

# Private Client

*Contributing editors*

Anthony Thompson and Nicole Aubin-Parvu



2017

GETTING THE  
DEAL THROUGH 

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**Gowling WLG (UK) LLP**

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Published by  
Law Business Research Ltd  
87 Lancaster Road  
London, W11 1QQ, UK  
Tel: +44 20 3708 4199  
Fax: +44 20 7229 6910

© Law Business Research Ltd 2016  
No photocopying without a CLA licence.  
First published 2012  
Fifth edition  
ISSN2051-5472

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Encompass Print Solutions  
Tel: 0844 2480 112



## CONTENTS

<b>Overview</b>	<b>5</b>	<b>Italy</b>	<b>63</b>
Anthony Thompson and Nicole Aubin-Parvu Gowling WLG (UK) LLP		Marco Cerrato and Alessandro Bavila Maisto e Associati	
<b>Belgium</b>	<b>7</b>	<b>Japan</b>	<b>68</b>
Saskia Lust, Barbara Albrecht and Jan Jorissen Loyens & Loeff		Kenichi Sadaka, Kei Sasaki and Akira Tanaka Anderson Mōri & Tomotsune	
<b>Bermuda</b>	<b>12</b>	<b>Jersey</b>	<b>75</b>
Jane Collis and Louise Charleson MJM Limited		Edward Devenport and Giles Corbin Mourant Ozannes	
<b>Brazil</b>	<b>17</b>	<b>Liechtenstein</b>	<b>80</b>
Felipe Katz Katz Advogados		Philip Georg Raich Gasser Partner	
<b>Cyprus</b>	<b>22</b>	<b>Monaco</b>	<b>84</b>
Despina Sofokleous, Lorenzo Toffoloni Andreas Th. Sofokleous LLC		Christine Pasquier-Ciulla & Regina Griciu PCM Avocats - Pasquier Ciulla & Marquet Associés	
<b>England and Wales</b>	<b>28</b>	<b>Netherlands</b>	<b>89</b>
Anthony Thompson, Nicole Aubin-Parvu and Alfred Liu Gowling WLG (UK) LLP		Frank Deurvorst, Lourens de Waard, Jules de Beer and Dirk-Jan Maasland Bluelyn	
<b>France</b>	<b>37</b>	<b>Poland</b>	<b>95</b>
Maryse Naudin Tirard, Naudin - Société d'Avocats		Sławomir Łuczak and Karolina Gotfryd Sołtysiński Kawecki & Szlęzak	
<b>Germany</b>	<b>43</b>	<b>Switzerland</b>	<b>100</b>
Andreas Richter and Katharina Hemmen P+P Pöllath + Partners		Natalie Peter, Michael Hamm and Gian Andri Töndury Staiger Schwald & Partner AG	
<b>Gibraltar</b>	<b>48</b>	<b>Ukraine</b>	<b>106</b>
Nyreen Llamas Hassans		Ivan Kasynyuk, Iryna Moroz and Dmitry Koval AGA Partners Law Firm	
<b>Guernsey</b>	<b>53</b>	<b>United States</b>	<b>111</b>
Matthew Guthrie, Catherine Moore and Stephanie Setters Mourant Ozannes		Stephen K Vetter and Eric Dorsch Kozusko Harris Duncan	
<b>India</b>	<b>58</b>		
Rajesh Narain Gupta and Anju Gandhi SNG & Partners, Advocates & Solicitors			
Ashok Natwarlal Shah N A Shah Associates LLP			

# Preface

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# Overview

Anthony Thompson and Nicole Aubin-Parvu

Gowling WLG (UK) LLP

As advances in technology and communication contribute to an ever-shrinking world, more people than ever are living an international existence, owning property in several different jurisdictions and dividing their time between them. At the same time, their children are moving to different places and starting lives and relationships in countries with widely differing cultures and legal and tax systems.

Wealthy people who are deciding where to live or invest, or both, tend to make their decisions according to a number of factors that remain largely true across the world:

- stability of the economy and tax system;
- security of the person and property within the jurisdiction and a strong rule of law;
- respect for family life and a developed educational system; and
- a thriving environment in which to do business.

In many cases, not all of these factors will exist in the same jurisdiction. For example, a country may be a good place in which to do business but not necessarily an ideal place to bring up a young family or to own property. Equally, the attributes of jurisdictions can change over time. For example, it remains to be seen what, if any, impact the recent vote by the UK to leave the EU may have on its attractiveness to wealthy individuals and their families as a jurisdiction in which to live and do business.

With this in mind, many wealthy people divide their lives and investments between different jurisdictions. As a result, they find that they may be regarded as resident in more than one country for the purposes of tax, and that different systems of law apply to the succession of their property in different jurisdictions. For example, an individual's domicile may be the critical factor in determining succession to his or her property in one jurisdiction, while nationality may be the key determinant in another. One country may permit complete freedom of disposition over an individual's estate, while another has strict rules as to the categories of heirs who may inherit property, and in what shares.

Accordingly, before wealthy individuals move to or invest in property in a new country, it is vital that they understand how the rules that apply to their personal lives, their property and their tax status may change.

## Wealth trends

For many generations, the developed countries of the West were the primary focus of private client lawyers and other professionals focused on individual and family wealth. It was in the West that concepts such as trust law in the common law world and the civil law foundation developed as vehicles to protect and manage wealth for the benefit of generations to come.

This has been changing for some years and, in 2015, Asia-Pacific overtook both North America and Europe in terms of its high net worth population and overall wealth, with Japan and China as significant drivers of growth. It also far exceeded both regions in the increase in the wealth of its ultra-high net worth (UHNW) population (those individuals with investable assets of US\$30 million or more). Overall, the global UHNW population and its wealth grew far more slowly than in previous years, largely as a result of a slowing in UHNW growth in Latin America, notably in Brazil, the region's largest economy, owing to political volatility and significant decline in the equity markets.

In all these developing jurisdictions, as well as those of the Middle East and Africa, there is often a focus on strong family values and a tendency to be first-generation wealthy, which leads to difficulties in ceding control by the family patriarch or matriarch to the successor generation and an awareness of the vital importance of a stable jurisdiction in which to locate their wealth.

Particularly in the case of Muslim and many Latin American countries, the law imposes strict inheritance rules upon their assets, either through shariah law in the case of Muslim countries, or a civil system of forced heirship. While many wealthy individuals are happy to comply with these rules to a greater or lesser degree, they may, nevertheless, wish to maintain some degree of control over the disposition of their property. Accordingly, they may choose to invest in jurisdictions without such rules and seek wealth structures that can assist them to plan as they wish to.

For individuals in all of these jurisdictions, and as a general rule among the wealthy wherever they live, confidentiality and privacy are of great importance. This importance may be heightened by fears of kidnap – a significant concern in Latin America – or, not uncommonly, as a result of uncertainty over the rule of law within their own country. Whatever the cause, it tends to lead to a focus on careful structuring of assets through asset-holding vehicles in order to maintain privacy and protection.

## Tax and the global fight against its evasion and avoidance

Over the past decade the fight against tax evasion and avoidance has become global. Governments realise that as their citizens increasingly hold business and personal interests in different countries, the reach of the tax system also has to become international. Since the global banking crisis in 2008, the subsequent recession and ongoing financial problems within certain countries in the EU and elsewhere, the need for individual countries to refresh their coffers by extracting as much tax revenue as possible has added to their determination to seek out sources of additional tax.

The early targets of the fight were the international offshore finance centres providing low-tax safe havens for international assets. The efforts of the Organisation for Economic Co-operation and Development (OECD) and the Financial Action Task Force have borne fruit, forcing such jurisdictions to comply with stringent international regulatory requirements and information exchange obligations in order to avoid being blacklisted as uncooperative tax havens.

The OECD in particular has done much to encourage jurisdictions, whether 'tax havens' or otherwise, to sign tax agreements enabling exchange of information between countries regarding the ownership of assets. Initially, in the United Kingdom and other countries, so-called 'tax amnesties', both unilateral and bilateral, such as the Liechtenstein Disclosure Facility (LDF) and offshore disclosure facilities between the UK and each of its Crown dependencies (the Isle of Man, Guernsey and Jersey), enabled taxpayers to repay their undisclosed tax liabilities, particularly those offshore, with lower rates of interest and penalties than would otherwise have been the case. These facilities closed at the end of December 2015 and have been superseded by a new Worldwide Disclosure Facility launched on 5 September 2016 and providing significantly fewer benefits and reductions than previous such facilities. Other initiatives, such as agreements between Switzerland and a number of other European countries, including the UK, have sought

to ensure that tax obligations are regularised for the future as well as the past.

The US Foreign Account Tax Compliance Act (FATCA) is an example of a national development with international reach. It has been developed to improve tax compliance involving foreign financial assets and offshore accounts and, in addition to placing filing and payment obligations on US taxpayers, it also requires foreign financial institutions to report directly to the IRS about accounts held by US taxpayers or held by foreign entities in which US taxpayers hold a significant ownership interest. The impact of FATCA on non-US institutions has already been significant and signals a new trend in how governments seek to enforce their tax laws against overseas entities.

Since the introduction of FATCA, a number of jurisdictions, including the UK, have signed enhanced automatic tax information exchange agreements with the US, based around the FATCA model. The UK has also signed automatic tax information agreements with its Crown dependencies and overseas territories (Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Gibraltar, Montserrat and the Turks and Caicos Islands). Of these, those signed with the Crown dependencies and Gibraltar are reciprocal, requiring the UK to provide information as well as to receive it.

These unilateral and bilateral agreements will shortly be superseded by the introduction of the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters. This was released and approved by the OECD in July 2014 and calls for governments to obtain and automatically exchange with other jurisdictions detailed account information from their financial institutions on an annual basis. The Standard consists of the Common Reporting Standard (CRS) containing due diligence rules for financial institutions to follow to collect and report the information that underpins the automatic exchange of information, and the Model Competent Authority Agreement (CAA) that links the CRS to the legal basis for exchange, specifying the financial information to be exchanged. It also includes commentaries, illustrating and interpreting the CAA and CRS. Automatic information exchange is to begin among 54 'early adopters' (out of a total of 101 jurisdictions as at July 2016) by the end of September 2017.

At the same time as governments are seeking to identify and enforce existing tax obligations overseas, they are also seeking to introduce new obligations on entities abroad. A recent example of this trend was the introduction in the UK in 2013 of the Annual Tax on Enveloped Dwellings (ATED) and the 'ATED-related CGT charge', respectively an annual charge on ownership and a capital gains tax charge on disposals of high-value UK residential property held by companies and certain other entities, both UK-resident and otherwise. Subsequently, CGT was extended to gains on disposals made on or after 6 April 2015 by non-UK residents of UK residential property of any value (non-resident CGT). Prior to the introduction of the ATED-related and non-resident CGT charges, the taxation of capital gains on UK property of any type had been restricted to individuals and entities resident in the UK. It is now proposed that overseas corporate and other entities holding UK residential property for non-UK domiciled individuals will be liable to inheritance tax in respect of such property on the occurrence of certain chargeable events with effect from 6 April 2017. The requirement to be able to identify such events and enforce any tax due is likely to result in an increase in the scope of information exchange required. It has recently been proposed that a register of overseas companies owning UK land may be introduced requiring such entities to disclose their ultimate beneficial ownership.

The increasing reach of tax obligations beyond individual borders and the greater sophistication of information exchange between

countries and international enforcement, mean that wealthy individuals cannot afford to remain ignorant of or in default with their tax obligations in any of the jurisdictions in which they have property or other connections. Expert tax advice is one of the most important wealth-planning requirements for any such individual.

### Immigration

Given the trend throughout the world for international mobility, it is important for wealthy individuals to have an understanding of each country's unique immigration rules. To avoid a situation in which one member of a family moves to a new country, only to subsequently discover that there is no right for his or her family to follow, these rules must be analysed and considered in good time before any such move takes place.

In general, immigration rules across the Western world are being tightened. Since the recession and subsequent financial instability within Europe and elsewhere in the world, there has been an underlying desire within countries to avoid an influx of people who may increase pressure on already scarce resources. With the crisis in Syria and other humanitarian crises in other parts of the Middle East and Africa, levels of immigration have become a primary political issue in many countries and 2015–2016 saw dramatic examples of this. The European migrant crisis beginning in 2015 saw unprecedented numbers of refugees seeking asylum in European countries and travelling freely around the EU based on the fundamental EU principle of freedom of movement. This resulted in the reintroduction of temporary border controls within parts of the Schengen area and no doubt played a major role in the UK voting to leave the EU on 23 June 2016 as many considered the principle of freedom of movement as the root cause for 'uncontrolled immigration'.

Wealthy people, of course, are often exempt from such concerns, and may be welcomed with open arms, provided that they are seen to bring with them funds and investment that may benefit their new home. Indeed, recent years have seen increasing popularity in certain countries' citizenship or residence-by-investment programmes and a correlating relaxation in their respective requirements as a means of encouraging more inward investment. Nonetheless, given the rules of free movement across borders within the European Community, countries within the EC may have additional restrictions on immigrants from non-EC countries, whose arrival they can control. Such considerations can result in additional restrictions being placed on the immigration of wealthy people as well as skilled and professional immigrants who would otherwise be welcome arrivals.

Latin American and many Asian countries, on the other hand, have tended to be more open to immigration and it is to be hoped that this trend will continue in the future.

### Summary

Given the international mobility of wealthy individuals and their families discussed above, it is vital that they and their local advisers have a resource to guide them through the often significantly different legal frameworks they may face in other jurisdictions in which they choose to live, do business and invest. This publication seeks to draw together the main issues of importance to a private client in this situation – rules in relation to tax, succession, the holding and management of property and immigration – to serve as a starting point to understand such rules in each jurisdiction. By its nature, such a guide is general in its scope and expert advice must be taken within each relevant jurisdiction before any action is taken. However, we hope it provides a useful initial guide for individuals and advisers beginning this process.

# Belgium

Saskia Lust, Barbara Albrecht and Jan Jorissen

Loyens & Loeff

## Tax

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

An individual becomes taxable in Belgium when he becomes in fact a Belgian resident. A Belgian tax resident is an individual who has his or her main residence in Belgium. An individual who does not have his or her main residence in Belgium but who has the seat of his or her fortune in Belgium also qualifies as a Belgian resident. Residency depends on all relevant circumstances. It is a factual criterion. However, the registration of the individual in the National Register creates a rebuttable presumption of residency.

Belgian residency triggers the liability of Belgian personal income taxes over the following types of income and gains:

- income of real property (see question 6);
- income of capital (see question 2);
- income of professional activities (see question 2); and
- income of diverse sources and (capital) gains (see questions 2 and 3).

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

Income of capital is taxed at flat rates.

In principle, dividends are taxed at a flat rate of 27 per cent, whatever the amount of dividends earned. Belgium does not grant a credit for foreign withholding tax. The foreign withholding tax can be deducted from the gross dividend to determine the taxable basis in Belgium. Upon fulfilment of conditions and deadlines, dividends can be taxed at a flat rate of 15 per cent. Dividends received upon the liquidation of a company qualify for a flat tax rate of 10 per cent, when conditions are met.

As for dividends, the basic tax rate for interest income is a flat rate of 27 per cent. Interest income from savings accounts within the European Economic Area can qualify for a lower rate of 15 per cent, if conditions are met.

Income of professional activities is taxed at progressive rates up to 50 per cent. The basic rates can be increased with surcharges up to approximately 53,5 per cent.

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

Gains realised upon the transfer of shares are not taxed in the hands of a Belgian tax resident when the sale or contribution qualifies as 'normal private wealth management'. In principle, a sale to a third party can qualify as 'normal private wealth management'. The sale of shares to an entity that is controlled by the seller does not qualify as 'normal private wealth management' and triggers tax liability at a flat rate of 33 per cent (increased with surcharges).

Gains realised upon speculative transactions are always taxed. The flat rate of 33 per cent (increased with surcharges) is applicable.

There is a specific rule on taxation of gains that are realised upon the sale of listed stock within six months after the purchase. The tax is levied at the flat rate of 33 per cent (increased with surcharges).

The gain on the sale of shares in a Belgian company is taxed when the purchaser is a legal entity established outside the European Economic Area, and when the seller holds a substantial shareholding (of more than 25 per cent) in the sold company. The applicable flat rate is 16,5 per cent (increased with surcharges).

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

A Belgian tax resident can gift moveable assets without liability of Belgian gift tax. The gift needs to be made in an informal way or before a foreign notary to avoid the liability of the Belgian gift tax. The basic rule is that when the donor of a gift free of Belgian gift tax passes away within a period of three years after the gift, Belgian inheritance tax is due over the gift if the donor is a tax resident of Belgium at the date of his or her decease. There are several exceptions to the rule according to which Belgian inheritance tax remains due over the tax free gift upon decease of the donor as a Belgian resident, even if the date of the decease falls out of the scope of the three years after the gift. Example of an exception can be the gift with reservation of usufruct by the donor.

A Belgian resident can also opt for a gift of moveable assets with payment of Belgian gift tax. Gift tax is levied by the regions. Belgium has three regions: the region of Flanders in the north, the Walloon Region in the south and the Brussels Capital Region in the centre. Each region has specific rates, reliefs and exemptions in the field of gift tax. In principle, the applicable regime is the regime of the region where the donor resides. The rates for gifts of moveable assets are flat rates, irrespective of the value of the gift. For gifts in direct line and between spouses, the flat rate is 3 per cent in the regions of Flanders and Brussels and 3,3 per cent in the region of Wallonia.

All three regions have introduced a specific regime for the gifting of assets of family-owned businesses and shares in family-owned companies established in the European Economic Area. The region of Flanders even grants an exemption when conditions are met.

Real property situated in Belgium cannot be gifted without payment of gift tax. The rates, reliefs and exemptions are determined by the regions. In principle, the tax is levied at progressive rates depending on the market value of the real property and the degree of kinship between the donor and the beneficiary.

Belgium does not levy gift tax when a Belgian tax resident gifts a real property that is situated outside Belgium.

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

If the deceased individual was a Belgian resident, inheritance tax is due over his or her worldwide assets. Belgium has three regions: the region of Flanders in the north, the Walloon Region in the south and the Brussels Capital Region in the centre. Each region has specific rates, reliefs and exemptions in the field of inheritance tax. In principle, the applicable regime is the regime of the region where the deceased resided.

In principle, each region applies progressive inheritance tax rates, depending on the degree of kinship between the deceased and the heir and on the market value of the inherited assets. In direct line and between spouses, the highest applicable inheritance tax rate in the Flemish Region is 27 per cent. In the Brussels Capital Region and the Walloon Region, the highest rate is 30 per cent in direct line and between spouses.

In the Flemish Region, the inheritance tax due by the spouse and by the heirs in direct line is calculated separately over the moveable and immovable assets. This distinction does not exist in the Brussels Capital Region or in the Walloon Region.

In the Flemish Region, the spouse of the deceased is exempted from payment of inheritance tax over the value of the inherited share in the family home.

All three regions have introduced a specific regime for the inheritance of assets of family owned businesses and shares in family owned companies established in the European Economic Area. If certain conditions are met, assets in family owned businesses and shares in family owned companies can be inherited at a flat rate of 3 per cent in the Flemish Region and the Brussels Capital Region. In the Walloon Region, those assets and shares can be inherited free of inheritance tax, upon fulfilment of conditions.

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

Upon purchase of real property situated in Belgium, registration rights are due over the purchase price at, in principle, a flat rate of 10 per cent in the Flemish Region (in the Brussels Capital Region and in the Walloon Region, the principle rate is 12.5 per cent).

When an individual rents a house situated in Belgium to another individual, income tax is due by the owner at progressive rates up to 50 per cent (increased with surcharges) over the cadastral income of the property. The cadastral income is a fictitious rental income. If the tenant rents the house for professional use, income tax is due by the owner at progressive rates up to 50 per cent (increased with surcharges) over the actual rental income.

If real property situated outside Belgium is rented by a Belgian individual, Belgium has no authority to levy taxes over the rental income according to the double tax treaties.

If an individual who is a tax resident of Belgium sells his family home, no income tax is due over the capital gain. However, if an individual sells real property, which is not his or her family home, within five years of the acquisition of the property, income tax can be due over the capital gain at a flat rate of 16.5 per cent (increased with surcharges).

Belgium has no authority, according to the double tax treaties, to levy income taxes over capital gains if real property situated outside Belgium is sold by a Belgian individual.

#### **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?**

Customs duties, excises (only for goods that qualify as excise goods) and import VAT will in principle become due when goods are brought into Belgium from outside the European Union. However, goods having no commercial character (thus for personal use and enjoyment) contained in personal luggage may be exempted from duties and taxes within certain limits.

There are no customs duties payable when travelling from another EU member state to Belgium. The same goes for excise duties and VAT as long as the goods are purchased tax included and they are destined for personal use.

EU and Belgian legislation foresees in certain general reliefs of import duties, excises and VAT such as, for example, for persons transferring their normal residence from outside the European Union to Belgium.

In principle, there are no customs duties, excises or VAT due if goods are taken out of Belgium (eg, export).

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

There is no wealth tax in Belgium.

In Belgium, the standard rate for VAT over consumer goods is 21 per cent.

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

##### **Trusts**

Belgium qualifies trusts as transparent for income tax purposes. On 1 January 2015, Belgium introduced a tax transparency measure, a 'look-through-tax'.

On the basis of the 'look-through-tax', the (heir of the) settlor of the trust residing in Belgium is taxed on the income received by the trust as from 1 January 2015, as if the trust did not exist, regardless whether or not the income was actually distributed to the (heir of the) settlor.

The taxability of the income received by the trust and the capital gains realised by the trust and the applicable tax rates depend on the income tax regime applicable to individuals (see questions 2 and 3). For

example, if the trust sells a substantial shareholding to a third party, the 'look-through-tax' can be without consequence.

The (heir of the) settlor can only avoid the 'look-through-tax' insofar as the evidence can be provided that the income has been distributed to a beneficiary.

Beneficiaries of trusts residing in Belgium will be taxed on the part of the distribution that stands for income received by the trust as from 1 January 2015, unless the evidence can be provided that this income has already been taxed in the hands of the settlor on the basis of the 'look-through-tax'.

The taxability of the income received by the trust and the capital gains realised by the trust and the applicable tax rates depend on the income tax regime applicable to individuals (see questions 2 and 3).

Only the income received by the trust as from 1 January 2015 is taxed. No tax is due in Belgium upon distribution of the assets contributed into the trust, nor upon distribution of the income generated by the trust assets before 1 January 2015.

Distributions are made on a 'last-in-first-out'-basis.

Settlors and beneficiaries who are residents of Belgium need to declare the taxable trust income in their annual personal income tax return. Income tax is due through the annual income tax assessment.

##### **Foreign private foundations**

Low taxed foundations established outside the European Economic Area, as well as the Liechtenstein foundation, are subject to the income tax transparency legislation as from 1 January 2015, on the basis of which the (heir of the) founder, resident of Belgium, is taxed on the income received by the foundation as if the foundation did not exist (see above 'trusts').

Distributions that exceed the value of the contributed assets, made by low-taxed foundations, are taxed in the hands of the founder as dividend at a flat tax rate of 27 per cent. Distributions are made on a 'last-in-first-out'-basis.

Founders who are residents of Belgium need to declare the taxable income or the taxable part of the distribution in their annual personal income tax return. Income tax is due through the annual income tax assessment.

##### **Foreign companies**

In principle, low-taxed companies established outside the EEA, as well as the Luxembourg Société de Patrimoine Familial, are also subject to the income tax transparency legislation as from 1 January 2015. The shareholder, resident of Belgium, is taxed on the income received by the company as if the company did not exist (see above 'trusts' and 'foreign foundations').

Distributions that exceed the value of the contributed assets, made by low-taxed companies, are taxed as dividend at a flat tax rate of 27 per cent.

Shareholders who are residents of Belgium need to declare the taxable income or the taxable part of the distribution in their annual personal income tax return. Income tax is due through the annual income tax assessment.

##### **Belgian holding companies**

Profits of Belgium based holding companies are subject to corporate income tax at a flat rate of 33.99 per cent. The Belgian minister of Finance intends to lower the corporate income tax rate (see update and trends). Under conditions, capital gains realised on subsidiaries are 100 per cent tax exempt. Under conditions, dividends received from subsidiaries are 95 per cent tax exempt (see 'Update and trends'). Dividends distributed to shareholders, residents of Belgium, are taxed as described under question 2.

The holding needs to submit annually a corporate income tax return. Corporate income tax is due through the annual corporate income tax assessment.

#### **10 How are charities taxed in your jurisdiction?**

A specific Belgian tax regime applies to charities. Mainly, this specific tax regime taxes the charitable entity on capital income and capital gains, as described for individuals under questions 2 and 3.



## Trusts and foundations

### 11 Does your jurisdiction recognise trusts?

There are no trusts according to Belgian law. Belgium has not ratified the The Hague Trust Convention. Belgium qualifies trusts as transparent for income tax purposes (see question 9). See question 15 for the qualification of trusts for inheritance tax purposes.

### 12 Does your jurisdiction recognise private foundations?

Belgium has its own private foundation. The Belgian private foundation requires an altruistic objective. Nor the founder nor the directors of the foundation can receive an advantage from the foundation.

A specific Belgian tax regime applies to private foundations. In basic terms, this specific tax regime taxes the private foundation on capital income and capital gains as described for individuals under questions 2 and 3.

Distributions made by Belgian private foundations can remain without gift tax and income tax when conditions are met. According to rulings, the beneficiaries can be family members of the founder, when conditions are met.

Belgium recognises private foundations governed by the laws of other jurisdictions (for the tax regime applicable to low-taxed foundations established outside the European Economic Area: see question 9).

## Same-sex marriages and civil unions

### 13 Does your jurisdiction have any form of legally recognised same-sex relationship?

Belgium recognises same-sex marriages and legal cohabitation. In the case of marriage or legal cohabitation, same-sex relationships benefit from the same (preferential) regimes as heterosexual relationships in income tax and inheritance tax.

With regard to inheritance tax, spouses enjoy preferential rates and specific exemptions (see question 5).

With respect to civil law, a surviving spouse has a forced heirship in the estate of his or her deceased spouse. In principle, when there is no will, the surviving spouse is entitled to the usufruct (eg, right of income) of the estate of the deceased spouse. According to the forced heirship rules, the surviving spouse is entitled to the usufruct of half of the estate of the deceased spouse (see question 17).

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

As an alternative for marriage, a heterosexual couple has the possibility to submit a declaration of legal cohabitation at their municipality.

Legal cohabitants benefit from the same (preferential) regimes as spouses in income tax and inheritance tax.

With respect to civil law, a surviving legal cohabitant has no forced heirship. When there is no will, the surviving cohabitant receives the usufruct of the family home. In a will, the surviving legal cohabitant can be disinherited.

## Succession

### 15 What property constitutes an individual's estate for succession purposes?

An individual's estate consists of all his or her personal property or in the case of co-ownership, the percentage of his or her property.

In Belgium, the concept of usufruct and bare ownership exists. The usufructuary is entitled to the income of the goods (eg, rental income or interests and dividends). The bare owner is entitled to the capital gains. Usufruct will end automatically upon decease of the usufructuary. In that case, the bare owner of the good acquires full ownership.

According to current Belgian legislation, trusts are not transparent for inheritance tax purposes. If a Belgian individual is the settlor of an irrevocable discretionary trust and dies in Belgium, the assets of the trust are not part of his or her estate for inheritance tax purposes. However, according to an opinion of the Belgian tax authorities, distributions made by the trust to a beneficiary upon or after the decease of the settlor are deemed to be fictitious legacies made by the settlor in favour of the beneficiary. Inheritance tax is due by the beneficiary over the value of the distribution at the moment of the distribution. The inheritance tax rate depends on the value of the distribution and on the

## Update and trends

The Belgian minister of Finance plans to start negotiations on a tax shift in autumn 2016. The Belgian minister of Finance intends to lower the corporate income tax rate and to make dividends received by holdings from subsidiaries 100 per cent tax exempt.

It is expected that, in the coming years, new Belgian inheritance law will be introduced, reducing the Belgian forced heirship rules.

degree of kinship between the settlor and the beneficiary. If no distributions are made out of the irrevocable discretionary trust, no inheritance tax is due.

### 16 To what extent do individuals have freedom of disposition over their estate during their lifetime?

Individuals can gift everything they own during their lifetime.

However, certain legal restrictions apply. Individuals married under the regime of community of property cannot give away common goods without the consent and approval of their spouse. An individual cannot give in such a way that he or she endangers the family interests (eg, he or she cannot give away the family home, not even if the family home is a personal property).

If an individual who is a tax resident of Belgium gifts moveable property and dies within a period of three years after the gift, Belgian inheritance tax will be due over the value of the gift if no Belgian gift tax has been paid (see question 4).

Also, an individual must take into account that his or her children and his or her surviving spouse have forced heirship rights according to Belgian inheritance law. The basis on which forced heirship is calculated includes not only the estate at the date of decease but also all the gifts that have been made by the deceased during his or her lifetime.

### 17 To what extent do individuals have freedom of disposition over their estate on death?

In a will, an individual can freely dispose of his or her estate. However, in the event that Belgian law applies to the succession, or in the event that Belgium can impose the Belgian forced heirship rules on the basis of the applicable conflict of law rules, both the surviving spouse and the children of the deceased can invoke a forced heirship on the basis of Belgian forced heirship rules.

In principle, the surviving spouse is entitled to a forced heirship of at least half of the estate in usufruct. The forced heirship of the children consists of the bare ownership of a part of the estate, depending on how many children the deceased had. An only child is entitled to at least half of the estate in bare ownership. If the deceased leaves two children, the forced heirship of the children amounts to the bare ownership of two-thirds of the estate. In the event the deceased had three or more children, the forced heirship amounts to the bare ownership of three-quarters of the estate.

The forced heirship is calculated on the estate of an individual at the moment of death as well as on all assets that have been gifted by the individual during his or her lifetime.

In the event at least one spouse has children from a previous marriage, it is possible to limit the inheritance rights of the surviving spouse in a marriage contract.

Regarding the Belgian forced heirship rules, see 'Updates and trends'.

### 18 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?

If the deceased leaves a surviving spouse and children, the surviving spouse receives the estate in usufruct. The children receive the estate in bare ownership, each in equal shares.

