

Private Client

Contributing editors

Anthony Thompson and Sara Walter



2018

GETTING THE
DEAL THROUGH 

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Tax

1 How does an individual become taxable in your jurisdiction?

There are no forms of income, corporate or capital gains tax in the British Virgin Islands (BVI). However, an individual is taxable in the BVI if they are employed or own BVI property.

2 What, if any, taxes apply to an individual's income?

Income tax in the BVI is zero-rated and no individual is taxed unless gainfully employed in the BVI. Payroll tax and social security is charged on every self-employed person or employer who carries on business in the BVI. Payroll tax at the rate of 10 per cent is chargeable for small employers and up to 14 per cent of remuneration for large employers. Eight per cent of the total remuneration may be reclaimed from the employee. Employees also pay 4 per cent social security contributions and employers pay 4.5 per cent.

3 What, if any, taxes apply to an individual's capital gains?

There are no capital gains taxes in the BVI.

4 What, if any, taxes apply if an individual makes lifetime gifts?

There are no gift taxes in the BVI.

5 What, if any, taxes apply to an individual's transfers on death and to his or her estate following death?

There is no estate duty or inheritance tax payable in the BVI.

6 What, if any, taxes apply to an individual's real property?

BVI stamp duty is payable on the purchase of real estate in the BVI at different rates depending on whether the purchaser is a foreign national or a BVI national.

Land and house tax together is called 'property tax'. For land owned by a BVI national or a BVI Company, there is a land tax of US\$3 per year on the first acre or part thereof, and US\$1 for each subsequent acre or part thereof.

On land owned by a foreign national, there is a tax of US\$50 per year for the first half acre or part thereof, and US\$150 for the second half acre and an additional US\$50 per year for each subsequent half acre.

House tax amounts to 1.5 per cent per annum on the notional annual rental value of the house.

7 What, if any, taxes apply on the import or export, for personal use and enjoyment, of assets other than cash by an individual to your jurisdiction?

Generally, import duty ranges from 5 per cent to 20 per cent of the market value of the imported goods, subject to a number of exemptions.

8 What, if any, other taxes may be particularly relevant to an individual?

There are no other applicable taxes, such as VAT, in the BVI.

9 What, if any, taxes apply to trusts or other asset-holding vehicles in your jurisdiction, and how are such taxes imposed?

Corporate tax is zero-rated. A trust duty of US\$200 is payable on the establishment of a trust governed by BVI law. The income received by the trustees is not subject to any BVI tax. There are no BVI fiscal implications arising out of transactions entered into by trustees or distributions to beneficiaries.

10 How are charities taxed in your jurisdiction?

Charities are not taxed in the BVI.

Trusts and foundations

11 Does your jurisdiction recognise trusts?

Trusts are recognised in the BVI, as a general rule, trusts governed by the laws of other jurisdictions are also recognised. The HCCH Convention on the Law Applicable to Trusts and on their Recognition 1985 (Hague Trusts Convention) has been extended to the BVI. Therefore, in general, the courts of the BVI will recognise most trusts established under foreign law for the benefit of foreign persons.

A range of trusts may be established in the BVI including discretionary trusts, fixed interest trusts, reserved power trusts, charitable and non-charitable purpose trusts. The principal legislation applicable to trusts is set out in the Trustee Act 1925. Trustees are ultimately subject to the jurisdiction of the BVI courts.

The Virgin Islands Special Trust Act 2003 (VISTA), as amended, may apply to all types of BVI trust. VISTA enables a settlor to create a trust holding shares in a BVI incorporated company under which the trustee may be disengaged, notwithstanding that his or her shareholding gives him or her a controlling interest in the company, from management responsibility in relation to the company's affairs. It therefore allows the company and its business to be retained and run as its directors see fit. It is desirable and has become routine when establishing VISTA trusts to preserve the trustee's statutory right to information about the company's affairs and to specify well-defined permitted grounds for complaint on the part of interested persons in relation to the trust. Appropriate use of the provisions of VISTA allows a settlor to achieve what cannot be achieved by mere exclusion of power and duty in a trust instrument (since no provision in a trust instrument can deprive a trustee of the power to exercise rights which it holds as a matter of company law). One other advantage of VISTA is that it allows a settlor to specify in advance 'office of director rules' whereby the trustee can be required to secure a specified composition of the board throughout the trust period.

