

Private Client 2021

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Cayman Islands

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TAX

Residence and domicile

1 | How does an individual become taxable in your jurisdiction?

There are no income or capital gains taxes for individuals in the Cayman Islands. This is the case regardless of the circumstances by which the individual has obtained residency.

Income

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

There is no income tax.

Capital gains

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

There is no capital gains tax.

Lifetime gifts

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

Generally speaking, and outside of real estate (as noted below) there are no gift taxes in the Cayman Islands. For land, stamp duty is payable in the Cayman Islands on gifts of land located within the Cayman Islands by the person receiving the gift unless it falls within certain permitted exemptions, for example, where there has been a transfer of land for 'love and affection' between family members..

Where stamp duty applies, on the transfer of land it is levied at a rate of 7.5 per cent of the market value. 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 and it is possible to apply for a waiver of the duty payable where a transfer does not result in any change of beneficial ownership.

Inheritance

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

There are no estate or wealth taxes in the Cayman Islands.

Real property

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

Other than stamp duty, there are no taxes applicable to real property in the Cayman Islands.

Non-cash assets

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?

Imported items are generally subject to a 22 per cent import duty. This is subject to certain personal allowances and concessions on some goods.

Other taxes

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

There is no wealth tax or VAT in the Cayman Islands.

Trusts and other holding vehicles

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

There are no taxes in the Cayman Islands in respect of trusts or other holding vehicles, save that CI\$40 stamp duty is payable on the establishment of a Cayman Islands trust. Income received by Cayman Islands trustees and distributions received by Cayman Islands resident beneficiaries is not subject to any Cayman Islands tax.

Charities

10 | How are charities taxed in your jurisdiction?

Charities are not taxed.

Anti-avoidance and anti-abuse provisions

11 | What anti-avoidance and anti-abuse tax provisions apply in the context of private client wealth management?

Because the Cayman Islands does not impose any income, capital gains or estate taxes, there are no anti-avoidance provisions in the Cayman Islands. The Cayman Islands is, however, subject to various regulatory regimes and multinational agreements that aim to prevent multinational tax avoidance and evasion (such as US Foreign Account Tax Compliance Act (FATCA) and the Common Reporting Standard (CRS).

Economic substance legislation has also recently come into force, requiring 'relevant entities' that are registered and tax resident in the Cayman Islands and are carrying on 'relevant activities' to report on and satisfy the 'economic substance test' as prescribed in the legislation. Many private wealth structures may not be subject to economic substance requirements as entities within these structures would typically not be carrying on any of the relevant activities, or, if they do, the relevant entity will often be subject to reduced requirements, which can be satisfied through the maintenance of a registered office and the completion of mandatory filings.

TRUSTS AND FOUNDATIONS

Trusts

12 | Does your jurisdiction recognise trusts?

Trusts are recognised in the Cayman Islands and, although the Convention on the Law Applicable to Trusts and on their Recognition 1985 has not been extended to the Cayman Islands, the courts of the Cayman Islands will recognise most trusts established under foreign law.

A range of trusts may be established in the Cayman Islands including discretionary trusts, fixed interest trusts and charitable and non-charitable purpose trusts (see below). The principal legislation applicable to trusts is set out in the Trusts Law (2020 Revision).

Reserved powers trusts (in which powers are reserved to the settlor or conferred on the protector or other person) are also expressly permitted in the Cayman Islands by Part III of the Trusts Law (2020 Revision).

'STAR' trusts, which are a product of the Special Trusts (Alternative Regime) (STAR) Law 1997 (now contained in Part VIII of the Trusts Law (2020 Revision)), are unique to the Cayman Islands and can be used for a wide range of applications for both institutional and private clients. The beneficiaries of a STAR trust may be persons or purposes, or both, and the purposes may be charitable or non-charitable (provided they are lawful and not contrary to public policy).

STAR trusts can facilitate a separation of the right to benefit under a trust from the right to enforce its terms (which can only be enforced by an 'enforcer'). This means that the beneficiaries of a STAR trust will not be able to sue the trustee or obtain information concerning the trust.