In the event there is no surviving spouse, the children receive the estate in full property, each in equal shares.

If the deceased leaves a surviving spouse but no children, the surviving spouse receives the deceased's share in the community property in full property, as well as the usufruct of the deceased's personal property. The bare ownership of the deceased's personal property

is divided between the surviving blood relatives on the basis of the degree of kinship with the deceased.

If the deceased leaves no surviving spouse, nor children, the estate is divided between the surviving blood relatives on the basis of the degree of kinship with the deceased.

In a marriage contract, gifts can be made to the surviving spouse.

**19 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?**

Only children of whom the legal parentage has been established can inherit from their parents.

It is not required for the parents to be married in order to establish legal parentage.

In principle, maternity is established automatically, since the name of the mother of the child is included in the birth certificate.

In the event that the mother is married, in principle, paternity (or co-maternity) is established automatically through the presumption that the mother's spouse is the father (or co-mother) of the child.

In the event the parents of the child are not married, the father (or co-mother) of the child needs to acknowledge the child in order to establish legal parentage.

An adopted child has the same rights in the estate of his or her adoptive parent as other children of which the legal parentage has been established.

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

Since 17 August 2015, the European Union's Succession Regulation determines the conflict of law rules. In the event that no choice of law has been made in a will, in principle the law of the state in which the individual had his or her last habitual residence is applicable. However, if it is clear from all circumstances that, at the moment of death, the deceased had a manifestly closer connection with another state, the law of this state is applicable. The applicable law governs the distribution of both the moveable and the immoveable estate.

A choice of law can be made in a will for the law of the state of which the resident has the nationality. This law governs the distribution of both the moveable and the immoveable estate.

On the basis of the European Union's Succession Regulation, Belgium will respect the application of non-Belgian law, even if this foreign law infringes Belgian forced heirship rules.

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

According to Belgian law, an individual can make a valid will before a notary. A valid will can also be drafted personally. The third option is the international will.

A notarial will needs to be drafted by the notary. The will needs to be read out by the notary to the testator in the presence of two

witnesses. The will needs to be dated. To be valid, the testator has to sign the will in the presence of the notary and the two witnesses.

A testator can also draft his or her will personally. In order to be valid, the entire content of the will must be handwritten by the testator. The will needs to be dated and signed by the testator.

The international will can be drafted by the notary, by the testator or by a third party. In order to be valid, the international will does not need to be handwritten. The testator needs to sign the will in the presence of a notary and two witnesses. The will must be dated by the notary. The will needs to be signed by the notary and the two witnesses.

**22 Are foreign wills recognised in your jurisdiction and how is this achieved?**

If a Belgian resident who is not a Belgian national has drafted a will in accordance with the laws of his or her state of nationality, in principle Belgium will recognise the will, provided it is valid according to the laws of the state of nationality. In principle, it will not be possible for the heirs to challenge the content of the will on the basis of the forced heirship rules of Belgian inheritance law.

**23 Who has the right to administer an estate?**

The executor appointed in the will has the right to administer the estate.

If no executor has been appointed, the heirs administer the estate.

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

Title to a deceased's assets passes to the heirs and successors on the basis of a notarial certificate of inheritance.

Provided that there is no executor, the notarial certificate of inheritance gives the heirs the authorisation to administer the estate. They must take all precautionary measures in order to preserve the assets until the estate is divided between the heirs.

**25 Is there a procedure for disappointed heirs and beneficiaries to make a claim against an estate?**

Disappointed heirs have the possibility to start a procedure before the court of first instance.

**Capacity and power of attorney**

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

When both parents are alive, they jointly hold and manage the property of a minor. Upon decease of a parent, the surviving spouse holds and manages the property. After the decease of both parents, a guardian who has been appointed in the parents' will, can take over the holding and the managing of the property of the minor. If there is no will, a guardian will be appointed by the court.

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

At the age of 18.

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

Every interested party can ask the court to declare that a person has lost the capacity to manage his or her affairs. The court will appoint an administrator. The administrator has to report to the court.

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#### **Immigration**

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**29 Do foreign nationals require a visa to visit your jurisdiction?**

A national of a country of the European Union does not need a visa to visit Belgium for a period of maximum three months. If the EU national wants to visit Belgium for more than three months, he or she needs a visa. A national of a country outside the EU may need a visa to visit Belgium.

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**30 How long can a foreign national spend in your jurisdiction on a visitors' visa?**

In principle he or she can spend three months in Belgium, unless the visa has been issued for a shorter or longer term.

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**31 Is there a visa programme targeted specifically at high net worth individuals?**

There is no specific visa programme for those individuals.

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

Not applicable.

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

Not applicable.

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

Not applicable.

# Bermuda

Jane Collis and Louise Charleson

MJM Limited

## Tax

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

There is no income or capital gains tax levied in Bermuda. Domicile and residence are only relevant to taxation with respect to Bermudian dollar-denominated or Bermuda-situate assets. Tax liability can arise as a result of employment (payroll tax) or land ownership in Bermuda (land tax and stamp duty).

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

Bermuda does not impose income tax. The Payroll Tax Act 1995 and the Payroll Tax Rates Act 1995 stipulate that payroll tax is charged quarterly on remuneration paid, given or assessed to every employee and deemed employee by every employer and self-employed person in Bermuda, and includes cash and any benefit (including pension contributions, stock options, housing allowance and profit-sharing). The maximum bracket is 15.5 per cent, which applies to taxpayers with an annual payroll greater than 1 million Bermudian dollars and exempt undertakings. The employer is permitted to withhold no more than 6 per cent from the remuneration paid to the employee.

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

There is no capital gains tax in Bermuda.

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

The form of tax applicable to lifetime gifts of real estate is an ad valorem stamp duty charged on the deed of conveyance. It is payable within a prescribed period of time from the date of execution of the document (customarily 30 days). The applicable rates of duty under the Stamp Duties Act 1976 are 2 per cent on the first B\$100,000 of value, 3 per cent on the next B\$400,000, 4 per cent on the next B\$500,000, 6 per cent on the next B\$500,000 and 7 per cent on any value in excess of B\$1,500,000. Voluntary dispositions of non-Bermudian property will carry an ad valorem duty of 1 per cent of the amount or value transferred, except where a local trustee is party to the relevant transaction. There is no exemption for lifetime gifts to a spouse or charity, but because of the lower rates of duty applicable, lifetime gifts can be an effective means of reducing the value of an estate for estate planning purposes.

Similarly, lifetime transfers of shares in privately held local companies (other than those trading on the Bermuda Stock Exchange) are also assessed to stamp duty based on the value of the interest being transferred, at the same rates.

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

In Bermuda, there is no direct tax on inheritance. However, stamp duty is assessable in respect of the value of the deceased's property in Bermuda (that is, the Bermuda estate, being Bermudian dollar-denominated or Bermuda-situate assets), irrespective of the deceased's nationality, residence or domicile, if it is necessary to file for a grant of probate or letters of administration in the deceased's estate. On any application for a grant of probate or letters of administration to the Supreme Court of Bermuda, the value of the Bermuda estate must be disclosed on oath, and is then liable to be assessed for stamp duty. The

stamp duty rates applicable in a deceased's estate are as follows (Head 2, Schedule to the Stamp Duties Act 1976):

- up to B\$100,000 in value: nil;
- over B\$100,000 to B\$200,000: 5 per cent;
- over B\$200,000 to B\$1,000,000: 10 per cent;
- over B\$1,000,000 to B\$2,000,000: 15 per cent; and
- over B\$2,000,000: 20 per cent.

Stamp duty is not assessed on the value of the following classes of assets passing on death:

- bequests to surviving spouses;
- bequests to registered charities (registered as charities under the Charities Act 2014) or to such other bodies or organisations that the Minister of Finance determines to be charitable;
- the value of a deceased's interest in Bermuda real estate that was designated exempt from stamp duty under section 47A of the Stamp Duties Act 1976 (the 'family homestead' designation); and
- assets comprised within a deceased's estate that are not 'Bermuda property' as defined in the Stamp Duties Act 1976.

Stamp duty can be avoided if:

- the estate comprises assets that are entirely exempt from stamp duty; or
- an application for a grant of probate or letters of administration can be avoided (for example, by holding assets in joint tenancy with others with the intention that those assets remain in the ownership of the surviving joint tenant owners (see question 15)).

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

There are no taxes assessed on capital gains on real estate or other assets owned by individuals. Stamp duty is charged on deeds of voluntary conveyance or conveyance on sale at the rates set forth in question 4. In addition, there is a land tax which is assessed on Bermuda real estate twice a year. The notional annual rental value (ARV) of each property dictates the applicable tax payable by a real property owner in Bermuda.

The following land tax rates apply:

- up to B\$11,000 ARV: 0.8 per cent;
- from B\$11,001 to B\$22,000 ARV: 1.8 per cent;
- from B\$22,001 to B\$33,000 ARV: 3.5 per cent;
- from B\$33,001 to B\$44,000 ARV: 6.5 per cent;
- from B\$44,001 to B\$90,000 ARV: 12 per cent;
- from B\$90,001 to B\$120,000 ARV: 25 per cent; and
- over B\$120,001 ARV: 47 per cent.

### 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?

Pursuant to the Customs Tariff Act 1970, customs duties are levied on the importation of goods. Goods brought into Bermuda by air and sea travellers are subject to duty at a rate of 25 per cent (with limited duty-free allowances). There is no export tax.



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

There is no VAT, wealth or sales tax in Bermuda.

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

Pursuant to the Stamp Duties Act 1976, an ad valorem tax is applicable on settlements of Bermuda real and personal property. The first B\$50,000 of value is exempt from duty, the next B\$150,000 of value is charged at 5 per cent, the next B\$800,000 at 10 per cent, and any value in excess thereof at 15 per cent. 'Instruments of addition' are also subject to stamp duty, up to the point at which the total amount of any duty paid on Bermuda property by way of instrument of addition equals B\$7,750 in total, at the rate of 5 per cent. The next B\$500,000 in value added is charged at the rate of 10 per cent and any value added in excess thereof at 15 per cent. There is a charge of 0.1 per cent of the value of non-Bermuda property added and a nominal charge on supplemental trust documents, subject to certain exemptions for instruments to which a local trustee or an international business (as defined by the Stamp Duties (International Businesses Relief) Act 1990) is a party.

In Bermuda, with the exception of stamp duty noted above, there are no taxes on income, profits, dividends, capital gains earned, received or derived by trusts.

There are no corporate taxes in Bermuda other than annual government fees which apply to all companies based on their level of 'assessable capital'.

An 'exempted undertaking' (being any one of an exempted company, permit company, exempted partnership or exempted unit trust scheme, as defined by the Exempted Undertaking Tax Protection Act 1966) may apply to the Minister of Finance for an assurance that, in the event of there being enacted in Bermuda any legislation imposing tax computed on profits or income, any capital asset, gain or appreciation, or any tax in the nature of estate duty or inheritance tax, that the imposition of any such tax will not be applicable to the exempted undertaking, or to any of its operations or the shares, debentures or other obligations of the undertaking. However, such an assurance will not prevent the application of any such tax to persons ordinarily resident in Bermuda or in respect of land leased to the relevant undertaking. At the present time, a tax assurance certificate is effective until 31 March 2035.

## 10 How are charities taxed in your jurisdiction?

Charities are not taxed in Bermuda. Additionally, gifts of property to charities do not attract any tax liability.

## Trusts and foundations

### 11 Does your jurisdiction recognise trusts?

Trusts are recognised in Bermuda. The governing legislation is the Trustee Act 1975, which is largely based on English law, the Trusts (Special Provisions) Act 1989, the Trusts (Special Provisions) Amendment Act 2014 and the Trustee Amendment Act 2014. Further to the UK Recognition of Trusts Act 1987 (Overseas Territories) Order 1989, trusts from other common law jurisdictions and certain types of similar concepts that apply in civil law jurisdictions are recognised in Bermuda.

The term 'trust' is defined in the Trusts Special Provisions Act 1989 as the legal relationship created inter vivos or on death, by a 'settlor' when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose. The Act stipulates that a trust has the following characteristics, namely, the assets constitute a separate fund and are not a part of the trustee's own estate; title to the trust property is registered in the name of the trustee or in the name of another person on behalf of the trustee; and the trustee has the power and the duty in respect of which he is accountable, to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him by law. The 1989 Act allows for the creation of non-charitable purpose trusts, where the purposes for which the trust are created are sufficiently certain to allow the trust to be carried out, lawful and not contrary to public policy.

The Trusts (Special Provisions) Amendment Act 2014 provides that the reservation by the settlor for himself or herself, or the grant to any other person in a trust instrument of any limited beneficial interest in trust property or any of the powers listed in the Act (which include, but

are not limited to, the power to: revoke, vary or amend the trust; direct the appointment of trust property; give directions; restrict the exercise of powers by the trustee; appoint trustees, a protector or enforcer; and add or remove from the class of beneficiaries) will not invalidate the trust, prevent the trust taking effect according to its terms or cause any or all of the trust property to form part of the estate of the settlor for probate purposes. The Act further sanctions that a trustee who has acted, or refrained from acting, in compliance with, or as a result of, an exercise of such powers shall not by reason of such compliance commit a breach of trust, or breach of an equitable or fiduciary duty. The Act pertains to trusts created before or after its commencement date.

The Trustee Amendment Act 2014 has established that where the court is satisfied in relation to the exercise of a fiduciary power that certain conditions are met, the court may set aside the exercise of the power and make such consequential orders as it sees fit. The requisite conditions are that the person who holds the power did not take into account one or more considerations (whether of fact or law or both) that were relevant to the exercise of the power, or took into account considerations that were irrelevant to the exercise of the power and but for that, would not have exercised the power, or would have exercised the power on a different occasion, or in a different manner. The Act thereby preserves the rule in *Re Hastings-Bass* as it was applied before the 2013 decision of the UK Supreme Court in *Pitt v Holt and Futter v Futter* [2013] UKSC 26.

Bermuda trusts may be discretionary, fixed, charitable or established for non-charitable purposes and resulting, implied and constructive trusts are recognised. Trusts are not registered in Bermuda. All information passing between settlor and trustee is confidential, subject to any intervention of the court, however, certain information concerning domicile, nationality and residence must be provided in accordance with Bermuda's obligations under FATCA and CRS.

The Perpetuities and Accumulations Act 2009 and the Perpetuities and Accumulations Act Amendment Act 2015 have abolished the rule against perpetuities with respect to trusts created after 1st August 2009, except in respect of interests in Bermuda land. In relation to a trust created before 1 August 2009 and which does not hold Bermuda land, application may now be made to the Supreme Court for an order declaring that the rule against perpetuities shall not apply to such trust.

### 12 Does your jurisdiction recognise private foundations?

There is no foundations law in Bermuda. However, the concept of a foundation, in the wide context of a charitable or philanthropic entity backed by endowments, is recognised but dealt with through the use of trusts and companies limited by guarantee.

## Same-sex marriages and civil unions

### 13 Does your jurisdiction have any form of legally recognised same-sex relationship?

Same-sex relationships are not recognised under Bermuda law.

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

Civil law relationships are not recognised under Bermuda law.

## Succession

### 15 What property constitutes an individual's estate for succession purposes?

A deceased's estate encompasses all real and personal property belonging to the deceased. Assets held in trust do not form part of the deceased's estate.

In the case of a joint tenancy, when one joint owner of a property dies leaving a surviving joint owner or owners, the title (both legal and beneficial) of the deceased's joint interest passes automatically to the survivor or survivors, without the need to obtain a grant of probate or letters of administration. If, however, the deceased joint owner leaves other solely owned assets within his or her estate, a grant of probate or letters of administration will be required in order to pass title to the beneficiaries. In such a case, the extent of any property owned in joint tenancy must be disclosed in the application for the grant and the market value of such assets at the date of the deceased joint owner's death, divided by the number of joint owners, will be assessed to stamp duty.

**16 To what extent do individuals have freedom of disposition over their estate during their lifetime?**

There are no restrictions on lifetime giving. Bermuda does not have any community property (marital property) regime or similar which might restrict an individual's lifetime dispositions.

**17 To what extent do individuals have freedom of disposition over their estate on death?**

There are no forced heirship rules in Bermuda. Individuals have freedom of disposition over their real and personal property, although there is no requirement to have a will. In the absence of a will, the rules governing intestacy set down in the Succession Act 1974 will apply. It is possible in certain circumstances for family members to bring a claim for financial provision out of a deceased's estate under Part III of the Succession Act 1974 (see questions 18 and 25).

**18 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?**

Matters of succession on intestacy are governed by the Non-Contentious Probate Rules 1974 and the Succession Act 1974. The Non-Contentious Probate Rules 1974 establish the order of priority for taking a grant of letters of administration without a will, and with the will annexed. In the case of intestacy, the order of priority is the surviving spouse, then the children of the deceased or the issue of a child of the deceased who has died during the deceased's lifetime, followed by parents, through brothers and sisters, nieces and nephews, grandparents and so on.

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

**19 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?**

Yes. Pursuant to the Children Act 1998 (as amended), a child is considered legitimate whether or not he or she was born in wedlock, and an adopted child is treated as if he or she was the natural child of his or her adopted parents.

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

Where there is a valid will in existence, it will be governed by the Wills Act 1988. In the absence of a will, assets located in Bermuda will pass according to the provisions of the Succession Act 1974 (see questions 18 and 25). Conflicts of laws principles will apply in the case of immovable property.

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

In Bermuda, the formalities for making a will are:

- the testator must be aged 18 or older;
- the testator must be of sound disposing mind, that is, have the requisite testamentary capacity, which is the ability to:
  - identify those persons he or she should consider when disposing of his or her estate;

- understand the nature of his or her act (when executing the will); and
- understand the extent of his or her estate;
- the will must be in writing;
- the testator must sign his or her will (or make his or her mark on the will, if he or she is illiterate) in the presence of two independent witnesses;
- the independent witnesses must be 18 or older and be of sound mind; and
- the independent witnesses must see the testator sign and then sign the will themselves in the presence of the testator.

The will should not be witnessed by persons named in the will as beneficiaries, or the spouses of those persons. If this occurs, the will, in the absence of any other defect in execution, will remain valid but the gift to the beneficiary who witnessed the will, or whose spouse witnessed the will, will be held void.

A holographic will, namely one written entirely in the testator's own handwriting (to be proved on oath by at least two persons well acquainted with his or her handwriting) and signed by him or her at the end, is valid under Bermuda law, if there is compliance with the relevant provisions of the Wills Act. However, holograph wills are not recommended, as the complexities of drafting a comprehensive and effective will and ensuring its proper execution are not widely appreciated and it can be difficult to obtain affidavit evidence as to handwriting after the passage of time. This can lead to a will being declared invalid and the unforeseen consequences resulting from intestacy.

**22 Are foreign wills recognised in your jurisdiction and how is this achieved?**

The Wills Act 1988 provides that a will is to be treated as properly executed in Bermuda if it has been executed in accordance with the laws of the jurisdiction where either:

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

Construction of a will is not altered by reason of any change in the testator's domicile after execution of the will.

Additionally, the Wills Act provides that the will is validly executed:

- if executed on board a vessel or aircraft, the will conforms to the laws of the territory of registration or close connection of that vessel or aircraft;
- to the extent that it disposes of immovable property, its execution complies with the laws where the immovable property is situated; or
- so far as a will exercises a power of appointment, if the execution of the will conforms to the law governing the essential validity of the power of appointment.

A foreign will must be admitted to probate, or resealed, in Bermuda in order to allow for access to the deceased's property in Bermuda.

**23 Who has the right to administer an estate?**

The estate representatives have the right to administer an estate. Where the executors are named in a will and any one or more of them obtains a grant of probate, the executors named in the grant will be the estate representatives. However, it is not a requirement that all named executors take a grant. An executor may renounce or choose to have power reserved to him or her. The rules contained in the Non-Contentious Probate Rules 1974 will determine, in order of priority, who may apply for a grant of letters of administration (with or without will annexed) if:

- there is no valid will; or
- if a will exists but no executors are named; or
- the named executors fail or refuse to act.

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

In Bermuda, the deceased's estate vests automatically in his or her executors (if any). They are able to pass good title to certain estate assets

immediately, but they cannot pass title to real estate until their authority is confirmed by the issue of a grant of probate. For intestate estates, the estate vests in the Registrar of the Supreme Court of Bermuda until the issuance of a grant of letters of administration, at which time title automatically transfers to and vests in the estate representatives.

The procedure to be followed and documents required to make application for a grant of probate or letters of administration are set out in the Non-Contentious Probate Rules 1974. The Administration of Estates Act 1974 governs the administration of a deceased's estate.

## **25 Is there a procedure for disappointed heirs and beneficiaries to make a claim against an estate?**

The beneficiaries of a deceased's estate may challenge the interpretation of a clause or clauses in a will where there is ambiguity, or on the basis of want of due execution of the will, want of sound disposing mind or want of knowledge and approval on the part of the testator. Claims of fraud and undue influence can also be raised. Beneficiaries may also challenge the estate representatives on the basis of devastavit or breach of trust.

Under the Succession Act 1974, the dispositive provisions of a will (or the intestacy trusts) can also be challenged by the following individuals on the grounds that the will or intestacy trusts do not provide reasonable financial provision for the beneficiary bringing the challenge:

- a spouse;
- a former spouse who has not remarried;
- children; and
- grandchildren, provided they were being maintained by the deceased.

Applications pursuant to the Succession Act for reasonable financial provision need to be commenced in the Supreme Court within six months from the date when a grant of representation is first taken out, although leave of the Court can be sought for an application to be commenced out of time.

If an appropriately drafted and enforceable forfeiture provision is contained in a will, then a beneficiary may risk forfeiture of his benefit in challenging it. A recent (2014) Bermuda Supreme Court decision upheld the long-standing legal rule against the *in terrorem* use of a forfeiture condition. In that case, the forfeiture provision included in the will under review by the Bermuda court was held to be invalid in the absence of a gift over provision.

## **Capacity and power of attorney**

### **26 What are the rules for holding and managing the property of a minor in your jurisdiction?**

Title to real estate in Bermuda cannot legally be held by a minor. Therefore, property may be held in trust for a minor and applied for his or her benefit, and may be paid to his parent or guardian or to the minor directly once he or she has reached the age of 16. The trustee is sufficiently discharged by the receipt of the parent or guardian of the minor and is not required to attend to the further application of the relevant property.

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

An individual attains legal capacity at age 18.

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

An individual may grant another a power of attorney (POA) but must have the requisite legal capacity at the time of execution for the POA to be valid. POAs can be limited in scope (for example, signing a conveyance on behalf of a party who will be abroad and unable to sign it when required) or extensive in scope, authorising the attorney to manage the property and affairs of the donor of the POA. If made in contemplation of subsequent legal incapacity, as defined in the Powers of Attorney Act 1944 (an enduring power of attorney (EPOA)), the EPOA will not be invalidated by the onset of legal incapacity.

Where a person has lost legal capacity without an EPOA, an interested person, supported by personal and medical affidavit evidence,

## **Update and trends**

A comprehensive review of Bermuda's trust laws, with the aim of enhancing and improving those areas where it is felt necessary, is being carried out through the joint efforts of the Society of Trust and Exchange Practitioners Bermuda, the Bermuda Business Development Corporation and the Bermuda Association of Licensed Trustees. Additionally, a Law Reform Commission has been formed and has made recommendations to the Ministry of Health, Seniors and Environment for legislative amendments that would better protect seniors from financial abuse.

may apply to the Supreme Court of Bermuda for a receivership order under the Mental Health Act 1986 to manage that person's property and affairs. Once appointed, the receiver must file annual accounts with the Court, setting out the income and expenses of the 'patient' and the extent of the patient's remaining property. Significant actions proposed to be taken in relation to the patient's property or affairs (for example, the sale of real estate) are subject to Court approval.

An EPOA is generally preferable to receivership, provided a suitable party is available to act as attorney, as the process to obtain receivership can be time consuming and expensive. However the granting of an EPOA is not without risk and attorneys must, therefore, be selected with care.

## **Immigration**

### **29 Do foreign nationals require a visa to visit your jurisdiction?**

Entry visas and visa waivers are no longer required for tourist and business visitors and persons entering Bermuda on a work permit. All persons entering Bermuda must be in possession of a passport valid for 45 days past the expiration of travel or a work permit and persons requiring a multi-entry visa must present it upon arrival and it must also be valid for 45 days past the expiration of travel or work permit. It is possible for a tourist to visit Bermuda with a return or onward ticket for up to 90 days, but this period may be extended for a further 90 days.

A non-Bermudian may reside and work in Bermuda provided he or she holds a valid work permit. As a result of 2015 policy changes, several new categories of work permit have been introduced, including the global work permit, whereby an employee of a global company transferring to Bermuda may be granted permission to work in Bermuda; and the new business work permit, whereby a newly established business may be granted automatic approval for a limited number of permits within the first six months of operation. Both of these categories of permit may be granted for periods of one to five years. There is also a category of global entrepreneur work permit, which may be issued for a period of one year for someone seeking to carry out feasibility studies related to establishing an exempted business in Bermuda. A Standard Work Permit may be issued for a period of one to five years and may be applied for on exhaustion of the period of any of the foregoing permit types. There is also a short term permit available for certain categories of persons, such as athletes and entertainers, employed for periods not exceeding six months. A periodic permit may be applied for in the case of persons conducting repeat business visits to Bermuda of less than 30 days, for example, travelling salespersons or service providers.

A non-Bermudian may apply for a residential certificate provided he or she is over 18 years of age, is of good character and conduct, possesses valid health insurance coverage, is free of tuberculosis and is able to provide evidence of sufficient financial means or a continuous source of annual income without the need to seek employment. It is possible for the spouse or partner and any dependent children of the holder of a residential certificate to obtain residential certificates, if they are sponsored by the certificate holder and they meet the requirements of good character, good health and adequate health insurance.

### **30 How long can a foreign national spend in your jurisdiction on a visitors' visa?**

See question 29.

**31 Is there a visa programme targeted specifically at high net worth individuals?**

There is no programme targeted at high net worth individuals. See question 29.

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

Not applicable. See question 29.

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

Not applicable. See question 29.

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

Not applicable. See question 29.



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# Brazil

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## Tax

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

Tax liability in Brazil is determined by the individual's residence status and not his or her domicile.

The general rule of tax residency in Brazil is determined according to the test of physical presence. This means the physical presence in Brazil for 183 days within a 12-month period. If the test is met, the individual automatically becomes liable for his or her worldwide assets and income.

Tax residence is also imposed, automatically, on foreign nationals acquiring a permanent visa or temporary work visa. In these cases, liability to Brazilian taxation commences upon arrival in Brazil.

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

Income is taxed exclusively on federal level and only income tax is levied according to a progressive chart as follows:

- up to 1,903.98 reais, no tax is applicable;
- between 1,903.99 reais to 2,826.65 reais, the tax rate is 7.5 per cent (deduction 142.80 reais);
- between 2,826.66 reais and 3,751.05 reais, the tax rate is 15 per cent (deduction 354.80 reais);
- between 3,751.06 reais and 4,664.68 reais, the tax rate is 22.5 per cent (deduction 636.13 reais); and
- above 4,664.69 reais, the tax rate is 27.5 per cent (deduction 869.36 reais).

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

Capital gains are also taxed on a federal level and income tax is levied, as a general rule, at 15 per cent.

However, a special tax treatment applies to income arising from foreign investments in Brazil earned in financial transactions. With the exception of capital gains, income is taxed as follows:

- 10 per cent on foreign investments in variable income funds, swap transactions and transactions carried out on futures markets;
- 15 per cent for other cases, including fixed-rate income investments and shares; and
- zero per cent for public bonds (Federal Law No. 11,312/06). This exemption applies to public bonds acquired after 16 February 2006. The exemption is not applicable if the investor is based in a privileged taxation jurisdiction.

Fixed income investment tax treatment is determined by Federal Law No. 11.033/04 and IN-SRB 1022/2010. Withholding tax applies to the income earned by residents of Brazil and residents of low-tax jurisdictions deriving from financial investments in fixed and variable income instruments, including swap transactions. The tax rates decrease according to the period for which the investment is maintained in the respective fund as follows:

- up to 180 days: 22.5 per cent;
- between 181 to 360 days: 20 per cent;
- between 360 to 720 days: 17.5 per cent; and
- more than 720 days: 15 per cent.

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

#### Succession and donation tax (ITCMD)

The ITCMD has a double purpose, to tax lifetime donations as well as succession. Both purposes are based on the effective transfer of assets or rights. This tax is established by state law and each state has different rules and tax rates. However, there is a federal limit established by the Brazilian Senate of 8 per cent.

The imposition of ITCMD excludes liability to real estate transfer tax (ITBI).

#### Tax rates

Tax rates, base and procedures may vary for each municipality in the case of ITBI. ITCMD may vary for each state. However, the Brazilian Senate determined the maximum ITBI and ITCMD rates to be applied by the municipalities and states respectively. At present, the maximum ITCMD rate is 8 per cent, and the maximum ITBI rate is 4 per cent.

#### Tax-free allowance

Tax-free allowances may be available but vary in accordance with state legislation. For example, in the case of the state of São Paulo, allowances under 58,875 reais per year are not taxed by the ITCMD.

#### Exemptions

##### ITCMD

There are tax exemptions for:

- successions up to the value of 176,625 reais; and
- donations up to the value of 58,875 reais (per year).

##### ITBI

The transfer of real estate from an individual or entity to another entity as payment for the subscription of capital is usually tax exempt. The same exemption applies when the transfer takes place as a result of a merger. However, these exemptions do not apply when the company receiving the real estate has as its main activity, for example, the development, construction, sale and rental of real estate properties.

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

The same as question 4, since ITCMD is a tax imposed on lifetime and death transmission. The triggering event for the imposition of the ITCMD tax is the transmission either by death or by donation.

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

Urban real estate is taxed by the local municipality. Each city has a different tax legislation, but all follow the same general principles provided by the Brazilian Constitution of 1988. The city statute is a federal law that established the maximum tax rate for all cities of Brazil. Such maximum rate is 15 per cent. However, no municipality charges such a high rate of property tax. As an example, São Paulo City charges 1 per cent as the basic rate and depending on the value of the property there is a progression on the rate with 1.5 per cent being the top rate for real estate exceeding 1,200,000 reais.

