



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Bermuda: Private Client (2nd edition)

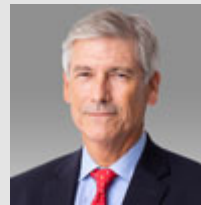
This country-specific Q&A provides an overview to
tax laws and regulations that may occur in Bermuda.

This Q&A is part of the global guide to Private Client.
For a full list of jurisdictional Q&As
visit <http://www.inhouselawyer.co.uk/practice-areas/private-client-2nd-edition/>



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The Legal 500



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1. Which factors bring an individual within the scope of tax on income and capital gains?

There is no income tax or capital gains tax in Bermuda.

2. What are the taxes and rates of tax to which an individual is subject in respect of income and capital gains and, in relation to those taxes, when does the tax year start and end, and when must tax returns be submitted and tax paid?

The financial year runs 1 April to 31 March, but for private clients there are no relevant tax payment dates or deadlines because there is no income or profits tax, capital gains

tax, capital transfer taxes, withholding tax or inheritance tax in Bermuda.

3. Are withholding taxes relevant to individuals and, if so, how, in what circumstances and at what rates do they apply?

There is no withholding tax in Bermuda.

4. Is there a wealth tax and, if so, which factors bring an individual within the scope of that tax, at what rate or rates is it charged, and when must tax returns be submitted and tax paid?

There is no wealth tax in Bermuda.

5. Is tax charged on death or on gifts by individuals and, if so, which factors cause the tax to apply, when must a tax return be submitted, and at what rate, by whom and when must the tax be paid?

There is no inheritance tax in Bermuda. The only relevant tax payable is stamp duty, which is payable on the value of the deceased's Bermudian property (that is real property situated in Bermuda, Bermudian dollars and shares in Bermudian companies).

On death, the rates vary between 0% for Bermudian assets below BM\$100,000 to 20% for Bermudian assets over BM\$2 million. The rate is applied to the market value of the assets, and secured debt on real property in Bermuda will reduce the amount of stamp duty payable.

Lifetime gifts of Bermudian property (other than cash) are subject to a lower rate of stamp duty, at a maximum of 7% for gifts with a value of over BM\$1.5 million.

Exemptions from stamp duty apply to:

- the value of any interest in an estate that passes to a spouse;
- gifts to charities registered in Bermuda (or international charities that the Minister of Finance deems to be charitable); and
- the value of a principal family home (this only applies for persons who hold “Bermuda Status”, as defined in the Bermuda Immigration and Protection Act 1956).

6. Are tax reliefs available on gifts (either during the donor’s lifetime or on death) to a spouse, civil partner, or to any other relation, or of particular kinds of assets (e.g. business or agricultural assets), and how do any such reliefs apply?

Gifts of Bermudian property to a surviving spouse on death are exempt from stamp duty.

There is no stamp duty relief for gifts of Bermudian property to spouses during lifetime, but due to the lower rates of stamp duty payable lifetime gifts can be effective way of reducing the value of an estate.

7. Do the tax laws encourage gifts (either during the donor’s lifetime or on death) to a charity, public foundation or similar entity, and how do the relevant tax rules apply?

There is no stamp duty on gifts of Bermudian property to Bermuda charities, or to international charities that the Minister of Finance deems to be charitable.

8. How is real property situated in the jurisdiction taxed, in

particular where it is owned by an individual who has no connection with the jurisdiction other than ownership of property there?

If an individual owns property in Bermuda an annual land tax applies, regardless of whether the individual is resident in Bermuda or not.

This is assessed semi-annually and is linked to the notional rental value of the property (which is set by the Accountant General). The rates are stepped and range from 0.8% for a notional annual rental value of under BM\$11,000 to 47% for the portion of notional rental value above BM\$120,000.

9. Are taxes other than those described above imposed on individuals and, if so, how do they apply?

Payroll tax applies to employers in Bermuda, which is split into an employer and employee portion. The employer is responsible for the payment of both portions, but they may deduct the employee portion (which is up to 8.75%) from an employee's salary (in whole or in part). The employer portion is up to 10.75%, depending on the individual's salary.

Customs duties are charged on the importation of goods to Bermuda at the rate of 25% (subject to limited duty free allowances).

There is no sales tax or VAT, and no other taxes applicable to individuals in Bermuda.

10. Is there an advantageous tax regime for individuals who have recently arrived in or are only partially connected with the jurisdiction?

As there are no taxes applied in Bermuda, there is no special tax regime for individuals



who have recently arrived.

If an individual is transferring their residence to Bermuda there is a relief from customs duty for personal belongings.

11. What steps might an individual be advised to consider before establishing residence in (or becoming otherwise connected for tax purposes with) the jurisdiction?

As no direct taxes are applied in Bermuda, there are no particular steps an individual might consider before establishing residence from a tax perspective. However, appropriate immigration permission should be obtained.