Trusts that do not have any beneficiaries resident or domiciled in the Cayman Islands can register as exempted trusts with the Registrar of Trusts. While not required, registration allows for the issuing of a tax undertaking from the government, which provides that even if the law changes, no future taxes (in any form) will be levied on the trust's assets in the Cayman Islands. The undertaking can apply for a period of up to 50 years.

Private foundations

13 | Does your jurisdiction recognise private foundations?

Private foundations, as known in civil law jurisdictions, do not exist in the Cayman Islands, however they may, depending on the nature of the particular foundation, be recognised in the Cayman Islands as a type of company.

That said, the Foundation Companies Law 2017 provides that a Cayman Islands foundation company may be established as a new form of Cayman company and will share many of its features with regular exempted Cayman companies, save that it will be prohibited from paying dividends to its members. The foundation company, which can have beneficiaries, has its own legal personality with attributes akin to civil law foundations.

SAME-SEX MARRIAGES AND CIVIL UNIONS

Same-sex relationships

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

The Cayman Islands has recently introduced the Civil Partnership Law, 2020 making same-sex partnerships legal in the Cayman Islands. Provided certain criteria are met, including that neither person in the civil partnership is currently married or in a civil partnership or

similar overseas relationship, the civil partnership may be formalised and thereafter shall be registered. The legislation provides that the terms 'wife' and 'spouse' otherwise found in other Cayman Islands legislation such as the Marriage Law (2010) shall be taken to mean 'civil partner'. As such, the comments in relation to succession apply equally to civil partners.

Heterosexual civil unions

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

The Civil Partnerships Law, 2020 provides for any two persons (provided certain conditions are met) to enter into a civil partnership, meaning that heterosexual civil partnerships are now possible in the Cayman Islands. The comments about succession in relation to same-sex partnerships also apply to heterosexual civil partnerships.

SUCCESSION

Estate constitution

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

All property, whether owned under law or equity, constitutes an individual's estate for succession purposes. 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.

Cayman Islands law follows English law, with two types of co-ownership.

- 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.
- 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 (and passes under the terms of his or her will or by intestacy rules).

Disposition

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

The Cayman Islands allows persons complete freedom of testamentary disposition over their estate during their lifetime, provided that the assets are not encumbered by any legal or equitable co-ownership or other interests. There is no community of property regime.

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

The Cayman Islands maintains complete freedom of disposition of estates upon death, and there are no forced heirship rules. Furthermore, pursuant to Part VII (Trusts-Foreign Element) of the Trusts Law (2020 Revision), known as 'firewall legislation', Cayman Islands law prevails over the law of the settlor's jurisdiction governing forced heirship or non-recognition of trust structures.

Trusts governed by the laws of the Cayman Islands or dispositions of property held on these trusts cannot be held void, voidable, liable to be set aside or defective, nor can the capacity of any settlor be questioned, nor is the trustee, any beneficiary or other person to be subjected to any liability or deprived of any right, by reason that:

- the laws of any foreign jurisdiction prohibit or do not recognise the concept of a trust;

- 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 any beneficiary (whether discretionary or otherwise) or by way of heirship rights; or
- the trust or disposition contravenes any rule of foreign law, any foreign judicial or administrative order or action that recognises, protects or enforces such rights, claims or interests.

Intestacy

- 19 | **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?**

When a person domiciled in the Cayman Islands dies without leaving a valid will, their estate will pass to family relatives in accordance with a fixed order of priority in accordance with the Succession Law (2006 Revision).

Where the deceased is survived by a spouse or civil partner, the spouse or civil partner has an absolute entitlement to all personal chattels and a portion of the residuary estate, as follows:

- 100 per cent where the deceased leaves no surviving issue or parents;
- 75 per cent where the deceased is survived by parents but no issue, with the remaining 25 per cent passing to the parents; and
- 50 per cent (or CI\$20,000, whichever is greater) where the deceased leaves issue, with the remainder held on trust in equal shares for the deceased's issue until they attain 18 years or marry.