Rural land is taxed on the federal level by the tax on rural properties. Accessing the actual tax rate is quite complex since the Federal Tax Services uses a chart that takes into account the size of the land lot and

the actual economical usage of the property in order to promote production. Tax rates vary from a minimum of 1 per cent to a maximum of 20 per cent over the value of the property.

**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?**

Travellers entering Brazil via airports may be exempt from import tax if the total products do not exceed US\$500 per passenger and are exclusively for personal use. Above such an amount import tax is levied at 50 per cent over the value of the products.

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

Until the present time there has been no wealth tax imposed in Brazil. However, the Federal Constitution foresees the creation of such a tax and currently there are some legislative initiatives in this direction.

Brazil has several different VAT-type taxes, which are all imposed over the movement of products and services. Such taxes are not imposed directly on the individual but are indirectly imposed, affecting the costs of services and products, which, in the end, affects living costs. For informative purposes, a couple of such indirect taxes can be cited. At the state level there is ICMS, which is based on the movement of products and services. The tax rate varies according to the product or service. At the federal level there are taxes imposed on the sale of products and services – federal contribution taxes on gross revenues (COFINS and PIS).

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

Brazil does not have the concept of a trust within its legislative system; nor does it have similar vehicles that may perform a similar role. However, holding companies are used as estate planning tools to hold assets depending on the class of assets and structure of the family. The taxation of such companies is exactly the same as a regular company. The type of assets and amount of income will define the classes of taxes and rates applicable to such companies and their shareholders.

**10 How are charities taxed in your jurisdiction?**

The Federal Constitution of 1988 granted tax immunity to charities, usually non-governmental organisations (NGOs) whose purpose is education or social assistance, including medical institutions, religious organisations, etc. In order to obtain immunity the NGO must be a not-for-profit organisation and register properly with the competent authorities.

**Trusts and foundations**

**11 Does your jurisdiction recognise trusts?**

As a civil law jurisdiction with important roots in the Portuguese and French legal systems, the Brazilian legal system does not adopt the concept of a trust. Brazil is not a signatory of the HCCH Convention on the Law Applicable to Trusts and on their Recognition 1985 (Hague Trusts Convention). However, there is a consensus that a trust should be recognised by the court as a binding multilateral contract or agreement. In this sense, in December 2014 a tribunal (TRF 1 – Tribunal Regional Federal) judged a case brought by tax authorities trying to impose taxes on the import of an aircraft registered under a trust in the United States. The Regional Federal Tribunal – TRF1 found that, despite the fact that the beneficiary was a Brazilian company, the legal owner of the aircraft was the trustee. This decision is to be decided as final instance by the Superior Court of Justice in a few months. Even though this case is not related to family or succession law, it represents a very important leading judgment on trusts because, for the first time, a Brazilian tribunal approached the matter of the division of property between legal property and equity property, accepting foreign law (US) as the applicable law of the trust (*Agravo de Instrumento TRF1 – 261904420144010000*).

**12 Does your jurisdiction recognise private foundations?**

The Brazilian legal system does embody private foundations, but such foundations may only be used with a charitable or social purpose. All management and accounting must be submitted to the competent

local public prosecutor who has the powers to control accounts and supervise the management of the estate.

A private foundation from a foreign jurisdiction could be regarded by Brazilian authorities as a private company. However, there is no case law on how the courts or authorities would perceive a foreign private foundation.

**Same-sex marriages and civil unions**

**13 Does your jurisdiction have any form of legally recognised same-sex relationship?**

There is no law banning same-sex marriage, but in the past, the civil notaries did not allow and register same-sex marriages. However, after several court decisions, including one from the Supreme Court (2012), same-sex marriage has been accepted. Resolution 175/2013, issued by the National Judicial Council, established that all civil notaries, in charge or the registration of marriages accept same-sex couples marriage.

Same-sex marriages or civil partnerships have equal legal and fiscal treatment as those of a heterosexual couple.

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

Yes, under the Civil Code of 2002, the civil partnership between a man and a woman is recognised as a family entity (also applicable to same-sex couples). The Civil Code defines a civil partnership as the bond between two people that have the intent to form a family.

**Succession**

**15 What property constitutes an individual's estate for succession purposes?**

All property, rights and duties must be listed at the probate procedure and included as pertaining to the estate. Legal and beneficial ownership are included as well as assets held in co-ownership. The probate procedure will then determine the way each asset, right and duty will be liquidated or passed on to the heirs.

**16 To what extent do individuals have freedom of disposition over their estate during their lifetime?**

Lifetime gifting is limited by law. Brazilian Civil Code establishes that a donation that does not leave sufficient means for the subsistence of the donor is void.

Lifetime donations exceeding the forced heirship portion may also be declared void.

Lifetime donations to heirs may be considered to be advancement of succession and have to be informed at the probate procedure unless the donor clearly states that the donation originated from his or her freely disposable portion.

It is important to note that 50 per cent of personal assets are free from the forced heirship rules and may be disposed of as the donor wishes.

**17 To what extent do individuals have freedom of disposition over their estate on death?**

Brazil imposes forced heirship rules over 50 per cent of the estate of the individual. The other 50 per cent may be freely disposed of.

As in many other jurisdictions, the governing marital regime can influence the size of the estate subject to the forced heirship rules.

The surviving spouse is entitled to half of the deceased's acquired assets:

- after the marriage, under the partial communion of assets regime and participation in *acquêts* regime; and
- before and after the marriage, under the total communion of assets regime.

Therefore, the size of the estate subject to the forced heirship rules includes:

- one-half of the deceased's assets excluding the surviving spouse's portion under the marital regime; and
- assets acquired by the deceased before his or her marriage or donated to or inherited by him or her, minus funeral expenses and the deceased's debts.

In most cases, only 25 per cent of the deceased's estate may be administered by will.

The Civil Code of 2002 granted to spouses and civil partners the status of forced heirship, along with descendants and ascendants.

The forced heirship participation is subject to the following order:

- the descendants and the surviving spouse, except if the deceased was married under the total communion of assets regime or the total separation of assets regime; or under the partial communion of assets regime if the deceased person did not leave particular assets (assets acquired by the deceased before marriage);
- if there are no descendants: the ascendants and the surviving spouse;
- if there are no descendants and ascendants: the surviving spouse;
- if there are no descendants, ascendants, or a surviving spouse, the collaterals (relatives up to the fourth degree);
- if the deceased person does not have any forced heirs, 100 per cent of the deceased's property can be disposed of by will; and
- if there is no will, the local (municipal) government where the assets are located (or the federal government, if the assets are located in a federal territory) inherits all of the deceased's assets.

Although Brazil enforces strict heirship rules, there is no specific legislation regarding the use of trusts. The lack of legislation does not authorise breach of the forced heirship rules and if any Brazilian heir can prove that his or her rights were breached by any means, the courts do grant decisions attacking the trust or any other vehicle, as well as settlors and other heirs who benefit from the breach of succession rights.

#### **18 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?**

If no will or instruction are available as to the disposition of the estate, the forced heirship rules are applicable over 100 per cent of the estate.

Participation in forced heirship is subject to the following orders:

- the descendants and the surviving spouse, except if the deceased was married under the total communion of assets regime or the total separation of assets regime, or under the partial communion of assets regime if the deceased person did not leave particular assets (assets acquired by the deceased before marriage);
- if there are no descendants: the ascendants and the surviving spouse;
- if there are no descendants and ascendants: the surviving spouse;
- if there are no descendants, ascendants or a surviving spouse, the collaterals (relatives up to the fourth degree); and
- if there are no living descendants or a will, the local (municipal) government where the assets are located (or the federal government, if the assets are located in a federal territory) inherits all of the deceased's assets.

#### **19 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?**

Legitimate, adopted and illegitimate children receive equal inheritance treatment.

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

Distribution of the estate has to follow the law of the last domicile of the deceased. Assets located in Brazil are subject to a local probate procedure, but the applicable law to a non-domiciled individual's estate will be the one from his or her last domicile.

#### **21 What formalities are required for an individual to make a valid will in your jurisdiction?**

There are three major forms of last wills:

- the open and publicly registered will: this implies that its content is public and accessible to anyone at the Civil Notary Registration Office. The will is prepared by the notary according to the wishes of the individual. Before registering the will, the notary reads the will out loud before two witnesses, who must sign the will along with the testator;

- the closed registered will: although this is registered before the Civil Notary Registration Office, the content is only made public after the death of the testator. The will may be prepared by the testator privately and in order to be registered, has to be submitted to a civil notary for approval of its terms. The act of submitting the will to the notary has to be with the accompaniment of two witnesses. Upon approval, the notary will stamp and seal the will and register a number and not the terms of the will. Upon the demise of the testator the will must be presented to the court for the probate procedure; and
- the private unregistered will: this is not registered with a public notary and the execution of the will must be recorded before the probate proceedings. The will has to be signed by the testator and three other witnesses.

#### **22 Are foreign wills recognised in your jurisdiction and how is this achieved?**

Foreign wills are recognised in Brazil. In order to be accepted by the court and authorities the will has to be legalised before the Brazilian consulate at the jurisdiction of origin, translated by a sworn translator duly registered with the local commercial registry in the state where the probate will take place and, in addition, the will, along with its sworn translation has to be registered at the Civil Notary Registration Office in order to be fully effective.

#### **23 Who has the right to administer an estate?**

The general rule is that the surviving spouse or the heir in possession of the estate is appointed as *inventariante* (manager of the estate). But when a will is made and an executor is appointed, the court may consider the appointment of such an executor as manager if the other heirs do not oppose the appointment. If no executor has been appointed, and no other heir wishes to accept the role of manager a third party may be appointed by the judge.

The powers of the manager include:

- sale of the deceased's assets;
- payment of the outstanding debts of the deceased; and
- use of the existing resources of the estate for the conservation of the estate.

The powers of the executor are limited and controlled by the judge or court in charge of the probate procedure. For example, the sale of assets is subject to the written authorisation of the court. A sale of assets without the court's consent is void and reversible.

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

Succession of the estate is immediate for heirs (possession), but formal vesting (property) depends on the court's decision, which involves the appointment of an executor or, in the absence of an executor, the appointment of the closest heir, usually the surviving spouse.

The formal passing of title varies according to the class of property, as follows:

- real estate: the transfer may only be registered by court order issued by the competent Brazilian Probate Court. With the court order the real estate registry may transfer the property and file the competent documents with the municipality in order to access the required fees and taxes;
- company shares and quotas: the transfer may only be registered by a court order issued by the competent Brazilian Probate Court. The Commercial Registry is the authority in charge of registering the transfer of property and the executor must file a specific requirement to file the court order;
- bank accounts: usually the assets held by banks are deposited on behalf of the probate procedure with the court. Once the procedure is over, the court issues a paying order on behalf of the heirs. Or, the assets may remain deposited with the banks until the court issues a paying order that must be presented to the bank by the heirs or executor; and
- rules of management are set out by articles 991 and 992 of the Civil Procedure Code. In short, the manager has a duty to manage the estate with the same level of care as if it was his or her own assets. The management of the estate has to be submitted to the audit and

**Update and trends**

**Criminal and tax amnesty 2016**

The most important legal update in Brazil is about the Voluntary Disclosure Programme in Brazil.

This programme ended on 31 October 2016 and allowed for the legalisation of undeclared assets held by Brazilians in foreign jurisdictions. The tax rate over the assets is 15 per cent plus 15 per cent of penalty resulting in a staggering 30 per cent payment.

The market estimates that around US\$5 to US\$15 billion will be paid in taxes to the Brazilian Federal Tax Authorities, helping to relieve the ailing Brazilian economic situation.

The reasons for Brazilians hiding money is well known. Economic uncertainties and past policies, including high inflation and risk of confiscation, have made many Brazilians maintain funds overseas undeclared to the Brazilian Federal Revenue Office and to the Brazilian Central Bank (Bacen).

Such practices may have resulted in crimes, particularly in violation of tax law (tax evasion) and foreign exchange regulation (failure to report deposits abroad to Bacen).

The situation has worsened for said persons as a result of the implementation of the Foreign Account Tax Compliance Act in the United States and the automatic exchange of information between various countries, in accordance with the Common Reporting Standard of the Organization for Economic Co-operation and Development (OECD).

In this context, governments have been encouraged to provide taxpayers a last window of opportunity to regularise undeclared assets. Voluntary disclosure programmes have been stimulated by the OECD to be adopted as a necessary step towards attaining an international tax compliance environment.

Therefore, on 13 January 2016, Law No. 13,254 established the Foreign Exchange and Tax Regularisation Special Regime to grant amnesty on taxes and crimes pertinent to the maintenance of undeclared assets abroad.

There are many details of who is eligible to participate and the assets that may be subject to declaration. The procedures are the most sophisticated and complicated on such kind of programme resulting in many consultations to accountants, tax and criminal lawyers as well as planners.

Even though the programme is limited, complex and its legislation has many defects and loopholes that create uncertainties, the general understanding that this is the last window of opportunity to legalise foreign undeclared assets held by Brazilians.

**New proposal to raise the tax rate of the State Succession and Gift Tax**

The current limit of the tax rate of the State Gift and Succession Tax is established at 8 per cent by the Federal Senate. There is a proposal to raise such limit to 20 per cent so that each state may decide what the rate will be charged. Such proposal has some states as supporters and some opposing as well. But even if it passes on the Federal Senate, each state will need to pass in its own Legislative Parliaments modifications to its own legislation to allow the raise on the rate to be implemented. And if this occurs there are good options of planning.

**New proposal to create federal taxes over succession and gifts**

Currently, succession and gift tax are only levied at State Level at the maximum rate of 8 per cent, as seen on the specific item on the paper above. However, on May 2016, still under the government of former President Rousseff, the Finance Minister presented a legislative proposal to create a Federal Tax over succession and gifts.

This proposal would need the amendment of the constitution to be implemented. It seems unlikely that such proposal will proceed, since the government has changed on August 2016 via impeachment and the new Minister of Finance has a different approach to the fiscal aspects. But, in any case it is worth informing about this high-impact event that if approved would be levied according to the following table:

Rate	Succession	Gift
Exempt	up to 5 million reais	up to 1 million reais
15%	from 5 million to 10 million reais	from 1 million to 2 million reais
20%	from 10 million to 20 million reais	from 2 million to 3 million reais
25%	above 20 million reais	above 3 million reais

approval by the court, with special formalities with regard to sale of property.

**25 Is there a procedure for disappointed heirs and beneficiaries to make a claim against an estate?**

The probate procedure is the adequate forum to present claims against the estate.

It is possible to challenge the will. However, the statute of limitations restricts the right to challenge after five years from the date of registration of the will. To challenge the will, the challenger must prove any of the following:

- the will benefited someone due to the coercion of the testator;
- the will benefited an undefined person;
- the will empowers one heir to establish the value of his or her portion of the estate; or
- the will favours the notary public, witnesses or any party involved in the registration or execution of the formalities of creating the will.

The executor can also be challenged if he or she:

- fails to present the assets of the estate;
- fails to promote the probate proceedings;
- causes damage to the estate by negligence;
- fails to represent the estate accordingly; or
- fails to account to the heirs.

**Capacity and power of attorney**

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

Property belonging to a minor is held and managed by his or her parents or guardians (tutors).

Management of a minor's property is not free. For example, the sale of real estate has to be previously submitted to the competent court for approval.

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

A minor that has not reached the age of 16 is considered legally incapable and, for that reason, must be represented by a parent or a tutor. A minor between 16 and 18 years old is also considered legally incapable but instead of being represented, he or she must be assisted by a parent or tutor.

A declaration of legal capacity (emancipation) is available to minors above 16 years old to become self-supporting and independent of parental control.

Although legally incapable for the purpose of civil acts, a minor can own assets. However, his or her parents or tutor execute the management of the assets unless the minor is emancipated. The state prosecutor, on request, can audit the management of the minor's assets.

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

A declaration of incapacity and interdiction must be filed against the individual, by his or her parents, tutor, spouse, any other relatives or the Public Prosecutor. The court decision pronouncing the interdiction appoints a guardian to that person.

A foreign decision appointing a guardian to a person that loses capacity is subject to recognition and enforcement by the Brazilian Superior Court of Justice.

**Immigration**

**29 Do foreign nationals require a visa to visit your jurisdiction?**

Visitors from most nationalities are exempt, but Brazil applies reciprocity to the nationalities where Brazilians have to obtain tourist visas. Therefore, it is important to verify this before travelling to Brazil.



**30 How long can a foreign national spend in your jurisdiction on a visitors' visa?**

A tourist visa enables a visitor to spend 90 days in Brazil. This period may be extended for another 90 days if the visitor presents a request for renewal with the federal police before the end of the initial 90-day period.

**31 Is there a visa programme targeted specifically at high net worth individuals?**

Not per se, but it is possible to invest in a business creating jobs and ask for an investment visa.

Essentially, the visa can only be granted to a foreign national who brings foreign funds into Brazil and invests them in productive activities, and who plans to remain indefinitely in Brazil to directly manage his or her investment. Note that bringing capital into Brazil for private investment, for example, to buy a house, land or stocks, does not qualify.

The investment must involve an initial transfer of foreign capital equivalent to at least 150,000 reais. The National Immigration Council (CNI) will examine visa requests for foreign investors who will bring in a smaller amount of foreign currency provided they can demonstrate that their investment project will create at least 10 new jobs in Brazil within five years.

The process might be directed to the CNI where, due to the number of foreign investors, it will generate substantially positive economical or social impact on the country.

While the petition is being considered, the main object to be analysed will be the social interest aspect, which is defined by the generation of jobs and income in Brazil, by the increase on the productivity, the assimilation of technology and the growth of resources to a specific sector of the economy.

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

A temporary or permanent work visa can normally be issued to include dependent relatives – specifically a spouse and unmarried children under 24 – provided these are named at the time of the original application. The normal practice is that dependent relatives receive the same visa type and duration as the head of the family. However, applicants should be aware that family members may not receive permission to work in Brazil.

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

The investor visa grants permanent residency, upon the observance of the investment requirements.

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

The investment visa, per se, does not grant any right to nationality or citizenship. However, Federal Law 6815/1980, under article 112, establishes that any individual holding a permanent visa and who has maintained residency during four consecutive years may apply for Brazilian nationality.

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# Cyprus

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## Tax

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

An individual becomes taxable in Cyprus in any year of assessment (the tax year and the calendar year are the same) on the basis of his or her residence.

An individual is tax resident if he or she is physically present in Cyprus for more than 183 days in the relevant year. For the purpose of calculating the days of presence in Cyprus:

- the day of departure from Cyprus is considered to be a day of residence outside Cyprus;
- the day of arrival in Cyprus is considered to be a day of residence in Cyprus;
- the arrival in and departure from Cyprus on the same day is considered to be a day of residence in Cyprus; and
- the departure from and return to Cyprus on the same day is considered to be a day of residence outside Cyprus.

Cyprus residents are taxed on the basis of worldwide income, irrespective of whether the income is remitted to Cyprus. Husband and wife are taxed separately.

Non-residents are subject to tax on income accruing or arising from sources in Cyprus.

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

The following two main types of taxes apply on income: income tax and special contribution for defence.

#### Income tax

The personal income tax rates are listed below:

Taxable income	Tax rate
Below €19,500	0%
€19,500 to €28,000	20%
€28,000 to €36,300	25%
€36,300 to €60,000	30%
Above €60,000	35%

Income tax is payable on business profits, income from an office or employment, discounts, pensions, charges or annuities, rents, royalties, remuneration or other profits from property and net consideration in respect of trade goodwill. Expenses incurred for the production of taxable income are deductible provided that they are supported by invoices or relevant receipts.

The following are exempt from income tax:

- interest and dividends;
- lump sums received on retirement or as commutation of pension or as a result of bodily injury or death;
- capital sums from approved life assurance policies and provident or pension funds;
- income from employment services provided abroad to a non-resident employer or an overseas permanent establishment of a resident employer for a period exceeding 90 days in the tax year;

- profit from the sale of shares (if the shares are of an unlisted company owning real estate in Cyprus the gain may be subject to capital gains tax - see question 3);
- salaries of officers and crew of ships owned by a Cyprus shipping company that sail under the Cyprus flag and operate in international waters;
- income from a qualifying scholarship, exhibition, bursary or similar educational endowment; and
- donations to approved charities, professional and trade union subscriptions, life insurance premiums and contributions to pension, social insurance and welfare funds.

Subject to certain conditions, expenditure on maintaining buildings subject to a preservation order may also be deductible.

Annual writing down allowances are available against plant, machinery and other assets used in a trade or profession.

Foreign pensions may be taxed either on the normal basis set out above, or on an alternative basis, under which the first €3,420 per annum of the foreign pension is free of tax and the excess over that amount is taxed at 5 per cent. At current rates the alternative basis results in a reduced tax liability on pensions above €24,860. The taxpayer may choose which basis to adopt in any particular year.

The local legislation provides for a separate, highly favourable tax system for international shipping and ship-management activities based on the tonnage of vessels operated or managed.

A 20 per cent deduction is granted to individuals from rental income received to cover expenses. The full amount of interest paid on loans for the acquisition of the let property is allowed as a deduction.

With regard widow's pensions, as of 1 January 2014 a special basis of taxation applied under which the first €19,500 per year was tax-free and any amount above €19,500 was taxed at 20 per cent. As of 2014 tax year onwards, the Income Tax Law (Amendment) of 2015, Law 116 (I) provides the option for the taxpayer to elect on a year-by-year basis the special basis mentioned above or to be taxed under the general rules provided by the Income Tax Law.

The Income Tax Law (Amendment) (No.2) of 2015, Law 187 (I) extends the exemptions to individuals who wish to take up tax residency in Cyprus. However, the below exemptions apply for tax years up to 2020 and provided the employment started during on or after 1 January 2012. An annual allowance equal to 20 per cent or €8,550 (the lower) is granted for remuneration from any office or employment of an individual provided that he or she was not resident of the Republic before employment (applicable for five years commencing from the 1st of January following the year of employment). If income from such employment exceeds €100,000 per annum, a 50 per cent deduction is allowed for the first 10 years of employment. The following limitations are noteworthy with regard the 50 per cent exemption and which apply for individuals whose employment commenced on or after 1 January 2015: it will not be available to individuals who were Cyprus tax residents for a period of three out of five years preceding the year of employment and it will not be available to individuals who were Cyprus tax residents in the year preceding the year of commencing their employment. Finally, the amended law provides that the 20 per cent exemption does not apply in case the 50 per cent exemption is also available.

### Special contribution of private sector employees, pensioners and self-employed individuals

As of 1 January 2012 and for a period of five years (1 January 2012 to 31 December 2016) a special contribution is imposed on gross emoluments, pensions and income of self-employed individuals and employees (50 per cent contributed by the employer) in the private sector at progressive rates of up to 3.5 per cent.

### Special contribution for defence

Up to and including 15 July 2015, all residents of Cyprus were subject to special defence contribution on interest, dividend and rents received at the following rates:

Nature of income	Rate
Dividends	17%
Interest income	30%
Rental income less 25%	3%

The Special Defence Contribution (Amendment) Law of 2015, Law 119(I) restricts liability to special defence contribution with effect from 16 July 2015 to taxpayers who are both resident and domiciled in Cyprus for the year of the assessment concerned (and as a result the aforementioned rates apply). Therefore individuals who are resident but not domiciled in Cyprus are exempt from Cyprus tax of all forms on dividends, rents and interests, regardless of whether such income is derived from sources within Cyprus.

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

Subject to certain exemptions and reliefs, capital gains tax is payable at 20 per cent on net gains from the disposals of immovable property situated in Cyprus and on gains from the disposal of shares in unlisted companies to the extent that their value derives from such property.

The Capital Gains Tax (Amendment) (No 2) Law of 2015, Law 117(I) exempts gains on certain disposals of property (whenever the disposal may occur) that was acquired by the alienator on an arm's-length basis within the period beginning on 16 July 2015 and ending on 31 December 2016. The exemption does not apply to property acquired under the foreclosure process prescribed in the Transfer and Mortgage of Immovable Property Law.

The Capital Gains Tax (Amendment) (No. 3) Law of 2015, Law 189(I) imposes capital gains tax on the sale of shares which directly or indirectly participate in other companies that hold immovable property in Cyprus provided that at least 50 per cent of the market value of the shares sold is derived from property situated in Cyprus.

All other capital gains are exempt from tax.

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

There are no taxes on lifetime gifts in Cyprus.

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

There are no succession taxes in Cyprus.

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

#### Annual taxes

Immovable property tax is payable in September each year (for 2013 the payment date is deferred until 15 November) at the following rates on the market value as at 1 January 1980 of all immovable property registered in the name of the taxpayer at the start of the year:

From	To	Rate
€0	€40,000	0.6% (minimum €75)
€40,000	€120,000	0.8%
€120,000	€170,000	0.9%
€170,000	€300,000	1.1%
€300,000	€500,000	1.3%
€500,000	€800,000	1.5%

€800,000	€3 million	1.7%
€3 million and above		1.9%

The government has announced that intends to rebase the tax for 2015 and subsequent years into current values. However, for 2016 the liability will continue to be calculated by reference to 1980 values, by applying the rates listed above.

Taxpayers who settle their 2016 immovable property tax liability by 31 October 2016 are entitled to a 75 per cent discount. If the liability is settled between 1 November and 31 December 2016, the taxpayer is entitled to a discount of 72.5 per cent. If the liability is settled after 31 December 2016, it will be discounted by 69.75 per cent. In all cases, if the total liability after the discount is less than €10, it will be waived. Owners whose total immovable property is valued at less than €12,500 are exempt from immovable property tax.

Immovable property tax will be abolished with effect from the beginning of 2017.

### Transfer fee and stamp duty when acquiring immovable property in Cyprus

Real estate transfer fees are imposed by the Land Registry in order to transfer freehold ownership to the name of the purchaser. The transfer fees are due for payment when the transfer of the title deed in the name of the purchaser takes place. The purchaser is solely responsible for the payment of the transfer fees. The rates are on a graduated scale:

Value of property (€)	Transfer fee rate
up to 85,430	3%
from 85,431 to 170,860	5%
over 170,860	8%

According to the 'Land and Surveys Department (Fees and Rights) (Amendment) (No. 2) Law', which was passed on 14 July 2016, the property transfer fee has been reduced by half and this is now permanent.

A one-off stamp duty is levied on the purchase of property in Cyprus. The rates are dependent on the contractual purchase amounts and payment is due within 30 days of signing the sale agreement. The amount is payable by the purchaser to the tax authorities. The rates are listed below (a maximum duty of €20,000 applies):

Purchase price in €	Stamp duty
Up to 5,000	0%
5,001-170,000	0.15%
Over 170,000	0.20%

### Capital gains tax

A disposal of real property may give rise to a charge to capital gains tax (see question 3).

### 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?

As an EU member state, Cyprus is a member of the EU Customs Union. No customs duties are levied on goods travelling within the customs union and members of the customs union impose a common external tariff on all goods entering the union.

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

There is no wealth tax or the like. Cyprus is a low-tax country and its standard VAT rate of 19 per cent is among the lowest in Europe.

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

Trusts are transparent for tax purposes. Section 12 of the Cyprus International Trusts Law as amended provides that income and profits of an international trust which are earned or deemed to be earned from sources within and outside Cyprus are subject to every form of taxation imposed in Cyprus in the case of a beneficiary who is resident there. In

the case of a non-resident beneficiary only Cyprus-source income and profits are subject to Cyprus tax.

#### 10 How are charities taxed in your jurisdiction?

Approved (by the Inland Revenue Department) charities are exempt from Cyprus tax. Charities with trading activities which exceed the registration threshold must register and account for VAT.

### Trusts and foundations

#### 11 Does your jurisdiction recognise trusts?

Trusts are recognised by and may be established under Cyprus law. The International Trusts Law of 1992 (which builds on the Trustee Law of 1955) has been widely amended in 2012, giving Cyprus a modern and favourable trust regime.

Cyprus international trusts offer, among others, the following benefits:

- all income whether trading or otherwise of an international trust (ie, a trust whose property is located and income is derived from outside Cyprus) is not taxable in Cyprus;
- dividends, interest or other income received by a trust from a Cyprus company are also neither taxable nor subject to withholding tax;
- gains from the disposal of the assets of an international trust are not subject to capital gains tax in Cyprus;
- powerful asset protection features (among others, a two-year 'hardening period');
- the possibility to reduce or eliminate inheritance taxes of the settlor.

Trusts governed by the laws of other jurisdictions are recognised under the Hague Convention on the Law Applicable to Trusts and on their Recognition of 1 July 1985, which is applicable in Cyprus.

#### 12 Does your jurisdiction recognise private foundations?

The Associations and Foundations Law of 1972 allows the establishment of foundations but it is out of date and has rarely been used due to the high degree of bureaucracy involved.

Foundations governed by the laws of another jurisdiction are recognised.

A new law on foundations is expected to be introduced in the near future.

### Same-sex marriages and civil unions

#### 13 Does your jurisdiction have any form of legally recognised same-sex relationship?

The Civil Cohabitation Law of 2015, Law 184 (I), enforced in Cyprus as of 9 December 2015, allows same-sex couples to form a legally recognised civil partnership.

Civil partners or cohabitants are treated in the same way as spouses for the purposes of succession law and thus the relevant provisions of the Wills and Succession Law, Cap 195 apply.

The Law affords civil partners or cohabitants the same rights as a married couple except the possibility to adopt children under the relevant laws of the Republic.

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

The Civil Cohabitation Law of 2015, Law 184 (I), enforced in Cyprus as of 9 December 2015, allows heterosexual couples to form a legally recognised civil partnership.

Civil partners or cohabitants are treated in the same way as spouses for the purposes of succession law and thus the relevant provisions of the Wills and Succession Law, Cap. 195 apply.

The Law affords civil partners or cohabitants the same rights as a married couple except the possibility to adopt children under the relevant laws of the Republic.

### Succession

#### 15 What property constitutes an individual's estate for succession purposes?

An individual's estate for succession purposes is made of all property passing on his or her death. Property held by an individual as trustee is not part of the estate, nor is property placed in a trust. The concept of joint ownership of property does not exist in Cyprus law. Co-owners hold property in specified shares, and on the death of one of the co-owners his or her share in the property will devolve in accordance with the individual's will or the rules of intestacy.

