



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
British Virgin Islands: Private Client

Published December 2017

This country-specific Q&A provides an overview to private client law in British Virgin Islands.

It will cover taxes, succession laws, wills, trusts and their structures.

This Q&A is part of the global guide to Private Client. For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/private-client/>

Country Author: O'Neal Webster

The Legal 500



Christopher McKenzie, Head of Private Client/BVI Trusts

CMcKenzie@onealwebster.com



Willa Tavernier, Head of Property and Business

WTavernier@onealwebster.com

The Legal 500



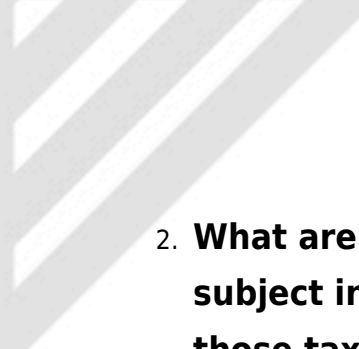
Vanessa King, Head of Corporate (and current chair of STEP BVI)

VKing@onealwebster.com

The Legal 500

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

In the Virgin Islands (the British Overseas Territory in the Caribbean commonly referred to as the British Virgin Islands or BVI) the rate of income tax is zero, and there is no 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?**

N/A.

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

The BVI is subject to the EU Savings Tax Directive.

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 are no wealth or gift taxes in the BVI.

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?**

No. There are no estate or gift taxes in the BVI.

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 (eg business or agricultural assets), and how do any such reliefs apply?

Real property transfers to a spouse or close relation may be made by way of 'love and affection' as the consideration. Such a transfer is taxed at deeply discounted rates – in the case of Belongers the tax is reduced from 4% of the market value to a flat US \$5 and for non-Belongers the tax is reduced from 12% of the market value to 5% of the market value.

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?

See answers to 6 above and 8 below.

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?

There is a transfer tax (stamp duty) of 12% on transfers for persons individuals and entities who are non-Belongers. Tax exemptions are available in the following cases:

(a) in the case of property registered in the name of an individual, where the transfer is

-

(i) to the legal spouse, children or grandchildren of the individual exclusively;

(ii) to a trustee of a trust the beneficiaries (a) of which at the time of transfer are any of

the persons referred to in subparagraph (i);

(iii) from the trustee to any other trustee of a trust referred to in subparagraph (a) (ii);
or

(iv) from the trustee of a trust referred to in subparagraph (a) (ii) to any beneficiary of the trust being one of the persons referred to in subparagraph (a) (i); and

(b) in the case of the property registered in the name of a company, where the transfer is -

(i) to the legal spouse, children or grandchildren of the beneficial owner of the company exclusively,

(ii) to a trustee of a trust the beneficiaries (a) of which at the time of transfer are any of the persons referred to in subparagraph (i), or

(iii) from the trustee to any other trustee of a trust referred to in subparagraph (a) (ii),
or

(iv) from the trustee of a trust referred to in subparagraph (ii) to any beneficiary of the trust being one of the persons referred to in (a) subparagraph (i).

Where a company transfers property (including shares in the company) to another company which has the same beneficial ownership as that company and the property is held pursuant to a licence issued under the Non-Belongers Land Holding Regulation Act that other company may apply in writing to the Governor to be exempted from payment of stamp duty.

9. Are taxes other than those described above imposed on

individuals and, if so, how do they apply?

Yes. Payroll tax is payable by employers operating in the BVI and their employees. There is an exemption for both employer and employee, in respect of the first \$10,000 of each employee's salary per annum. Payroll taxes are levied as follows:

Class 1 - 10%: employer 2%; employee 8%; and

Class 2 - 14%: employer 6%; employee 8%.

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

The BVI is a low tax jurisdiction and this applies across the board. The tax advantages are set out in the answers to questions 2 to 5 above.

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

He or she should consider the impact of the individual's liability to taxation in other jurisdictions to which that individual might be subject, because of citizenship or other factors.

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

The succession to movable BVI-situs property will be determined by the laws of the

jurisdiction in which a person dies domiciled. The succession to immovable BVI property will, on the other hand, be determined by BVI domestic law no matter where its owner dies domiciled.