12. What are the main rules of succession, and what are the scope and effect of any rules of forced heirship?

Bermuda allows individuals freedom of testamentary disposition; there are no forced heirship laws.

13. Is there a special regime for matrimonial property or the property of a civil partnership, and how does that regime affect succession?

There is no special regime for matrimonial property or the property of a civil partnership. Ownership of property acquired both prior to and during a marriage is determined on ordinary principles.

14. **What factors cause the succession law of the jurisdiction to apply on the death of an individual?**

The Succession Act 1984 sets out what happens to assets located in Bermuda in the absence of a will under the rules of intestacy (see the response to question 16 below for more details).

15. **How does the jurisdiction deal with conflict between its succession laws and those of another jurisdiction with which the deceased was connected or in which the deceased owned property?**

Firewall provisions will protect assets in a Bermudian trust from being attacked based on orders of a foreign court under foreign law. Bermuda trusts will be held valid when subject to a challenge based on foreign forced heirship laws, mandatory community property matrimonial laws and, in certain cases, under foreign bankruptcy laws.

Under section 11 of the Trusts (Special Provisions) Act 1989 where a trust is validly created under Bermuda law, a Bermuda court will not:

- vary it or set it aside;
- treat a disposition of property to be held upon trust as void, voidable, liable to be set aside or defective, for any reason;
- question the capacity of any settlor; or
- treat any trustee, beneficiary or any other person as subjected to an liability or deprived of any rights;

by reason that:

1. the law of another jurisdiction prohibits or does not recognise the concept of a trust;
2. the trust or disposition avoids or defeats rights, claims or interests of another jurisdictions laws concerning heirship and personal relationships; or
3. the trust avoids or defeats rights, claims or interest of another jurisdictions laws

concerning creditors' rights.

A foreign judgment shall not be recognised, enforced, or give rise to any estoppel if it is inconsistent with this section.

16. **In what circumstances should an individual make a Will, what are the consequences of dying without having made a Will, and what are the formal requirements for making a Will?**

Whilst there is no requirement for an owner of assets in Bermuda to make a will, it is advisable.

In the absence of a will, assets will pass according to the rules of intestacy. Broadly these state that:

- Where the deceased dies intestate and leaves only a spouse, the spouse takes the residuary estate absolutely.
- If the deceased leaves a spouse and issue (i.e. descendants), the spouse will take the personal chattels absolutely and a sum equal to 50% of the value of residuary estate (or BM\$100,000, whichever is greater), the balance of the residuary estate will be held for the deceased issue per stirpes.
- If the deceased leaves a spouse and no issue, but also a parent, sibling or issue of the sibling, the surviving spouse will take the personal chattels and a sum equal to 66% of the value of the residuary estate (or BM\$150,000, whichever is greater) and the parents, siblings or siblings' children will share the balance in a set order of priority.
- If the deceased leaves only issue the issue will take per stirpes.

17. **How is the estate of a deceased individual administered and who is responsible for collecting in assets, paying debts, and distributing to beneficiaries?**

Estate representatives have responsibility for administering the estate. If executors are

named in a will they will become estate representatives once one or more of them obtain a Grant of Probate.

If there are no executors (either because none are named, the named executors fail or refuse to act, or no valid will is in existence), the Non-Contentious Probate Rules 1974 determine who may apply for a Grant of Letters of Administration.

18. **Do the laws of your jurisdiction allow individuals to create trusts, private foundations, family companies, family partnerships or similar structures to hold, administer and regulate succession to private family wealth and, if so, which structures are most commonly or advantageously used?**

Trusts are very well established in Bermuda and private trusts and purpose trusts are the primary vehicles of choice for succession planning.


Trust law in Bermuda is based on English law principles and it has been partly codified in the Trustee Act 1975 and the Trusts (Special Provisions) Act 1989.

The most common forms of trust established under Bermuda law are:

- Discretionary
- Life interest / fixed interest trust
- Accumulation and maintenance
- Charitable
- Non-charitable purpose trusts
- Employee benefit trusts

Bermuda law does not recognise foundations at this time.

In addition to the sophisticated institutional trust companies that operate in Bermuda



Private Trust Companies (“**PTCs**”) can be easily set up to provide more bespoke trustee services to structures.

PTCs have many advantages for private clients and their families, including allowing greater involvement in trust administration through board representation and providing a trust structure through which to hold more non-traditional assets which may be considered onerous by institutional trustees, such as family trading companies, high risk portfolios, and unusual assets.

Bermuda also has codified statute concerning partnerships, which follows English partnership law and family partnerships/family companies are possible under Bermuda law, although trusts are most commonly used.

