

Private Client Guide 2022 – Bermuda (Legal 500)

Briefing Summary: This guide to Bermuda's private client sector includes commentary on tax, trusts, foundations and private wealth structures used within the jurisdiction, including charitable or philanthropic structures. It also looks at capital gains, withholding and wealth tax rules along with issues relating to real property, immigration, succession, making a will and estate planning considerations, legislative changes and disclosure obligations.

Service Area: Private Client, Trusts and Private Wealth

Location: Bermuda

Content Authors: Keith Robinson, Stephanie Bernard

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

Bermuda does not impose income or capital gains taxes.

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 Payroll Tax Act 1995 and the Payroll Tax Rates Act 1995 imposes payroll tax which is charged quarterly on remuneration paid, given or assessed to every employee and deemed employee by every employer and self-employed person in Bermuda, and includes cash and any benefit (including pension contributions, stock options, housing allowance and profit sharing). The maximum bracket is 10.25 per cent, applicable to taxpayers with an annual payroll greater than B\$1 million and exempt undertakings. The employer is allowed to withhold the following percentages from the remuneration paid to an employee:

For the year April 2021 through March 2022:

- in respect of employees earning less than B\$48,000 per annum: 2.00 per cent;
- in respect of employees earning up to B\$96,000 per annum: 8.50 per cent;
- in respect of employees earning up to B\$235,000 per annum: 9.00 per cent; and
- in respect of employees earning over B\$235,000 per annum: 9.50 per cent.

Key Contacts



Keith Robinson
PARTNER, BERMUDA
+1 441 542 4502

[EMAIL KEITH](#)



Stephanie Bernard
COUNSEL, BERMUDA
+1 441 542 4274

[EMAIL STEPHANIE](#)

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B\$ means Bermuda dollars and Bermuda dollars are pegged to the United States dollar on a one to one ratio.

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

Bermuda does not impose withholding taxes.

4. How does the jurisdiction approach the elimination of double taxation for individuals who would otherwise be taxed in the jurisdiction and in another jurisdiction?

Bermuda is not a signatory or party to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.

Bermuda has agreed to the Country-by-Country (CbC) reporting as part of the Base Erosion and Profit Shifting Action Plan. Bermuda's, competent authority will annually exchange, on an automatic basis, the CbC report received by each reporting entity that is a resident for tax purposes in Bermuda. The CbC is exchanged with all other competent authorities of jurisdictions with respect to which Bermuda has an effective agreement.

5. 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?

Bermuda does not impose wealth taxes.

6. 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?

Stamp duty on affidavit of value of deceased's estate

Bermuda does not impose death taxes (or inheritance taxes) but imposes a tax known as stamp duty on the value of "Bermuda property" held in a deceased's estate. "Bermuda property" consists of essentially Bermuda dollar-denominated and Bermuda-situate assets (including shares held in a Bermudian company).

Stamp duty is assessable on the affidavit of value that supports an application to the Supreme Court for a grant of probate or letters of administration. Stamp duty on the affidavit of value is payable by the executors or administrators (as applicable) out of the deceased's estate. The amount of stamp duty payable is calculated by reference to the value of the deceased's "Bermuda property", irrespective of the deceased's nationality, residence or domicile, if an application in Bermuda for a grant of probate or letters of administration in the deceased's estate is required. The stamp duty rates applicable on affidavits of value are as follows:

- up to B\$100,000 in value of the "Bermuda property" forming part of the deceased estate: nil;
- over B\$100,000 to B\$200,000: 5%;
- over B\$200,000 to B\$1 million: 10%;
- over B\$1 million to B\$2 million: 15%; and
- over B\$2 million: 20%.

In addition to the exemption in relation to "Bermuda property", stamp duty on the affidavit of value 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 2014) or to such other bodies or organisations that the Minister of Finance determines 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 (the "family homestead" designation). An application can be made to the Tax Commissioner during the deceased person's lifetime or, following death, prior to filing of the affidavit of value at the Supreme Court with the application for probate/letters of administration.

Additionally, stamp duty on a deceased's estate can be avoided if the estate comprises assets that are entirely exempt from stamp duty (for example, non-Bermuda property). Non-Bermuda property consists of 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.

If application for a grant of probate or letters of administration can be avoided (e.g. if all property was held by deceased as a joint tenant) then no affidavit of value would be required and consequently no stamp duty would be payable thereon.

