

Private Client Guide 2023 - Cayman Islands (Legal 500)

Briefing Summary: This guide to the Cayman Island'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: Trust Litigation, Family Office, Private Client, Regulation of Trust Company Business, Taxation and Economic Substance Requirements, Trusts and Private Wealth, Estate Planning, Private Trust Structures, Regulation of Trust Company Business, Wills and Inheritance

Sector: Trust and Company Business

Location: Cayman Islands

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

The Cayman Islands has no income or capital gains tax.

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?

As above, the Cayman Islands has no income or capital gains tax.

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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 the Cayman Islands.

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?

As the Cayman Islands has no income or capital gains tax there is no ability for double taxation to occur. The Cayman Islands is not a signatory to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.

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?

There is no wealth tax in the Cayman Islands.

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?

There are no death or gift taxes in the Cayman Islands. However, stamp duty does apply to the transfer of Cayman Islands real property and therefore gifts of Cayman Islands real property may incur a stamp duty tax, unless certain permitted exemptions apply (§6).

Where stamp duty applies, it is levied at a rate of 7.5 % of the market value subject to certain concessions. First-time Caymanian purchasers of land are eligible for reduced rates of duty of zero to 2 per cent, depending on the value of the property being purchased and whether it is undeveloped land or developed property.

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?

Where a gift of Cayman Islands real property is made, certain concessions are available for transfers between: (i) spouses; (ii) from a parent to a child; (iii) between children of the same parent; and (iv) between grandparents and grandchildren under the "natural love and affection" exemption. It is possible to apply for a waiver of the duty payable where a transfer does not result in any change of beneficial ownership (i.e. in the case of a transfer to a company the shares in which are 100% owned by the transferor).

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?

As there are no gift or estate taxes in the Cayman Islands, there is no tax advantage, from a Cayman Islands perspective, in gifts to charity.

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?

Other than stamp duty mentioned above, there are no property taxes in the Cayman Islands.

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

The only other tax imposed in the Cayman Islands is an import duty on most imported goods. This is generally levied at a rate of 22% but can vary between 5% and 42% depending on the kind of goods imported. Import duty is also subject to certain personal allowances and concessions on some goods.

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

For persons moving to the Cayman Islands, they typically have up to six months to import their personal effects without import duty being levied.

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

Because the Cayman Islands do not impose income, capital gains, wealth, estate or gift taxes (outside of stamp duty and import duty), persons looking to establish residence in the Cayman Islands should investigate what the tax implications might be for their existing place of residence or domicile.

Outside of tax, individuals looking to purchase Cayman Islands real estate or invest in Cayman Islands businesses would be well served to investigate whether they would be eligible for any of the residency certificates for persons of independent means or direct investment.

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

The rules governing succession in the Cayman Islands primarily derive from the Succession Act (2021 Revision), the Wills Act (2021 Revision) and the Probate and Administration Rules (2008 Revision).

Broadly, the Cayman Islands allows persons complete freedom of testamentary disposition over their estate during their lifetime. There are no "forced heirship" rules nor limits on the amount of an individual's estate which may be freely disposed on death.

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

There are no special rules for matrimonial property or the property of a civil partnership in the Cayman Islands. In all cases, property will pass based upon how it is held; for jointly owned property, it will pass to the survivor and for property owned by persons as tenants in common, a person's identifiable share will pass to their estate to be determined in accordance with their will or relevant intestacy rules.

When a person domiciled in the Cayman Islands dies without a valid will under the Succession Act (2021 Revision), if they are survived by a spouse or civil partner, the spouse/civil partner has an absolute entitlement to all personal chattels and a portion of the residuary estate, depending upon whether the deceased was survived by any issue or their parents, ranging from 50% to 100% where the deceased was not survived by any issue or parents.

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

If a person dies domiciled in the Cayman Islands, the Succession Act (2021 Revision) will apply. The test for domicile in the Cayman Islands is broadly that a person has a domicile of origin at birth (the domicile of the person's father is usually used unless the person's parents were not married), however that can be displaced by adopting a domicile of choice (by going to live in a new jurisdiction with an unequivocal intention of remaining there permanently such that they effectively abandon their domicile of origin).

Where a person domiciled outside of the Cayman Islands owns Cayman Islands real estate, Cayman Islands law will govern the distribution on their death. Where a person domiciled outside of the Cayman Islands dies with Cayman Islands movable assets (such as Cayman Islands company shares), these will pass in accordance with the law of the person's last domicile.

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?

