

Bermuda

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TAXATION - GENERAL

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.

There is no income or profits tax, withholding tax, capital gains tax, capital transfer tax or inheritance tax in Bermuda (see *Questions 3 to 10*). Therefore, from a private client law perspective, there are no relevant tax payment dates or deadlines.

DOMICILE AND RESIDENCE

2. Does your jurisdiction have concepts of domicile and residence? In what context(s) are they relevant and how do they impact on a taxpayer?

Bermuda has concepts of domicile and residence. However, neither of these has significant tax implications from a private client law perspective. Bermuda follows the English common law concept of domicile without statutory modification.

A person can enter Bermuda and remain as a visitor for an initial period of 21 days, although extensions are routinely granted for stays of up to six months.

Persons wishing to reside in Bermuda for a longer period must apply to the Minister of Labour, Home Affairs and Public Safety for permission to reside.

It is necessary to:

- Complete an application form giving certain personal information.
- Supply evidence of good health and the ability to support oneself financially.

Permission to reside is normally given initially for up to 12 months. It can be reviewed, provided the applicant has demonstrated:

- Good character.
- Adequate financial resources.
- Continued medical insurance coverage.

A residential certificate grants the right to the holder to live in Bermuda and to enter and exit freely for so long as the certificate

is in existence. A non-Bermudian wishing to apply for a residential certificate must be:

- Retired across the world.
- Over 50 years old.
- In possession of substantial financial means (that is, can demonstrate the ability to support himself without having to be employed).
- Either:
 - a person who was, immediately prior to the application, employed in Bermuda for at least five years; or
 - the owner of property in Bermuda.

Residential certificates are issued without time limit. They can be revoked by the Minister of Labour and Home Affairs, subject to the rules of natural justice.

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 tax when a person leaves, and there are no other consequences of leaving.

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

A person can enter Bermuda and remain as a visitor for an initial period of 21 days, although extensions are routinely granted for stays of up to six months.

TAXES ON GAINS AND INCOME

5. How are gains on property/assets owned by a foreign national taxed? What are the capital gains tax rates?

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

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

There is no income tax or withholding tax in Bermuda.

INHERITANCE TAXES

7. What is the basis of the inheritance tax or gift tax regime (or alternative regime if relevant)? Please explain whether the rate of tax depends on:

- How much the beneficiary receives.
- Who the beneficiary is.
- How wealthy the beneficiary is.

There is no tax on inheritance in Bermuda. However, stamp duty is payable on death, on the value of any "Bermuda Property" (as defined in the Stamp Duties Act 1976), owned by the deceased person's estate (*see Question 8*).

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

- Tax-free allowances.
- Exemptions (for example, for inheritances by spouses).
- Techniques to reduce liability (for example, gifting assets during the testator's lifetime, selling assets but retaining a life interest, establishing a trust or purchasing through an offshore company).
- Any other ways to reduce liability.

The stamp duty rates are as follows:

- BM\$50,000 (about EUR34,190) and lower: 0%.
- BM\$50,001 to BM\$200,000 (about EUR136,760): 5%.
- BM\$200,001 to BM\$1 million (about EURO.7 million): 10%.
- Over BM\$1 million: 15%.

Exemptions apply to:

- The value of any charitable gift to a charity:
 - in Bermuda;
 - outside Bermuda and certified as charitable by the appropriate minister.
- The value of any interest in an estate that passes to a spouse.
- The value of the principal family home (available only for persons who hold "Bermuda Status", as defined in the Bermuda Immigration and Protection Act 1956 (as amended)).

Liability can be reduced by lifetime gifts as these are subject to lower rates of stamp duty, up to a maximum of 7%.

Stamp duty arising on death applies to the gross value of the estate's Bermuda Property. Secured debt, which reduces the value of these assets, may reduce the amount of stamp duty payable.

9. Does the inheritance tax or gift tax regime apply to foreign owners of property/assets?

All Bermuda Property is subject to stamp duty, irrespective of the nationality of the owner. Foreign assets are generally not taxed.

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

There are no other taxes on death or on lifetime gifts.