If the Registrar of the Supreme Court agrees with the disclosure as set out in the affidavit of value 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.
- Stamp Duty Certificate is then lodged with the Registrar of the Supreme Court as proof of payment of the requisite stamp duty; and
- Registrar issues a separate acknowledgement of payment in full of the stamp duty to the estate representatives.

Stamp duty on instruments effecting life time (*inter-vivos*) gifts

There is no direct tax on lifetime transfers, or gifts of property or assets in Bermuda. However, subject to exemptions, stamp duty is payable on instruments effecting the transfer of "Bermuda property".

The amount of which is calculated on the value of the "Bermuda property" transferred is as follows:

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

Instruments of settlement of property of trusts are not subject to stamp duty at the above rates, but at the following rates:

- Stamp Duty: \$250 plus:

in respect of "Bermuda property" (but so that in the valuation of that property there shall be deducted the value of any benefit conferred on a settlor's spouse and the cost of valuing any Bermuda property, provided that a spouse that is a discretionary object of the settlement is not conferred an interest for the purpose of such deduction):

- on the first \$50,000 of the amount or value, nil;
- on the next \$150,000 of the amount or value, 5%;
- on the next \$800,000 of the amount or value, 10%; and
- thereafter, 15%.

Exemptions from ad valorem duty on lifetime instruments of transfer of "Bermuda property" include instruments:

- of appointment of property from a trust fund to one or more beneficiaries,
- effecting a transfer of legal interest where there is no transfer of the beneficial interest including transfers of trust property to new or continuing trustees, provided that an appointment of Bermuda property from one Bermuda law trust to another existing Bermuda trust requires the trustee of the recipient trust to execute an instrument of addition upon which stamp duty is payable at the ad valorem rates set out above.

Stamp duty on instruments effecting lifetime transfers of non-Bermuda property is also, subject to exemptions, assessed on the value of the property transferred, at a rate of 1%.

Instruments effecting gifts (whether Bermuda or non-Bermuda property) to:

- Bermuda registered charities or to any body of persons whose purposes are, in the opinion of the Minister, charitable; or
- any body of persons whose purposes are in the opinion of the Minister non-profit, provided that, in respect of gifts of Bermuda real property, it is specified in the instrument of conveyance that it is being conveyed for the purpose of being maintained as open space, are not subject to stamp duty.

There are exceptions from stamp duty for instruments to which an "international business" (as defined by the Stamp Duties (International Businesses Relief) Act 1990) is properly a party or instruments executed by a "local trustee" (as defined in the Stamp Duties Act 1976), in each case provided such instruments do not effect a disposal or agreement to dispose of Bermuda property. There is presently a cap of \$7,500 on the aggregate stamp duty payable on instruments of settlement (and additions to settlement) in respect of non-Bermuda property in circumstances where the "local trustee" and international business" exemptions above do not apply.

The stamp duty is payable within a certain period of the date of the parties' delivery of the instrument of transfer (usually 30 days).

7. 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?

Stamp duty is not payable on the affidavit of value of assets passing on death to a surviving spouse.

In addition, a taxpayer can also reduce (and in some cases eliminate) liability to stamp duty arising on the issuance of a grant of probate or letters of administration by:

- lifetime transfers/gifts (due to the lower rates of stamp duty payable on lifetime transfers/gifts) e.g. to individuals, trusts or spouses; or
- leverage, i.e. securing debt against a particular asset to reduce the equity held in that asset. 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. 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; or
- nothing now and have the affidavit of value subject to a potentially larger assessment following their death.

8. 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?

Yes. See response to question 6 above for the exemptions to stamp duty available in respect of instruments effecting lifetime transfers and affidavits of value of a deceased's estate.

9. 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?

Individuals that own property in Bermuda are required to pay annual land taxes based on the notional rental value of the property set by the Accountant General. The tax incurred is applicable regardless of whether the individual is a Bermuda resident or not.

The land tax rates applicable are as follows:

Annual Rental Value	Tax rate percentage
B\$0 – B\$11,000	0.8%
B\$11,001 – B\$22,000	1.8%
B\$22,001 – B\$33,000	3.5%
B\$33,001 – B\$44,000	6.5%
B\$44,001 – B\$90,000	17%
B\$90,001 – B\$120,000	30%
B\$120,001 and over	50%

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

Customs duties are charged on the importation of goods to Bermuda under the Customs Tariff Act 1970. Those goods carried into Bermuda by air and sea passengers are charged duty at the rate of 25% (subject to limited duty free allowances). There is no sales tax or VAT and there are no other significant taxes.