12 Does your jurisdiction recognise private foundations?

There is no statutory provision for the establishment or recognition of private foundations under BVI law.

Same-sex marriages and civil unions

13 Does your jurisdiction have any form of legally recognised same-sex relationship?

There is no statutory provision for the recognition of same-sex relationships in the BVI.

14 Does your jurisdiction recognise any form of legal relationship for heterosexual couples other than marriage?

There is no statutory provision for the recognition of legal relationships other than marriage between heterosexual couples in the BVI.

Succession

15 What property constitutes an individual's estate for succession purposes?

All property, whether owned under law or equity, constitutes an individual's estate in the BVI. Certain assets, such as real property held on joint tenancy, do not pass to an individual's estate, but rather transfer to the joint surviving owner upon death.

As under English law, there are two types of co-ownership under BVI law.

In a joint tenancy, the co-owners hold an indivisible share of the property. On the death of a joint tenant, the property vests in the surviving joint tenant or tenants by operation of law, and does not form part of his or her estate on death.

In a tenancy in common, the co-owners own a separate and identifiable share in the property and on death the share of the property forms part of the deceased co-owner's estate (so that it passes under the terms of his or her will or intestacy).

16 To what extent do individuals have freedom of disposition over their estate during their lifetime?

The BVI maintain complete freedom of disposition over their estate for individuals during their lifetime, provided the assets are not encumbered by any legal or equitable co-ownership or other interests. There is no comity of property regime.

17 To what extent do individuals have freedom of disposition over their estate on death?

The BVI maintain complete freedom of disposition of estates upon death and there are no forced heirship rules.

In relation to lifetime transfers into trusts established under BVI law, there is a comprehensive set of conflict of laws rules (set out in section 83A of the Trustee Act). These are designed to provide certainty and to prevent a challenge to the validity of the trust on forced heirship grounds. Therefore, trusts governed by the laws of the BVI or dispositions of property held on these trusts cannot be held void, voidable, liable to be set aside or defective, and the capacity of the settlor cannot be questioned simply because the laws of any foreign jurisdiction prohibit or do not recognise the concept of a trust. Furthermore, the trust or disposition avoids or defeats rights, claims or interests conferred by foreign law on any person because of a personal relationship to the settlor or by way of heirship rights, or contravenes any rule of foreign law, any foreign judicial or administrative order or action that recognises, protects or enforces such rights, claims or interests.

A foreign judgment will not be recognised, enforced or give rise to an estoppel if it is inconsistent with these provisions.

18 If an individual dies in your jurisdiction without leaving valid instructions for the disposition of the estate, to whom does the estate pass and in what shares?

The BVI's rules of intestacy are set out in the Intestates Estates Act to the following effect:

- if the deceased leaves a surviving spouse, the surviving spouse always receives:
 - the personal chattels (as defined in the Act); and
 - 10 per cent of the net value of the residuary estate (or US\$240 if greater) plus interest at 5 per cent per annum;
- if the deceased leaves a surviving spouse and no issue, the balance of the residuary estate is held in trust for the surviving spouse for life;
- if the deceased leaves a surviving spouse and issue:
 - one-half of the balance of the residuary estate is held in trust for the surviving spouse for life, with the remainder given to the deceased's issue on statutory trusts; and
 - the other half of the balance of the residuary estate is held in statutory trusts for the deceased's surviving issue (but if those statutory trusts fail during the lifetime of the spouse then this

property is held in trust for the spouse for the remainder of his or her lifetime);