#### 16 To what extent do individuals have freedom of disposition over their estate during their lifetime?

Individuals are free to dispose of their estate during their lifetime.

#### 17 To what extent do individuals have freedom of disposition over their estate on death?

Cyprus law imposes restrictions on the freedom of the testator to dispose his or her estate by will and it allows him or her to dispose only a portion of the estate (known as the 'disposable portion'; the one that cannot be disposed of by will is instead called the 'statutory portion').

In particular, if a person dies leaving spouse and child, or spouse and descendant of a child, or no spouse but child or descendant of a child then the disposable portion must not exceed the quarter of the net value of the estate.

Whether a person dies leaving spouse or father or mother but no child or descendant of a child, then the disposable portion must not exceed the half of the net value of the estate.

The only way a person is able to dispose all of his or her estate freely is where he or she dies leaving neither a spouse, nor a child, nor a descendant of a child, nor a father, nor a mother. In that cases, he or she is free to dispose by will all of his or her estate.

In cases where a testator disposed more than the disposable portion, the will is not void but the portion is reduced to the disposable portion. However, when a person dies leaving only a spouse, but neither child or descendant of a child, nor father or mother and he or she leaves to his or her spouse a portion that exceeds the disposable portion, no reduction is necessary.

#### 18 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?

The Wills and Succession Law, Cap 195 sets out in its first schedule the rules of intestacy. Such rules apply not only if there is no valid will, but also to any part of the estate not disposed of by will.

The persons entitled to succeed to the estate of a deceased person are divided into the following four classes:

- first class: the children of the deceased living at the time of his or her death and the surviving descendants of the deceased's children who died in his or her lifetime. The first schedule of the Wills and Succession Law restricts succession to legitimate children, but this restriction no longer applies and all children are entitled to succeed (see question 19);
- second class: the father, mother, brothers and sisters of the deceased and the surviving descendants of brothers or sisters who died in the lifetime of the deceased;
- third class: the surviving ancestors of the deceased nearest in degree of kindred; and
- fourth class: the nearest surviving relatives of the deceased up to the sixth degree of kindred (more remote relatives are excluded).

The estate is distributed to the members of the highest class. The persons of one class exclude persons of a subsequent class. Distribution takes place after the deduction of the share of the surviving spouse (see below). In the first class, the surviving children of the deceased succeed equally per capita, but the descendants of children who died before the deceased succeed per stirpes (the phrase per stirpes means that the descendants of a deceased child will equally inherit the share that their deceased mother or father would otherwise have inherited if the mother or father was alive). In the second class, parents and surviving siblings are entitled to equal shares but half-brothers and



half-sisters are entitled to only half the share of a full sibling (a legacy of when polygamous marriage was permitted for Muslims).

The descendants of siblings who died before the deceased succeed per stirpes. In the third class the succession is per stirpes and in the fourth class it is per capita.

The estate of an individual who dies leaving no spouse and no relative within the sixth degree of kindred will become the property of the Republic of Cyprus.

#### **The rights of the surviving spouse**

After the repayment of any debts or liabilities of the estate, the surviving spouse is entitled to a share in the statutory portion and in the part of the disposable portion that remains undisposed, if any.

In particular, if the deceased leaves except from the spouse, a child or a descendant of a child, they all receive equal shares.

If the deceased leaves neither a child nor a descendant of a child but he or she leaves an ascendant or a descendant of an ascendant within the third degree of kinship, the share of the surviving spouse will be half of the net estate.

If the deceased leaves no child or descendant of a child, or any ascendant or a descendant of an ascendant within the third degree of kinship, but leaves an ascendant or a descendant of an ascendant within the fourth degree of kinship, then the share of the surviving spouse will be three-quarters of the net estate.

If, however, the deceased leaves no child or descendant of a child, nor any ascendant or a descendant of an ascendant within the fourth degree of kinship, then the share of the surviving spouse will be the whole statutory portion and the whole part of the disposable portion that remains undisposed.

Under section 45 of the Wills and Succession Law, property received by the surviving spouse from the deceased under a marriage contract is not taken into account in calculating the surviving spouse's entitlement.

#### **19 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?**

The Wills and Succession Law restricts the right of inheritance to legitimate children of a deceased and their descendants only. However, this provision is overridden by Cyprus's obligations under the European Convention on the Legal Status of Children Born out of Wedlock, which Cyprus signed in 1978 and which was ratified by Law 50 of 1979. Article 9 of the Convention provides that a child born out of wedlock will have the same right of succession to the estate of its father and its mother and of a member of its father's or mother's family as if it had been born in wedlock. Section 54 of the Wills and Succession Law provides that the latter will not be applied in the event of inconsistency with any obligation imposed by treaty.

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

The provisions of the EU Regulation No. 650/2012 regarding International Jurisdiction and the applicable law relating to Wills and Succession in European Union countries apply in Cyprus for persons who deceased on or after 17 August 2015. The EU Regulation provides the general rule that the applicable law to the succession as a whole of an individual shall be the law of the state of habitual residence of the deceased at the time of his or her death. If this was Cyprus then the provisions of the Wills and Succession Law apply as stated in questions 17 and 18.

According to the EU Regulation, where by way of exception it is clear that at the time of death the deceased was manifestly more closely connected with a state other than the state his habitual residence, the law applicable to the succession shall be the law of that other state.

In addition, according to the EU Regulation, citizens can choose the law of their country of nationality to apply to their estate, whether it is an EU or a non-EU country.

#### **21 What formalities are required for an individual to make a valid will in your jurisdiction?**

The testator must be of sound mind, memory and understanding and must be at least 18 years old. The will must fulfil the requirements of section 23 of the Wills and Succession Law, pursuant to which a valid will must be in writing and executed in the following manner:

- it must be signed at the foot or end by the testator, or by some other person on the testator's behalf, in the testator's presence and by his or her direction;
- this signature must be made or acknowledged by the testator in the presence of two or more witnesses present at the same time;
- the witnesses must attest and subscribe the will in the presence of the testator and in the presence of each other; and
- if the will consists of more than one sheet of paper, each sheet must be signed or initialled by or on behalf of the testator and the witnesses.

If the person making the will is blind or illiterate, the will must be read out to him or her before execution and the testator must place his or her mark on it or it must be signed by some other person on the testator's behalf, in the testator's presence and by his or her direction.

All the other formal requirements apply equally in the case of blind or illiterate testators.

Wills made in Cyprus must comply with the aforementioned requirements, irrespective of the nationality, residence or domicile of the testator.

Wills made by soldiers and sailors need not comply with these requirements, even if they dispose of real estate in Cyprus.

Law 96(I) of 2015 amends the Wills and Succession Law by inserting a new section which gives the court discretion to overlook or amend any grammatical or numeric errors in a will, provided that the request has been submitted with persuasive evidence by an interested party and that it considers it equitable to do so.

#### **22 Are foreign wills recognised in your jurisdiction and how is this achieved?**

A will executed overseas that complies with the formalities required by the Wills and Succession Law or a will that meets the requirements of the Hague Convention will be recognised by the Cyprus courts, as long as it has been deposited with a probate registry in Cyprus.

If the will does not meet these requirements it will not be recognised, and any property in Cyprus will have to be administered and devolve according to the laws of intestacy.

#### **23 Who has the right to administer an estate?**

The right to administer an estate of a deceased person is granted to the 'personal representatives' of the latter, namely, the executor or executors named in the will or the administrator appointed by the court.

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

Title to a deceased's assets, except for very small and uncomplicated estates, does not pass directly to the heirs and successors. Instead, title passes to the executor or the administrator of the estate, referred to generically as the 'personal representatives', whose duty is to pass them on to the heirs. The executor derives his or her powers over the estate of the deceased from the will of the deceased, and the estate is vested in him or her at the time of death of the deceased. If no executor is appointed by the will, the court will appoint an administrator who has the same powers and duties as an executor appointed by the will. The administrator derives his or her powers from the order of the court appointing him or her, but once the order has been issued the vesting of the estate is effective from the time of death of the deceased.

The executor or administrator acquires all the rights and obligations of the deceased and may sue and be sued in all matters concerning the estate of the deceased and his or her administration of it. Pending the grant of administration the estate vests temporarily in the court, and for small estates the court may make an order for summary administration, in which case the probate registrar or another public officer appointed by the court will act as administrator.

### Update and trends

In July 2016 the Cypriot Council of Ministers has approved new attractive tax incentives, the implementation of which will be effected after the enactment of the bill in Parliament. The incentives target the support of new and innovative businesses and they provide for the following:

- exemption of the investment from the investor's taxable income (up to a maximum amount of 50 per cent of the taxable income); and
- deduction of €150,000 per year as well as the right of allocation and distribution of the discount up to five years later.

Additionally, the definition of an 'innovative business' has been amended to a broader range.

The Administration of Estates Law Cap 189 sets out the general rules governing administration by personal representatives. Executors have the powers and duties given and imposed on them by common law and the doctrines of equity as applied in England, except as specifically varied by Cyprus law. Subject to any limitations contained in the grant, administrators will have the same powers and duties, namely:

- to administer the estate of the deceased according to the law;
- to pay the just debts of the estate;
- to collect and distribute the assets among the heirs according to the will, if any, and the hereditary rights of the heirs; and
- to account to the court for their administration.

The court may remove any executor or administrator for wilful neglect or misconduct in the administration of the estate, either on its own initiative or on the application of any person interested in the estate. The court may grant letters of administration to some other person in the place of an executor or administrator who has been removed or has died or has become incapable of acting.

### 25 Is there a procedure for disappointed heirs and beneficiaries to make a claim against an estate?

Disappointed heirs may institute legal proceedings against the executor, disputing the formal validity of the will, its compliance with the legal requirements as to the statutory portion or the testamentary capacity of the testator. Under the Limitation of Actions Law 66(I) of 2012 no action can be commenced questioning the validity of a will, or in relation to the estate of a deceased or any portion or part thereof or bequest, after eight years from the date of death. In the event that the claimant was absent from Cyprus the limitation period will not be deemed to have been completed unless one year has elapsed from the time that the claimant returned to Cyprus or became aware of the death (or with reasonable diligence could have become aware of the death).

### Capacity and power of attorney

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

Pursuant to the Parents and Children Relations Laws, 1990 to 2008, the property of a minor shall be managed by the parents until the child reaches the age of majority. In case where the parental responsibility terminates by reason of death, or declaration of disappearance, or absence of one of the parents, the parental responsibility is exercised exclusively by the other parent. In the event that one of the parents is unable to exercise parental responsibility due to practical reasons or because he or she lacks the necessary legal capacity, the other parent exercises parental responsibility alone. However, a minor parent may also exercise care of the person of the child.

In case of divorce or annulment of the marriage or void marriage and provided that both parents are alive, the exercise of parental responsibility is regulated by the court.

When dealing with immoveable property the parents of minor children are required to sign a written statement declaring that they have not been disqualified to administer the property of their minor children. They must also obtain the leave of the court before transferring or mortgaging the immoveable property of their minor children or alienating it in any other way.

In the event there is no parent able to exercise parental responsibility the nearest ascendants are to exercise parental responsibility jointly as if they were the parents. If, for whatever reason, the nearest ascendants are not able to exercise parental responsibility, the court may appoint a guardian. The guardian may not without a leave of the court:

- dispose of, mortgage, charge, exchange, or in any other way alienate property of the minor;
- lease any of the immoveable property of the minor for a term exceeding five years;
- purchase any immoveable property on behalf of the minor;
- invest money belonging to the minor; or
- settle suits or claims in favour or against the minor.

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

An individual attains legal capacity for the purposes of holding and managing property at the age of 18 years.

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

Agents are appointed by the relevant legislation or by the court to act for and on behalf of individuals such as mental patients and missing persons who are no longer capable of managing their affairs.

### Immigration

### 29 Do foreign nationals require a visa to visit your jurisdiction?

Citizens of the European Economic Area (EU states plus Norway, Iceland and Liechtenstein), Switzerland and approximately 30 other countries and other categories of persons as listed on the website of the Ministry of Foreign Affairs may visit Cyprus for up to 90 days without a visa.

### 30 How long can a foreign national spend in your jurisdiction on a visitors' visa?

For third-country (non-EU) nationals the duration of each visit may not exceed three months in any half year, starting from the date of first entry. Multiple entry visas may be issued provided that the total duration of visits does not exceed three months in any half year.

### 31 Is there a visa programme targeted specifically at high net worth individuals?

The Republic of Cyprus has a fast-track procedure allowing high net worth individuals to acquire a permanent residence permit on an accelerated basis.

The procedure applies to individuals who have fully and freely at their disposal a secured annual income, high enough to allow a decent living in Cyprus, without having to engage in any business, trade or profession.

Associated requirements for the granting of the permit are:

- Evidence of a steady income from abroad of at least €30,000, from sources other than employment in Cyprus (namely: certificates of dividends, certificates of fixed deposits, pension statements, rents or salary advice). The necessary minimum income, if applicable, is increased by €5,000 for each dependent.
- Confirmation letter from a Cypriot bank, showing deposits of a minimum capital of €30,000 in an account, from sources other than employment in Cyprus. The capital should be transferred from an international bank to a local Cypriot bank and it should be pledged for at least a period of three years.
- Title deed or purchase agreement of a residential property, issued on the name of the applicant. The minimum market value of the property should be €300,000 plus VAT and proof of payment for at least €200,000 excluding VAT. The VAT rate of 5 per cent is applied for first residences with a total area not exceeding 275 square metres in accordance with the architectural plans (after the exception of up to 88 square metres for common areas). The first 200 square metres are subject to 5 per cent VAT and anything

above 200 square metres is subject to the standard rate of VAT, currently 19 per cent.

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

Married spouse, children under 18 years old and financially dependent children up to 25 years old are may also obtain the right of permanent residence. A permanent residence permit may also be granted to the parents and parents-in-law of the applicant or holder of a permanent residence permit with the submission of an application and the payment of the relevant fee, with the condition that the applicant or holder of the permanent residence permit presents only an additional annual income of €8,000 for every such dependent parent.

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

The programme gives the right of permanent residence. This right is automatically lost if the holder is absent from Cyprus for a continuous period of two years.

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

As a part of its policies aiming to attract foreign investors in Cyprus the Council of Ministers introduced in 2011 an economic citizenship programme under which applicants may obtain 'fast-track' citizenship.

The Cyprus government through the Council of Ministers has revised in September 2016 the criteria for granting the Cypriot citizenship by investment, in an effort to further promote foreign direct investments in Cyprus and align the scheme with the most recent industry requirements and standards.

In order to be eligible for the scheme, the applicant must have a clean criminal record, be the holder of a residency permit of Cyprus and hold a permanent privately owned residence in Cyprus with a value of at least €500,000 (plus VAT) and fulfil at least one of the following criteria:

- the applicant has made a direct investment in Cyprus of at least €2 million for the acquisition or development of real estate projects (residential, commercial, tourism or other infrastructure). It shall be noted that the acquisition of land which falls under residential, touristic or commercial building zones is an allowable

investment. Land not under a building zone (ie, forest land, agriculture land, etc) is not considered to be a qualifying investment under this criterion;

- the applicant has purchased or created or participated in Cypriot businesses or companies. The applicant must do an investment of at least €2 million in the purchase, creation or participation in businesses or companies that are based and operate in Cyprus. These businesses or companies should evidently have a tangible presence and substantial activity in Cyprus and employ at least five Cypriot or EU citizens who have been legally residing in Cyprus for a continuous period of at least five years;
- the applicant has made an investment in alternative investment funds (AIFs), financial assets of Cypriot businesses or organisations which are licensed by the Cyprus Stock Exchange Commission. The applicant must purchase financial assets of at least €2 million (units in AIFs, bonds (maximum €500,000 possible to buy per application), debentures, other securities, etc) registered and issued in the Republic of Cyprus, in companies or organisations with substantial economic activity in Cyprus which are regulated by the Cyprus Stock Exchange Commission; or
- the applicant may choose to have a combination of any of the above criteria amounting to at least €2,0 million. In the context of this criterion (ie, combination of investments), the applicant may also purchase governmental bonds of the Republic of Cyprus of a maximum amount of €500,000 and a €1.5 million real-estate in Cyprus.

It is noted that under the revised criteria, the investor's parents are entitled to apply for Cyprus citizenship by exception provided that the investor's parents are the owners of a permanent residence in Cyprus of at least €500,000 excluding VAT.

In addition, it is noted that under the revised criteria, the investment in government bonds of the Republic of Cyprus is now fixed restricted to a maximum €500,000.

Finally, it is noted that under the revised criteria, if the applicant has invested under the first criterion mentioned above (real estate) or the applicant has chosen to have combination of the criteria, for example, €500,000 government bonds and a real-estate project of €1.5 million that contains at least one residential villa or apartment of €500,000, then the applicant does not need to buy an additional residence with a value of at least €500,000 plus VAT.

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## Tax

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

#### Principal factors

An individual's place of domicile and residence are the principal factors in determining how he or she may be taxed in the United Kingdom (UK). The situs of assets will also be relevant in respect of certain taxes.

#### Domicile

Broadly speaking, an individual's domicile is where he or she has a 'permanent home' and intends to live permanently or indefinitely. Long-term residence may be a factor in determining domicile, but is insufficient in itself.

At birth, an individual's domicile of origin will be based on the domicile of his or her parents (primarily his or her father). A domicile of origin can be displaced by the acquisition of a domicile of dependency (if an individual's parents acquire a new domicile while he or she is under 16 years) or, after the age of 16 years, a domicile of choice (if an individual resides in another country with the intention of residing there permanently and indefinitely). However, if an individual loses a domicile of choice in a country by leaving it, not intending to return to it, and moving to a different country without forming the intention of living there permanently or indefinitely, his or her domicile of origin will revive unless and until it is replaced by a new domicile of choice.

Strictly, an individual is not domiciled 'in the UK' but in one of the jurisdictions that make up the UK: England and Wales, Scotland or Northern Ireland. At present, unless otherwise stated, the tax provisions described in this note apply across the UK, however, so we use the shorthand 'domiciled in the UK' to refer to an individual who is domiciled within one of these jurisdictions.

#### Deemed domicile

Under the existing law, for the purposes of inheritance tax (IHT), an individual will be deemed domiciled in the UK if he or she has been resident in the UK in at least 17 out of the past 20 tax years.

Similarly, an individual will be regarded as deemed domiciled in the UK for IHT purposes if he or she has been UK-domiciled under general law within the previous three years.

Measures were announced at the UK Summer Budget on 8 July 2015 to introduce, with effect from 6 April 2017, a new deemed domicile rule for the purposes of inheritance tax, income tax and capital gains tax. For more information on this, and other measures being introduced for non-UK domiciled individuals born in the UK with a UK domicile of origin, see Update and trends.

#### Residence

With effect from 6 April 2013, tax residence in the UK is based on a statutory residence test. This test combines a test of presence in and connections with the UK. It applies only to individuals and covers income tax, capital gains tax and, where relevant, inheritance tax and corporation tax. It supersedes all existing legislation, case law and guidance for tax years following its introduction.

The test is divided into three parts, as follows:

- the automatic overseas tests. The satisfaction of one of these for a tax year means that the individual concerned is automatically non-UK resident for that year. There are five tests (two of which relate

to individuals who have died during the relevant tax year). Three of the five tests focus on the number of days spent by an individual in the UK in the relevant tax year, combined with his or her residence in preceding years, and the other two focus on work overseas, combined with days spent in the UK in that tax year, or the individual's residence status in preceding years. If none of these tests applies to an individual;

- the automatic residence test must be considered. This is divided into four automatic UK tests (one of which relates to individuals who have died during the relevant tax year). The first test provides that an individual is UK-resident for any tax year in which he or she spends at least 183 days in the UK (the old statutory test). Two of the other tests focus on time spent by an individual in a home in the UK compared with any homes overseas, and one focuses on work in the UK. The satisfaction of any one of these tests for a tax year means that the individual is automatically UK-resident for that year. If neither automatic test applies to an individual;
- the sufficient ties test will determine the position. This test compares the number of days during a tax year spent by an individual in the UK with the number of 'ties' the individual has with the UK during that year. These 'UK ties' relate to family, work, accommodation, days spent in the UK in earlier tax years (90-day tie) and (for those who have been UK-resident for one or more of the previous three tax years) days spent in the UK in the relevant tax year compared with other countries (country tie).

There are specific tests that apply to determine the residence status of international transport workers. There is also a set of split-year rules determining how an individual's residence for years of departure from or arrival in the UK may be determined in different situations, as well as a number of anti-avoidance and transitional provisions.

For tax years prior to 6 April 2013, the concept of residence was based primarily on physical presence in the UK, so that if an individual spent 183 days or more in the UK during the tax year, or an average of 91 days or more in a tax year in the UK over four years, he or she would be tax resident in the UK (as mentioned above, the 183-day test is retained in the new statutory test). However, spending less time in the UK would not automatically have led to the conclusion that an individual was not a UK resident, as other factors linking the taxpayer to the UK were also considered. Other relevant factors were:

- the frequency and duration of an individual's periods of presence in the UK;
- the purpose and pattern of his or her presence; and
- his or her connections to the UK.

#### Ordinary residence

The concept of ordinary residence was scrapped in the UK with effect from 6 April 2013, other than in very limited circumstances. Transitional provisions were put in place for those who already benefited from a particular tax treatment due to being not ordinarily resident in the UK, provided that such individuals would have met the conditions to be not ordinarily resident in the relevant transitional years (2013-14, 2014-15 or 2015-16, depending on the particular situation). An individual was treated as ordinarily resident in the UK if he or she came to the UK for a settled purpose and established a regular and habitual mode of life here.



It was possible to be resident, but not ordinarily resident, in the UK and vice versa.

### Remittance basis

Under the existing rules, an individual who is resident, but not domiciled, in the UK is entitled to elect to be taxed on the remittance basis in respect of his or her foreign income and capital gains. In this case, he or she is only liable to tax on foreign income and gains that are brought into, or 'remitted' to, the UK.

Subject to certain exemptions (including an exemption for minors) and de minimis limits, for individuals who have been resident in the UK in at least seven of the preceding nine tax years, there is an annual charge of £30,000 to claim the benefit of the remittance basis. The annual charge increases to £60,000 for individuals who have been resident in the UK in 12 of the preceding 14 tax years and to £90,000 for individuals who have been resident in the UK in 17 of the preceding 20 tax years. In most cases, an individual who claims the remittance basis loses his or her entitlement to the personal allowance for income tax and the annual exemption for capital gains tax.

See Update and trends for measures relating to the tax treatment of non-UK domiciled individuals that will affect the circumstances in which they are able to claim the remittance basis, with effect from 6 April 2017.

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

Income tax is levied on an individual's income from all sources: employment, profits of a trade or business, savings and investments.

Under the existing rules, a UK-resident individual who is domiciled outside the UK may claim, or be automatically entitled to, the remittance basis of taxation in relation to his or her foreign income (see question 1 and Update and trends for proposed changes). Otherwise, UK-resident individuals are taxable on their worldwide income as it arises, subject to any double tax treaty relief where foreign income has been taxed at source.

An individual who is resident outside the UK is taxable only on his or her UK income and, if that income is also taxed in the individual's country of residence, he or she may be entitled to relief under a double taxation treaty if there is one in force between the UK and the country of residence.

### Rates

The income tax rates applicable vary according to the source and level of income received by the individual in any tax year.

In tax year 2016-17, the income tax rates applicable are as follows:

<b>Savings income</b>	Up to £5,000: 10%	Above £5,000: rates are as for non-savings income		
<b>Dividend income</b>	Up to £5,000: 0%	£5,000 - £32,000: 7.5%	£32,000 - £150,000: 32.5%	Above £150,000: 38.1%
<b>Other income</b>		Up to £32,000: 20%	£32,000 - £150,000: 40%	Over £150,000: 45%

The personal allowance for income that can be earned in any tax year before income tax is paid is £11,000 for individuals with an annual income of £100,000 or less. Above that limit, the allowance is reduced by £1 for every £2 of extra income, until it is exhausted when income exceeds £122,000. There are certain other allowances for blind people and for individuals and married couples over the age of 65 or 75, although age-related allowances are also subject to income limits.

As set out in the table above, from April 2016 the notional 10 per cent tax credit on UK dividends was replaced by a new tax-free dividend allowance. Under this allowance, there is no tax on the first £5,000 of dividend income regardless of what non-dividend income is available. However, any dividends received over £5,000 are taxed at 7.5 per cent within the basic rate band, 32.5 per cent within the higher rate band and 38.1 per cent within the additional rate band.

Also with effect from April 2016, changes were made to the taxation of income for taxpayers in Scotland. These changes are beyond the scope of this chapter.

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

Capital gains tax (CGT) is levied on the taxable gains of individuals resident in the UK. Individuals resident outside the UK are not liable to tax in the UK on their capital gains, UK or otherwise, other than in respect of gains on disposals of residential property in the UK made on or after 6 April 2015, as a result of the introduction of the non-resident CGT charge. Indirectly, non-resident individuals may also be affected by the ATED-related CGT charge (see question 6) where they have an interest in UK residential property held through a company or certain other entities.

A UK-resident individual who is domiciled outside the UK may claim or be automatically entitled to the remittance basis of taxation in relation to his or her foreign gains (see question 1 and Update and trends for proposed changes). Otherwise, UK-resident individuals are taxable on their worldwide capital gains, subject to any double tax treaty relief applicable.

Capital gains realised on the disposal of an asset, which includes a sale or a gift, are taxed as the top slice of income and are levied at a rate of 10 per cent for basic-rate taxpayers (18 per cent for carried interest and residential property) and otherwise at 20 per cent or 28 per cent respectively. There is an annual exemption from tax on gains up to £11,100. These rates also apply to gains on disposals of UK residential property by non-UK resident individuals.

Transfers of assets between spouses or civil partners are not liable to CGT and neither are disposals of a main residence, as a result of principal private residence relief (PPR). PPR may be claimed by UK residents disposing of a UK or non-UK residential property and non-UK resident disposing of a UK residential property provided that, in either case, the property qualifies as a main residence for the purposes of the relief.

Other CGT deferrals and reliefs may be available, including entrepreneurs' relief on the sale of certain business assets owned for at least one year, the effect of which is to reduce the rate of tax to 10 per cent on gains up to a lifetime limit of £10 million.

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

There is no gift tax in the UK.

Gifts of cash made between individuals give rise to no immediate tax consequences. Gifts of other assets may be liable to CGT if standing at a gain (see question 3).

Gifts into trust (other than of excluded property - see question 5) are liable to inheritance tax (IHT) as 'immediately chargeable transfers' at the rate of 20 per cent, to the extent that they exceed the available nil rate band of the individual (a maximum of £325,000 in tax year 2016-17).

However, if an individual dies within seven years of making a gift (including one into trust) then, unless the gift is subject to an exemption or relief, IHT or additional IHT may be payable in certain circumstances (see question 5).

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

### Inheritance tax

IHT is payable by reference to an individual's domicile and the situs of assets. UK-domiciled individuals (actual or deemed) are subject to IHT on their assets worldwide (subject to any applicable double tax treaty relief). Non-UK-domiciled individuals are only liable to IHT on their UK situs assets. Non-UK situs assets are excluded property for inheritance tax purposes. However, these rules are to change with effect from 6 April 2017 with respect to UK residential property held by non-UK domiciliaries through certain offshore entities (see Update and trends).

On an individual's death, IHT is payable at 40 per cent on the value of any property he or she then owned or is deemed to have owned (see question 9) that exceeds the available nil rate band, at present £325,000. A new additional nil rate band for 'qualifying residential interests' (usually the family home, but certainly one that has at some point been a residence of the deceased) left to one or more of

a specified class of descendants is to be introduced for estates valued below a specified threshold with effect from tax year 2017–18.

The additional bands will take effect, as follows:

- £100,000 in 2017–18;
- £125,000 in 2018–19;
- £150,000 in 2019–20; and
- £175,000 in 2020–21.

It will then increase in line with the Consumer Prices Index from 2021–22 onwards. It will be possible to transfer any unused nil rate band to a surviving spouse or civil partner, as is the case with the existing nil rate band (see below).

There will be a tapered withdrawal of the additional nil rate band for estates with a net value of more than £2 million at a withdrawal rate of £1 for every £2 over this threshold. Accordingly, in 2017–18 estates valued at £2.2 million or more will be unable to take advantage of the additional band.

Provision is also to be made for situations where the deceased had downsized or ceased to own a residence before death.

IHT may also be payable on property the deceased gave away within the seven years preceding death, to the extent that the value of such gifts and the estate of the deceased together exceed the nil rate band available at his or her death. Taper relief reduces IHT liability in respect of gifts made between three and seven years before death.

In addition to his or her own nil rate band, if the deceased survived his or her spouse or civil partner, and the nil rate band of the first of the spouses or civil partners to die was not entirely used up at their death, any unused nil rate band may be claimed, generally by the deceased's personal representatives, and added to the deceased's own nil rate band to reduce the IHT payable on his or her estate.

A number of IHT reliefs and exemptions exist, which include:

- legacies to a spouse or civil partners. Generally, such legacies are fully exempt from IHT. However, this exemption is limited to the annual nil rate band, at present £325,000, on a transfer of assets to the non-domiciled spouse or civil partner of a UK-domiciled individual. However, if it is possible for a non-UK-domiciled spouse (or, where relevant, their personal representatives on their behalf) to elect to be treated as being UK-domiciled for IHT purposes, in which case they will be entitled to the full spouse exemption. At the same time, however, their estate will be chargeable to IHT in the same way as any other UK domiciliary;
- legacies to charity are exempt from IHT;
- business property relief and agricultural property relief, which may apply at 50 per cent or 100 per cent on relevant business or agricultural assets;
- annual exemption of £3,000;
- gifts in consideration of marriage or civil partnership, the value of which varies between £1,000 and £5,000 depending on the relationship between the donor and recipient;
- annual exemption for small gifts to any one person not exceeding £250 (provided that person does not also benefit from the whole or part of the £3,000 exemption);
- normal expenditure out of income: regular gifts made out of surplus income may be made tax-free. Regularity does not mean the amount has to be the same each year; the test is that such a gift does not adversely affect the donor's standard of living; and
- potentially exempt transfers: outright gifts that the donor survives by at least seven years.