19. **How is any such structure constituted, what are the main rules that govern it, and what requirements are there for registration with or disclosure to any authority or regulator?**

A trust may be constituted by a trust deed and the main rules that govern Bermuda-law governed trusts are contained within the Trustee Act 1975 and the Trust (Special Provisions) Act 1989.

There is no requirement for trusts to be registered, or for there to be disclosure to an authority or regulator in Bermuda.

Trust companies, or persons who carry on “trust businesses” must be licenced.

A PTC is exempted from the licensing requirements, although on the written notice for the exemption they are required to state the nature and scope of their business (being that business which is set out in the Memorandum of Association).

20. **What information is required to be made available to the public regarding such structures and the ultimate beneficial ownership or control of such structures or of private assets generally?**

There is no trust register in Bermuda or register of people with ultimate beneficial ownership in relation to trusts, and details concerning trusts do not need to be made available to the public.

21. **How are such structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?**

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

There is no stamp duty payable in Bermuda on the initial trust deed or on the conveyance or transfer of non-Bermuda property into the trust. Non-Bermuda property basically refers to all assets except Bermuda currency denominated assets and Bermuda land. The shares of a Bermuda incorporated exempted company are considered to be non-Bermuda property, and are excluded from stamp duty.

Stamp duty is payable if Bermuda property (e.g. real estate located in Bermuda) is transferred into trust. The maximum rate is 15% for values over BM\$1 million.

22. **Are foreign trusts, private foundations etc recognised?**

Bermuda recognises foreign trusts. Bermuda law does not provide for foundations at this time. However, Bermuda law will recognise foreign law foundations where the foreign law is applicable under its conflict of law rules.

23. **How are such foreign structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?**

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

24. **To what extent can trusts, private foundations etc be used to shelter assets from the creditors of a settlor or beneficiary of the structure?**

Bermuda trusts can be used for asset protection planning. Bermuda has firewall legislation in place that can protect assets from general claims made by or on behalf of creditors.

Generally, a Bermudian court will only set aside or vary a trust that was validly created under Bermudian law in accordance with Bermudian law.

25. **What provision can be made to hold and manage assets for minor children and grandchildren?**

Trusts are commonly used as succession vehicles to hold and manage assets for minor children and grandchildren, and accumulation and maintenance trusts can be set up for this purpose. There is no perpetuity period in Bermuda so trusts can run indefinitely as dynastic trusts for future generations. There is also no tax payable in Bermuda on the assets held in trust.

26. **Are individuals advised to create documents or take other steps in view of their possible mental incapacity and, if so, what are**

the main features of the advisable arrangements?

There are no statutory power of attorney provisions in Bermuda, however the trust laws contain provisions which determine if someone had capacity when they created a trust.

27. What forms of charitable trust, charitable company, or philanthropic foundation are commonly established by individuals, and how is this done?

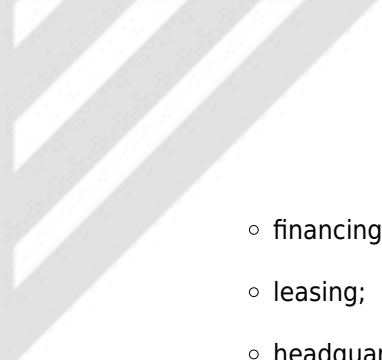
Charitable trusts can be established in Bermuda, and Bermuda was the first jurisdiction to introduce legislation permitting non-charitable purpose trusts under the Trusts (Special Provisions) Act 1989, which provides creative solutions for philanthropic structures where a client's objectives reach beyond the fairly narrow scope of the traditional definition of "charity", and extend to more philanthropic, benevolent and socially useful purposes.

28. What important legislative changes do you anticipate so far as they affect your advice to private clients?

In line with many other British Overseas Territories and Crown Dependencies Bermuda is introducing economic substance legislation, further to an assessment by the EU Code of Conduct Group.

The Economic Substance Act 2018, which was tabled on 7 December 2018 and is due to come into force on 1 January 2019, sets out the requirements for companies carrying out certain activities in Bermuda to have a sufficient economic substance in Bermuda. The relevant activities are:

- banking;
- insurance;
- fund management;

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- financing
 - leasing;
 - headquarters;
 - shipping;
 - distribution and service centre;
 - intellectual property; and
 - holding company

There are various criteria for such entities to satisfy, such as that core income generating activities are undertaken in Bermuda and the company has “adequate” premises and employees in Bermuda.

It is expected that many companies operating in Bermuda will already fulfil these criteria, due to compliance with the existing regulatory requirements.

Further details will be contained in regulations to be published by the Government are expected, however unlike similar legislation in other jurisdiction holding companies are not included in the list of relevant activities.

In addition, in October 2018 the Tax Reform Commission produced a report suggesting various changes to Bermuda’s tax system. However, if introduced these reforms will mainly impact Bermudian residents and should not have an impact on private clients who are looking to establish structures in Bermuda.