BUYING PROPERTY

11. Are there any other taxes that a foreign national must consider when buying assets/property in your jurisdiction? For example:

- Purchase and gift taxes.
- Annual rates.
- Wealth taxes that apply to foreign nationals with assets above a certain value in your jurisdiction.

There is a relatively small market of Bermudian real estate available for purchase by non-Bermudians for private residential use. These properties are at the upper end of the property market and must:

- Have an annual rental value at least equivalent to the minimum, set by the government from time to time.
- Already be the subject of foreign ownership.

A non-Bermudian, wishing to acquire property in Bermuda, must obtain a licence from the Minister of Labour, Home Affairs and Public Safety. Currently, the fee is:

- 25% of the purchase price in the case of a house.
- 18% of the purchase price in the case of a condominium.

A lesser, flat fee is paid for a licence to acquire property that is transferred by gift or inheritance.

The licences require that the property is owned in the name of the individual and cannot be held by a trust or company.

Annual land tax is assessed on the property's annual rental value.

There are no wealth taxes.

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

Individuals without Bermuda Status can only hold land in Bermuda through a licence and in their own names (*see Question 11*). Where there is more than one owner, the only permissible form of ownership is joint tenancy (*see Question 35*).

INTERNATIONAL AGREEMENTS

13. Is there a wide network of double tax treaties? If so, please provide examples (including any treaties with the UK and the US).

Bermuda does not impose income tax and has not therefore entered into any full double taxation treaties with other countries. Bermuda is on the Organisation for Economic Co-operation and Development (OECD) white list of jurisdictions that have substantially implemented the internationally agreed tax standard and has entered into tax information exchange agreements (TIEAs) with various countries, some of which contain provisions relating to foreign taxes. Additionally Bermuda has signed a separate agreement for the exchange of tax information with the US and ratified this by enacting the USA-Bermuda Tax Convention Act 1986.

WILLS AND ESTATE ADMINISTRATION

14. 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?

While it is highly desirable, it is not essential for an owner of an asset in Bermuda to have a will in Bermuda. If there is no will, the assets will be dealt with under the laws of intestacy as they apply to the deceased person (*see Question 27*).

15. 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?

To have capacity to make a will, a testator must be over 18 years of age and of sound disposing mind.

To establish formal validity, a will must be executed:

- By the testator (or by some other person in the testator's presence and under his direction).
- In the presence of two independent witnesses, both present at the same time who then subscribe their names as witnesses in the presence of the testator. It is not necessary to subscribe their names in each other's presence.

Holographic wills are possible. These are wills that are:

- Entirely in the testator's handwriting.
- Signed at the foot or end by the testator.
- Authenticated under oath by two or more persons, well acquainted with the testator's handwriting.

However, holographic wills are not recommended.

16. Is it possible to make a post-death variation (that is, are there any special rules which apply if testamentary provisions or the provisions of intestacy rules are varied after the date of death by the agreement of the beneficiaries, or are such variations treated as lifetime dispositions by the beneficiaries)?

There is no specific provision to allow the beneficiaries to agree post-death variation. Limited classes of beneficiaries may be able to apply for financial support from the deceased's estate, including (*Succession Act 1974*):

- Spouses.
- Former spouses receiving maintenance.
- Children.
- Grandchildren receiving maintenance.

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

Generally, a will executed outside Bermuda is treated as properly executed if its execution was in accordance with the internal law in force in the:

- Territory where it was executed.
- Territory where, at the time of its execution or of the testator's death, the testator was:
 - domiciled or had his habitual residence;
 - a national.

To be recognised in Bermuda, either:

- The will must have the original grant of probate re-sealed by the Supreme Court of Bermuda (Supreme Court).
- A grant of probate or letters of administration with the will annexed must be applied for in Bermuda.

In cases of intestacy, to enable a legal personal representative (LPR) to deal with any assets located in Bermuda, either of the following must be obtained:

- A reseal of a foreign grant of letters of administration.
- A Bermuda grant of letters of administration.

18. Are there any particular practical issues that are relevant if foreign nationals die in your jurisdiction?

If a foreign national owns land in Bermuda, care must be taken to deal with the land in Bermuda in accordance with the provisions of the Bermuda Immigration and Protection Act 1956 (as amended) (*see Question 11*).