- if the deceased leaves issue, but no surviving spouse, the residuary estate is held on statutory trusts for the deceased's surviving issue;
- if the deceased leaves no issue, but one or both parents, subject to the interest of any surviving spouse, the residuary estate is held in trust for the deceased's parents equally, or for the surviving parent;
- if the deceased leaves no issue or parent, subject to the interests of any surviving spouse, the residuary estate is held in trust for the following surviving relatives (in the following order of priority):
 - on statutory trusts for the deceased's brothers and sisters of the whole blood;
 - if none of the above, on statutory trusts for the deceased's half-brother and half-sisters;
 - if none of the above, on statutory trust for the deceased's uncles and aunts of the whole blood; or
 - if none of the above, on statutory trusts for the deceased's uncles and aunts of the half-blood; and
- if the deceased leaves neither issue nor parents, nor any relatives within the categories described above, the entire estate passes to the surviving spouse or, if there is no surviving spouse, the estate passes to the Crown (and the Crown may make provisions for any dependents of the deceased or any person for whom the deceased might reasonably have been expected to make provisions).

The formation of a statutory trust under the Intestates Estates Act means that:

- the property is held on trust for sale for the relevant class of relatives and their children and more remote issue in equal shares per stirpes (in shares according to the family branch) on attaining the age of 18;
- statutory provisions relating to maintenance and accumulation apply;
- hotchpot provisions (where amounts already received are taken into consideration when calculating the final amount due to the beneficiaries under the terms of the trust) may apply; and
- if these trusts fail, the property passes as if those concerned had died before the deceased. Therefore, the entitlements of a child, sibling, uncle or aunt who has predeceased the intestate pass to his or her own children (or more remote issue) on attaining majority.

It is not possible for beneficiaries to challenge the adequacy of these provisions.

19 In relation to the disposition of an individual's estate, are adopted or illegitimate children treated the same as natural legitimate children and, if not, how may they inherit?

The status of illegitimacy has been abolished in the BVI. The term 'child' will generally be interpreted as meaning a child born in a marriage, a legitimated child (ie, a child born outside of marriage to parents who subsequently marry one another) or an adopted child.

The Status of Children Act 2014 abolishes the status of illegitimacy and declares that all children are of equal status, whether or not they were born within or outside of wedlock.

20 What law governs the distribution of an individual's estate and does this depend on the type of property within it?

In the BVI, the distribution of real property is governed by the *lex situs* and all other property is governed by *lex domicilii*.

21 What formalities are required for an individual to make a valid will in your jurisdiction?

The requirements of a valid will in the BVI are provided for under the Wills Act, Cap 81. In order to create a valid will (ie, applicable to persons dying domiciled in the BVI at death and in respect of BVI-situated immoveable property), a testator must possess the requisite testamentary and mental capacity to understand and approve of the contents of the will, and the testator must have been free from undue influence. A will must be in written form and signed by the testator in the presence of two attesting witnesses.

22 Are foreign wills recognised in your jurisdiction and how is this achieved?

The validity of a will disposing of immovable property in the BVI is governed by BVI law. The validity of a will disposing of moveable property in the BVI is governed by the law of the testator's domicile at death.

The validity of a will disposing of immovable property situated outside the BVI is determined by the law of the jurisdiction where the immovable property is situated.

For these purposes, shares in a BVI company are regarded as moveable property situated in the BVI.

A will is construed in accordance with the law intended by the testator and if a will includes a statement to the effect that it will be governed by BVI or foreign law, this is normally conclusive.

A foreign will is therefore recognised as valid if:

- to the extent that it disposes of immovable property, it is valid under the laws of the jurisdiction in which the property is situated; or
- to the extent that it disposes of moveable property, it is valid under the laws of the jurisdiction in which the testator dies domiciled.

23 Who has the right to administer an estate?

The right of, and responsibility for, administering a deceased person's BVI-situated estate falls on the personal representative(s) (PRs) appointed under a BVI grant of representation or, under a foreign grant re-sealed by the BVI High Court, and in no other person. PRs are either executors (if appointed by will), or administrators (if not appointed by will).

The powers and duties of BVI personal representatives (whether under a domestic or re-sealed foreign grant) are determined exclusively by the law of the BVI and include:

- ascertaining the BVI-situated estate and worldwide liabilities;
- getting in the deceased's BVI-situated estate; and
- paying or making due provision for the estate's worldwide liabilities out of the BVI-situated estate (it is possible, to obtain protection by appropriate advertisement under section 28 of the Trustee Act).