Where there is a conflict between the succession law of the Cayman Islands and the succession laws of another jurisdiction it is thought that the doctrine of *renvoi* may apply, albeit there are no reported cases in the Cayman Islands on the application of the doctrine of *renvoi* as it relates to succession of foreign immovable property.

Where the deceased established a Cayman Islands intervivos trust prior to their death, subject to certain provisos, that will be presumed to have taken effect immediately on establishment notwithstanding *inter alia* that the trust may have been created in order to avoid the application of foreign laws relating to wills, probate or succession. In addition, Part VII of the Trusts Act (2021 Revision) contains various conflict of laws rules designed to prevent challenges to the validity of trusts on the basis of forced heirship regimes and provides that foreign judgments will not be recognised or enforced to the extent they are inconsistent with these provisions.

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?

If a person owns Cayman Island assets (whether that be real property or shares/bank accounts etc), a Cayman Islands will is recommended as it means that steps can be taken in the Cayman Islands to have the will admitted to probate in order to deal with the Cayman Islands assets independent of any probate processes taking place elsewhere.

The Wills Act (2021 Revision) provides that to create a valid Cayman Islands will, a testator must be over the age of 18. A will must be in written form and signed by the testator in the presence of two attesting witnesses. With regard to Cayman Islands immovable property, the will must comply with Cayman Islands law. For Cayman Islands movable assets, a will may still be treated as valid under the laws of the Cayman Islands if it is valid under the laws of certain other jurisdictions (see The formal Validity of Wills (Persons Dying Abroad) Law 2018).

If a person domiciled in the Cayman Islands does not make a valid will covering their Cayman Islands property, they will have died 'intestate'. In these circumstances, their estate will pass to family relatives in accordance with a fixed order of priority in accordance with the Succession Act (2021 Revision). Usually this results in the estate being shared between any surviving spouse and children of the deceased.

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

If the deceased dies leaving a valid will, the executors will be required to obtain a grant of probate from the Cayman Islands Grand Court authorising them to collect the deceased's assets, paying any debts and distributing the residuary to the beneficiaries in accordance with the will. Where a grant of probate has been obtained in certain other common law jurisdictions, an application can be made for that grant to be resealed by the Grand Court rather than making an application for a fresh grant of probate.

Where the deceased died without a valid will, relatives of the deceased (in the order prescribed by the Succession Act) will be required to seek a grant of letters of administration from the Cayman Islands Grand Court in order to administer the deceased's estate.

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?

Individuals can create a wide range of structures to hold and protect their wealth and to regulate succession. The most common structures in the Cayman Islands are ordinary discretionary trusts and what are known as "STAR" trusts created pursuant to Part VIII of the Trusts Act (2021 Revision) which can be established for beneficiaries or purposes or both.

Increasingly, individuals and families are looking to use Cayman Islands 'Foundation Companies' (established pursuant to the Foundation Companies Act, 2017) which is a form of hybrid vehicle with attributes of traditional companies and civil law foundations.

20. How are these structures constituted and what are the main rules that govern them?

There are no strict legislative formalities for the constitution of an ordinary trust. Under normal circumstances a trust would be established under a written deed of settlement or declaration of trust. The Trusts Act (2021 Revision) applies to all Cayman Islands law governed trust (and other trusts which fall within its scope). STAR Trusts must meet certain prescribed formalities set out in the Trusts Act (2021 Revision).

Foundation companies are incorporated under the rules set out in the Foundation Companies Act, 2017. Certain prescribed requirements in relation to a Foundation Company's memorandum and articles of association must be adhered to.

21. What are the registration requirements for these structures and what information needs to be made available to the relevant authorities? To what extent is this information publicly available?

The Cayman Islands beneficial ownership register for Cayman Islands companies does not directly impact upon Cayman Islands trusts but may do so indirectly where the trust structure involves a Cayman Islands company. This register is not publicly accessible at this time although it is presently proposed that the register is made public in 2023.

There is no trusts register in the Cayman Islands. Certain information regarding Foundation Companies must be kept in the register at the Foundation Company's registered office.

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

The Cayman Islands does not impose any taxes in respect of Cayman Islands trusts. A nominal stamp duty fee is however payable on the establishment of trusts and other dealings involving trusts when the trust documents are executed or brought into the Cayman Islands.

23. Are foreign trusts, private foundations etc recognised?

Foreign trusts are generally recognised in the Cayman Islands to the extent they do not conflict with or infringe upon Cayman Islands law. The Cayman Islands courts are familiar with trusts and vehicles from other common law jurisdictions but less so with regard to civil law vehicles such as private foundations which have no equivalent in the Cayman Islands albeit the hybrid Cayman Islands foundation company has some similarities.