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

There is little need for such incentives in circumstances where no income, capital gains or wealth taxes are imposed in Bermuda. There is a relief from customs duties on an individual's personal belongings when an individual transfers their residence to Bermuda.

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

Generally, we recommend that persons moving to the jurisdiction are well advised on the potential tax implications in jurisdictions other than Bermuda with which they are connected prior to any move. Additionally, individuals should consider Bermuda's immigration policies and the permissions required to work or reside in Bermuda (i.e. work permits).

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

Bermuda does not apply forced heirship rules and allows freedom of testamentary disposition.

14. 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 communal or matrimonial property or the property of a civil or domestic partnership in Bermuda. Ordinary principles of law are applied to the ownership of property acquired either prior to or during any marriage or domestic partnership.

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

If an individual dies without a will, the rules governing intestacy will apply in accordance with the Succession Act 1984.

The Succession Act 1974 establishes the priority as to beneficial interests in a deceased's estate. If the intestate leaves only a spouse, the spouse takes the residuary estate absolutely, and if the deceased leaves only issue, the issue will take per stirpes. If the intestate leaves a spouse and issue, the spouse will take the personal chattels absolutely, and, in addition, a sum equal to 50 per cent of the value of the residuary estate or B\$100,000, whichever is greater, and the balance of the residuary estate will be held for the deceased's issue per stirpes. It should be noted that in a situation where the deceased leaves a spouse and any one or more of a parent, brother or sister of the whole blood, or issue of a brother or sister of the whole blood, but no issue, the surviving spouse will take the personal chattels and a sum equal to 66.66 per cent of the value of the residuary estate or B\$150,000, whichever is the greater, and the parents or siblings, or siblings' children, as the case may be, will share the balance. In the absence of a spouse or issue the order of priority is parents, siblings (whole blood or their issue, then half blood or their issue), grandparents, uncles and aunts (whole blood or their issue, then half blood or their issue), failing which, the crown.

16. 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?

See the below response at question 24.

The Supreme Court has jurisdiction to hear and determine any claim concerning the validity, construction, effects or administration of a Bermuda trust or a foreign trust which was either validly created in Bermuda or is administered with a Bermuda connection.

The Wills Act 1988 provides that 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:

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

17. 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?

It is advisable for individuals owning real or personal property situated in Bermuda to have a Bermuda will in respect of the distribution of their deceased estate situated in Bermuda. In circumstances where a Bermuda resident owns assets situated outside Bermuda it is advisable for the person to obtain advice in those jurisdictions as to whether it is necessary or preferable to have a will governed by the laws of those jurisdictions in respect of such assets.

In the absence of a Bermuda will:

- wills executed outside of Bermuda may be effective in Bermuda if they meet the formality requirements of the Wills Act 1988, and can be admitted to probate in Bermuda;
- a foreign grant of probate, letters of administration, or letters testamentary issued out of the relevant probate courts of the United Kingdom, any British possession or colony or dependency, a Commonwealth member nation and any state of the US (including the District of Columbia) can be resealed in the Supreme Court of Bermuda, conferring on the foreign executors (or administrators) the right to administer the deceased's Bermuda estate (e.g. comprising an interest in Bermuda real estate, shares in Bermuda companies, or deposits in Bermuda banks).

The formalities for making a valid Bermuda 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 his 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 if proved by the oath of at least two persons acquainted with the testator's handwriting. However, this should be avoided, as most lay people would not appreciate the complexities of drafting a comprehensive and effective will and ensuring its proper execution.

A non-Bermuda 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:

- it was executed; or
- 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 was a national of that jurisdiction.

In the absence of a will, an individual's estate situated in Bermuda will pass in accordance with the intestacy provisions as set out in 15 above.

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

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; or
- the named executors fail or refuse to act; or
- no valid will is in existence.

19. 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?

Yes. Trusts are most commonly used for succession planning, often in conjunction with underlying entities such as partnerships (including limited partnerships) which may have separate legal personality, companies limited by shares, companies limited by guarantee and limited liability companies. The structure selected often depends on the tax planning applicable to settlors and their families in the jurisdictions with which they are resident/domiciled/citizens, their objectives and personal preferences.

Bermuda's trust laws are based on English trust law principles as set out in the Trustee Act 1925. Such English principles are incorporated in Bermuda's Trustee Act 1975 and the Trusts (Special Provisions) Act 1989.

The types of trusts commonly utilised in Bermuda are discretionary trusts, accumulation and maintenance trusts, life/fixed interest trusts, employee benefit trusts, charitable trusts and non-charitable purpose trusts.