Where there is no surviving spouse or civil partner, the estate will pass absolutely to the deceased's issue, if any. Where there is neither a surviving spouse, civil partner nor issue, the estate will pass absolutely to any surviving parents in equal shares. Where there is no surviving spouse or civil partner, issue or parents, the legislation provides an order of priority consisting of full siblings, half-siblings, grandparents, uncles and aunts.

Where there are no relatives within any of the specified categories, the deceased's estate will pass to the Crown, which has discretion to provide for any persons for whom the deceased might reasonably have been expected to make provision.

Adopted and illegitimate children

- 20 | **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?**

Pursuant to the Status of Children Law 2003, it does not matter whether a child is born inside or outside of marriage. Where an adoption order has been made pursuant to the Adoption of Children Law 2013 (or under the laws of any other jurisdiction), the child is the child of the adoptive parents as if they were his or her natural parents. Unless a contrary intention appears in the will of the deceased, both illegitimate and adopted children shall be treated as though they were natural children.

Distribution

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

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

Formalities

- 22 | **What formalities are required for an individual to make a valid will in your jurisdiction?**

The requirements of a valid will are provided for under the Wills Law (2004 Revision). To create a valid will, a testator must possess the requisite testamentary and mental capacity to understand and approve the contents of the will, and 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.

Foreign wills

- 23 | **Are foreign wills recognised in your jurisdiction and how is this achieved?**

A will is admissible to be resealed for proof by the Grant Court of the Cayman Islands if it has been accepted by the country of domicile as a valid testamentary document and if it is executed in accordance with the law of the Cayman Islands.

In addition, the Formal Validity of Wills (Persons Dying Abroad) Law, 2018 allows persons domiciled outside of Cayman to execute a valid Cayman will dealing with moveable property according to Cayman law. This law removed previous restrictions making it difficult and cumbersome to deal with a deceased's assets in Cayman, and is important because it allows people who own shares in Cayman companies or who have interests in Cayman Islands investment funds to more easily dispose of their interests on death even if they die domiciled outside of the Cayman Islands.

Administration

- 24 | **Who has the right to administer an estate?**

Where probate is granted for a will that names an executor of the estate, the Grand Court will appoint that as the representative of the estate.

Where a will is admitted to probate but no executor is named, the Grant Court may appoint a person to be administrator of the estate pursuant to Rule 32 of the Probate and Administration Rules (2008 Revision).

Where the deceased died wholly intestate, the Grand Court may appoint an administrator pursuant to Rule 33 of the Probate and Administration Rules (2008 Revision). The order of priority of entitlement in relation to estates of persons dying domiciled outside the Cayman Islands, is set out in Rule 37.

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

Once a grant of probate has been issued to the estate representatives, they are entitled, and indeed required, to gather and take control of the assets of the deceased person and have them transferred into the names of the executors, or directly to a person who is ultimately entitled to the same under the terms of the relevant will.

In the absence of leave of the Grand Court, no grant of probate or letters of administration with the will annexed can be issued within 21 days of the death of the deceased and no grant of letters of administration can be issued within 28 days of the death of the deceased. The grant must be obtained within six months of death (or two months of the termination of any dispute concerning the right to a grant) unless special leave of the Grand Court is obtained. Special leave is ordinarily given where a reasonable explanation for the delay is provided, subject to any objections of those entitled under the estate. There is no time limit for an application for the resealing of a foreign grant.

An estate must be administered within one year from the date of the grant of probate, unless the Grand Court has granted an extension for the submission of the final accounting of the estate.

Challenge

26 | Is there a procedure for disappointed heirs and/or beneficiaries to make a claim against an estate?

The validity of a will and the identity of the applicant for probate can be challenged at the appropriate time during the application for probate. A beneficiary under a will or the rules of intestacy can also apply to the Grand Court to challenge the manner of administration of the estate, however the administration cannot be challenged on the basis that no adequate provision was made for dependants of the deceased or otherwise (as is possible in other jurisdictions).

CAPACITY AND POWER OF ATTORNEY

Minors

27 | What are the rules for holding and managing the property of a minor in your jurisdiction?

A minor cannot hold title to property in the Cayman Islands. Section 32 of the Trusts Law (2020 Revision) provides that a trustee may pay or apply the property in which a minor has an interest to the parent or guardian of the minor for his or her maintenance, education or benefits. Upon attaining the age of 18, the trustee shall pay any unvested interest to the individual.