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

As above, the Cayman Islands does not impose any form of tax on individuals aside from stamp duty and import duty. Because of this, foreign structures and those connected with them are unlikely to be subject to any form of tax in the Cayman Islands.

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

Cayman Islands trusts can be an effective tool for asset protection provided they are not established with a view to putting assets out of the reach of existing creditors. The Fraudulent Dispositions Act (1996 Revision) provides that every disposition of property made with intent to defraud and at an undervalue shall be voidable at the instance of a creditor thereby prejudiced.

Care must be taken in establishing trusts to ensure that they meet the requirements of the Trusts Act (2021 Revision). While the Cayman Islands provides a statutory basis for reserved powers pursuant to section 14 of the Trusts Act (2021 Revision), it is important that any powers reserved are not so extensive as to render the trust invalid or a 'sham'. In addition, if reserved powers are considered to be 'property' of the power holder, there is a risk that a receiver can be appointed over the power by way of equitable execution as was the case in Privy Council decision of *Tasarruf Mevduati Sigorta Fonu (Appellant) v Merrill Lynch Bank and Trust Company (Cayman) Limited and others (Respondents)* [2011] UKPC 17 which concerned a Cayman Islands trust.

More generally, the 'firewall' provisions contained in the Trusts Act (2021 Revision) provide that a Cayman Islands trust will not be void or liable to be set aside because it defeats the rights of any person by virtue of their relationship to the settlor or a beneficiary. Care is however needed when the trust assets are subject to the jurisdiction of a foreign court, particularly a foreign court which may not be familiar with trusts.

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

Cayman Islands trusts can be established to benefit a person's children and remoter issue. Pursuant to sections 32 and 33 of the Trusts Act (2021 Revision), these trusts can contain provisions giving the trustees power to apply income and capital of the trust for the maintenance, education, benefit and advancement of minors by way of payment to their parent or guardian. These trusts usually record that the assets are held by trustees for the benefit of a minor until they reach a certain age, typically 18 or 25. As above, there are no income, capital gains, gift or wealth taxes on individuals in the Cayman Islands (outside of stamp duty on real property as previously noted).

In addition, 'protective' trusts can also be created for a specific person for a specified period by virtue of section 34 of the Trusts Act (2021 Revision).

27. 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?

The Cayman Islands does not have an enduring powers of attorney regime, meaning that any power of attorney granted will expire in the event of incapacity. Trusts can be a good way to guard against the complications associated with incapacity, provided that they include appropriate provisions dealing with the incapacity of any power holder. An appropriately drafted trust can also provide scope for trustees to meet medical bills and other costs, such as nursing home expenses, for the beneficiaries of the trust.

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

Individuals looking to promote charitable causes usually do so via Cayman Islands charitable trusts (established as an ordinary trust but exclusively for charitable purposes) or a STAR trust with charitable purposes (either instead of or in addition to beneficiaries and/or non-charitable purposes).

Foundation companies (as discussed under question 18 above) have also proven popular given their separate legal personality and features similar to trusts. They have the added advantage of not requiring members or shareholders.

Under the Non-Profit Organisations Act, 2020 'non-profit organisations', which have been established primarily for the promotion of charitable, philanthropic or other similar purposes and solicit contributions from the public within Cayman or elsewhere are subject to registration and other requirements.

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

The Cayman Islands approach to information sharing is to follow the exchange of information on request procedure which has been modelled on the OECD's Manual on the Implementation of Exchange of Information Provisions for Tax Purposes.

The Cayman Islands has also implemented the Foreign Account Tax Compliance Act and the Common Reporting Standard.

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

Whilst not yet adopted in the Cayman Islands, the OECD's Mandatory Disclosure Rules (MDRs) would have an impact on private clients and service providers if they do come into effect. In broad terms, the MDRs seek to prevent the circumvention of the Common Reporting Standard (CRS) and oblige certain persons (including promoters, intermediaries and service providers) to make disclosures to local tax authorities in circumstances where arrangements may have the effect of circumventing CRS. Importantly, the MDRs (if implemented) would likely operate with retrospective effect.

The Cayman Islands have recently issued proposals to revise the existing beneficial ownership register for Cayman Islands companies. Part of these proposed measures include a pledge to make this register accessible to the public in 2023. This does not impact upon Cayman Islands trusts directly but may do so indirectly where the trust structure involves a Cayman Islands entity in respect of which beneficial ownership information is required.

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