19. Please outline the role and powers of the executor(s). Does the estate vest initially in either:

- Personal representatives who are responsible for administering the estate?
 - The heirs?
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The estate initially vests in the executor(s) named in the will. Where there is no executor, the estate vests in the registrar of the Supreme Court pending the court issuing a grant of letters of administration. At that point, the estate vests in the administrator(s), appointed by the court.

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

- Paying taxes?
 - Distributing?
 - Establishing title and gathering in assets (including any particular considerations for non-resident executors)?
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To establish title to assets in Bermuda, the Supreme Court must issue a grant of probate, letters of administration or a reseal of a foreign grant (Grant). If it is not necessary to establish title to an asset, for example, the only assets are jointly owned assets, it may not be necessary to obtain a Grant.

Liability to tax only arises in cases where a Grant is applied for. The tax is a stamp duty, assessed on the value of the assets of the deceased, as disclosed in an affidavit of value submitted to the court with the application for a Grant (see Questions 7 and 8).

Stamp duty is payable within 90 days of the issue of the Grant.

For full protection, the LPR should only distribute the estate when:

- The stamp duty on the estate has been paid.
- The statutory notice to creditors has expired.
- All liabilities have been paid or provided for.
- The time limit for applications to the Supreme Court, under which certain family members can apply for reasonable financial provision from the estate, has expired.

See Question 21.

21. Are there any time limits/restrictions/valuation issues that are particularly relevant to an estate with a foreign element?

Creditors' claims must be submitted within one month of the expiry of the notice to creditors, advertised in the official *Gazette*.

Claims for family provision must be made within six months of the date of the issue of the Grant.

Where land, situated in Bermuda, is owned by a person who does not hold Bermuda Status, any interest in the land is subject to a licence from the Minister of Labour, Home Affairs and Public Safety (see Question 11).

When a non-Bermudian holding a licence dies, the LPR has one year to dispose of the property to a new owner (that is, a Bermudian or a non-Bermudian who obtains a licence to hold the property).

If property held by a non-Bermudian estate is not disposed of within the year, permission must be obtained from the Minister by the LPR to retain the property for a further period.

Holding an interest in Bermuda land without the requisite licence or permission can result in heavy penalties and forfeiture of the land.

22. Is it possible for a beneficiary to challenge a will/the executors/the administrators? If so, how?

A potential beneficiary (including the next of kin who would otherwise take on intestacy) may challenge the validity of a will in relation to:

- The formal requirements under the Wills Act 1988.
- The testator's capacity.

SUCCESSION REGIMES

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

Bermuda allows freedom of testamentary disposition and has no forced heirship regime.

Foreign forced heirship regimes resulting from nationality or some other connecting factor may be recognised in Bermuda in relation to the testator's estate or testamentary trusts established by the testator's will (see Question 29).

Foreign heirship claims will not be recognised in relation to assets held in an inter-vivos (living) trust that has been validly established under Bermuda law (see Question 33).

24. If there is a forced heirship regime in your jurisdiction, please state whether:

- It can be avoided (for example, by buying assets through an offshore or other entity and/or holding assets in joint names).
 - It takes into account assets received by beneficiaries in other jurisdictions.
 - The forced heirship rights are mandatory on the forced heir or whether the forced heir can agree to a different distribution during the testator's lifetime.
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Not applicable (see Question 23).

25. Are property/assets owned by a foreign national subject to your succession laws or the laws of the foreign national's original country?

In matters of succession, movable property is governed by the laws of the deceased's domicile and immovable property is governed by the laws of Bermuda.

26. Do your courts accept a reference back to your jurisdiction where your laws refer succession issues to the foreign national's home jurisdiction, whose courts have refused jurisdiction because the issues concern immovable property?

The principles of reference back (*renvoi*) can apply in Bermuda unless a conflict of laws rule under a Bermuda statute or other common law rule applies to avoid the reference back. Bermudan courts can accept jurisdiction over foreign immovable property if the courts where the property is located (*situs*) refuse to deal with the matter. In that case, it is likely that the Bermuda court will apply the law of the location of the immovable property.

INTESTACY

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

Where Bermuda law governs the intestate succession to the property of a deceased person, the assets of the deceased person will be distributed to his heirs in the manner established by the Succession Act 1974.