In addition, Private Trust Companies ("PTCs") can be incorporated in Bermuda to provide trustee services for private clients and their families to set up family trusts. This allows private families and individuals to have greater involvement in how their family trusts are managed and controlled; and have more insight regarding the type of assets that are held.

20. Bermuda does not have a foundations law. 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?

Trusts can be constituted by a person (a trustee) holding property declaring that it holds such property pursuant to the terms of a trust instrument or a settlor settling funds on a trustee to hold pursuant to the terms of a trust instrument. The legislation directly most relevant to the formation and administration of trusts include the Trustee Act 1975, the Trusts (Special Provisions) Act 1989 and the Perpetuities and Accumulations Act 2009. There are no requirements to register trusts (e.g. family trusts) in Bermuda. However, Bermuda charities that solicit funds from the general public and pension trusts (established for Bermuda residents) are required to be registered. In addition, trusts utilised for certain investment funds may require registration under the applicable pension, charities or investment funds legislation. With the exception of such trusts, disclosure is not required to be made to Bermuda authorities or regulators when forming a trust. Trustees of certain trusts may be required to report certain information annually to the Internal Revenue Service in the United States for the purposes of the United States' Foreign Account Tax Compliance Act as applied in Bermuda (**FATCA**) and to Bermuda's Ministry of Finance under the Organisation for Economic Cooperation and Development's Standard for the Automatic Exchange of Financial Account Information as applied in Bermuda (the **CRS**). The information reported is not made available to the public and is subject to information security requirements.

A trust company is required to obtain a trust licence in order to carry on trust business in Bermuda. The requirement to hold a licence to conduct trust business does not apply to PTCs which are exempt from any licencing requirements. Companies, partnerships and limited liability companies established by non-Bermudians are ordinarily established as exempted undertakings, meaning they are exempted from certain ownership and control requirements that apply to "local" entities. The persons forming exempted undertakings are required to apply for the consent of the Minister of Finance (**Minister**) in order to form the undertaking. The application for consent process is confidential and includes providing information to the Minister in respect of the proposed beneficial owners of the exempted undertaking. The exempted undertaking can be registered with the Registrar of Companies (**RoC**) after the Minister's consent is provided. Certain exempted undertakings are also required to attend to FATCA and CRS reporting and file beneficial ownership and economic substance information with the Minister and/or the RoC as applicable. The information filed is not made publicly available and is subject to information security requirements.

21. 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?

Information concerning the ultimate beneficial ownership of structures is not required to be made available to the public and is the subject of information security requirements. A company's share register is accessible to the public and nominee shareholders are frequently used to preserve confidentiality.

22. What is the jurisdiction's approach to information sharing with other jurisdictions?

Bermuda has 43 bilateral Tax Information Exchange Agreements (TIEAs) with: Argentina, Aruba, Australia, Belgium, Bonaire, Saint Eustatius and Saba, Brazil, Canada, Chile, China, Curacao, Czech Republic, Denmark, Faroe Islands, Finland, France, Germany, Greenland, Guernsey, Iceland, India, Indonesia, Ireland, Italy, Japan, Republic of Korea, Malaysia, Malta, Mexico, Netherlands, Netherlands Antilles, New Zealand, Norway, Poland, Portugal, Qatar, Singapore, Saint Maarten, South Africa, Sweden, Turkey, United Kingdom and United States.

Bermuda is also a signatory to the OECD's Convention on Mutual Administrative Assistance in Tax Matters which has a total of 144 participants.

The bilateral agreements and the convention allow member countries to send written requests of information for tax purposes to Bermuda's competent authority. Requests are sent to the Minister of Finance, if the request is in proper form and approved, court production orders are processed and the organisation in possession of the information has 21 days to provide the information requested. Once the information is received, the Minister of Finance will transfer the information to the requesting country.

The transfer of personal information to overseas third parties, is provided for in the Personal Information Protection Act 2016 ("PIPA") (not fully in force). Section 15 of PIPA deals with these transfers. The Bermuda organisation wishing to transfer personal information must assess the level of protection the third party has for receiving and holding personal information and ensure that the third party's protection is in line with PIPA. If the third party does not have the proper protection the Bermuda organisation will require a binding contract which protects the information to the level required by PIPA.

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

Please see responses above, and to question 6 in particular.

24. Are foreign trusts, private foundations etc recognised?

Foreign trusts and private foundations are recognised in Bermuda. However, Bermuda does not have a foundations law.

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

Please see responses above, and to question 6 in particular.

