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The Legal 500
Private Client
comparative guide – Q&A
Cayman Islands

CAREY OLSEN

Questions

1. Which factors bring an individual within the scope of tax on income and capital gains?
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?
3. Are withholding taxes relevant to individuals and, if so, how, in what circumstances and at what rates do they apply?
4. 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?
5. 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?
6. 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?
7. 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?
8. 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?
9. Are taxes other than those described above imposed on individuals and, if so, how do they apply?
10. Is there an advantageous tax regime for individuals who have recently arrived in or are only partially connected with the jurisdiction?
11. What steps might an individual be advised to consider before establishing residence in (or becoming otherwise connected for tax purposes with) the jurisdiction?
12. What are the main rules of succession, and what are the scope and effect of any rules of forced heirship?
13. Is there a special regime for matrimonial property or the property of a civil partnership, and how does that regime affect succession?
14. What factors cause the succession law of the jurisdiction to apply on the death of an individual?
15. 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?
16. 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?
17. How is the estate of a deceased individual administered and who is responsible for collecting in assets, paying debts, and distributing to beneficiaries?
18. 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?
19. 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?
20. 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?
21. How are such structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?
22. Are foreign trusts, private foundations etc recognised?
23. How are such foreign structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?
24. To what extent can trusts, private foundations etc be used to shelter assets from the creditors of a settlor or beneficiary of the structure?
25. What provision can be made to hold and manage assets for minor children and grandchildren?
26. 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?
27. What forms of charitable trust, charitable company, or philanthropic foundation are commonly established by individuals, and how is this done?
28. What important legislative changes do you anticipate so far as they affect your advice to private clients?

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.
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. 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.
5. 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 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.
6. 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 exemptions are available for transfers between spouses and transfers from a parent to a child 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.
7. 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.
8. 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.
9. 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 levied at a rate of 22 percent, subject to certain personal allowances and concessions on some goods.
10. 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 (§9) being levied.
11. 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.
12. 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 Law (2006 Revision), the Wills Law (2020 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.

13. [Is there a special regime for matrimonial property or the property of a civil partnership, and how does that regime affect succession?](#)

There are special rules for matrimonial property or the property of a civil partnership in the Cayman Islands. As such, 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.

However, when a person domiciled in the Cayman Islands dies without a valid will, 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.

14. [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 Law (2006 Revision) will apply. The test for domicile in the Cayman Islands is broadly that a person has a domicile of origin at birth (where 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 immovable property, 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.

15. [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 had established a Cayman Islands trust prior to their death, subject to certain provisos, that will be presumed to take effect immediately notwithstanding inter alia that the trust may have been created in order to avoid the application of laws relating to wills, probate or succession. In addition, Part VII of the Trusts Law (2020 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 or give rise to any estoppel to the extent they are inconsistent with heirship rights.

16. [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 Law (2020 Revision) provides that to create a valid Cayman Islands 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. With regard to immovable property, the will must comply with Cayman Islands law. For movable assets, formal validity is determined by the law of the deceased’s domicile.

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 Law (2006 Revision). Usually this results in the estate being shared between any surviving spouse and children of the deceased.

17. 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 Law) 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.

18. 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 Law (2020 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 Law, 2017) which is a form of hybrid vehicle with attributes of traditional companies and civil law foundations.

19. 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?

For Cayman Islands trusts (whether ordinary or STAR trusts), these are constituted by execution of the trust deed/instrument or declaration of trust and the transfer to the trustees of the initial trust property. For STAR trusts, there must be an 'enforcer' and at least one of the trustees must be a Cayman Islands licensed trust corporation.

Ordinary and STAR trusts are not subject to any registration requirements however the Trusts Law (2020 Revision) requires that a Cayman Islands 'exempted' trust (being a trust without Cayman Islands beneficiaries) must

be registered with and provide certain information to the Registrar of Trusts which may share that information with other competent authorities.

For certain trusts, information in relation to parties connected with trusts may need to be disclosed to the Cayman Islands tax authority pursuant to the Common Reporting Standard (CRS).

20. 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?

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.

21. 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 where the trust documents are executed or brought into the Cayman Islands.

22. 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 has no equivalent in the Cayman Islands albeit the hybrid Cayman Islands foundation company has some similarities (§19).

23. 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 taxes 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 taxes in the Cayman Islands.

24. 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 of reach of existing creditors. The Fraudulent Dispositions Law (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 Law (2020 Revision). While the Cayman Islands provides a statutory basis for reserved powers pursuant to section 14 of the Trusts Law (2020 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 Law (2020 Revision) provide that a Cayman Islands trust will not be void or liable to be set aside by reason that 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.

25. [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 Law (2020 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 the 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, 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 Law (2020 Revision).

26. [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 any enduring powers of attorney regime meaning that any power of attorney granted will expire upon the event of incapacity. Trusts can be a good way to guard against the complications associated with incapacity, provided they include

appropriate provisions dealing with the incapacity of any power holder. By doing so, a person's incapacity should not affect any property settled into trust. An appropriately drafted trust can also provide scope for trustees to meet medical bills and other costs such as nursing home expenses of the beneficiaries of the trust.

27. [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 as 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 Law, 2017 '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.