Distributing the remaining assets to those beneficially entitled to them under and in accordance with applicable succession law (which may be a system of law other than that of the BVI).

24 How does title to a deceased's assets pass to the heirs and successors? What are the rules for administration of the estate?

A BVI grant of probate is generally required before property in the BVI (such as shares in a BVI company) is transferred to the deceased's personal representatives (or heirs).

The Probate Registry will issue the grant to either:

- the executor or executors' names in a valid will;
- if there is either no valid will, the will does not name an executor, or if the executor renounces the will, the person entrusted to

administer the deceased's estate in the jurisdiction in which he or she died domiciled; or

- if no such person was entrusted, the person or persons beneficially entitled to the estate under the laws of that jurisdiction.

A grant of probate or letters of administration (or a BVI re-sealed foreign grant) is required in order to establish title to the estate and allow the personal representative (PR) to collect in the assets, unless assets will vest separately (for example, by way of survivorship).

The grant must be applied for within three years of death and an affidavit of reasons for any delay must be filed with any application for a grant outside of this period. Grants are regularly made to applicants outside of the period when the registrar is satisfied with the reasons, subject to the objections of those entitled in a lesser degree of priority. There is no time limit for an application for the resealing of a foreign grant.

25 Is there a procedure for disappointed heirs and beneficiaries to make a claim against an estate?

A will can be challenged on the following grounds:

- the testator lacked capacity, such as:
 - lack of mental capacity;
 - not having the requisite knowledge and approval of the will's contents;
 - being a minor;
 - the will was executed by mistake; or
 - fraud or undue influence;
- failure to comply with the formal requirements for executing the will; or
- essential invalidity of the will (such as in the case of a will disposing of the moveable property of a non-BVI domiciled individual).

Capacity and power of attorney**26 What are the rules for holding and managing the property of a minor in your jurisdiction?**

There is no general bar on a minor (the age of majority is 18 years old) owning assets (other than BVI land), but this may lead to difficulties associated with acquiring good title from a minor, so assets are often held on trust in such circumstances.

27 At what age does an individual attain legal capacity for the purposes of holding and managing property in your jurisdiction?

In the BVI the age of majority is 18 years old.

28 If someone loses capacity to manage their affairs in your jurisdiction, what is the procedure for managing them on their behalf?

The authority given to an attorney by a power of attorney ceases on the donor's death or incapacity, and BVI domestic law contains no



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provisions that enable enduring powers of attorney (which continue to have effect following the donor's incapacity) to be made. However, the Conveyancing and Law of Property Act enables irrevocable powers of attorney to be made in circumstances in which valuable consideration is provided.

Part III of the Mental Health Act, Cap 191 contains extensive provisions that enable the court to exercise various powers for:

- the maintenance and benefit of persons who are incapable, by reason of mental disorder, of managing and administering their property and affairs, or members of their family;
- providing for other persons or purposes for whom or which the patient might be expected to provide if he or she were not suffering from mental disorder; and
- administering the patient's affairs.

An application to the BVI court under the Mental Health Act by a person, such as an attorney appointed under an enduring power of attorney that is valid under the law of the jurisdiction in which the person is domiciled and physically present, who has been appointed as the curator or a mentally incapable person in a foreign country is likely to be successful.

Immigration

29 Do foreign nationals require a visa to visit your jurisdiction?

Some foreign nationals do require visas to visit the BVI (see a full list on www.bvitourism.com/visas).

30 How long can a foreign national spend in your jurisdiction on a visitors' visa?

Initially 30 days, but this is renewable on special application to the Chief Immigration Officer.

31 Is there a visa programme targeted specifically at high net worth individuals?

There is no citizenship by investment programme in the BVI.

32 If so, does this programme entitle individuals to bring their family members with them? Give details.

Not applicable.

33 Does such a programme give an individual a right to reside permanently or indefinitely in your jurisdiction and, if so, how?

Not applicable.

34 Does such a programme enable an individual to obtain citizenship or nationality in your jurisdiction and, if so, how?

Not applicable.

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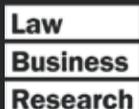
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