Care must be taken with lifetime gifts to ensure that the donor does not continue to benefit from the asset transferred, for example, by continuing to live rent-free in a house he or she has given away. If the donor does continue to benefit in such a way, the asset remains in his or her estate. Such gifts are referred to as 'gifts with a reservation of benefit' (GROBs).

Liabilities of a deceased may generally be deducted from the assets of his or her estate before calculating IHT due. However, rules introduced in 2013, limit such deductions in certain situations. These include restrictions to the deductibility of liabilities attributable to financing the acquisition of, or the maintenance or enhancement of, the value of excluded property or of relievable property (ie, business property, agricultural property or woodlands), and of liabilities

that are not discharged on or after death, other than in certain specified circumstances.

#### Other taxes

On death, there is a tax-free uplift to market value of the deceased's assets for CGT purposes, so that there is no tax liability on their deemed disposal on death.

CGT and income tax will be payable by the personal representatives of the deceased on any gains realised or income accruing during the administration of the estate.

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

### Stamp duty land tax (SDLT)

When real property is transferred in England and Wales (and Northern Ireland), SDLT is payable by the purchaser. SDLT does not generally apply to a gift made by an individual unless the property is subject to a mortgage.

A purchaser of residential property pays SDLT at the following rates, each rate being applicable to the part of the price within the relevant band:

- £0 to £125,000: zero per cent;
- £125,001 to £250,000: 2 per cent;
- £250,001 to £925,000: 5 per cent;
- £925,001 to £1,500,000: 10 per cent; and
- £1,500,001 and over: 12 per cent.

If a purchaser of residential property valued at £40,000 or over already owns another property, he or she may also have to pay an additional 3 per cent SDLT on the value of the new property. This additional rate will not apply if the new property is being acquired to replace a main residence that is being sold. A company will usually have to pay the additional SDLT rate regardless of whether it owns any other property. In certain circumstances, trustees may also have to pay the additional rate.

For residential property costing over £500,000 acquired for private use through a company or other relevant non-natural person (such as a collective investment scheme or partnership with at least one corporate partner), higher rate SDLT at 15 per cent is payable on the entire purchase price.

However, if an appropriate relief applies, for example, if the residential property is used for a property rental or development business, the standard residential rates above apply instead. If the higher rate SDLT at 15 per cent is payable on an acquisition, the additional 3 per cent rate will not also be payable.

### Capital gains tax

A disposal of real property may give rise to a charge to CGT if a gain is realised on disposal (see question 3). The rules under which such a charge arises, the gains to which it applies and the rates at which it is levied will vary according to the nature of the property (eg, whether it is residential or commercial), and the nature and residence status of the individual, trustees, company, partnership or other entity that makes the disposal. Reliefs and exemptions may be available to mitigate a charge in appropriate circumstances. For example, in the case of an individual's main residence, principal private residence relief should apply to relieve the gain from tax.

Broadly, gains made on a disposal of real property may be taxed under the following regimes:

- the main CGT regime: these are the rules that apply to tax gains made on disposals of all types of chargeable property owned by UK tax residents, with the exception of companies that are liable to corporation tax on their chargeable gains. Reliefs and exemptions are available in certain circumstances;
- ATED-related CGT: this regime was introduced with effect from 6 April 2013, together with the annual tax on enveloped dwellings (see below) and higher rate SDLT (see above). It taxes gains arising on or after 6 April 2013 (unless an election is made to take into account earlier gains) on disposals of higher-value UK residential property made by companies, collective investment schemes or partnerships in which a company is a partner. The charge applies where consideration for a disposal exceeds a 'threshold amount', currently £500,000. Tax is charged at 28 per cent and reliefs

applicable to ATED and higher rate SDLT also apply to ATED-related CGT; and

- non-resident CGT: this regime was introduced with effect from 6 April 2015. Gains made on or after that date (unless an election is made to different effect) on disposals of UK residential property by non-UK residents, including individuals, trustees, partnerships, closely held non-resident companies and funds that are not widely marketed, are potentially within charge. In contrast to ATED-related CGT, all property that is 'used or suitable for use as a dwelling' is within the scope of the non-resident CGT charge, regardless of its value, including residential property used for letting purposes. The reliefs available under ATED-related CGT are not available under this regime. However, in appropriate circumstances, principal private residence relief may be available to individuals and trustees making disposals.

In circumstances where a gain is within the scope of both ATED-related CGT and non-resident CGT, ATED-related CGT will take precedence so that there is no double charge. If any part of a gain post 6 April 2015 is not within ATED-related CGT (perhaps because a property was rented out for a period), that part of the gain will be potentially subject to the non-resident CGT charge.

In addition to the CGT provisions described above, there are anti-avoidance provisions in place that attribute gains made by non-resident companies to their UK resident members. Similar provisions apply to attribute gains made by non-resident trustees to settlors and beneficiaries in certain circumstances. While both ATED-related CGT and non-resident CGT will take precedence over such provisions in respect of gains to which they apply, the provisions will still be relevant to tax gains not caught by either regime.

#### Income tax

Any rental income arising from a UK property will be from a UK source and always taxable in the UK at the individual's marginal rate of tax.

#### Council tax

Council tax on residential property is payable annually to the local authority.

#### Annual tax on enveloped dwellings

An annual tax was introduced, with effect from 1 April 2013, on high-value residential property in the UK held through a company (other than one holding the land as trustee), a collective investment scheme or a partnership in which a company is a partner. It also applies to property in joint ownership where such an entity holds jointly with individuals.

It is known as the 'annual tax on enveloped dwellings' (ATED) and, with effect from 1 April 2016, applies to interests in UK residential property valued over £500,000. For the first five years from 1 April 2013, the charge is based on the market value of the property as at 1 April 2012 or on the date of acquisition, if later. Subsequent revaluations will be made every five years. For the present period of account (1 April 2016 to 31 March 2017) the charge is being levied at the following rates:

- over £500,000 and up to £1 million: £3,500;
- over £1 million and up to £2 million: £7,000;
- over £2 million and up to £5 million: £23,350;
- over £5 million and up to £10 million: £54,450;
- over £10 million and up to £20 million: £109,050; and
- over £20 million: £218,200.

ATED returns and payment for each year are generally due 30 days after the start of a period of account (ie, 30 April each year).

There are a number of reliefs and exemptions from ATED, including (among others) relief for property developers, property traders and property rental businesses, as well as for providers of social housing, and charitable companies that do not fall within the 'ownership condition' for the purposes of the tax. These exemptions and reliefs are also applicable to the higher rate of SDLT (15 per cent) for acquisitions of residential property over £500,000 by companies, collective investment schemes or partnerships in which a company is a partner, as well as to the ATED-related charge to CGT on disposals of high-value residential property (see above).

#### 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?

A purchaser of goods brought into the UK from another EU member state pays acquisition value added tax (VAT) (as under EU law, there is no 'import' or 'export' of goods or services between member states).

One or more of UK customs duty, excise duty or import VAT may be payable on certain assets imported to the UK from a country outside the European Union. In the case of import VAT, it may also be payable on imports from certain EU 'special territories', among others, the Aland Islands, Canary Islands, Channel Islands, French Overseas Departments of Guadeloupe, French Guiana, Martinique and Reunion and Mount Athos (also known as Agion Oros).

There are certain reliefs, including a relief for personal belongings of a certain class or value and a private motor vehicle from outside the EU and for sailing pleasure craft to and from the UK. Imported works of art, antiques and collectors' items may be entitled to a reduced valuation at importation for the purposes of duty and import VAT.

In practice, there are no export taxes, duties or levies payable on goods being exported from the EU. VAT is levied on a supply of goods from the UK (whether to a place inside of or outside the EU) but is zero-rated (charged at zero per cent).

Clearly, the departure of the UK from the EU following the Brexit vote in June 2016 is likely to result in changes to the rules in relation to the taxation of imports and exports. However, until the terms of the UK's departure are agreed, it is impossible to know what such changes, if any, will look like (see also 'Update and trends').

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

There is no wealth tax in the UK.

VAT is payable on many goods and services at the rate of 20 per cent. In some circumstances, a reduced rate or exemption may apply.

Stamp duty is payable at 0.5 per cent on transfers of shares for value in UK companies. It does not apply to shares in non-UK companies if transferred abroad, nor to gifts of shares.

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

Trusts are recognised in England and Wales. A trust is not a separate legal entity. It is a relationship that can be defined as an equitable obligation binding a person, the trustee, to deal with property over which he or she has control, the trust property, for the benefit of persons, the beneficiaries, of whom he or she may himself or herself be one, and any one of whom may enforce the obligation.

While a trust is not a legal entity, it is a taxable entity, and UK-resident trustees are responsible for completing tax returns and paying tax.

#### Inheritance tax

For IHT purposes, the treatment of a trust varies according to whether the trust is a relevant property trust. Relevant property trusts include:

- discretionary trusts, where no beneficiary has a fixed interest in the trust assets unless and until the trustees make an appointment in his or her favour; and
- life interest (or interest in possession) trusts created during the settlor's lifetime on or after 22 March 2006. A life interest trust is one in which one or more beneficiaries have an immediate right to the income of the trust. (In certain circumstances, life interest trusts created prior to 22 March 2006 may subsequently qualify as relevant property trusts.)

Relevant property trusts are liable to IHT on each 10-year anniversary at a rate of up to 6 per cent of the value of any assets in excess of the nil rate band. An exit charge or 'proportionate charge' of up to 6 per cent is also imposed when property leaves the trust. There are rules in place to prevent individuals avoiding IHT through the use of multiple trusts, each with its own nil rate band. The rules apply to settlements created on the same day ('related settlements') and, with certain limited exceptions, now also apply to two or more relevant property trusts created on different days where, on or after 10 December 2014, property is



added to each of them on the same day and after the commencement of those trusts.

There are no IHT charges on life interest trusts that do not qualify as relevant property trusts because the assets are treated as forming part of the life tenant's taxable estate on death. The life tenant's death is not a taxable event in the case of a relevant property trust.

Certain trusts created on the death of a parent from which a minor or young person under the age of 25 can benefit are also treated differently for IHT purposes.

Trusts established by individuals domiciled outside the UK may be excluded property trusts for the purposes of inheritance tax to the extent property held within them is situated outside the UK. Such property is not subject to either 10-year anniversary charges or exit charges. Under existing law, property situated in the UK is excluded property provided it is not held directly by the trustees but instead through a non-UK situated company or other vehicle. This is to change with effect from 6 April 2017 in relation to UK residential property held through offshore vehicles (whether owned by trustees or individuals) so that such property will no longer escape a charge to IHT. There will also be changes to the treatment of excluded property trusts established by non-UK domiciled individuals who were born in the UK with a UK domicile of origin during periods in which they are resident in the UK (see Update and trends).

### Income tax and capital gains tax

Trustees of UK-resident discretionary trusts pay income tax at the relevant rate applicable to income (currently 38.1 per cent for dividend income and 45 per cent otherwise for trust income over £1,000) and CGT (at 20 per cent generally or 28 per cent for carried interest and residential property) on their worldwide income and gains.

Trusts are treated as UK-resident for both taxes if all of the trustees are UK-resident or at least one of the trustees is UK-resident and the settlor was UK-resident or domiciled when he or she created the trust (on death or otherwise) or subsequently added funds to it.

A trustee who is not otherwise UK-resident will be treated as such if the trustee acts as such in the course of a business that the trustee carries on in the UK through a branch, agency or permanent establishment.

Trustees of non-UK resident trusts pay income tax only on UK income, and CGT only on disposals of UK residential property held directly by the trustees and even then generally only on gains arising after 5 April 2015 (the 'non-resident CGT charge'). However, there are complex anti-avoidance rules in place that, in appropriate circumstances, attribute for tax purposes other income or gains of such trusts and their underlying companies to UK-resident settlors or beneficiaries.

In the case of disposals of interests in high-value UK residential property, underlying companies may be liable for the ATED-related CGT charge (see question 3) introduced with effect from 6 April 2013 on ATED-related gains. To the extent that disposals of UK residential property by an underlying company do not fall within the ATED-related CGT charge for any reason, they may be caught by the non-resident CGT charge, in which case gains arising on or after 6 April 2015 may be taxed. In either situation, the anti-avoidance provisions may also be relevant to tax gains in respect of such property interests that fall outside both charges (eg, gains arising before 6 April 2013 on high value property not subject to an ATED relief, or other residential property-related gains arising before 6 April 2015).

### 10 How are charities taxed in your jurisdiction?

Broadly speaking, charities are taxable in the same way as other entities of the same type, for example, companies, trusts or unincorporated associations. However, organisations that are recognised as charities in the UK are subject to a number of exemptions and reliefs from tax on most types of income and on their capital gains, and on the profits of certain activities, provided the money is used for charitable purposes only.

Donations made through the Gift Aid scheme by individuals who are UK taxpayers enable a charity to claim basic rate tax from Her Majesty's Revenue and Customs (HMRC) on income received. Charities are also exempt from tax on donations received from companies, although no tax may be reclaimed as companies (unlike individuals) do not have tax deducted at source. Again, however, for any charitable tax exemption to apply, the money must be used for charitable purposes only.

There are also reliefs available for SDLT on the purchase of property by a charity and, in certain circumstances, from VAT on goods and services.

Profits made by a charity from trading activities are likely to be taxable unless the activities are very closely aligned to the charitable purposes of the charity. There are exemptions on profits from fundraising events, for example, and for activities carried out by the beneficiaries of the charity.

Many charities undertake taxable trading activities through a trading subsidiary that is taxable in the same way as any other company. If the subsidiary transfers some or all of its profits to the charity as a donation, the subsidiary is able to claim tax relief. Provided the charity uses the income for charitable purposes, it will also be exempt from tax on that income.

Rental income from properties in the UK or overseas held by charities is exempt from UK tax provided the income is used for charitable purposes. However, profits made from developing property or land do not attract an exemption from UK tax.

Charitable companies are not liable for ATED in respect of any interest they hold in UK residential property that would otherwise be caught, provided that the interest in the property is held for qualifying charitable purposes.

Gifts made to charities are also exempt from inheritance tax.

## Trusts and foundations

### 11 Does your jurisdiction recognise trusts?

Trusts are recognised by and may be established under the law of England and Wales.

Trusts established under the laws of other jurisdictions are recognised in England and Wales both under the general law and under the Hague Convention on the Law Applicable to Trusts and on their Recognition, 1 July 1985, which is applicable in the UK.

### 12 Does your jurisdiction recognise private foundations?

There is no specific law of private foundations in England and Wales. Neither is there any specific legislation dealing with the recognition of foreign private foundations. Under the general law, foundations governed by the laws of other jurisdictions may be recognised by the courts of England and Wales and they are likely to be treated according to whether their characteristics are most closely aligned to companies or trusts.

## Same-sex marriages and civil unions

### 13 Does your jurisdiction have any form of legally recognised same-sex relationship?

The Civil Partnership Act 2004 provides for same-sex couples to form (and to dissolve) a legally recognised civil partnership. Civil partners are treated in the same way as spouses for the purposes of tax and succession law.

Following the introduction of the Marriage (Same-Sex Couples) Act 2013, same-sex couples have been able to marry since 29 March 2014. Since 10 December 2014, civil partners who wish to do so have been able to convert their civil partnership into a marriage. Following a review of the future of civil partnership in 2014, the government confirmed that it has no plans to make any changes. Accordingly, civil partnership will continue to be an option for same-sex couples alongside marriage.

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

No.

## Succession

### 15 What property constitutes an individual's estate for succession purposes?

Under the law of England and Wales, an individual's estate for succession purposes comprises all property he or she owns in his or her sole name.

It also includes the deceased's interest in any property owned jointly with others under a 'tenancy in common'. With a tenancy in

common, each co-owner has a fixed share in the property, succession to which is determined by their will or intestacy rules.

The estate also comprises assets over which the deceased had power to control their use and determine their destination, known as a general power of appointment, together with assets in the estate of an individual who predeceased him or her, to which the deceased is entitled.

For these purposes, a deceased's estate does not include jointly owned property held under a 'joint tenancy', in which the co-owners each own an indivisible share. In these circumstances, on the death of a co-owner, the rule of survivorship applies to vest his or her interest in the property in the other joint tenants.

#### **16 To what extent do individuals have freedom of disposition over their estate during their lifetime?**

Under the law of England and Wales, individuals have freedom of disposition over their entire estate during their lifetime. England and Wales does not have a marital property or forced heirship regime to place restrictions on an individual's freedom of disposition.

In the event of a divorce, the dissolution of a civil partnership or a legal separation, the English court has wide discretion to order the distribution of assets between a couple in order to achieve fairness in accordance with the principles of need, contribution and sharing, which may effectively restrict an individual's freedom to deal with his or her assets as he or she chooses. In doing so, following recent case law in this area, the court will generally give effect to a valid marital property agreement entered into by parties to a marriage provided, in all the circumstances, it is fair to do so. This is notwithstanding the fact that under the existing law of England and Wales, marital property agreements are not contractually enforceable.

#### **17 To what extent do individuals have freedom of disposition over their estate on death?**

Under the law of England and Wales, individuals have complete freedom of disposition over their estate. There is no system of forced heirship, nor are there any provisions for clawback of lifetime gifts.

The rules relating to jointly owned property will affect an individual's ability to dispose of such property.

Individuals with specified relationships to a deceased may make a claim for provision or increased provision from his or her estate if they consider they have not been adequately provided for. However, this does not restrict the individual's testamentary freedom.

#### **18 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?**

The rules of succession on intestacy are set out in Part IV of the Administration of Estates Act 1925. In each case, minors inherit at the age of 18 and, until they reach that age or marry or enter into a civil partnership earlier, their share is held on statutory trusts under which the income is either used for their maintenance, education or benefit, or is accumulated.

#### **Intestates leaving a surviving spouse or civil partner**

Since the Inheritance and Trustees' Powers Act 2014 (ITPA 2014) came into force on 1 October 2014, if an individual dies leaving a surviving spouse or civil partner but no issue (broadly, children or grandchildren, etc), the entire residuary estate passes to the surviving spouse or civil partner.

If the same individual leaves issue, the surviving spouse or civil partner takes the deceased's personal chattels, a fixed statutory sum of (currently) £250,000 plus interest from the date of death, and half of the residuary estate of the deceased absolutely. The issue receive the other half of the estate on statutory trusts. The issue inherit on a per stirpital basis, a grandchild taking only if their parent has predeceased the intestate, for example.

If the same individual died before 1 October 2014, leaving a spouse or civil partner but no issue, and was survived by one or more of his or her parents, full siblings or issue of such siblings, the spouse or civil partner would have received the personal chattels, a fixed statutory sum of £450,000 and half of the residuary estate absolutely. The other half passed to the parents of the deceased absolutely or in equal shares

if one or both survived. If the parents had died, the other half passed to the full siblings of the deceased.

#### **Intestates leaving no surviving spouse or civil partner**

If a deceased leaves children or other issue but no surviving spouse or civil partner, his or her issue take his or her residuary estate in equal shares at 18.

If the same individual leaves no issue but is survived by one or both of his or her parents, they take the residuary estate either alone or in equal shares absolutely.

If the same individual leaves no issue or parent, then his or her residuary estate passes to the following people in order of priority:

- full siblings, and if none then;
- half siblings, and if none then;
- grandparents, and if none then;
- uncles and aunts (being full siblings of a parent of the deceased), and if none then;
- uncles and aunts (being half siblings of a parent of the deceased), and if none then;
- bona vacantia, to the Crown, the Duchy of Lancaster or the Duchy of Cornwall.

#### **19 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?**

##### **Adopted children**

Adopted children are treated as the legitimate children of an adopter or adopters and of nobody else. Once they have been adopted, they do not have any rights of inheritance from the estate of their biological parents, other than any to which they became entitled prior to adoption. Before the introduction of ITPA 2014, only interests to which the child had an unconditional entitlement ('vested in possession') would have been preserved. For adoptions made on or after 1 October 2014, an interest of a child in the estate of a deceased biological parent, which is a contingent interest other than one in remainder, will also be preserved. A contingency is a condition that must be fulfilled before the child has an absolute entitlement to the interest. For example, an interest may be contingent on the child attaining the age of 18 years. A contingent interest is in remainder, and thus not preserved by ITPA 2014, if it is subject to the interest of another person. An example would be a gift in a will of a deceased's estate to a person for life and then to the child at 18 years. The child's interest is contingent on reaching 18 years but is in remainder to the above person's life interest and, therefore, not preserved by the new rules.

As a testator has complete testamentary freedom over his or her estate, no child has a right to inherit from a parent, but if a will provides for a legacy to children without expressly naming individuals, adopted children would be entitled to inherit in the same way as biological children.

##### **Illegitimate children**

No distinction is made between legitimate and illegitimate children. This rule applies to wills and trusts made on or after 4 April 1988 and to the intestacy rules where the intestate died on or after 4 April 1988.

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

In England and Wales the law of the place where the property is situated governs the distribution of immovable property. Moveable property is governed by the law of domicile of the individual.

#### **21 What formalities are required for an individual to make a valid will in your jurisdiction?**

In England and Wales, a will must be made in writing and must be signed by the testator, testatrix or by some other person in his or her presence and by his or her direction. This signature must be made or acknowledged by the testator in the presence of two witnesses, who must be present at the same time. Each witness must either sign the will or attest their signature in the presence of the testator or testatrix, but not necessarily in the presence of another witness.

There is no requirement for a will to be dated unless it appoints guardians of a minor. However, if there is doubt as to the date on which a will was executed, evidence may be required to establish it.

If a beneficiary under the will, or their spouse or civil partner, witnesses the will, the legacy to that beneficiary is void.

Formalities are relaxed for wills for servicemen on active service. These may be written in a paybook or even made verbally.

## **22 Are foreign wills recognised in your jurisdiction and how is this achieved?**

Foreign wills are recognised in England and Wales provided that they comply with the law of a country in or of which the testator was domiciled, habitually resident or a national either at the time of the execution of the will or at the date of his or her death, or both.

A grant of probate or grant of representation will usually be required to administer property in England and Wales owned by a deceased person who died domiciled outside the jurisdiction. However, if the deceased was domiciled in a country to which the Colonial Probates Acts 1892 and 1927 apply, and a grant has been issued in that country, an application may be made for the grant to be re-sealed to administer the estate in England and Wales.

## **23 Who has the right to administer an estate?**

The personal representatives (PRs) of the deceased have the right to administer an estate in England and Wales. Where someone has left a valid will, the PRs are called executors and where the deceased died intestate, the PRs are appointed by the court and are called administrators. The latter administer the estate according to the intestacy rules.

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

Where the deceased left a valid will, his or her estate vests in the executors at the date of death. Where a deceased dies intestate, the estate vests in the public trustee until a grant of administration is made by the court at which point the estate vests in the administrators.

The grant of probate or administration (together a grant of representation) enables the PRs to obtain title to the assets of the deceased and to distribute them to his or her heirs.

## **25 Is there a procedure for disappointed heirs and beneficiaries to make a claim against an estate?**

Under the Inheritance (Provision for Family and Dependents) Act 1975, the following categories of individuals can make a claim for reasonable financial provision from the estate of a deceased person if a will or the applicable intestacy rules do not do so:

- present or former spouses and civil partners (provided they have not entered into a subsequent marriage or civil partnership);
- co-habitants, whether same-sex or opposite-sex, who had lived with the deceased for two years prior to their death;
- a child of the deceased or anyone who was treated by the deceased as a child of a family in which the deceased stood in the role of parent; or
- any other person who was being maintained wholly or partly by the deceased immediately before his or her death.

Claims must be made within six months of the grant of representation being taken out but, in relation to deaths after 10 October 2014, there is nothing to prevent an application being made before such a grant is taken out. Claims can only be made if the deceased was domiciled in England and Wales at the time of death.

Alternatively, a person with a potential interest in an estate can bring an action to challenge the validity of a will on the grounds that it was not validly executed, the deceased lacked testamentary capacity at the time of its execution, he or she did not know or approve its contents, that in making it the deceased was subject to undue influence or that the will was forged or there was some other type of fraud involved.

## **Capacity and power of attorney**

### **26 What are the rules for holding and managing the property of a minor in your jurisdiction?**

Under the law of England and Wales, a minor (child under 18) can hold most types of property in their own name, with the exception of legal title to land. Having said that, a minor has no capacity to contract and cannot give a valid receipt. Accordingly, assets left for a minor under a will may be held in bare trusts for them until the age of 18. Often, the terms of a will expressly provide for the interests of minors to be held on trust for them until they reach 18 (or a later age).

If a minor inherits property under the intestacy rules, he or she is entitled to his or her share of an estate on attaining the age of 18 or on an earlier marriage or civil partnership.

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

An individual attains his or her majority at the age of 18 and, therefore, legal capacity to hold and manage a legal interest in land.

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

When someone loses capacity to manage their affairs, either their attorney or, if the individual does not have a validly appointed attorney, a deputy appointed by the Court of Protection, manages their affairs on behalf of the incapacitated.

Since 1 October 2007, it has been possible for someone to appoint an attorney by way of a lasting power of attorney (LPA) at a time at which he or she has full capacity. Prior to 2007, an attorney was appointed by way of an enduring power of attorney (EPA) and EPAs created prior to 1 October 2007 are still valid.

Two types of LPAs exist – a property and financial affairs LPA, under which an attorney can make decisions in relation to someone's property and financial affairs, and a health and welfare LPA, under which attorneys can make decisions in relation to issues such as the medical treatment a person should receive.

A property and financial affairs LPA may be made either to be used only when the donor of the power lacks capacity to make decisions or at any time. Health and welfare LPAs can only be used at a time at which the donor lacks capacity. An LPA must be registered with the Office of the Public Guardian.

Attorneys appointed under an EPA may only deal with decisions relating to the donor's property and financial affairs.

Foreign equivalents of an LPA or the appointment of a deputy are recognised by the court in England and Wales as 'protective measures' if the individual concerned is habitually resident in the other country. However, the court does have the power to refuse to recognise such measures in certain circumstances where it considers that to do so would be unjust, against public policy, against a provision of the law of England and Wales or inconsistent with a measure already taken in England and Wales in relation to the individual.

In relation to an LPA, a donor can specify that the law applicable to the power is that of any country of which he or she is a national, in which he or she was habitually resident or in which he or she has property.

## **Immigration**

### **29 Do foreign nationals require a visa to visit your jurisdiction?**

The requirement for a visa depends upon the nationality of the visitor. Nationals of countries in the European Economic Area and Switzerland do not currently require a visa to come to the UK. It remains to be seen whether this will continue once the UK formally leaves the EU following the result of the referendum on 23 June 2016.

Visa nationals will always require a visa in advance to visit the UK. A visa national is a citizen of a country that is listed in Appendix 2 of Appendix V of the Immigration Rules (this includes countries such as China, Russia, India and the United Arab Emirates).

Non-visa nationals may visit the UK for less than six months without obtaining a visa in advance. Non-visa nationals who wish to visit the UK for more than six months will require a visa. A non-visa national is a citizen of a country that is not listed in Appendix 2 of Appendix V of the



## Update and trends

### Brexit

#### General

The UK's vote to leave the UK on 23 June 2016 is likely to have many implications for individuals coming to, living in and investing in the UK. However, until the terms of the UK's departure are agreed, it is impossible to determine exactly what the impact will be on such individuals.

#### Immigration

Following the UK's vote to leave the EU on 23 June 2016, high-net worth EU nationals who either have been resident in the UK or are considering UK residency by exercising their EU Treaty rights will now have to keep a close eye on developments and how this may impact their UK residency rights.

As at the time of writing, the UK government has not triggered article 50 of the Lisbon Treaty which formally initiates the UK's two-year withdrawal process from the EU. Up until the end of that two-year period, EU nationals are able to continue exercising EU Treaty rights to reside in the UK. However, there is currently much uncertainty surrounding the UK residency rights of EU nationals after the UK formally leaves and to what extent these rights will be protected. Such individuals may wish to safeguard against the current uncertainties by applying at the earliest opportunity to either certify they have acquired permanent residence status or naturalise as a British citizen if appropriate.

#### Changes to the taxation of non-UK domiciled individuals and their wealth-holding structures

##### Measures announced at the Summer Budget 2015 in relation to the tax treatment of UK-resident non-domiciled individuals

At the UK Summer Budget on 8 July 2015, measures were announced to introduce a new test of deemed domicile for the purposes of all taxes: inheritance tax, income tax and capital gains tax. The current proposal is that this will take effect from 6 April 2017 and will apply to non-UK domiciled individuals after they have been resident in the UK for 15 out of the past 20 tax years. It is also proposed that if a non-UK domiciled individual subsequently leaves the UK and spends at least six consecutive tax years outside the UK, he or she will lose his or her deemed domiciled status for tax purposes. For IHT purposes, individuals who leave the UK for over four years will lose their deemed

domicile status but if they return to the UK within six tax years, they may be treated as deemed domiciled from arrival.

Furthermore, additional measures were announced in relation to non-UK domiciled individuals who were born in the UK, with a UK domicile of origin (see question 1). It is currently proposed that, from 6 April 2017, such individuals will be treated as UK-domiciled for all tax purposes on any occasion on which they are resident in the UK, even if under the general law they have acquired and retain a different domicile. A short grace period is proposed for IHT purposes only for individuals who only return to the UK for a short time. Individuals will only be treated as domiciled in the UK for IHT purposes from arrival if they have been resident in the UK in one of the two preceding tax years.

At the time of writing, the proposed details of both measures are under a second consultation. It is anticipated that legislation should be included in the Finance Bill 2017.

#### IHT changes for residential property in structures

Measures were also announced in the UK Summer Budget 2015 to bring all UK residential property held directly or indirectly by foreign domiciled persons into charge for IHT purposes, even where the property is held indirectly through an offshore company, partnership or other vehicle. Under existing rules, a foreign-domiciled individual is liable to IHT on death only on his or her UK situate property. Accordingly, if such property is held through an offshore company, for example, the individual owns shares in the offshore company rather than the underlying UK property. In this case, IHT is not payable in respect of the underlying UK property.

Similarly, if offshore trustees of a trust established by a non-UK domiciled settlor hold UK situate property through an offshore company or other similar vehicle, such property is excluded property and not within the scope of IHT 10-year or exit charges.