The domestic laws of the BVI do not contain any forced heirship provisions. There is full freedom of testamentary disposition as a matter of BVI domestic law and we have, in the BVI, no equivalent to the (English) Inheritance (Provision for Family and Dependents) Act 1975. Given the potential application of non-BVI law to the succession to movable property, forced heirship provisions would however be capable of applying to the succession to the movable property of non-BVI domiciliaries depending on where they die domiciled. If they do not wish these provisions to apply they should consider setting up lifetime trusts since the BVI's Trustee Act contains robust firewall provisions insulating BVI trusts and trustees against such claims and against foreign judgments based on them.

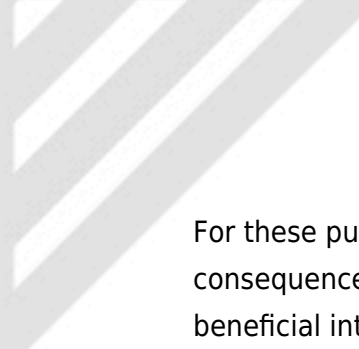
Regardless of where a person dies domiciled, a BVI grant of representation would be needed before BVI property, whether movable or immovable, is dealt with following death or else anyone dealing with it risks exposure to liability for intermeddling. It would be very rare indeed for it to be appropriate to rely on a non-BVI grant for these purposes.

13. 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 matrimonial property in the BVI and the domestic laws of the BVI law do not yet recognise civil partnerships.

14. What factors cause succession laws to apply on the death of an individual?

See the answer to question 12 above.



For these purposes shares in BVI companies will be regarded as BVI-situs property as a consequence of section 245 of the BVI Business Companies Act, 2004 (as will absolute beneficial interests in such shares). Subject to that, the extent of which property will be regarded as 'movable' or 'immovable' will be determined by applying very similar principles to those which apply by virtue of English common law.

A person's 'domicile' as a matter of BVI law will, be determined by applying the relevant principles of English common law.

If an issue of succession is referred to the laws of another jurisdiction the doctrine of renvoi would be applicable to the same extent to which it would were the referral to be one made by English law.

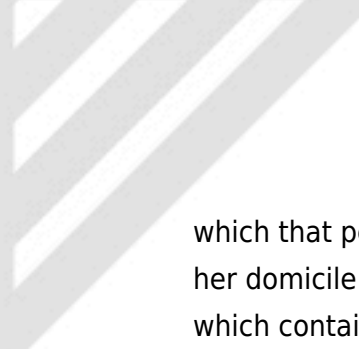
15. **How does the jurisdiction deal with conflict between its succession laws and those of another jurisdiction with which the deceased was connected or in which the deceased owned property?**

See answer to question 12 above.

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?**

The circumstances in which a person would make a Will are essentially the same as they would be in England and Wales.

It is however important to point out that, in view of the issues summarised in the answer to question 12 above, those owning BVI-situs movable property (typically shares in BVI companies or absolute beneficial interests in them) should ensure that any Will which he or she executes is compatible with the laws of the jurisdiction in



which that person is domiciled and that this issue be kept under review in case his or her domicile changes after making the Will. Those domiciled in jurisdictions the laws of which contain forced heirship or similar provisions should seriously consider settling the relevant property on BVI trusts during their lifetimes should they not wish those who would otherwise be entitled to inherit such property to receive it.

BVI Wills are frequently made by those whose only connection with the BVI is owning property in the jurisdiction: these Wills tend to be confined in their scope to such property.

If an individual dies leaving British Virgin Islands-situs property without having made a Will, the rules of intestacy of the jurisdiction in which he or she dies domiciled will determine how his or her movable property is disposed of and the BVI's rules of intestacy will determine how that individual's immovable property is disposed of.

The BVI's current rules of intestacy are contained in the Intestates Estates Act and which of a deceased's family members will be entitled the estate it under that statute's terms will depend on whether the deceased left a surviving spouse, issue or any grandparents or their descendants. If the person leaves no surviving spouse or issue, nor any of those more distant relatives, the entire estate will pass to the Crown *bona vacantia*.

To be valid under the internal laws of the BVI, subject to two rarely applicable exceptions, a Will must comply with the requirements of section 7 of the Wills Act. These require the Will to be in writing and to be signed at the foot or end by the testator (or by some other person in the testator's presence and at his or her direction); the testator's signature must be made or acknowledged by the testator in the presence of at least two witnesses who must be present at the same time and such witnesses must also attest and subscribe the Will in the presence of the testator.

It is however highly relevant for these purposes that, on the basis that the BVI currently has no equivalent to the English Wills Act 1963, the formal validity of Wills disposing of movable BVI property (and thus the manner in which they must be executed) will be determined (in accordance with historic English common law principles) by the laws of the jurisdiction in which the person dies domiciled.