OVERSEAS PROPERTY

28. How are residents in your jurisdiction with property/assets overseas taxed?

Bermuda residents do not pay tax in Bermuda on overseas property or assets.

TRUSTS

29. Are trusts (or an equivalent structure) recognised in your jurisdiction? Please describe the trust (or equivalent structure), including:

- **How it is taxed.**
 - **How its residence status is established.**
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Trusts are recognised in Bermuda. Bermuda trust law is based on English trust law but has been enhanced in some areas by Bermuda legislation. English common law is of highly persuasive authority in Bermuda.

The principal legislation governing trusts in Bermuda is the:

- Trustee Act 1975 (as amended).
- Trusts (Special Provisions) Act 1989 (as amended).

There is no Bermuda income, capital gains, gift, inheritance, estate or other tax imposed on Bermuda trusts (*see Questions 3 to 10*). However, certain minor stamp duties can apply to various documents.

The following types of trust can be established in Bermuda:

- Discretionary trusts. These are the most common form of trust in Bermuda, as they offer the most flexible and efficient structure.
- Fixed interest trusts.
- Charitable and non-charitable purpose trusts (*see Question 32*).

There are no public registration requirements concerning the establishment of trusts in Bermuda. Trust records kept by a trustee should not be disclosed, unless required by law. All information passing from a settlor to the trustee is treated as absolutely private and confidential by the trustee.

The Supreme Court has jurisdiction in matters concerning a Bermuda trust where (*section 9, Trusts (Special Provisions) Act 1989*):

- A trustee is resident in Bermuda.
- Trust property is situated in Bermuda (but not in relation to property situated elsewhere).
- The administration of any trust is carried on in Bermuda.
- The Supreme Court thinks it appropriate.

It is usually advisable to ensure that substantive contacts with Bermuda are established, to create a clear jurisdictional connection (that is, the trust administration should take place in Bermuda or there should be at least one Bermuda resident trustee).

However, there is no requirement that the settlor be resident in, or have any physical connection with, Bermuda. It is unnecessary, although it may often be advisable, to have the trust property situated in Bermuda

30. 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 and are created for foreign persons.

31. What are the tax consequences of importing/exporting a trust to/from your jurisdiction?

There are no tax consequences of importing or exporting a trust to or from Bermuda.

32. 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?**

Non-charitable purpose trusts

The Trusts (Special Provisions) Act 1989 introduced non-charitable trusts into Bermuda law. Bermuda was the first offshore jurisdiction to provide for these trusts by statute.

The Trusts (Special Provisions) Amendment Act 1998 amended non-charitable purpose trusts to enhance their reputation as effective offshore vehicles, particularly for commercial transactions, including that:

- A trust can be established for non-charitable purposes, provided that those purposes are:
 - sufficiently certain for the trust to be carried out;
 - lawful;
 - not contrary to public policy.
- A trustee no longer needs to be a "designated person" (that is, a local licensed trust company or other local professional).

The Act also expressly provides who has standing before the Bermuda courts.

Perpetuity periods

The Perpetuities and Accumulations Act 2009 became effective on 1 August 2009. It abolished the rule against perpetuities for trusts created after 1 August 2009, except for trusts owning Bermuda land.

The rule against perpetuities continues to apply to trusts created before 1 August 2009. In certain circumstances it may be possible to apply to the Bermuda court to extend the duration of an existing trust.

Accumulations of income under a trust can continue for the duration of the perpetuity period, which is either:

- 100 years.
- The common law period of a life in being plus 21 years for trusts created before 1 August 2009.

For trusts created after 1 August 2009 there is no restriction on the period during which income can be accumulated.

The new Perpetuities Act enables the court to disapply the rule against perpetuities for trusts in existence before 1 August 2009 (other than when Bermuda land interests are involved).

Information disclosure

There are no statutory provisions regulating disclosure of information to beneficiaries. Confidentiality clauses can be included in trust deeds. However, ultimately the court has discretion whether to order disclosure to a beneficiary.

Generally, trustees must disclose sufficient information to the beneficiaries to allow them to determine whether they are fulfilling their duties as trustees. However, they do not have to disclose documents which have not been produced in the normal course of administration of the trust.