Under the new proposals, which are due to come into effect from 6 April 2017, IHT will be charged on the value of UK residential property owned by an underlying offshore company on any occasion which would be a chargeable event for IHT (eg, the death of an individual, a gift of the company shares into trust or a 10-year anniversary of a trust). Details of the proposals and how it is intended they will work are currently under consideration in a public consultation, with legislation anticipated in the Finance Bill 2017.

Immigration Rules (this includes countries such as Australia, Brazil, Singapore and the United States).

### 30 How long can a foreign national spend in your jurisdiction on a visitors' visa?

Generally, a foreign national can spend six months in the UK as a visitor (business or tourist).

### 31 Is there a visa programme targeted specifically at high net worth individuals?

The Tier 1 (Investor) category is aimed at high net worth individuals who are willing to make a substantial financial investment in the UK. The principal requirement is to demonstrate the ability to invest a minimum of £2 million in the UK (once in the UK, the individual must invest their money in UK government bonds, share capital or loan capital in active and trading UK-registered companies (qualifying investments) within three months). Since April 2015, there is now an additional requirement to open an account with a UK regulated bank for the purposes of making the investment in the UK prior to applying for the visa. In addition, since September 2015 an overseas criminal record certificate must be provided for any country the individual has resided in continuously for 12 months or more in the 10 years prior to their visa application.

Unlike the other categories available, there is an exemption for Tier 1 (Investor) applicants from demonstrating English language and maintenance requirements. Additionally, the visa allows the individual (and their dependants) to work or study in the UK with few restrictions.

Please note that the pre-6 November 2014 for this visa category will continue to apply to individuals with a Tier 1 (Investor) Visa granted before that date. One of the key differences under the previous rules is that the minimum value category of qualifying investments was £1 million.

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

Yes. Individuals are entitled to bring dependants (ie, children under 18 years of age, or their husband, wife, civil partner, or unmarried or same-sex partner) with them to the UK. A separate dependant application form must be completed.

Dependants will normally be granted a visa in line with that of the main applicant. Please note that the new requirement to provide an overseas criminal record certificate for the main applicant will equally apply to adult dependants.

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

Yes. In order to obtain indefinite leave to remain (also known as settlement), an applicant must be continuously resident in the UK for a period of two, three or five years (if they have invested £10 million, £5 million or £2 million respectively in the UK). The applicant cannot be outside the UK for more than 180 days in any 12 calendar months in the continuous period of residence.

The applicant must have sufficient English language ability and knowledge of life in the UK in order to apply for settlement, unless they are under 18 or over 65.

The applicant must also be able to show that they have maintained their investment throughout the continuous period of residence and that they meet all the other requirements of the Immigration Rules.

Dependants can apply for settlement at the same time as the main applicant under the five-year continuous residence route. However, for the two-year and three-year routes, only the main applicant is eligible for settlement after the two- or three-year period, but any dependants must still wait five years.

Please note that Tier 1 (Investor) visa holders whose visas were granted before 6 November 2014 will be eligible to apply for UK

settlement under the previous rules. The rules are as summarised above but the minimum investment level (ie, for the five-year route) is £1 million.

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

An applicant may apply for British citizenship 12 months after having been granted settlement. In addition, they must be over 18 years, of sound mind and have the intention to continue living in the UK. They must also satisfy the residential requirements, which means that they must have:

- been resident in the UK for at least five years (the residential qualifying period);
- been present in the UK five years before the date of the application;
- not spent more than 450 days outside the UK during the five-year period;
- not spent more than 90 days outside the UK in the last 12 months of the five-year period; and
- not been in breach of the Immigration Rules at any stage during the five-year period.



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# France

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## Tax

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

The concept of 'residence' determines the French tax authorities' right to tax. It is defined in the same way for all tax purposes (article 4B of the French Tax Code (FTC)). There are four alternative tests for determining whether an individual is treated as a resident for tax purposes:

- the individual's home is in France;
- the individual's primary place of residence is in France;
- the individual performs an (economic) activity in France; or
- the individual has the centre of his or her economic interests in France.

In principle, individuals who are residents of France under article 4A of the FTC are liable to income tax in France in respect of their worldwide income. However, where jurisdictions conflict, the applicable tax treaty determines which country can tax.

The concept of 'domicile' is not used by the FTC. However, the French courts usually find that the law of the deceased's last domicile governs succession (see also question 18). Under the French Civil Code (CC), domicile is the place where a person has his or her habitual residence. The place of origin has no influence on the determination of habitual residence.

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

Residents of France are subject to income tax on their worldwide income, except by virtue of the application of a tax treaty. Non-residents are subject to French income tax on their French source income. Taxable income is as a general rule subject to a progressive tax scale with a marginal tax rate (for 2015) of 45 per cent. A minimum tax rate of 20 per cent applies to non-residents. It is also subject to social contributions, as a general rule for French residents only (at the rate of 15.5 per cent for 2016). Withholding taxes may also be levied depending on the type of income.

A supplementary contribution also applies to an individual's high annual income, at a rate of 3 per cent for the fraction of income between €250,000 and €500,000 for single taxpayers (between €500,000 and €1 million for couples subject to joint taxation) and 4 per cent for the fraction of income over €500,000 for single taxpayers (over €1 million for couples subject to joint taxation). This contribution is assessed on the individual's reference tax income, corresponding to the net annual amount of all income and capital gains, including capital gains on the sale of real estate and exceptional income. This contribution applies to both French residents and non-residents whose French reference tax income exceeds the above thresholds.

The tax treatment differs according to the type of income.

### Wages and salaries

These are subject to a withholding tax when paid by non-resident individuals. Professional expenses amounting to 10 per cent of the wages received (limited to €12,700 for 2015) are deductible for the determination of the net income subject to the progressive tax rate for residents (and for non-residents when the annual amount received exceeds €41,909 for 2015). Social contributions (at the rate of 8.2 per cent for 2016) are withheld by the employers.

### Real estate income

This is taxed on the progressive tax scale applied to resident taxpayers (a minimum rate of 20 per cent applies to non-residents). Since 1 January 2012, non-resident individuals' rental income from their real property in France is also subject to social contributions at the rate of 15.5 per cent. However, an infraction procedure has been initiated against this for EEA residents on the ground that social security contributions cannot be charged to individuals who are not affiliated to the French social security system. The rule providing that non-resident taxpayers were subject to social contributions on rental income and real estate capital gains was therefore repealed for the years which were not statute barred (ie, 2013; 2014 and 2015). Nevertheless, from 1 January 2016, the budgetary allocation of the social contributions has been modified. From now on, social contributions no longer finance the French social security system, the consequence of which is that social contributions may now be charged to non-resident taxpayers.

### Investment income

This is, as a general rule, subject to the progressive tax scale for residents. Social contributions are only due by French residents; royalties are, however, subject to a flat rate of 16 per cent under certain conditions. Social contributions are due. Dividends paid to French residents are now subject to a 21 per cent withholding tax, which is considered a prepayment of the income tax due by application of the progressive tax scale.

Withholding taxes are assessed on the income of non-resident taxpayers at the following rates:

- dividends: 30 per cent, or 21 per cent if paid to an individual resident in a member state of the European Economic Area (EEA);
- royalties: 33.33 per cent;
- interest benefit from an exemption under certain conditions; and
- 75 per cent when dividends, royalties or interest are paid to an individual resident in a 'non-cooperative state or territory'.

Tax treaties usually provide for exemptions or lower rates.

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

As a general rule, French-resident individuals are taxed on realised capital gains upon the sale of real estate property (regardless of where the property is located) at the global rate of 34.5 per cent for 2015 (19 per cent plus social contributions at the rate of 15.5 per cent since 1 January 2016, see our explanation in the real estate income paragraph in question 2).

Capital gains on the sale of the main residence are, however, tax-exempt. Rebates apply depending on the ownership period preceding the sale of the real estate. As a consequence, capital gains are fully exempted from income tax (at the rate of 19 per cent) after 22 years of ownership and social contributions (at the rate of 15.5 per cent) are fully exempted after 30 years of ownership.

Capital gains upon the sale of shares of real estate companies realised by French tax residents are taxable at different rates depending on the form of the company. Assuming the company sold is a pass through entity, capital gains are subject to a flat rate of income tax of 19 per cent plus social security contributions. Capital gains upon the sale of real estate companies which are subject to corporate tax are taxable as if they were business companies (see below).

Non-resident individuals' capital gains on the sale of real estate are only taxed in France when the property transferred is situated in France. Capital gains realised on the sale of shares of companies directly or indirectly owning French properties (having a market value which exceeds the market value of the other assets they own) are also taxable in France. Taxable capital gains are determined on the same basis as for a French resident. As opposed to the tax regime applying to resident taxpayers, they are always subject to a withholding tax of 19 per cent representing income tax and social contributions at the rate of 15.50 per cent (since 1 January 2016). Tax treaties do not provide for exemptions any longer when the French real estate is sold. However some treaties do not allow France to tax the sale of shares of companies owning directly or indirectly French real estate under certain conditions.

From 1 January 2013 an additional tax varying from 2 per cent to 6 per cent applies when the taxable capital gain on French real estate and shares of companies owning directly or indirectly real properties exceeds €50,000.

Realised capital gains from the sale of securities or shares by a French resident are subject to the progressive tax scale with a marginal rate of 45 per cent. Social contributions at the rate of 15.5 per cent are also due.

Rebates apply depending on the ownership period preceding the sale amounting to 50 per cent if the shares have been held for more than two years and less than eight years and to 65 per cent assuming the shares have been held for more than eight years.

Unrealised capital gains can, however, be taxable under the 'exit tax'. We are convinced that the exit tax does not comply with the constitutional and European fundamental principles.

Finally, unless a tax treaty provides otherwise, a non-resident individual's capital gains from the sale of securities or shares are taxed only if his or her participation, together with the participations of his or her spouse, ascendants (that is, those from whom a person is descended, for example, parents and grandparents) and descendants exceeds 25 per cent of the shareholding in a resident company subject to corporate income tax at any time during the previous five years. At present, a flat tax rate of 45 per cent applies.

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

Liability to French gift and inheritance taxes is determined by the donor's and donee's residence (or the deceased and heir's residence), as well as the location of the assets transferred.

When the donor (or deceased) is a resident of France or when the donee (or heir) has been so for at least six of the preceding 10 years, all moveable and real property (wherever situated) transferred without valuable consideration is liable to tax in France.

When the donor and the donee are both resident outside of France, only moveable and real property situated in France is liable to French gift or inheritance taxes in these circumstances.

Tax treaties may modify the above rules. As a general rule, gift taxes apply to the beneficiary's net entitlement, after applying tax-free allowances (see below) and deducting liabilities under certain strict conditions.

#### Allowances

The amounts that can be transferred free from inheritance and gift tax depend on the transferor's relationship with the beneficiary. The allowances for 2016 are as follows:

- parents and children in the direct line: up to €100,000 for each 15-year period;
- brothers and sisters: up to €15,932 for each 15-year period;
- nephews and nieces: up to €7,967 for each 15-year period;
- lifetime gifts made to a spouse or partner: up to €80,724 for each 15-year period;
- lifetime gifts made to grandchildren: up to €31,865 for each 15-year period;
- lifetime gifts made to great-grandchildren: up to €5,310 for each 15-year period;
- lifetime gifts made to disabled people: up to €159,325 for each 15-year period; and
- bequests made to other beneficiaries: up to €1,594.

#### Rates

Gift tax rates do not depend on the beneficiary's wealth. Rates vary according to the family relationship between the transferor and the beneficiary, with it being specified that reduced rates can apply to gifts depending on the transferor's age.

The gift rates for 2016 are as follows:

- transfers to parents and children in direct line are taxable at progressive rates varying from 5 per cent (under €8,072) to 45 per cent (over €805,677);
- transfers by lifetime gift to a surviving spouse or partner of a PACS (civil union) in the case of an inter vivos gift are also taxable at progressive rates varying from 5 per cent (under €8,072) to 45 per cent (over €1,805,677);
- transfers to brothers and sisters are taxable (when the amount transferred is over €15,932) at the following rates: 35 per cent up to €24,430 and 45 per cent over €24,430;
- transfers to fourth-degree relatives are taxable at the rate of 55 per cent; and
- transfers to relatives greater than fourth degree and other beneficiaries are taxable at the rate of 60 per cent.

#### Exemptions

From 22 August 2007, cash gifts of up to €31,865 to children, grandchildren, great-grandchildren (or nephews and nieces, in the absence of direct descendants) are exempt from gift tax if, at the time of the donation:

- the donor is under 80 years old (for gifts made since 31 July 2011); and
- the beneficiaries are over 18 years old or emancipated (that is, a child over 16 years old that has acquired legal capacity from a judge).

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

Inheritance taxes are also calculated on the beneficiary's net entitlement after applying the same tax-free allowances as for gift taxes (see question 4) and deducting liabilities.

#### Rates

The inheritance tax rates do not depend on the beneficiary's wealth but on the amount transferred by death, and vary according to the family relationship between the transferor and the beneficiary:

- no inheritance tax is payable on transfers to a surviving spouse or partner of a PACS in the case of succession; and
- in all other situations, inheritance tax applies at the same rates as for gift taxes.

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

##### Inheritance and gift taxes

In principle, France levies inheritance and gift tax upon transfer without consideration of all real property (wherever situated) owned by French residents. Tax treaties may, however, provide otherwise. France always levies inheritance and gift taxes on non-resident owners' real property situated in France, even if the transferor and the beneficiary are both resident outside France. The same treatment also applies to the transfer of shares in foreign companies whose assets are mainly composed, directly or indirectly, of real property located in France.

The same rates and rules apply irrespective of whether the beneficiary is resident or non-resident in France.

##### Registration fee

When real property located in France is transferred by gift, a registration fee must be paid in addition to gift tax.

##### Transfer duties and notaries' fees

The purchase of real estate located in France is subject to transfer duties and notaries' fees at a global rate of approximately 6.2 per cent.

The purchase of shares in a company (French or foreign) that directly or indirectly owns French real property with a value representing more than 50 per cent of its total French assets is also subject to transfer duties at a rate of 5 per cent (applying to the market value of the

property after deduction of the sole debts incurred for the acquisition of the property).

The above taxes apply irrespective of whether the buyer is a French resident or not.

#### Local property tax

The tax base and rates of local property taxes are set up by local authorities and vary significantly according to the location and size of the property.

Any owner of real property, whether an individual or a corporate entity, must pay local property tax on any developed or undeveloped property in the municipality where the property is located.

#### Wealth tax

Resident taxpayers are liable to wealth tax on their worldwide assets whereas non-resident taxpayers are only liable to wealth tax on their French assets. In particular, non-residents are subject to wealth tax on their capital assets located in France, with the exception of financial investments made in France (eg, shares, securities, bonds, deposits). Most treaties impose French tax on property situated in France.

Wealth tax is payable only by individuals whose private wealth, after the deduction of debts, exceeds a certain limit on 1 January each year (€1.3 million for 2015).

For 2016, individuals liable to wealth tax will be subject to a flat rate applicable to their whole estate. The rate will depend on the value of their net assets:

- up to €800,000: zero per cent;
- €800,000 to €1,300,000: 0.5 per cent;
- €1,300,001 to €2,570,000: 0.7 per cent;
- €2,570,001 to €5 million: 1 per cent;
- €5,000,001 to €10 million: 1.25 per cent; and
- more than €10,000,001: 1.5 per cent.

#### 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?

See question 8.

In addition to VAT which may be due on imported and exported assets (except if they are second-hand assets), custom duties may also apply depending on the nature of the assets when they are imported from or exported to states that are not EU members

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

##### VAT

French legislation has applied the VAT Sixth Community Directive since 1 January 1979. Article 256, I of the FTC provides that the sale of goods, the delivery of assets and the supply of services for payment by a taxpayer are subject to VAT. This extremely broad definition contains a certain number of exceptions, which are set out in the FTC. However, some exempt transactions may be rendered taxable if the appropriate elections are made.

The standard rate is 20 per cent. A reduced VAT rate of 10 per cent applies to certain goods and services (eg, agricultural products, non-reimbursable medication, books) and a reduced VAT rate of 5.5 per cent applies to basic necessities such as food products. Nevertheless, a number of specific rates should be added to this list (eg, newspapers) as well as various specific rates applicable in Corsica and the overseas territories.

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

Up until the adoption of the Law of 29 July 2011 (the New Law), France had no tax legislation dealing with the tax treatment of trusts in respect of gift and inheritance taxes as well as wealth tax. As a consequence, irrevocable and discretionary trusts benefited from a very favourable tax treatment in France.

However, to counter the exploitation of what were perceived as loopholes, the New Law introduced a comprehensive gift, inheritance and wealth tax regime for the taxation of trusts. The same regime applies to all trusts, regardless of their characteristics.

The New Law is particularly difficult to analyse as it does not follow the concepts generally applicable in common law jurisdictions and tries to tax the trust's assets as if no trust had been set up. The New Law only affects the tax treatment of trust's assets. It does not interfere with the French and/or foreign legal treatment of the trust (notably in matters of successions and estate devolutions), which remains unchanged.

#### Inheritance or gift tax

The New Law introduced a fiction under which upon the death of the original settlor, beneficiaries (appointed by the trust settlement or by default by the trustee) become deemed settlor. This is because French law do not allow for a trusts' assets to be under the ownership of a legal owner different from the economic owner.

The beneficiaries are liable for the payment of gift or inheritance tax, which is assessed on the value of the trust assets at the time of either the transfer to beneficiaries or the death of the original settlor or beneficiary deemed settlor. The tax rate is determined in accordance with the relationship between the original settlor (or deemed settlor) and the beneficiary (see question 4).

If it is not possible to ascertain the shares of the beneficiaries in the trust fund on the death of the settlor, the trustee and the beneficiaries are jointly liable for the payment of tax, at the rate of:

- 45 per cent, if the class of beneficiaries only contains descendants of the settlor; or
- 60 per cent, if the class of beneficiaries contains non-descendants.

The 60 per cent rate will always apply if the trust either:

- is governed by the law of other non-cooperative states or territories; or
- was settled by a French resident after 11 May 2011.

#### Wealth tax

Since 1 January 2012, the original settlor (or the beneficiaries treated as 'deemed settlors' after the original settlor's death) must pay French wealth tax on assets held in any kind of trust (including an irrevocable discretionary trust) if either the settlor (or the beneficiary 'deemed settlor') is a French resident, or the trust fund contains taxable French assets.

After the death of the settlor, the beneficiaries who become 'deemed settlors' are subject to wealth tax.

A specific tax applicable to trusts is also being introduced, at a rate of 1.5 per cent. A catch-all provision provides that the trustee is liable for this tax jointly with the settlor and the beneficiaries if either the trust assets are not included in the settlor's or the beneficiaries' estates for wealth tax purposes, or if the trustee failed to comply with its French reporting obligations.

#### 10 How are charities taxed in your jurisdiction?

##### Tax exemption for qualifying purposes

As a general rule, a favourable tax regime applies to public utility foundations and under certain conditions to 'associations'. Article 206-5 of the FTC provides that public utility foundations and associations benefit from a corporate tax exemption in respect of their income deriving from non-profit activities. Reduced corporate tax rates also apply, under certain conditions, on other income derived from 'business activities'.

##### Donations from individuals:

Individuals making donations to public utility foundations and foundations under the aegis of a public utility foundation can deduct 60 per cent of the contribution from their French income tax, up to 20 per cent of the donor's taxable income (article 200-1 of the FTC). A gift or inheritance tax exemption is also granted under certain conditions.

#### Trusts and foundations

##### 11 Does your jurisdiction recognise trusts?

The concept of a trust is alien to the CC, which makes no distinction between legal and equitable ownership. Therefore, creating a trust under French law is impossible. The French *fiducie*, adopted in February 2007, is a very different institution and cannot be seen as an alternative structure to the common law trust, either conceptually or functionally.

Although it is not possible to create a trust under French law, French courts recognise the effects in France of common law trusts, provided they comply with the mandatory rules of French law.

## 12 Does your jurisdiction recognise private foundations?

Foundations cannot be used in France for estate planning purposes. Public utility foundations are always controlled by a representative of the state. They only acquire legal personality and the right to receive gifts or legacies upon special authorisation, which can only be granted under very strict conditions and provided that the only purpose of the foundation is to promote public welfare. Foundations can only be set up for cultural, scientific or charitable purposes and cannot be considered as a substitute for trusts (except, to a limited extent, in the case of charitable trusts).

## Same-sex marriages and civil unions

### 13 Does your jurisdiction have any form of legally recognised same-sex relationship?

A same-sex couple as well as two persons of the opposite sex can conclude a contract to organise their life in common (PACS). They are not treated as spouses for succession purposes, but they are fully exempt from inheritance tax under certain conditions.

Since 17 May 2013 a marriage can be contracted by two persons of the same sex pursuant to article 143 of the CC. Married couples can choose their matrimonial regime by marriage contract before getting married, which they may change during the marriage.

See question 16.

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

See question 13.

## Succession

### 15 What property constitutes an individual's estate for succession purposes? French civil law makes no distinction between legal and equitable ownership.

As already explained, French civil law makes no distinction between legal and equitable ownership.

However, under French law, ownership can be divided into two distinct elements: usufruct and bare ownership. Article 578 of the CC defines usufruct as the right to enjoy property owned by another as if one were the beneficial owner, but subject to a duty to conserve its substance. Although a usufruct that allows a person to use the property and to receive any income thereon bears some resemblance to the common law concept of 'life interest', the two concepts are significantly different.

A usufruct comes to an end with the death of the usufructuary, as a result of the expiry of the period for which it was granted or by reuniting in the same person the two qualities of usufructuary and bare owner. A usufruct may be created by operation of law (eg, the rights of a surviving spouse) or by gift or sale. Although generally granted for life, usufruct may also be for a fixed term.

### 16 To what extent do individuals have freedom of disposition over their estate during their lifetime?

Lifetime freedom of disposition can be restricted under certain circumstances due to applicable ownership rules or family relationships.

## Co-ownership

The Law of 10 July 1965 defines all the rights and obligations of co-owners concerning estate administration. A co-ownership agreement must be signed by all co-owners. Each co-owner can dispose of his or her private part of the property and, in principle, has the right to sell, give and bequeath it (unless prohibited by the co-ownership agreement).

## Matrimonial regimes

Spouses can enter into a contract before marriage to regulate their property rights but they may also change it during marriage. When a spouse transfers property, it is essential to refer to the marriage contract, which may contain clauses affecting the division of assets held as common property.

If a couple marries without a contract, spouses automatically fall under the regime of 'community reduced to acquisitions'. Moveable and real property owned separately at the time of the marriage, or subsequently acquired by gift or inheritance, remain the sole property of the original owner. Common property is then limited to the assets acquired by the couple during the marriage. Both spouses hold a 50 per cent interest in the common property and can dispose of their share in the common property by will.

If the spouses choose not to apply the community reduced to acquisitions regime, the CC provides two main alternatives:

- the separation of property: each spouse retains the administration of his or her present or future property and has the free enjoyment and disposition of both capital and income; therefore, each spouse can dispose of all his or her own property by will; and
- the universal community: all of the assets acquired by the spouses before or after the marriage are common property. Spouses hold together the interest in the assets composing the common property and can, therefore, dispose of his or her share in the common property by will. Upon the death of one of the spouses, the surviving spouse becomes the sole owner of the assets, as from their acquisition.

A person who lived with the deceased without being married to them (such as a common law spouse or a civil partner) is not acknowledged by the intestate succession rules and is treated as a third party.

## Forced heirship rules

There is a forced heirship regime. Dispositions of property made in contravention of forced heirship rules are valid, but they can be reduced to protect the hereditary reserve (see question 17). Only spoiled heirs may request for the application of the forced heirship rules.

### 17 To what extent do individuals have freedom of disposition over their estate on death?

#### Forced heirship rules

Under the French forced heirship rules, a certain portion of the estate (hereditary reserve) cannot be disposed of by lifetime gift or will other than to descendants and, under certain conditions, to the surviving spouse.

The remaining portion of the estate that can be freely disposed of depends on the number of children the deceased had:

- one child: half;
- two children: one-third; and
- three children or more: one-quarter.

If the deceased does not leave descendants, the surviving spouse is entitled to 25 per cent of the estate, provided that no divorce proceeding is pending.

#### Other restrictions

Two other restrictions to the freedom of disposition on death may apply:

- the prohibition of covenants on future inheritance: any agreement that purports to allocate assets falling within a future estate to the future heirs is prohibited unless it is made according to the provisions of the CC; and
- the prohibition of 'substitutions': any provision under which a donee or an heir is obliged to conserve property and transfer it to a third party is prohibited, except in the cases expressly allowed by the law.

### 18 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?

#### Applicable law

As from 17 August 2015, a new EU Regulation has considerably modified the rules on the jurisdiction and the applicable law governing matters of successions in France.

Under the new Regulation, the law applicable to the succession as a whole (immovable and moveable succession) shall be the law of the country in which the deceased had his habitual residence at the time of the death.



The Regulation however allows a person to choose the law of the country whose nationality he possesses at the time of making the choice, or at the time of death, as the law to govern his succession.

#### Devolution of intestate estates under French law

In the absence of a valid will, article 731 of the CC establishes five hierarchical categories of heirs:

- children or their descendants inherit from their parents, grandparents and other ascendants. They inherit equal, per capita shares, without any distinction on the basis of sex or primogeniture and irrespective of whether they are legitimate children from different marriages, illegitimate children or illegitimate children of adulterous origin (where one parent is married to a third person at the time of conception) with the exception in the last case of children born in the marriage during which they were conceived. The presence of such descendants excludes all other relatives. Moreover, descendants of a predeceased child are allowed to inherit by 'representation';
- parents and brothers and sisters share the estate if the deceased had no living descendants in accordance with the following principles:
- if there are no living parents, the brothers and sisters (including half-brothers and sisters), or their surviving descendants are entitled to the whole estate. All other relatives are excluded;
- if there is one surviving parent, the brothers and sisters share three-quarters of the estate between them and the other quarter goes to the surviving parent;
- if both parents are living, the brothers and sisters receive half of the estate and the remaining half is shared equally between the parents; or
- if both parents are living but there are no brothers and sisters, the parents receive the entire estate (half for the mother and half for the father);
- grandparents, etc: if there are no living parents or brothers and sisters or their descendants, the surviving grandparents or other ascendants in each line (the father's family is one line, the mother's family is another) share half the estate between them. If there are no ascendants in one line the estate devolves entirely to the ascendants in the other line;
- ordinary collateral relations (cousins, uncles, aunts): if there are no descendants, ascendants, brothers or sisters on either side of the family, the nearest relations in each family line share half the estate between them on a per capita basis. However, collateral relatives do not inherit beyond the sixth degree; if there are neither any closer relatives nor a surviving spouse (see below), the state will be entitled by the court to take over the estate; and
- the surviving spouse has varying rights depending on whether the deceased leaves descendants:
  - if there are only descendants from both spouses, the surviving spouse can elect to receive either the whole of the estate in usufruct or a quarter in full ownership;
  - if the deceased leaves descendants who are not also the descendants of the surviving spouse, the surviving spouse receives a quarter of the estate in full ownership without the option to receive the usufruct;
  - in the absence of descendants, a distinction should be made depending on whether the deceased leaves either of his or her parents. The surviving spouse receives half of the estate if both the parents survive and three-quarters if only one of the deceased's parent survives; and
  - finally, in the absence of descendants and surviving parents, the surviving spouse is entitled to the whole of the estate even if siblings survive.

Moreover, the spouse can claim, under certain conditions, a life right to inhabit the principal accommodation that is part of the estate (article 764 CC). It should also be noted that a person who lived with the deceased without being married to them (including those having the status of a common law spouse or PACS), is not acknowledged by the intestate succession rules and is treated as a third party.

People who have concluded a PACS are not treated as spouses for succession purposes (see above), but they are fully exempt from inheritance tax (see question 5).

#### 19 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?

All children are treated equally (see question 18).

#### 20 What law governs the distribution of an individual's estate and does this depend on the type of property within it?

As explained in question 18, the law applicable to the succession as a whole (immoveable and movable succession) shall be either the law of the country in which the deceased had his habitual residence at the time of the death, or the law of the country of his citizenship.

#### 21 What formalities are required for an individual to make a valid will in your jurisdiction?

There are two main forms of wills under French law:

- holographic will: this must be handwritten by the testator but does not need to be witnessed. This is the most common type of will; and
- authentic will: this must be made in the presence of a notary and two witnesses.

#### 22 Are foreign wills recognised in your jurisdiction and how is this achieved?

Wills valid in another jurisdiction are recognised as valid in France. French law also recognises the effect of a foreign grant of representation.

#### 23 Who has the right to administer an estate?

Either the heirs collectively or a representative designated by the will administer the estate. The role of the executor is different from that in many countries. His or her powers are only supervisory and his or her role lasts for up to two years.

#### 24 How does title to a deceased's assets pass to the heirs and successors? What are the rules for administration of the estate?

Heirs are deemed to inherit property from a deceased person immediately upon death without a common law estate administration (thus the distinction between common law 'probate' and civil law 'succession').

#### Establishing title and gathering in assets

Under French law, there is no procedure to prove a will. The nearest equivalent to a grant of representation is an affidavit drafted by a notary. It is prepared by the person who acts in the estate and certifies the persons who are entitled to inherit from it.

#### Procedure for paying taxes

Inheritance tax is imposed on the recipient. Any other transfer by reason of death is subject to tax, payable by the heirs, on condition that they accept the property. The heirs must pay the inheritance tax within six months of the death if the deceased was a French resident and within one year if he or she was a non-French resident.

#### Distributing the estate

The concept of personal representatives does not exist in French law. It is therefore necessary to have arrangements to vest the deceased's property in the beneficiaries, which will depend on whether the deceased died intestate or left a will:

- in the case of intestacy, French law determines the persons who are entitled to inherit, namely the heirs. As a general rule, a share of the deceased person's estate is attributed to each heir on acceptance of the inheritance, without the requirement for any further action (see question 16); and
- in the case of a will, the testator decides to allocate, by inter vivos gift or legacy, a part of his or her estate to the person he or she chooses, provided that this complies with the forced heirship rules (see question 17).

#### 25 Is there a procedure for disappointed heirs and beneficiaries to make a claim against an estate?

Heirs can challenge a will if the forced heirship rights have not been respected.



