the date of the deceased joint owner's death divided by the number of joint owners of the property at that time. That value falls to be included as part of the deceased's dutiable estate (provided that it is Bermuda property) even though it passes automatically to the surviving joint owners and does not devolve in accordance with his will or the intestacy trusts.

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?

Bermuda law does not recognise the concept of a common law or same sex marriage and does not confer any rights on such persons or on cohabitants. The rights of any such persons as they relate to real estate and other assets may derive from areas of the law not necessarily relating to succession or trusts (in the usual sense of *inter vivos* trusts), such as rights founded in contract or equity (constructive trust and proprietary estoppel).

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

See *Question 40*.

42. How are the following terms defined in law:

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

Married

There is no main definition of the term "married". It is referred to in the following legislation, in a variety of different contexts:

- Marriage Act 1944.
- Matrimonial Causes Act 1974.
- Adoption of Children Act 1963.
- Wills Act 1988.

Divorced

See above, *Married*.

Adopted

There is no formal legal definition of the term "adopted", although section 14(1) of the Adoption of Children Act effectively defines an adopted child as a child who was not born to the adopter but stands in relation to the adopter "exclusively in the position of a child born to the adopter".

Legitimate

Bermuda law no longer recognises the concept of an illegitimate child and so all natural born children, whether born in or out of wedlock, are legitimate children (arguably the concept of legitimate children is also redundant) (*Children Amendment Act 2002*).

Civil partnership

See *Question 40*.

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 age of majority in Bermuda is 18 years (*Minors Act*).

A minor is legally incapable of holding title to real estate in Bermuda. Property may be held in trust for a minor and applied for his benefit and/or may be paid to his parent or guardian or to the minor directly if he has reached the age of 16 years. The receipt of the parent or guardian of the minor is a sufficient discharge to the trustee to see to the further application of such property.

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?

Powers of attorney

Bermuda law recognises powers of attorney. Powers of attorney can be limited in scope (for example, signing a conveyance on behalf of a party who will be abroad and unable to sign it at the requisite time) or quite broad and extensive in scope, authorising the attorney to do almost anything and everything on behalf of the donor of the power of attorney.

The donor of a power of attorney must have requisite capacity to grant a valid power of attorney.

A regular power of attorney ceases to be valid on a subsequent loss of "legal capacity" (as defined in the Mental Health Act 1986) of the donor of the power of attorney. If the power of attorney is granted to endure throughout the subsequent loss of legal capacity by the donor (enduring power of attorney) it will not become invalid should the donor then subsequently lose legal capacity.

Receivership

In the absence of an enduring power of attorney an interested person can apply to the Supreme Court of Bermuda for an order under the Mental Health Act 1986 to be made the receiver for a person who has lost legal capacity (patient) to manage the patient's property and affairs. A person appointed as the receiver must file accounts with the Court annually setting out the income and expenses of the patient and the extent of the patient's remaining property. Significant actions proposed to be taken in relation to the patient's property or affairs (for the sale of real estate) must first be approved by the Supreme Court of Bermuda.

While receivership is certainly an available option if a person loses legal capacity and did not have previously grant a valid enduring power of attorney, the process to obtain receivership can be cumbersome and expensive. The granting of an enduring power of attorney is generally preferable.

PROPOSALS FOR REFORM

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

At present there are significant efforts being made in several quarters and in collaboration (through the Society of Trust and Exchange Practitioners (STEP) Bermuda, the Bermuda Business Development Corporation and the Bermuda Association of Licensed Trustees) to undertake a comprehensive review of Bermuda's trust and estate planning laws with a view to enhancing and improving those areas where it is felt necessary. Bermuda's approach to legislative change in this area has been quite measured and considered. It is likely that certain changes to the Trustee Act 1975, the Children Act 2002 and the Perpetuities and Accumulations Act 1989 will be made in the near future, together with the introduction of some hybrid form of company akin to a foundation, although there is debate as to whether a Bermuda Foundation will enhance Bermuda as an offshore trust jurisdiction and financial centre.

ONLINE RESOURCES

Bermuda Laws Online (BLO)

W www.bermudalaws.bm/default.aspx

BLO is a database of Bermuda's statutes and statutory instruments. It contains both consolidated laws and annual laws from 1993. It is maintained by the government and kept up-to-date.

Bermuda Judiciary

W www.gov.bm/portal/server.pt?open=512&objID=204&mode=2&in_hi_userid=2&cached=true

Official page of the Bermuda Judiciary, which is maintained by the government and kept relatively up-to-date. The website provides a general introduction to Bermuda's court system, as well as more detailed information for the public and lawyers.

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