26. 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 has modern firewall legislation (in sections 10 and 11 of the Trusts Special Provisions) Act 1989) that facilitates the use of Bermuda law trusts to protect trust assets against claims by creditors or the settlors, whether such creditors' claims are based on foreign heirship, communal property or insolvency laws or foreign orders granted based on such foreign law to which the settlor or his or her estate may be. Bermuda's firewall legislation essentially provides that Bermuda law will apply in respect of issues concerning the validity and administration of a Bermuda law trust subject to certain exceptions, such as claims in respect of immovable property situated outside of Bermuda or claims relating to a severable aspect of a Bermuda trust governed by foreign law. Bermuda's fraudulent transfer legislation, contained in section 36A to G of the Conveyancing Act provides that, subject to the aforementioned firewall provisions, "eligible creditors" may bring claims within certain time limits to set aside transfers made by an individual with the dominant purpose of defeating such creditors' interests.

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

Trusts are the most common vehicle used for succession planning in Bermuda. Trusts are extremely flexible and, among other things, subject to their terms may be utilised to defer gifts to beneficiaries and/or provide discretion to trustees and/or non-trustee power holders as to when and how beneficiaries (which may include minors and grandchildren) may benefit from trust property. Accumulation and maintenance trusts can also be established for the benefit of minor children and grandchildren. Such structures are not subject to perpetuity periods and can therefore run indefinitely for generations to come.

28. 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?

Individuals are encouraged to grant enduring powers of attorney to persons they trust well in advance of losing mental capacity. Such enduring powers of attorney may include not just provisions dealing with the donor's assets but authority to express wishes to medical practitioners in respect of the donor's healthcare treatment.

As may be the case elsewhere, individuals are encouraged to communicate their wishes with donees of the attorney and make appropriate and secure arrangements to enable donees of enduring powers of attorney to access financial and other information in the event of the donor's incapacity.

Individuals are also encouraged to immediately consider and seek advice in respect of their estate and, if applicable, business succession planning to, insofar as possible, ensure a smooth transition and, if applicable, exit from management and/or control of the business in the event of the individual's incapacity.

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

Charities are entities that are established exclusively for charitable purposes that are for the public benefit. The Charities Act 2014 considerably extended the range of activities that are considered charitable so that the activities that are charitable under Bermuda law now substantively reflects those activities that are considered charitable under the Charities Act 2011 in England and Wales. The public benefit requirement in Bermuda also largely reflects that applied in England and Wales.

Charities may be established using a trust or a company limited by guarantee as the charity vehicle. Charities are required to be registered with the Registry General unless they are privately funded, in which case the charity will need to provide particulars of the charity to the Registrar, (which are not publicly available).

The formation of trusts are outlined above. Insofar as relevant in this context, the memorandum of association of a company limited by guarantee must state that each member undertakes to contribute to the assets of the company in the event of it being wound up while he is a member, or within one year after he ceases to be a member, for the payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs charges and expenses of winding up, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount. Companies limited by guarantee are not permitted to pay dividends.

In order to successfully apply to be a registered charity, the applicant will, among other things, need to demonstrate that it can meet its obligations as set out in the Charities (Anti-money laundering and Anti-terrorist financing) Regulations 2014. The obligations include implementing systems, and training among the charities personnel, to detect and prevent money laundering and anti-terrorist financing. Privately funded charities are also required to implement such measures unless the charity is subject to the compliance requirements of a Bermuda licensed trustee and/or a corporate service provider performs the compliance functions engaged by the charity.

The Trusts (Special Provisions) Act 1989 established the ability to create non-charitable purpose trusts which may be utilised to further philanthropic purposes that go beyond the scope of the definition of "charity".

Companies limited by guarantee may also be established under Bermuda law, to further non-charitable purposes.

Bermuda does not have a foundations law.

30. Have any specific tax policies or approaches been implemented, on a temporary or permanent basis, to take account of the COVID 19 pandemic?

Bermuda implemented a payroll tax relief to Hotels, Bars & Restaurants as a result of the Covid-19 pandemic. Hotels were given relief for the period 1 April, 2021 to 20 September, 2021 during which time hotels paid 0% rate of tax on the employer and employee portions. Bars and Restaurants were given relief for the period 1 April, 2021 to 31 March, 2022 during which they paid 0% rate of tax on the employer portion while tax continued to be payable on the employee portion.

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

Bermuda private client and other legislative reform groups are currently working closely with the Bermuda Government on a number of legislative reform initiatives, particularly with the view of attracting more family offices and high net worth families to the jurisdiction.

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