Only reserved heirs (ie, those entitled under the forced heirship regime) can bring a court action to challenge gifts made by the deceased during his or her life that harm their heirship rights. The reserved heirs must act within five years of the opening of the succession.

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#### Capacity and power of attorney

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

Under French law a minor (that is, under the age of 18) can own assets. Legal administration is, however, attributed either to parents or to a guardian in certain circumstances.

When an heir is a minor, only his or her parents can accept any inheritance on his or her behalf. Until the age of 16, an heir's parents represent him or her and act for him or her.

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

See question 26.

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

When a person loses capacity, the law organises his or her protection. Different regimes apply depending on the degree of incapacity. In some cases where the person is of totally unsound mind he or she must be represented by another person. In other cases he or she will only be advised or supervised.

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#### Immigration

##### 29 Do foreign nationals require a visa to visit your jurisdiction?

In principle, foreign nationals entering and staying on French territory must be in possession of a valid entry and stay visa, unless exempt from this requirement. Visa exemption depends on the individual's nationality, the possession of a residence permit for France or a Schengen state, the duration of the stay and where on French territory the individual intends to stay.

As a general rule, only nationals of member states of the European Union and the European Economic Area, Andorra and Monaco are exempt from entry and long-stay visa requirements.

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##### 30 How long can a foreign national spend in your jurisdiction on a visitors' visa?

A short stay is a stay in the Schengen Area lasting less than 90 days or a succession of stays totalling less than 90 days in any period of six months. For short stays, European regulations specify the list of countries whose nationals are exempt from visa requirements to enter the Schengen Area.

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##### 31 Is there a visa programme targeted specifically at high net worth individuals?

No.

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

Not applicable.

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

Not applicable.

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

Not applicable.

## TIRARD, NAUDIN

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# Germany

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## Tax

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

Tax liability in Germany is determined by the concept of residence. An individual is a German resident if he or she has either a permanent home or a habitual abode in Germany. Residence is assessed using objective criteria. The resident individual's worldwide income and assets are subject to:

- income tax (see questions 2 and 3); and
- inheritance tax (IHT) and gift tax (see questions 4 and 5).

The concept of domicile, however, is not recognised in Germany.

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

An individual's income is subject to income tax. Income tax covers income from seven sources:

- income from agriculture or forestry;
- income from trade or business;
- income from self-employment;
- income from employment (salaries and wages);
- income from capital investments;
- income from rent, especially real property or groups of assets; and
- other items of income, for example income from leases of moveable assets.

Income is generally taxed at a progressive tax rate, ranging from 14 to 45 per cent. In addition, a solidarity surcharge of 5.5 per cent of the tax due is levied, which is payable to finance German reunification.

Income from capital investments is subject to withholding tax at a flat rate of 25 per cent plus the solidarity surcharge (a total of 26.375 per cent plus church tax, if any).

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

An individual's capital gains are subject to income tax (see question 2).

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

Lifetime gifts are taxable in accordance with transfers on death under the German Inheritance and Gift Tax Act (see question 5).

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

Each beneficiary is liable for IHT or gift tax on the value of his or her share of the estate received, regardless of his or her personal wealth. The tax rates range from 7 to 50 per cent, depending on the relationship between the transferor and the beneficiary, and the value of the share of the estate received. Spouses and descendants pay IHT and gift tax at a rate of 7 to 30 per cent. Transfers between most other relatives are taxed at a rate of 15 to 43 per cent. Between unrelated persons, the applicable tax rate is 30 or 50 per cent (for more than €6 million).

The following tax-free allowances apply if either the transferor or the beneficiary is a resident:

- spouses receive a personal allowance of €500,000 and a maintenance allowance of up to a maximum of €256,000; and
- descendants receive a personal allowance of €400,000 and an age-dependent maintenance allowance of up to €52,000.

According to a recent ruling of the European Court of Justice the same tax-free allowances have to apply for the calculation of gift tax if neither the transferor nor the beneficiary is a German resident but citizen of a member state of the EU.

In addition, there is no IHT or gift tax on a lifetime transfer of the family home to a spouse and on an equalisation of the gains accrued during the course of a marriage, where the statutory matrimonial property regime of the community of surplus (as provided for by the German matrimonial regime or a similar foreign regime) applies.

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

A transfer tax with differing regional rates ranging from 3.5 to 6.5 per cent applies to:

- the acquisition of real property; and
- the acquisition of a substantial shareholding (at least 95 per cent) in a company holding real property.

In addition, an annual property tax ranging from 1 to 4 per cent may be due on the value of real property (on the basis of an assessed uniform value that is often less than the fair value of the property) at the discretion of the relevant local authority. Though the assessed uniform value is quite low, the property tax is becoming more and more significant because of continuously rising rates of assessment.

Income from real property is subject to income tax at the standard rates (see question 2).

### 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?

The import of assets to Germany may trigger VAT. There are different rules for transactions within the European Union and transactions to or from non-EU states.

The import of goods for personal use and enjoyment from non-EU states by an individual into Germany triggers import turnover tax. The import turnover tax rate equals the VAT rates of 19 per cent or 7 per cent and has to be paid to the customs authority. The import turnover tax cannot be refunded as input tax if the imported assets are not used for business but for personal use and enjoyment. The export of such goods to countries outside the EU is generally VAT-tax-free, as the other state, in accordance with the German VAT-rules, levies an import turnover tax on the goods imported.

In contrast, the import of assets for personal use and enjoyment from EU member states by an individual does not trigger German VAT as the other state, in accordance with the German VAT-rules, levies VAT tax on the goods exported. Correspondingly, Germany levies VAT on the goods exported for personal use and enjoyment into EU member states.

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

Wealth tax has not been levied in Germany since 1997 due to it being declared unconstitutional by the German Federal Constitutional Court.

VAT applies to the net turnover of the entrepreneur at a tax rate of 19 per cent or 7 per cent (for certain tax-privileged turnover, eg, food).

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

Trusts, domestic as well as foreign, are not recognised in Germany (see question 11). However, the following can trigger IHT and gift tax:

- foreign trusts created by residents;
- the transfer of assets located in Germany to a trust; and
- a distribution to beneficiaries during the trust period or on the trust's dissolution if the beneficiary is a German resident or as far as assets located in Germany are distributed.

German corporation tax can apply to:

- income received by a foreign trust from German sources; and
- the worldwide income of a foreign trust if its place of management is in Germany and if certain other conditions are met.

Income received by a foreign trust can be attributed to the settlor or the beneficiaries if they are German residents.

Instead of trusts, corporations, fiscally transparent partnerships and foundations (see questions 10 and 12) are used as asset-holding vehicles in Germany.

Corporations and non-charitable foundations are subject to corporation tax at a tax rate of 15 per cent plus solidarity surcharge of 5.5 per cent of the tax. An additional trade tax of about 15 per cent is due for all corporations. Foundations are subject to trade tax only to the extent that they are engaged in trade or business. Partnerships are treated as fiscally transparent; the income is attributed to the partners according to their interest in the partnership and subject to income tax at their level. The partnership itself may be subject to trade tax; the partners will receive a tax credit for their personal income tax for any trade tax levied at the partnership's level. IHT or gift tax is levied if a non-charitable foundation is created or endowed with assets.

### 10 How are charities taxed in your jurisdiction?

Charities are tax-privileged in Germany. Recognition as a charitable foundation or corporation requires that the charity's activities be dedicated to the altruistic advancement of the general public in material, spiritual or moral respects. These purposes must be pursued altruistically, exclusively and directly. The formation of a charity does not trigger inheritance or gift tax, nor does it trigger a transfer tax if real property is transferred gratuitously to the charity. A charity is exempt from almost every current form of taxation, especially corporate tax and trade tax.

Special rules apply for charitable foundations: for example, a charitable foundation may use one-third of its income for the maintenance of the founder and his or her family. In addition, an endowment of up to €1 million made to increase the capital stock of the foundation may be deducted from the assessment basis for income tax purposes, in addition to the deductions that can be made for gifts to other charities.

## Trusts and foundations

### 11 Does your jurisdiction recognise trusts?

Trusts, domestic as well as foreign, are not recognised in Germany, which has not ratified the HCCH Convention on the Law Applicable to Trusts and on their Recognition 1985.

### 12 Does your jurisdiction recognise private foundations?

German civil law provides for the creation of private foundations, which can be established as a corporate body for any legal purpose. A family foundation can also be set up for the benefit of the settlor and his or her family. The foundation's directors are bound to the foundation's statutes as provided by the settlor. A private foundation resident in Germany is subject to supervision by a local authority under the applicable law of the respective federal state where the foundation's registered seat is. However, such supervision is very limited. Foreign private foundations are recognised as well, provided the structure is comparable to a foundation as provided for in German civil law.

## Same-sex marriages and civil unions

### 13 Does your jurisdiction have any form of legally recognised same-sex relationship?

Since 1 August 2001, same-sex couples can enter into a registered civil partnership. A civil partnership is a recognised form of legal relationship similar to marriage, and provides most of the rights of a married couple. The requirements for a registration are:

- both partners are of the same sex;
- both are at least 18 years old;
- neither of them has entered into another existing civil partnership or marriage; and
- the partners are neither related to each other in the direct ascending line nor siblings.

Following several rulings of the Federal Constitutional Court, registered partnerships are now treated equally to marriages for tax purposes as well as successions (but not with regard to the rules concerning the adoption of children).

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

A civil partnership is only recognised for same-sex couples and marriage only for heterosexual couples. Other legal relationships for couples do not exist.

## Succession

### 15 What property constitutes an individual's estate for succession purposes?

For succession purposes, an individual's estate is constituted by his or her property as a whole (universal succession). Legal ownership determines whether an asset belongs to the estate. Debts and other liabilities, as well as the individual's interest, for example, in the co-ownership of an asset, are part of the estate to the extent the individual was their legal owner.

### 16 To what extent do individuals have freedom of disposition over their estate during their lifetime?

Generally, an individual can dispose of his or her estate during his or her lifetime without restrictions.

However, there are narrow exemptions from this rule: a spouse may enter into a contract on his or her property as a whole or on household articles only if the other spouse agrees to the contract.

In addition, an unsatisfied creditor may reclaim property:

- within 10 years if the property was disposed of in order to harm the creditor's interest;
- within four years if the property was gifted to a non-related person; or
- within two years if the property was transferred to a related person in circumvention of the creditor.

### 17 To what extent do individuals have freedom of disposition over their estate on death?

Generally, individuals can dispose freely of their estate by will or by a contract of succession. Thereby, an individual can:

- choose his or her heirs and provide what share each heir receives; or
- entitle a person to a legacy without making that person an heir. This legacy claim can be for an amount of money, a share of the deceased's estate, an item or anything else.

However, if spouses have entered into a contract of succession or into a joint will and one of them dies, the surviving spouse may not rescind the contract or the will to change dispositions unless the changes correspond to the intention the spouses have originally agreed in the contract or the will.

There is a forced heirship regime, under which the following categories of relatives are entitled to make a claim for a compulsory share of the deceased's estate if they are excluded from the testator's will or if the share granted to them is less than their compulsory share:

- descendants;
- spouse;

- civil partner; and
- parents.

A relative's compulsory share under a will generally amounts to 50 per cent of the value of that relative's share on intestacy. It is a monetary claim and not a claim for a share of the estate.

If the deceased is not survived by any of these individuals, he or she can freely distribute his or her whole estate.

#### **18 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?**

On intestacy, the order of succession is as follows (each of the following categories precludes the subsequent heirs from receiving a share of the deceased's estate):

- children of the deceased and, subordinated, their descendants;
- parents of the deceased and, subordinated, their descendants;
- grandparents of the deceased and, subordinated, their descendants; and
- great-grandparents of the deceased and, subordinated, their descendants.

Relatives within a particular category inherit in equal shares (succession per stirpes).

The surviving spouse (or civil partner) also has a right of inheritance, determined by the applicable matrimonial regime.

#### **Community of surplus**

The surviving spouse is entitled to:

- 50 per cent of the inheritance if relatives in the first category (see above) survive; or
- 75 per cent of the inheritance if there are no surviving relatives in the first category but relatives in the second category survive.

#### **Separation of property or community of property**

The surviving spouse is entitled to:

- 25 per cent of the inheritance if relatives in the first category survive; or
- 50 per cent of the inheritance if there are no surviving relatives in the first category, but relatives in the second category survive.

If there is a separation of property regime and the surviving spouse is entitled together with one or two children of the deceased, the surviving spouse and each child inherit in equal shares.

#### **19 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?**

Generally, adopted and illegitimate children are treated the same as natural legitimate children.

However, where an individual is adopted after he or she has reached the age of 18, the adopted person is treated as a child of the adopter but not of the adopter's family. This can be important for maintenance and succession reasons.

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

For successions on and after 17 August 2015, new conflict of laws rules apply according to the European Union's Succession Regulation. They are valid in all EU member states except Denmark, Ireland and the United Kingdom. According to the Regulation, the deceased's habitual residence at the time of his or her death is relevant for the question of which succession law is applicable, instead of his or her nationality. If it is obvious that the deceased had a closer relationship to another state, that state's law will apply under certain circumstances. There is, however, the opportunity to opt for the succession law of an individual's nationality by a will, a joint will or by an agreement as to succession.

In addition, provisions on legal jurisdiction, recognition and enforcement of decisions and authentic instruments and on the European certificate of succession are part of the Regulation. As a general rule, the legal jurisdiction shall be determined by the habitual residence at the time the individual dies.

#### **Update and trends**

In December 2014, the Federal Constitutional Court delivered a judgment that certain provisions of the German IHT and Gift Tax Act, stating that the privilege of the gratuitous transfer of business assets, is unconstitutional. However, the German legislator passed the deadline of 30 June 2016 to reform these provisions. It is contentious which provisions are applicable in the meantime until new provisions come into force. At the moment it is still unclear when exactly the reformed Act will be ratified, and it remains to be seen to what extent business assets will be tax-privileged in the future. However, since the reform will presumably apply retroactively from 1 July 2016 on, entrepreneurs wishing to transfer business assets are generally well advised to wait until the final provisions are implemented in order to have a clear legal basis.

For successions before 17 August 2015, pursuant to the German conflict of laws rules, the applicable succession law is that of the deceased's nationality. If the deceased was a foreign national, German succession law applies only if the law of the deceased's nationality provides for a reference back to Germany. This may be the case if the deceased was domiciled in Germany, if the deceased's habitual abode was in Germany or if the deceased held property or assets in Germany at the date of his or her death.

#### **21 What formalities are required for an individual to make a valid will in your jurisdiction?**

Under German law, there are two valid forms of will:

- holographic will, which is handwritten, dated and signed by the testator; and
- public will, which is signed before and certified by a notary public.

Neither form of will requires a witness.

A testator can also enter into a contract of succession with another person or a joint will with his or her spouse or civil partner. A contract of succession must be signed before and certified by a notary public (a handwritten contract does not meet the formal requirements).

#### **22 Are foreign wills recognised in your jurisdiction and how is this achieved?**

Germany recognises the HCCH Convention on the Conflicts of Law Relating to the Form of Testamentary Dispositions 1961 (Hague Testamentary Dispositions Convention). A will is valid if it complies with the law of any of the following:

- The state of the testator's nationality.
- The state where the testator made the will.
- The state of the testator's residence.
- The state where the assets are situated (in the case of real estate).

According to article 75 of the EU Succession Regulation the HCCH Convention prevails over the provisions of the Regulation with regard to the formal validity of a will.

#### **23 Who has the right to administer an estate?**

A testator can appoint an executor at his or her own discretion. The executor has to be legally competent. According to the German Federal Civil Court, an executor does not have to be a lawyer, tax adviser, notary public or any other person that has to take out liability insurance.

An executor can ask the probate court for a certificate of executorship, which officially verifies his or her authority to act as executor.

German law gives broad powers to executors but the testator can limit these powers. For example, an executor can be given the power to:

- distribute the estate;
- administer a single bequest; or
- administer the estate for a defined period of time (for example, until the date of the executor's death or until the naming of a successor executor who may be appointed within 30 years of the testator's death).



#### 24 How does title to a deceased's assets pass to the heirs and successors? What are the rules for administration of the estate?

The estate vests automatically in the heirs on the deceased's death. The heirs also administer the estate if an executor has not been appointed.

The deceased's will and other dispositions taking effect on death must be filed with the probate court (unless the documents are already in the court's custody).

The probate court will officially read the will and disclose its contents to the heirs.

After the will has been read (or, in the case of intestacy, immediately) the heirs can ask the probate court for a certificate of inheritance. The certificate specifies:

- the heirs' names;
- their share in the inheritance; and
- the executor's name if the testator has appointed one (see question 23).

The certificate of inheritance gives the heirs the legitimacy to administer the estate, provided there is no executor. If the law of a foreign jurisdiction governs the succession, the probate court issues a certificate relating only to assets and property located in Germany.

The beneficiaries must file a notice of inheritance with the competent tax authority within three months of receiving the notice of succession. At the request of the tax authority, the beneficiaries (or the executor, if appointed) must file an IHT return.

The estate is distributed in kind among the heirs according to what is agreed and there is no time limit for distribution. Until distribution, the estate remains joint property of the heirs.

#### 25 Is there a procedure for disappointed heirs and beneficiaries to make a claim against an estate?

Heirs or beneficiaries cannot make a post-death variation.

Heirs or beneficiaries can challenge the validity of a will before a civil court. If the court sets the will aside, then intestacy rules will apply if there is no other valid will.

Under the intestacy rules, it is not possible for heirs or beneficiaries to challenge the adequacy of their provision.

An heir can sell his or her share in the estate after the death of the testator by entering into a contract before a notary public.

If an heir does not want to receive his or her portion of the estate, he or she must disclaim his or her right within six weeks of receiving notice of the death of the deceased and the inheritance. The time limit is extended to six months if either:

- the deceased had his or her habitual abode outside Germany; or
- the heir was abroad when the period began to run.

The disclaimer is made by a declaration to the probate court. The declaration must be made in the presence of, and recorded by, the probate court or in notarially certified form.

#### Capacity and power of attorney

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

A minor can own assets (see question 27). Usually, it is the parents' duty to manage these assets on the minor's behalf. The following rules apply:

- all contracts of substantial economic impact that are entered into by the parents on the minor's behalf and that establish an obligation of the minor (eg, sale or purchase of real property, sale or purchase of a business or of shares in a business entity, and similar transactions) are subject to approval by the family court; and
- for specified transactions, particularly for contracts between the minor and his or her parents or other close relatives, the parents must not act on the minor's behalf. Instead, the family court appoints a legal guardian to act on the minor's behalf.

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

In Germany, children under 18 years of age are minors. Having legal personality, a minor can hold assets regardless of his or her age. Parents usually have joint custody of their child. Parents with custody administer the minor's estate, including his or her inheritance (see question 26). If the minor and the parents are heirs of the same testator, it may be necessary to appoint a guardian to distribute the estate.

A testator can name in his or her will a person other than the minor's parents to administer the minor's inheritance. If the testator does not name a person, the court will nominate a guardian.

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

When a person loses capacity, a guardian is appointed to represent that person in all legal matters, under supervision by a court. The applicable law is that of the nationality of the incapacitated person.

A power of attorney is recognised in Germany if it complies with the law of the nationality of the incapacitated person.

#### Immigration

#### 29 Do foreign nationals require a visa to visit your jurisdiction?

EU citizens generally do not require any residence or settlement title to stay, work or settle in Germany.

Non-EU citizens, however, need a visa, a temporary residence permit or a permanent settlement permit (see question 30) in order to enter into and stay in Germany.

#### 30 How long can a foreign national spend in your jurisdiction on a visitors' visa?

A visa enables the holder to entry or short stays in Germany of up to 90 days for each period of 180 days. In the event of longer stays, a temporary residence or permanent settlement permit is required.

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Temporary residence permits are issued for specified purposes (eg, education or training, gainful employment, humanitarian, political or family reasons). They allow the holder to stay in Germany for at least six months. The permission to work in Germany is not always part of a temporary residence permit.

Permanent settlement permits are issued if a foreign national has possessed a residence permit for five years and meets additional requirements (eg, a secure income, no criminal record, adequate command of the German language). Permanent settlement permits are valid for an unlimited period of time. However, they can be taken back or revoked if the foreign national does not meet the requirements.

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**31 Is there a visa programme targeted specifically at high net worth individuals?**

Germany does not have a visa programme targeted at high net worth individuals.

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

Not applicable.

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

Not applicable.

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

Not applicable.

# Gibraltar

Nyreen Llamas

Hassans

## Tax

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

The Income Tax Act 2010 (the 2010 Act) prescribes the rules relating to taxation in Gibraltar, including the basis of assessment and charge to tax.

Gibraltar operates a territoriality-based tax system. Income tax is charged on income that accrues in or derives from Gibraltar.

An individual (not a company or trust) who is a tax resident, as defined in the 2010 Act, is also liable to pay tax on a worldwide basis in respect of certain taxable heads of income.

The test for determining whether income accrues in, or is derived from Gibraltar follows the established jurisprudence set out in various leading UK Privy Council decisions (Privy Council judgments are binding in Gibraltar) and related authorities (*Commissioner of Inland Revenue v Hang Seng Bank Ltd* [1990] 3 WLR 120 or [1991] AC 306 *Inland Revenue Commissioner v HK-TV International* [1992] WLR 439 or [1992] 2 AC 397). Regard must be had to, inter alia, the whole of the activities undertaken and where these activities take place.

The 2010 Act provides that an individual is ordinarily resident in Gibraltar if:

- he or she is present in Gibraltar during any year of assessment for at least 183 days and;
- when considering three consecutive years of assessment, an individual has been present in Gibraltar for more than 300 days over that three-year period.

Any presence in Gibraltar in any 24-hour period commencing midnight shall be counted as a day, irrespective of whether accommodation in Gibraltar is used or not.

The tax year runs from 1 July to 30 June and tax is payable on the actual taxable profits for the year.

In its June 2015 budget, the Gibraltar government announced its intention to overhaul various aspects of the residency and taxation rules. A working group has been established to advise the government on the various options, designed in particular to encourage further inward investment. There are likely, therefore, to be important developments in this area over the course of the next 12 months.

There are certain incentives designed to attract high net worth individuals and executives possessing particular skills. These make Gibraltar a very attractive base for suitably qualified individuals and their dependants, or for retirees or entrepreneurs wishing to live in a tax-competitive jurisdiction.

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

The 2010 Act provides two main systems that taxpayers can choose between so as to ensure a lower tax payment. These are described respectively as the 'allowance-based system' and the 'gross income-based system'.

#### Allowance-based system

This allows a taxpayer to claim a large number of allowances and deductions against his or her chargeable income. These allowances include personal, spouses and civil partners allowances (£3,215 each), nursery and blind persons allowances (maximum of £5,020), and in respect of one child (£1,105) and for each child studying abroad (£1,255). Medical

insurance premium payments (£5,020) and a one-off residential property purchase allowance (£12,000) are also allowed. Mortgage interest relief to acquire Gibraltar property to be used as a taxpayer's principal residence is available on loans up to a value of £350,000.

The tax rates applicable to the allowance-based system are as follows:

Taxable income bands	Rate (%)
£0-£4,000	14
£4,001-£16,001	17
£16,001-	39

#### Gross income-based system

This system allows for a much smaller number of deductions or allowances but applies reduced rates of tax on gross income as follows (for persons with gross income over £25,000):

Taxable income bands	Rate (%)
£0-£17,000	16
£17,001-£25,000	19
£25,001-£40,000	25
£40,001-£105,000	28
£105,001-£500,000	25
£500,001-£700,000	18
£700,001-	5

The gross income-based system is generally regarded as the most simple and beneficial for taxpayers. It is usually the case that this assessment will deliver the lowest level of income tax liability.

Further, there is no tax on passive investment income (including bank interest or dividends from quoted securities or funds invested in these).

The incentives in place to attract high net worth individuals to Gibraltar limit the amount of tax which is payable by them. An explanation of each of these programmes is set out below.

#### High net worth individuals (Category 2)

The Qualifying (Category 2) Individuals Rules 2004 provide for a well-established regime that limits income tax for high net worth individuals wishing to reside in Gibraltar.

The Category 2 programme has enjoyed great success since it was first introduced in the early 1990s. In order to apply for a certificate, an individual is required to verify that he or she has a minimum net worth of £2 million (usually in bank deposits or securities) and is of good character. The holder of a Category 2 certificate is taxed in Gibraltar on the basis of the normal rates applicable under the gross income-based system, but only on the first £80,000 of assessable income. There is, however, a minimum annual tax payment of £22,000. Any income in excess of £80,000 is not subject to income tax in Gibraltar (irrespective of whether the income is remitted locally or otherwise). This effectively gives rise to a maximum tax liability in the order of £27,560, irrespective of worldwide income (at current 2016-2017 rates).

The benefits of a Category 2 certificate (which is a lifetime status subject to the eligibility criteria being satisfied on an ongoing basis) can extend to the worldwide income of a spouse or civil partner and of dependent children (up to 18 years or until the end of higher education).

A Category 2 individual is required to either rent or buy appropriate accommodation in Gibraltar for his or her exclusive use.

It should be noted that the general principle is that individuals enjoying Category 2 status should not seek mainstream employment in Gibraltar or carry out business in competition with ordinary taxpayers. This principle holds whether the individual is carrying out business personally or via a legal entity such as a company.

Thus, it follows that a Category 2 certificate holder should not derive 'earned' income from activities in Gibraltar, unless it can be proved that, to the satisfaction of the Ministry of Finance, there is exceptional economic benefit for Gibraltar that, in the opinion of the Ministry of Finance, warrants a departure from the general principle. In practice, this latitude has developed to encompass what is currently a wide spectrum of activities.

There are, therefore, various examples of economic activity that a Category 2 individual can undertake in Gibraltar. These are in accordance with published guidelines and include the following:

- owning a Gibraltar company for investment purposes (eg in bank deposits, equities and bonds);
- owning a Gibraltar company to invest and trade in properties throughout the world;
- owning a Gibraltar company for trading in goods outside Gibraltar;
- doing any of the above from a physical office set up in Gibraltar;
- receiving director's remuneration as well as dividends in respect of any of the above;
- being a shareholder in a company carrying out activities licensable in Gibraltar under applicable financial services or gambling legislation;
- being a shareholder in a company carrying out a business in Gibraltar that is not in competition with other businesses in Gibraltar;
- investing, either personally or through a company or another entity, directly or indirectly, in the purchase of property situate in Gibraltar for investment purposes. However, the rental income arising from any such properties is taxable in Gibraltar, either on the company or the individual, and therefore does not form part of the individual's tax shelter deriving from his or her Category 2 status;
- providing consultancy services to non-Gibraltar companies or receiving employment income from companies outside Gibraltar, as long as those services or employment are physically carried out exclusively outside of Gibraltar; and
- from within Gibraltar providing consultancy services to companies or other entities trading outside Gibraltar if that individual owns and controls, or is connected by a significant shareholding or ownership interest in such company or entity. 'Consultancy' in this paragraph means consultancy to a company or entity itself and not the provision of advice or services to a client of that company or entity.

The profile of Category 2 residents has changed considerably over the last 25 years. Category 2 certificate holders now tend to become longer-term residents contributing to, and engaging socially, economically and often philanthropically with Gibraltar. This has meant real estate of increasing quality has become more readily available locally, with a marked improvement in general in the entertainment, restaurant and cultural scene. The policy direction is to encourage further residence by such entrepreneurs and high net worth individuals and to underpin this drive with increased investment in Gibraltar's infrastructure.

#### **Entrepreneurs and individuals with specialist skills (HEPSS)**

Gibraltar is keen to continue to attract individuals who bring special skills that are not available locally. The Higher Executives Possessing Specialist Skills (HEPSS) Rules 2008 provide a favourable tax regime for individuals who possess particular skills in key positions in a business established locally.

The basic requirements in respect of such applicants are the following:

- a basic salary of over £120,000 per year;
- skills that are not available in Gibraltar;
- exclusive qualifying accommodation must be arranged in Gibraltar (either rented or purchased); and

- he or she cannot have been resident in Gibraltar within the last 36 months.

A person in possession of a HEPSS certificate is only taxed (on the basis of the gross income-based system) on the first £120,000 of assessable income (including any bonuses, prerequisites and other benefits in kind connected with employment). At 2016-2017 rates this would result in a maximum tax payment of around £29,940 per annum.

There are also various additional allowances (eg relocation provisions) to facilitate the attraction of specialist skills.

This HEPSS programme has played an important role in diversifying and widening the skills base of the Gibraltar economy. HEPSS status has been particularly relevant in the remote gambling and financial services sectors. The creation of a critical mass of specialists in particular areas (eg, e-commerce and IT) has generated the growth of peripheral activities (ranging from services to family offices to payment processing operations).

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

Gibraltar does not have any capital gains taxes or wealth taxes.

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

Gibraltar does not levy taxes on lifetime gifts.

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

Gibraltar does not apply any inheritance taxes.

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

Stamp Duty Land Tax is payable on real estate as follows:

- nil for real estate costing up to £200,000;
- 2 per cent on the first £250,000 and 5.5 per cent on the balance for real estate costing between £200,001 and £350,000; and
- 3 per cent on the first £350,000 and 3.5 per cent on the balance for real estate costing over £350,000.

Note that no stamp duty is payable by first-time and second-time buyers on the first £260,000 of the cost of their property, irrespective of the total cost. Stamp duty on the transfers of properties between spouses is nil.

#### **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?**

When entering Gibraltar you will pass through customs and must declare everything obtained outside of Gibraltar in excess of the duty-free allowances. Certain goods, such as food, are exempt from import duty. Duties on goods range to rates of up to 12 per cent. Items to which no duty applies include: works of art, LED lighting, writing implements, mobile phones, musical instruments, portable computers, TVs, electrical audio, visual and sports equipment, educational equipment, software, biofuels, loose gemstones, paper and stationery made from recycled materials, yachts, and electronic equipment and propellers for use on boats and sails. Excise duty is levied mainly on spirits, wines, tobacco and mineral oils.

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

There are no other taxes that would be particularly relevant to an individual. It is noteworthy that although Gibraltar is part of the EU, our terms of accession exempt Gibraltar from VAT and the provisions of the Customs Union.