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

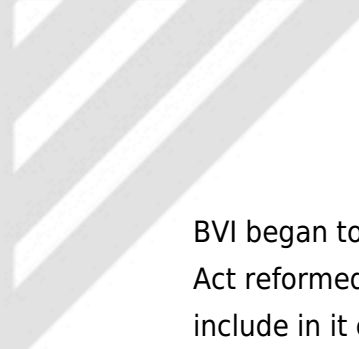
The estate will be administered by the deceased's personal representatives who will be responsible for collecting in assets, paying debts and distributing property to that person's heirs. The personal representatives will be the person's executors if he or she has left a Will containing a valid appointment of executors who are willing and able to apply for grant of probate or, if not, his or her administrators (whose identity will be determined by the law). The latter would need to obtain a BVI grant of letters of administration before they proceed with the estate's administration. The procedure for applying for a grant is set out in the Eastern Caribbean Supreme Court (Non-Contentious) Probate Rules 2017.

18. Do the laws 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?

The BVI is the world's leading international finance centre for company incorporations and BVI companies account for 45% of the international market share (according to a report by the IMF in 2004). It effectively emerged as an international finance centre in 1984 and there are now over 500,000 active companies on the register and many of these are set up as private holding companies (and are particularly popular in Asia).

Since 1984 the Territory has progressed from being a single product jurisdiction to a financial centre which is able to offer the full range of international products and services.

It was following the enactment of amendments to the BVI Trustee Act in 1993 that the



BVI began to emerge as a popular jurisdiction for the establishment of trusts. The 1993 Act reformed BVI trust law in line with the laws of some of its main competitors to include in it clarification relating to conflict of laws provisions, those enabling protectors to be appointed and powers to be reserved to settlors, protectors and others; it also added provisions enabling non-charitable purpose trust to be established. Most importantly the statute abolished the requirement to the effect that all BVI trust deeds needed to be filed publicly since the latter had been a major deterrent to the creation of BVI trusts. The first specialist trust lawyer (co-author Chris McKenzie) arrived in the BVI in 1996, others soon followed and the number of BVI trusts began to steadily increase. Accordingly, within less than 10 years, the BVI became one of the world's leading international trust centres.

In 2003 reforms which took effect in March 2004, mostly notably the Virgin Islands Special Trusts Act, 2003 (VISTA) has given the BVI major competitive advantage over many other jurisdictions and increasing global familiarity and acceptance of the reforms has fuelled - and will continue to fuel - the accelerating growth of BVI trust business. The VISTA legislation is unique in that it enables trusts to be established to hold shares in BVI companies (as holding companies for other assets such as shares in foreign companies and speculative investments) and, uniquely, offers a secure and appropriate way to hold commercial assets in a trust structure.

The appeal of the BVI as a trust jurisdiction was further augmented when innovative regulations enabling private trust companies (PTCs) to be established in the BVI were introduced in 2007.

BVI partnerships are often used within structures that manage and hold family wealth. The Partnership Act, 1996 governs the formation and operation of BVI partnerships.

The laws of the BVI do not yet provide for the creation of civil law- type foundations.

BVI trusts and (to a less extent companies) are most commonly used for succession planning purposes.

19. **How is any such structure constituted, what are the main rules that govern it, is there any requirement for registration with or disclosure to any authority or regulator, and what information about the structure is available to the public?**

A BVI trust would be constituted in exactly the same manner as that in which an English trust is constituted. Trust duty of US\$200 is however payable on most trust instruments: the duty is paid by affixing BVI revenue stamps for this amount to the original document and 'cancelling' these in the prescribed manner; the payment of the duty would not involve the submission of the document to any revenue or other authorities; confidentiality is thereby maintained. Subject to (in practice rare) exceptions relating to certain trusts which are set up as collective investment schemes, neither the trust instrument nor any of its contents would be filed with any authority or regulator and no information whatsoever would be available to the public.

The Beneficial Ownership Secure Search Systems Act came in to force on 30 June 2017 and requires the name, date of birth, nationality and residential address of all beneficial owners of BVI companies to be entered in a secure searchable non-public database.