33. 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 Bermuda court will not recognise the order of a foreign court to vary or set aside a Bermuda trust on the basis of matrimonial or divorce proceedings arising under foreign law.

In addition, Bermuda trusts cannot be challenged on the basis of foreign forced heirship laws, matrimonial laws and, in certain cases, bankruptcy laws. In relation to a trust that is validly created under the laws of Bermuda (*section 11, Trusts (Special Provisions) 1989*):

- It cannot be varied or set aside by a Bermuda court.
- No disposition of property to be held on that trust can be:
 - void;
 - voidable;
 - liable to be set aside for any reason.
- The trustee, any beneficiary or any other person cannot be subjected to liability or deprived of rights because:
 - the law of another jurisdiction prohibits or does not recognise the concept of a trust;
 - the trust or disposition:
 - avoids or defeats rights, claims or interests that the law of another jurisdiction grants to any person because of a personal relationship to the settlor, or to any beneficiary, or by way of heirship rights;
 - breaches the law of another jurisdiction or any foreign judicial or administrative order or action intended to recognise, protect, enforce or give effect to any of those rights, claims or interests; or
 - avoids or defeats rights, claims or interests that the law of another jurisdiction grants to any person concerning the protection of creditors in matters of insolvency.

34. 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?

A Bermuda court will not recognise the order of a foreign court to set aside a trust on the basis of creditors' rights arising under foreign law (*see Question 33*).

CO-OWNERSHIP

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

Property in Bermuda can be owned by individuals either as joint tenants or as tenants in common:

- **Joint tenants.** This allows the right of survivorship. On the death of a joint owner the property automatically passes to the surviving joint owner(s).

The notional value of any Bermuda Property is potentially liable to stamp duty where a Grant is applied for (*see Question 20*). The notional value for stamp duty is the market value at the date of death divided by the number of joint owners (including the deceased) at the date of death.

- **Tenants in common.** This permits the co-owners to hold the property in whatever proportions they choose. On the death of a tenant in common, the property of the deceased co-owner forms part of his estate and is dealt with according to his will or the distribution rules on intestacy. The value for stamp duty is the market value of the deceased's share at the date of death.

FAMILIAL RELATIONSHIPS

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

There is no recognition of the rights of cohabitants or civil partners in property under Bermuda law. No protection of property rights is available either for succession or ownership purposes unless the parties have entered into formal contracts to govern their legal positions before or on death.

37. Please describe how the following terms are defined in law:

- **Divorced.**
- **Married.**
- **Adopted.**
- **Legitimate.**

Each of these terms (or derivatives of these terms) is defined in various pieces of Bermuda legislation, for example the:

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

However, there is no uniform definition for each term, as each depends on specific circumstances.

MINORITY

38. What rules apply during the period when an heir is a minor?

The age of majority in Bermuda (18 years) is governed by the Minors Act 1950.

Unless other provisions are made in the will or by a court order, assets are held for the benefit of the minor by the LPR or trustee, pending the minor coming of age. There are statutory provisions that allow for advancement of income and capital for the benefit of the minor during his minority.

Where a minor is sole executor of a will, administration with the will annexed is granted to his guardian, or to another person that the court considers suitable, until the minor reaches the age of majority. On reaching 18, he can obtain probate of the will.

CAPACITY

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

When a person loses capacity in Bermuda, if an enduring power of attorney (EPA) is in place, his attorney can manage his affairs.

If there is no valid EPA in place, the receivership provisions of the Mental Health Act 1968 apply and application must be made to the Supreme Court for a receivership order.

The Supreme Court has power to:

- Appoint a receiver to manage the property of an incapacitated person. It will require any receiver to provide annual accounts to the court.
- Order an EPA to provide accounts to the court.
- Revoke an EPA, if necessary.

A power of attorney (or equivalent) prepared in a foreign jurisdiction can be recognised in Bermuda. However, adequate proof is required:

- Of the formal and essential validity of the foreign document.
- That the power is to extend to assets situated in Bermuda.

Where the document is not in the English language, a certified translation of the document into the English language is also required.

The preferred course for clients with assets in Bermuda is to execute a power of attorney in Bermuda to deal with assets located here.

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