28. [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 would operate with retrospective effect such that a disclosure would be required in respect of any arrangement which had the effect of circumventing CRS dating back to 29 October 2014.

The Cayman Islands have recently established a beneficial ownership register for Cayman Islands companies (§20). 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. The Cayman Islands government has committed to making this register accessible by the public in the future if that becomes the global standard.

About Carey Olsen

Carey Olsen is a leading offshore law firm advising on the laws of Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey and Jersey from a network of nine international offices.

We provide legal services in relation to all aspects of corporate and finance, trusts and private wealth, investment funds, insolvency, restructuring and dispute resolution.

Our clients include global financial institutions, investment funds, private equity and real estate houses, multinational corporations, public organisations, sovereign wealth funds, high net worth individuals, family offices, directors, trustees and private clients.

We work with leading onshore legal advisers on international transactions and cases involving our jurisdictions.

In the face of opportunities and challenges, our clients know that the advice and guidance they receive from us will be based on a complete understanding of their goals and objectives combined with consistently high levels of client service, technical excellence and commercial insight.

Our Trusts and Private Wealth practice

Carey Olsen has one of the largest trusts and private wealth teams in the offshore world with 50 partners and associates providing advice on the laws of Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey and Jersey to local and international clients and their advisers. Our offices in Hong Kong and Singapore, with growing private wealth practices, also ensure that we are able to advise clients in Asia on both contentious and non-contentious trusts and private wealth matters.

Our global reach, scale and experience means that we are perfectly positioned to assist and advise on the most demanding and complex cases concerning wealth planning and asset protection as well as the more straightforward day-to-day instructions. We understand the longevity of trusts work, which is why we focus on building long-term relationships with our clients and their other advisers.

We represent professional trustees, private individuals and families, banks, financial institutions and charities from all over the world. International law firms and accountancy practices look to us for support on projects that require specialist advice on the laws and regulations of our jurisdictions.

Our lawyers work across a range of structures including private, corporate, charitable, purpose and commercial trusts, foundations, family offices, partnerships and companies. We advise on settlor reserved power trusts, private trust company arrangements, pension and employee benefit schemes, wills and matters of inheritance, international estate planning, regulatory advice and trust-related disputes.

With a fully integrated practice, we also represent trustees, executors and beneficiaries in contentious matters such as breach of trust actions, estate disputes, and other administrative applications that need to be made to the courts. Our contentious trust lawyers have appeared in many significant offshore trust cases to come before the courts, including representing clients before the Privy Council in the UK.

“Its trusts and fiduciary team is in a class of its own”.

Chambers and Partners

Bernadette Carey

Partner – Head of Private Client and Trusts,
Cayman Islands

D +1 345 749 2025

E bernadette.carey@careyolsen.com

Chris Duncan

Counsel – Private Client and Trusts, Cayman
Islands

D +1 345 749 2057

E chris.duncan@careyolsen.com

*The Legal 500 & The In-House
Lawyer*

*Comparative Legal Guide
Cayman Islands: Private Client (4th
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*This country-specific Q&A provides
an overview to private client laws
and regulations that may occur in the
Cayman Islands.*

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Our offices

Jurisdictions

Bermuda

Carey Olsen Bermuda Limited
Rosebank Centre 5th Floor
11 Bermudiana Road
Pembroke HM 08
Bermuda

T +1 441 542 4500

E bermuda@careyolsen.com

British Virgin Islands

Carey Olsen (BVI) L.P.
Rodus Building
PO Box 3093
Road Town
Tortola VG1110
British Virgin Islands

T +1 284 394 4030

E bvi@careyolsen.com

Cayman Islands

Carey Olsen
PO Box 10008
Willow House
Cricket Square
Grand Cayman KY1-1001
Cayman Islands

T +1 345 749 2000

E cayman@careyolsen.com

Guernsey

Carey Olsen (Guernsey) LLP
PO Box 98
Carey House
Les Banques
St Peter Port
Guernsey GY1 4BZ
Channel Islands

T +44 (0)1481 727272

E guernsey@careyolsen.com

Jersey

Carey Olsen Jersey LLP
47 Esplanade
St Helier
Jersey JE1 0BD
Channel Islands

T +44 (0)1534 888900

E jerseyco@careyolsen.com

International offices

Cape Town

Carey Olsen
Protea Place
40 Dreyer Street
Claremont
Cape Town 7708
South Africa

T +27 21 286 0026

E capetown@careyolsen.com

Hong Kong

Carey Olsen Hong Kong LLP
Suites 3610-13
Jardine House
1 Connaught Place
Central
Hong Kong

T +852 3628 9000

E hongkong@careyolsen.com

London

Carey Olsen LLP
Forum St Paul's
33 Gutter Lane
London EC2V 8AS
United Kingdom

T +44 (0)20 7614 5610

E londonco@careyolsen.com

Singapore

Carey Olsen Singapore LLP
10 Collyer Quay #24-08
Ocean Financial Centre
Singapore 049315

T +65 6911 8310

E singapore@careyolsen.com

OFFSHORE LAW SPECIALISTS

BERMUDA BRITISH VIRGIN ISLANDS CAYMAN ISLANDS GUERNSEY JERSEY
CAPE TOWN HONG KONG LONDON SINGAPORE

[careyolsen.com](https://www.careyolsen.com)