Age of majority

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

A person attains legal capacity at the age of 18.

Loss of capacity

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

The Cayman Islands Grand Court has the power to appoint a guardian for a person, or the estate of a person, of unsound mind or suffering from mental illness.

When making a determination for guardianship, the court will hear evidence from the applicant and any opposing parties regarding the suitability of certain individuals to act as legal guardian and will require expert medical evidence regarding the mental capacity of the patient.

IMMIGRATION

Visitors' visas

30 | Do foreign nationals require a visa to visit your jurisdiction?

Foreign nationals require a visitors' entry permit, which is typically limited to a six-month period. Persons who require a visa to visit the Cayman Islands must apply to the nearest British embassy or consulate.

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

A foreign national can usually stay within the jurisdiction for a six-month period but may apply to the Department of Immigration for an extension.

High net worth individuals

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

A person may apply to the Chief Immigration Officer for permanent residence where they are of independent means and sufficient resources to adequately maintain themselves and their dependants (as set out below).

There are four types of independent means categories:

- a 'residency certificate for persons of independent means': grants permanent residency for a period of 25 years – this requires an investment in Cayman Islands real estate of CI\$1,000,000 or more and either CI\$400,000 in a Cayman Islands bank account or an annual income of more than CI\$120,000;
- a 'residency certificate (substantial business presence)', whereby the applicant owns at least 10 per cent of an approved category of business or is employed in a senior management capacity of an approved business, entitles the person to reside and work in the business in which he or she has invested or are employed in a senior management position;
- a 'certificate of direct investment', whereby an investment of at least CI\$1,000,000 has been made in an employment generating business in the Cayman Islands and enables a person to apply for 25 years of residency as a high net worth investor with the right to work in the business or businesses in which he or she holds an investment; and
- a 'certificate of permanent residency for persons of independent means', where an investment in Cayman Islands real estate of more than CI\$2,000,000 has been made, grants residency for life, and the holder may apply to the Caymanian Status and Permanent Residency Board for a variation to allow for the right to work for any employer, but only in particular occupations specified by the Board. There is a quota of up to 250 of these certificates per year.

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

The ability to bring dependants may vary depending on the type of grant but is generally permitted. The Cayman Islands government website should be consulted (www.immigration.gov.ky).

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

Yes, in some cases (for example, the certificate of permanent residency). The Cayman Islands government website should be consulted (www.immigration.gov.ky).

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

Yes, in some cases. The Cayman Islands government website should be consulted (www.immigration.gov.ky).

UPDATE & TRENDS**Key developments**

- 36 | Are there any proposals in your jurisdiction for new legislation or regulation, or to revise existing legislation or regulation, in areas of law relevant to high-net worth individuals, particularly those coming to or investing in your jurisdiction? Are there any other current developments or trends relevant to such individuals that should be noted?

Various updates were made to the Cayman Islands Trusts Law in 2020, introducing inter alia a statutory basis for setting aside a transactions under what is known under English law as the rule in Hastings-Bass and record keeping obligations for trustees. Under the revisions to the Trusts Law, Cayman Islands trusts can now be varied provided the proposed variations are not 'to the detriment' of beneficiaries that cannot consent to the variation (where previously the proposed variations needed to be 'for their benefit').

In addition, Single Family Offices are no longer non-registerable persons for the purposes of the Securities and Investment Business Law (2020 Revision) and so may be subject to regulations in respect of securities business. Further regulations in respect of Single Family Offices are currently in draft and may come into force in 2021.

Coronavirus

- 37 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

In order to combat the economic effects of covid 19, the Cayman Islands government passed legislation allowing persons to cease making contributions to private pension plans for a six-month period (which has recently been extended until December 2020) whilst also allowing persons in the Cayman Islands to make a lump sum withdrawal from their pension fund of US\$10,000 together with up to 25 per cent of the balance remaining.

The Cayman Islands courts were also quick to conduct hearings via Zoom, meaning that matters involving the assistance of the Cayman Islands courts were largely uninterrupted.

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