In order to constitute a BVI limited partnership two or more persons (which may be a natural person, a company or other legal entity) must execute articles of partnership which would be the agreement that governs the relationship between the partners. The articles are submitted to a BVI registered agent and are not public documents. The BVI registered agent is required to subscribe to a memorandum of partnership which is filed with the Registry. The memorandum, which is a public document, would include the name of the partnership, its objects and purpose, details of the general partner and other information. Upon receipt of memorandum the Registrar will register the partnership and issue a certificate of limited partnership.

20. **How are such structures and their settlors, founders, trustees,**

directors and beneficiaries treated for tax purposes?

See the answer to question 19 above in relation to BVI trust duty. Trust instruments which establish merely bare trusts or trusts for exclusively charitable purposes are exempt from such duty.

As indicated above there is no inheritance, capital gains or estate tax in the BVI and income tax is zero-rated.

Businesses operating in the BVI are subject to payroll tax: see the answer to question 9 above.

There are furthermore wide exemptions from tax in section 90 of the Trustee Act: these include exemptions from stamp duty, but they will only apply if the trust's assets, or its underlying assets, do not include BVI land and if the trustees do not (in their capacity as trustees rather than in their personal i.e. professional capacity) do not carry on a business or trade in the jurisdiction.

21. Are foreign trusts, private foundations, etc recognised?

The provisions of the Hague Trusts Convention have been extended to the BVI and most of the provisions of the (English) Recognition of Trusts Act 1987 form part of BVI law, with the result that the vast majority of foreign trusts would be recognised.

We are aware of no decided case dealing with the recognition of foreign foundations but they feature in many BVI structures and it is generally considered that these would normally be recognised.

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

These would essentially be taxed in the same way as the equivalent BVI structures and persons.

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

There is, in the BVI, no equivalent to the 'asset protection' legislation which has been enacted in some of our competitor jurisdictions such as the Cayman Islands, The Bahamas and, perhaps most conspicuously, the Cook Islands. It is understood that the authorities declined, as a matter of policy, to succumb to pressures to enact such laws in order to protect the jurisdiction's reputation on the basis that a high profile case might tarnish the jurisdiction's reputation. The 1571 Statute of Elizabeth is thought to apply in the BVI and similar provisions are contained in section 81 of the BVI's Conveyancing and Law of Property Act (which is worded identically to section 172 (1) of the English Law of Property Act 1925). Accordingly the English cases relating to the Statute of Elizabeth and section 172(1) of the 1925 Act would be of persuasive authority in the BVI. Whilst it contains no equivalent to section 423 of the English Insolvency Act 1986, the BVI's own Insolvency Act, 2003 contains detailed provisions enabling transfers by individuals and companies to be set aside in appropriate circumstances. Section 40 of the BVI's Matrimonial Proceedings and Property Act also contains provisions enabling certain transfers which are made to defeat financial provision under that statute to be avoided, but that section will only apply to certain BVI residents.

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

Such provision is generally made by establishing a BVI trust which includes appropriately drafted terms.

25. **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 BVI does not yet enable enduring (or lasting) powers of attorney to be drawn up under its domestic laws so that (subject to a very limited exception in the Conveyancing and Law of Property Act enabling irrevocable powers of attorney to be drawn up in certain circumstances) the authority given by a power of attorney which a donor makes will terminate automatically when the donor loses capacity (or dies). When a person owning BVI property becomes incapable of dealing with such property an application to the BVI court would therefore be needed, but there are provisions in the BVI's Mental Health Act which would enable the BVI court to recognise those appointed under foreign enduring or lasting powers of attorney.

Steps which should therefore be taken prior to losing capacity might include (in particular) the creation of appropriately lifetime trusts and/or ensuring that a co-owner or co-fiduciary will be able to take over should the person lose capacity and/or ensuring that (where appropriate) foreign enduring or lasting powers which extend to the donor's BVI property are executed.

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

Charitable trusts and companies with charitable objects are often created and this is done by following the same procedures as those which apply to beneficiary trusts and companies. The Non-Profit Organisations Act, 2012 contains registration and other requirements which could be applicable, but these will not apply if the charity's funds are not raised or distributed primarily within the BVI or (in the case of a trust) if its sole trustee or all its trustees are regulated under BVI statute.

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

The Trust and Succession Law Review Committee of the BVI Branch of STEP (the proposals of which led to VISTA, the BVI's PTC Regulations and all the other major recent amendments to the BVI's trust legislation) is actively in the process of drawing up further proposals for suggested trust and succession law reform and these proposals, which are confidential, are at an advanced stage. The committee is chaired by co-author Vanessa King.