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

Gibraltar law does not tax trusts settled by non-residents for exclusively non-resident beneficiaries, except in the case of Gibraltar taxable source income. It should be noted that passive investment income (to include bank interest or dividends from quoted securities or funds invested in these) are not taxable in Gibraltar in any event.

One benefit for high net worth individuals registered as Category 2 individuals in Gibraltar (as described above) is that while being a resident in Gibraltar, they will nonetheless be regarded as non-resident for the purposes of the establishment of a Gibraltar trust.

Gibraltar resident beneficiaries of a trust pay tax upon a distribution of income to them. No income, however, will be deemed to be distributed to them and consequently is not taxed until this occurs.

Companies resident in Gibraltar are charged corporate tax on profits at 10 per cent (certain utility service providers are liable to up to 20 per cent corporate tax). This competitive 10 per cent rate is complemented by the absence of any capital gains tax or stamp duty.

Additionally, there is no charge to tax on the receipt by a Gibraltar company of dividends from any other company, regardless of where it is incorporated. Further, there is no Gibraltar tax on dividends paid by a Gibraltar company to another company and no tax (or withholding) on a dividend to any person not resident in Gibraltar.

A Start-Up Incentive scheme was introduced for companies and limited partnerships starting up between 5 July 2016 and 30 June 2017 can make use of a new incentive scheme. The new scheme means that new businesses will be eligible for a tax credit equal to the tax otherwise payable up to a maximum of £50,000 over each of the first three years of trading. In order to qualify the business must have at least five employees in the first year, as well as meeting certain other conditions (anti-avoidance measures).

Royalties received or receivable by a company in Gibraltar are chargeable to tax (at the usual corporate rate of 10 per cent).

#### 10 How are charities taxed in your jurisdiction?

In Gibraltar, a charity is registered with the Charity Commissioner at the Supreme Court. One of the advantages of registering as a charitable organisation is their exemption from paying certain taxes once certified.

### Trusts and foundations

#### 11 Does your jurisdiction recognise trusts?

Gibraltar is a common law jurisdiction that recognises trusts (pursuant to the English Law (Application) Act, the common law and the rules of equity from time to time in force in England shall be in force in Gibraltar, so far as they may be applicable to the circumstances of Gibraltar). Trusts are extensively used in succession and estate planning. These come in a variety of forms and are largely drafted along the lines of English settlements.

Although there is no mandatory requirement (indeed, as in other jurisdictions the vast majority of trust arrangements remain confidential) Gibraltar law allows for the voluntary registration of trusts. The Registered Trusts Act 1999 provides for the registration of a certain information relating to a trust (name, identity of trustees and date of creation) but only in those circumstances where registration is required by the deed establishing the relevant trust. Such a registration facility is often regarded as helpful to establish the creation of a trust (especially relevant for clients with a civil law background).

A trust resident in Gibraltar (one in which one or more of the beneficiaries are ordinarily resident for tax purposes in Gibraltar (excluding Category 2 individuals)) is subject to taxation in Gibraltar at a rate of 10 per cent.

Importantly, a Gibraltar trust is not subject to taxation in Gibraltar if it has non-resident beneficiaries and its income can be accumulated free of tax in Gibraltar.

#### 12 Does your jurisdiction recognise private foundations?

The government of Gibraltar announced in a press release dated 17 September 2015, that legislation providing for private foundations is at the very final stages of drafting and should be presented to Parliament shortly. Having said this, it is possible at present to establish a Gibraltar company limited by guarantee (with or without a share capital) and that displays many similarities to a traditional 'foundation'.

### Same-sex marriages and civil unions

#### 13 Does your jurisdiction have any form of legally recognised same-sex relationship?

The Gibraltar Civil Partnership Act 2014 was enacted recently, whereby Gibraltar introduced civil partnerships between opposite

and same-sex couples. Such partnerships enjoy largely the same legal rights and responsibilities as married couples. This includes the entry into financial agreements (largely as applicable to marriages under the Matrimonial Causes Act) in respect of partners. Furthermore, a bill was published in August 2016 to amend the Marriage Act to allow for civil marriage between same-sex couples. It is anticipated that civil marriage between same-sex couples will be possible in Gibraltar very soon.

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

The Civil Partnership Act 2014 applies to heterosexual couples.

### Succession

#### 15 What property constitutes an individual's estate for succession purposes?

The real and personal estate, both legal and equitable, constitute an individual's estate for succession purposes. A beneficial interest in joint property passes under the principle of survivorship to the surviving joint owner.

#### 16 To what extent do individuals have freedom of disposition over their estate during their lifetime?

Gibraltar does not limit or tax lifetime gifts. Individuals therefore have freedom to dispose of their estate during their lifetime.

#### 17 To what extent do individuals have freedom of disposition over their estate on death?

As is the position in the UK, the basic principle of succession law in Gibraltar is freedom of testamentary disposition. There are no forced heirship rules applicable and we have not adopted the EU Succession Regulation (EU, 650, 2012).

Gibraltar has also enacted the Trusts (Private International Law) Act 2015 in order to introduce the prevention of the enforcement of foreign judgments relating to succession that are inconsistent with Gibraltar law.

There are, however, rights for spouses, civil partners and certain dependants to make certain claims on the estate of an individual under the Inheritance (Provision for Family and Dependents) Act 1977 (largely based on the UK 1975 Act).

Probate and administration of estates in Gibraltar is generally similar in procedure to that of England and Wales. Because of the nature of Gibraltar's international client base, the jurisdiction is very familiar with cross-border succession and probate matters. Practitioners regularly deal with international succession and planning.

#### 18 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?

The Administration of Estates Act 1933 sets out the beneficiaries under the intestacy rules. These would depend on the surviving family members; for example, a surviving spouse is entitled to all personal chattels and the first £150,000. The child and the spouse will have an interest in the remaining property over £150,000.

#### 19 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?

An adopted child ceases to have rights to the estate of any of his or her natural relatives but has equal rights as any child of the adopted family. Illegitimate children have the right to inherit from their natural parents and grandparents under the intestacy rules. An individual can, of course, provide for any illegitimate children by his or her will, as they have full testamentary freedom.

#### 20 What law governs the distribution of an individual's estate and does this depend on the type of property within it?

Gibraltar law is similar to English law in that the law of lex domicilii applies to the person's personal property. The lex situs (ie the law of the jurisdiction of where the land is situated) applies to the jurisdiction of that land.

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

The Wills Act 2009 states that a will shall be valid if:

- it is in writing and signed by the testator or by some other person in his presence and by his or her direction;
- it appears that the testator intended by his or her signature to give effect to the will; and
- the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time.

Generally no will made by any person under the age of 18 shall be valid.

**22 Are foreign wills recognised in your jurisdiction and how is this achieved?**

Foreign wills are recognised if they are properly executed and its execution conformed to the law in force in the territory or state where it was executed, or in the territory or state where, at the time of its execution or of the testator's death, he or she was domiciled or had his or her habitual residence, or in a state of which, at either of those times, he or she was a national.

**23 Who has the right to administer an estate?**

The personal representative of a deceased person shall have the right to administer an estate and is under a duty to:

- review and itemise the entire real and personal estate of the deceased and administer it according to law;
- when required to do so by the court, exhibit on oath in the court a full inventory of the estate, and when so required render an account of the administration of the estate to the court; and
- when required to do so by the court, deliver up the grant of probate or administration to the court.

The personal representative will be the executor appointed in a will after he or she has proved the will. If there is no will the personal representative is the administrator who obtains a grant of letters of administration and the intended administrator will normally be a person (or persons) who has a beneficial interest in the estate.

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

The personal representative would assent the property to the heirs, and if it is real property will record this in a deed of assent to be registered in the Land Property Registry.

**25 Is there a procedure for disappointed heirs and beneficiaries to make a claim against an estate?**

Under the Inheritance (Provision for Family and Dependents) Act, a disappointed heir or beneficiary may in certain circumstances make a claim. Generally it would be someone who has been maintained by

the testator. The claim must be lodged within six months of the grant of probate.

**Capacity and power of attorney****26 What are the rules for holding and managing the property of a minor in your jurisdiction?**

The property of a minor can be held on trust for him or her and the provisions of the Trustees Act would apply.

Where a minor is entitled to inherit property under the will or on the intestacy of a person, the personal representatives of the deceased may appoint a trust corporation, or two or more individuals not exceeding four, to be the trustee or trustees of such devise, legacy, residue or share for the minor. If land has been inherited, the trustees will be trustees of the land for the purposes of the UK Settled Land Act 1882, which applies in Gibraltar pursuant to the Gibraltar English Law (Application) Act (please see question 11).

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

At the age of 18.

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

An application would be made to the Court of Protection under the provisions of the Mental Health Act for an order appointing a receiver. In Gibraltar we do not have the equivalent of the UK's Lasting Powers of Attorney legislation, which can be entered into by the individual prior to losing capacity.

**Immigration****29 Do foreign nationals require a visa to visit your jurisdiction?**

Gibraltar is a British Overseas Territory, which joined the European Union (subject to a number of important derogations) with the UK in 1973. The EU freedoms of movement of people extend to Gibraltar. Visa-requiring nationals are generally the same as those who require visas for the UK.

**30 How long can a foreign national spend in your jurisdiction on a visitors' visa?**

Dependent on the individual circumstances, temporary visas are granted for a period of three to six months.

**31 Is there a visa programme targeted specifically at high net worth individuals?**

No. A high net worth individual is entitled to reside in Gibraltar, but for those who are not EU citizens, movement out of Gibraltar would need to be assessed separately through their embassy or consul of origin.



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

Although there is no specific programme, a high net worth individual will almost certainly be granted a discretionary residence permit for his or her spouse and children.

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

The right to reside would be reviewed if the individual gave up their special status (CAT 2 or HEPSS) dependent on their nationality, but while their status remains unchanged they will have a right to reside in Gibraltar.

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

No. However, an individual who comes to reside permanently in Gibraltar and has been in Gibraltar for a period of five years can apply to be naturalised as a British overseas territory citizen. In practice, successful applicants would have been in Gibraltar for at least 10 years, although their contribution to the jurisdiction in economic and social terms will also be considered in the application.

# Guernsey

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## Tax

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

The Bailiwick of Guernsey is made up of three distinct jurisdictions each with its own tax legislation: Guernsey (which includes the islands of Herm and Jethou), Alderney and Sark. For these purposes, we will refer only to Guernsey.

Guernsey's principal tax is income tax. Guernsey does not have any capital gains, inheritance or gift taxes, nor any form of VAT.

Liability to taxation in Guernsey is determined by reference to residence, rather than domicile. As Guernsey does not have any inheritance or gift tax, domicile has no direct relevance to taxation, although it will be relevant to determine which rules of private international law apply to the devolution of a person's estate.

The Income Tax (Guernsey) Law, 1975 (as amended) (the Income Tax Law) distinguishes between individuals who are resident, solely resident and principally resident in Guernsey. We briefly describe each of these below.

#### Resident in Guernsey

An individual will be resident in Guernsey if:

- they spend 91 days or more in Guernsey in a tax year; or
- if they spend 35 days or more in Guernsey in that tax year and during the four preceding tax years, have spent 365 days or more in Guernsey.

A person is treated as being in Guernsey on any particular day if they are in Guernsey at midnight on that day.

#### Solely resident in Guernsey

Individuals will be solely resident in Guernsey if in any particular tax year they are resident in Guernsey and are not resident in any other place in that tax year. For these purposes a person will only be treated as being resident in another place if he or she spends 91 days or more in that place in that tax year.

#### Principally resident in Guernsey

Individuals will be principally resident in Guernsey if:

- they spend 182 days or more in Guernsey in that tax year;
- they spend 91 days or more in Guernsey in that tax year and during the four preceding tax years, have spent 730 days or more in Guernsey; or
- they take up permanent residence in Guernsey in that tax year.

Individuals who are resident in Guernsey are taxable on their worldwide income unless they elect to pay the standard charge for that year (currently £30,000). Individuals who are solely or principally resident in Guernsey are subject to income tax in Guernsey on their worldwide income.

There is, however, an exemption for individuals who are resident but not principally resident in Guernsey, and who do not pay the standard charge where the sole or main purpose of their presence is for employment purposes. In order for this exemption to be applicable, the individual's only Guernsey source income must be bank interest and employment income (which must be subject to deduction of tax by the employer through the Employee Tax Instalment Scheme). Such

individuals are also subject to income tax in Guernsey on any foreign income which they remit to Guernsey.

For individuals who are solely or principally resident in Guernsey, there is an annual tax cap of £110,000 for non-Guernsey source income and from certain Guernsey sources (such as bank interest). An individual may, however, elect for the tax cap to apply to their Guernsey source income, although this has the effect of increasing the cap to £220,000 per tax year.

Non-resident individuals are generally only subject to income tax in Guernsey on income from profits from a business with a permanent establishment in Guernsey and immovable property situated in Guernsey.

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

Individuals are subject to income tax at 20 per cent and social security contributions are also payable at variable rates.

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

Capital gains are not taxable in Guernsey.

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

Lifetime gifts are not taxable in Guernsey.

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

Guernsey imposes no taxes on transfers on death, or to or from an individual's estate following death.

On obtaining a grant of probate, a charge of circa 0.35 per cent is applied by the Ecclesiastical Court to the gross value of the moveable estate. Where Guernsey is the jurisdiction in which the first grant of probate is applied for, the 0.35 per cent charge would apply to the worldwide moveable estate of the deceased. Where a grant is obtained overseas, it is only the Guernsey estate that would be subject to the 0.35 per cent charge.

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

Document duty is charged on the acquisition of residential real property and is charged on a sliding scale depending on the value of the property.

For properties in excess of £400,000, it is charged at a flat rate of 3 per cent, the same percentage applying for non-dwelling properties (ie commercial property, lands or fields), regardless of the value.

A tax on real property (local rates) is payable annually and is based on the size of the property.

### 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?

There are only import taxes in relation to fuel, oil, cigarettes and alcohol, otherwise there are no import or export taxes on goods.

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

There are no other taxes in Guernsey particularly relevant to individuals.

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

In addition to trusts, which are recognised in Guernsey, foundations, companies (whether limited by shares or by guarantee or cellular), partnerships, limited partnerships (both with and without separate legal personality) and limited liability partnerships can all be established in Guernsey as asset-holding vehicles.

### Trusts

The only tax potentially applicable to a trust with a Guernsey resident trustee is income tax. By concession, where all of the beneficiaries of a trust with Guernsey-resident trustees are themselves resident outside of Guernsey, the trustees have no liability to income tax in Guernsey, save in respect of their Guernsey-source income (and there is a specific exemption for Guernsey-source bank interest). Where there are beneficiaries who are resident in Guernsey or where the settlor was resident in Guernsey, this concession would not apply and income tax may be payable depending on the particular circumstances in question.

Where income tax is payable, it is assessable on the trustee and the trustee is required to file a tax return in Guernsey in relation to the income. It is possible for income tax to be assessed directly on the settlor where the trust is held to be revocable under the Income Tax Law (although this would only apply in respect of a Guernsey resident settlor).

### Foundations

The exact tax treatment of foundations in Guernsey has not yet been formalised by legislation. However it is anticipated that they will be tax-neutral where the founder and beneficiaries are not resident in Guernsey.

### Companies

Companies resident in Guernsey, or non-resident companies with a permanent establishment in Guernsey, are generally taxed at a rate of zero per cent. Certain categories of income are taxed at 10 per cent, such as profits from banking, investment, insurance or fiduciary business, and others at 20 per cent, such as income from Guernsey real property.

### Partnerships

Partnerships are treated as transparent for the purpose of tax in Guernsey.

### Limited partnerships

Limited partnerships are treated as transparent for the purpose of tax in Guernsey.

### Limited liability partnerships

Limited liability partnerships are treated as transparent for the purpose of tax in Guernsey.

## 10 How are charities taxed in your jurisdiction?

Charities are exempt from income tax in so far as their income is applied solely for charitable purposes. Where an individual who is resident in Guernsey makes a donation to a Guernsey charity, the Guernsey charity may reclaim the income tax paid in respect of that donation.

## Trusts and foundations

### 11 Does your jurisdiction recognise trusts?

Yes, trusts are recognised in Guernsey, whether they are governed by Guernsey law or the laws of a foreign jurisdiction.

The Trusts (Guernsey) Law 2007 (the Trusts Law) governs the establishment of trusts in Guernsey. Some of the salient points about the Trusts Law are:

- Guernsey trusts can be of unlimited duration: there is no perpetuity period under Guernsey law;
- trusts can hold Guernsey real estate;
- the settlor can reserve to himself or herself or another person certain powers and the reservation of such powers will not invalidate the trust;

- beneficiaries are not automatically entitled to information on the deliberations of trustees or to receive copies of letters of wishes;
- non-charitable purpose trusts can be established under Guernsey law and are frequently used to create orphan structures. An enforcer must be appointed and the enforcer has a fiduciary duty to enforce the purposes as against the trust; and
- 'firewall' legislation provides that a Guernsey trust cannot be held as void because it avoids or defeats a claim under foreign laws relating to marriage, civil partnership or forced heirship. The Trusts Law generally provides a strong defence against challenges to the validity of a trust by foreign courts based on particular issues, including the administration of the trust and capacity of the settlor, by preventing the application of foreign laws in determining such issues.

### 12 Does your jurisdiction recognise private foundations?

The Foundations (Guernsey) Law 2012 (the Foundations Law) introduced the concept of a foundation into Guernsey law.

A foundation is an entity with separate legal personality that must be established for a purpose. The purpose can be to benefit beneficiaries but the beneficiaries do not have a proprietary interest in the foundation's assets.

A foundation contracts in its own name and can sue and be sued. The foundation's assets are owned legally and beneficially by the foundation.

A Guernsey foundation must have a charter setting out the purpose for which the foundation has been established and will usually also have a set of rules which govern such matters as the appointment and removal of council members. The founder must provide an initial endowment to the foundation.

A foundation is administered by a council and it is permissible to have a single councillor. The council must act in good faith in the exercise of their functions and its duties are owed to the foundation.

The founder can reserve certain powers to himself or grant these to a third party. However, the power to amend, revoke, vary or terminate the foundation may only be reserved to the founder during his or her lifetime (if he is a natural person) or for a period of 50 years (if the founder is a legal person).

A unique feature of the Foundations Law is the concept of 'enfranchised' and 'disenfranchised' beneficiaries. Enfranchised beneficiaries are entitled to certain information about the foundation, while disenfranchised beneficiaries are not. Where a foundation has disenfranchised beneficiaries, it must have a guardian to enforce the terms of the foundation. A guardian is also required where a foundation is established for a purpose other than to benefit beneficiaries.

Where neither the council nor the guardian includes a licensed fiduciary, a Guernsey licensed fiduciary must be appointed to act as the foundation's resident agent. The resident agent is required to keep certain information in relation to the foundation in Guernsey.

A foundation must be registered to come into existence and will exist for so long as it remains on the register. Foundations can also be migrated into and out of Guernsey.

## Same-sex marriages and civil unions

### 13 Does your jurisdiction have any form of legally recognised same-sex relationship?

It is not currently possible for couples of the same sex to get married or become civil partners in Guernsey, however, legislation has been approved by the States of Deliberation which will permit same-sex marriage. It is anticipated that such legislation will come into force in 2017 if approved by the Privy Council.

Currently, legal civil partnerships or same-sex marriages in a foreign jurisdiction have no status in Guernsey. However, the partnership or marriage contract is likely to be enforced in the same way as any other written contract. The legislation provides that same-sex marriages contracted outside Guernsey may be recognised under Guernsey law.

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

Only religious or civil marriage between heterosexual couples is currently recognised in Guernsey.

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**Succession**


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**15 What property constitutes an individual's estate for succession purposes?**

All moveable and immoveable property owned (legally or beneficially) by an individual forms part of their estate.

The exception to this is jointly owned property (unless the presumption of joint ownership is rebutted), which will vest automatically in the co-owner.

However, the value of jointly owned property may be taken into account when calculating the value of the deceased's net estate for the purposes of an application under section 5 of the Inheritance (Guernsey) Law, 2011 (the Inheritance Law) for a claim for financial provision.

**16 To what extent do individuals have freedom of disposition over their estate during their lifetime?**

There is no restriction on the disposition of assets during an individual's lifetime. Lifetime dispositions made with an intention to defeat any claim for financial provision under the Inheritance Law made within six years of the date of death, may be set aside pursuant to an application brought under the Inheritance Law.

**17 To what extent do individuals have freedom of disposition over their estate on death?**

With effect from 2 April 2012, individuals domiciled in Guernsey have complete freedom of testamentary disposition. However, Guernsey's forced heirship rules will still apply in respect of wills executed before 2 April 2012, unless the testator executes a codicil stating that they wish the new rules to apply. It is also permissible to amend an existing will by codicil and for the forced heirship regime to continue to apply, if the testator so wishes. The advantage to a will remaining subject to the forced heirship regime is that this regime did not permit any challenges to a will on the basis it failed to make financial provision for any person.

When the same-sex marriage legislation referred to in question 13 comes into force, it will provide that wills made after the commencement of such Law will be interpreted in accordance with the principle that 'marriage' and related expressions includes same-sex marriage, unless provision is made to the contrary.

**18 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?**

The Inheritance Law sets out the order of the devolution of an individual's estate where they die intestate. Different provisions apply to intestate succession of immoveable property and moveable property.

In the case of immoveable property:

- the surviving spouse or civil partner inherits the whole of the real property absolutely if there are no descendants;
- the surviving spouse or civil partner inherits an undivided one-half share of the matrimonial home, an undivided one-half share of any other real property of the deceased and a life interest (usufruct) over the remaining one-half share of the matrimonial home until they re-marry or form a new civil partnership if there are descendants;
- the descendants of the deceased (being the deceased's children and remoter issue through all degrees) inherit equally (with representation being permitted per stirpes through all degrees of descent) if there is no surviving spouse or civil partner;
- the privileged collaterals (being brothers and sisters of the deceased and their descendants) inherit equally if there are no descendants;
- the ascendants (being those from whom the deceased is descended) inherit equally if there are no privileged collaterals; and
- the remaining collaterals (being those who are descendants, together with the deceased, from a common ascendant) inherit equally if there are no ascendants.

For moveable property:

- the surviving spouse or civil partner inherits all of the personal property absolutely if there are no descendants;
- the descendants inherit all of the personal property absolutely if there is no surviving spouse or civil partner;

- the descendants take a one-half share and the surviving spouse or civil partner takes the remaining half absolutely if there are descendants and a surviving spouse or civil partner; and
- the privileged collaterals inherit, followed by the ascendants and finally the remaining collaterals if there are no descendants and no surviving spouse or civil partner.

If there is no one to inherit, immoveable property escheats to the Crown and moveable property passes to the Crown as bona vacantia.

**19 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?**

Adopted and illegitimate children are treated the same as natural and legitimate children under the Inheritance Law.

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

Moveable property is governed by the *lex domicilii* of the individual, while immoveable property is governed by the *lex situs* of the property.

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

In Guernsey, the general rules are that:

- a will must be made in writing;
- the will must be signed by the testator or testatrix, or by some other person in their presence and at their direction, and the testator or testatrix must have intended by his or her signature to give effect to the will;
- the testator or testatrix's signature must be made or acknowledged by the testator or testatrix in the presence of two or more witnesses present at the same time; and
- each witness must either attest and sign the will or acknowledge his or her signature in the presence of the testator or testatrix.

Holographic wills may be made in respect of moveable property in Guernsey and must be entirely handwritten and signed and dated by the testator or testatrix at the end of the will.

One will can cover both immoveable and moveable property. However, for privacy reasons separate wills are usually prepared as the will of immoveable property will be registered at the Greffe as evidence of title to the property.

**22 Are foreign wills recognised in your jurisdiction and how is this achieved?**

The Execution of Wills (Bailiwick of Guernsey) Law 1994 governs the validity of wills.

The Courts in Guernsey will recognise a will as being valid if its execution conforms to the internal law in force in:

- the territory where it was executed;
- the territory where, at the time of its execution or of the deceased's death, the deceased was domiciled or had their habitual residence;
- a state of which, at either of those times, the deceased was a national; or
- in so far as the will disposes of real property, in the territory where the property is situated.

**23 Who has the right to administer an estate?**

This will depend on whether the property is moveable property or immoveable property situate in Guernsey.

Immoveable property vests automatically in the deceased's heirs following the principle *le mort saisit le vif*. No conveyance or otherwise is required.

Moveable property situate in Guernsey will vest in the deceased's personal representatives. Where there is no will, the surviving spouse is the preferred administrator followed by the deceased's children (with the elder children preferred to the younger, in order of age). Where there is a will but no executor, one of the beneficiaries would be the preferred administrator.



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

See above in respect of immoveable property.

As regards moveable property, this will depend on the type of asset. The legal mechanism to transfer each type of asset will need to be followed. For example, if the moveable property is shares, a share transfer form will be required and the heir will need to be registered as the shareholder in place of the deceased.

**25 Is there a procedure for disappointed heirs and beneficiaries to make a claim against an estate?**

Where a will is made on or after 2 April 2012, a person can bring a claim where they can establish that the deceased did not make reasonable financial provision for them under their will.

Those who are eligible to make a claim are a spouse or civil partner, a former spouse or civil partner who has not remarried or formed a new civil partnership, any person living as if spouse or civil partner for at least two years before death, a child of the deceased, a person treated by the deceased as a child of the family and any person who was being maintained by the deceased.

A spouse or civil partner can claim for such financial provision as it would be reasonable in all the circumstances for a spouse or civil partner to receive, while all other eligible claimants are only entitled to receive such amount as is reasonable for their maintenance.

A claimant must file their claim within six months of the date of death.

**Capacity and power of attorney****26 What are the rules for holding and managing the property of a minor in your jurisdiction?**

A guardian, known as a tuteur, will hold moveable and immoveable property on behalf of a minor. A tuteur has parental responsibility for the child and a duty act en bon père de famille when dealing with the property of the child. Their responsibilities include safeguarding, preserving and otherwise dealing with the child's property (pursuant to the Children (Guernsey and Alderney) Law 2008, as amended).

Guardianship of a minor will terminate on the minor attaining the age of 18 or if they marry earlier (and such marriage must be with the permission of the guardian).

Where a child's parents are married at the time of the child's birth, they both acquire parental responsibility at that time. Where the father is not married to the mother at the time of the child's birth, he will acquire parental responsibility:

- if he marries the child's mother;
- if he is registered as the child's father;
- upon the making of a residence or parental responsibility order; or
- by written agreement with the child's mother.

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

At 18 years of age.

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

Where a person loses capacity, a guardian (known as a curateur) may be appointed to manage their affairs pursuant to the Curatelle Rules 1989, by way of an application in a specified form. Medical evidence (usually in the form of an affidavit by the individual's doctor) must be submitted with the application.

The family council must appear in court either personally or by attorney to confirm their approval to the appointment of the guardian. The appointment is an official court procedure whereby the guardian is then sworn into office. A curateur owes the same duties as a tuteur as regards the property of the individual.

In addition, one off decisions for someone who lacks capacity can be authorised by the court on application under Schedule 3 of the Mental Health (Bailiwick of Guernsey) Law 2010.

There is currently legislation being drafted which will apply to those aged 18 and over and sets out a process for establishing whether someone lacks capacity and aims to support them in making their own decisions where possible while protecting their basic rights and freedoms. The Law will allow people to decide how they would prefer to be treated and cared for in case they lack capacity at a later stage and also allows for them to appoint a trusted person to make decisions on their behalf.

**Immigration****29 Do foreign nationals require a visa to visit your jurisdiction?**

Guernsey forms part of the Common Travel Area with the UK (and certain other territories) and UK immigration statutes are extended to Guernsey.

A British Citizen or a citizen of one of the European Economic Area (EEA) countries may travel to Guernsey without a visa.

Visa nationals (persons who need an entry clearance to enter the United Kingdom and Guernsey) for whatever reason, and non-EEA nationals seeking entry for more than six months, will need an entry clearance.

**30 How long can a foreign national spend in your jurisdiction on a visitors' visa?**

See above.

**31 Is there a visa programme targeted specifically at high net worth individuals?**

No.

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

Not applicable.

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

Not applicable.

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

Not applicable.

# India

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## Tax

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

An individual is taxed for income tax in India on the basis of income earned during a financial year, which commences on 1 April and ends on 31 March of each year (tax year).

The charge of tax depends upon residential status.

An individual who is resident is charged tax on all global income.

An individual who is a non-resident in India is not charged tax on income that accrues or arises outside India. However, certain income with a source in India will be taxable as deemed to accrue or arise in India.

An individual who is not ordinarily resident is not charged tax on income that accrues or arises outside India unless such income is derived from a business controlled in or profession set up in India.

The residential status of an individual is determined on the basis of number of days a person stays in India.

Generally, a person is said to be resident of India if:

- his or her stay in India exceeds 181 days in a tax year; or
- if in previous four years he or she stays in India for a period of 365 days or more and in the current tax year, his or her stay exceeds 59 days in India.

There is a relaxation for individuals who are non-resident Indian or persons of Indian origin, where the period of 60 days is extended to 182 days in certain circumstances.

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

An individual is liable to income tax on taxable income based on the following slab rate:

Tax rate	Age below 60 years	Age 60 years or more but less than 80 years	Age 80 years or more
10%	250,001 to 500,000 rupees	300,001 to 500,000 rupees	-
20%	500,001 to 1 million rupees	500,001 to 1,000,000 rupees	500,001 to 1 million rupees
30%	Above 1 million rupees	Above 1 million rupees	Above 1 million rupees

The tax computed on the basis of above slab, shall be further increased by surcharge at 15 per cent in case the taxable total income exceeds 10 million rupees during the tax year. The total tax including surcharge (if any) shall be further increased by education cess at 3 per cent.

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

An individual is liable to capital gains tax on the basis of following rates:

Long-term capital gains is taxed at 20 per cent. Long-term capital gain from sale of equity shares through a recognised stock exchange in India is exempt from tax.

Short-term capital gains is taxed based on the applicable slab rate. Short-term capital gain from sale of equity shares through a recognised stock exchange in India is chargeable to tax at 15 per cent.

Long-term capital gains means a gain arising from a capital assets held by a taxpayer for not more than 36 months immediately preceding the date of transfer. In the case of securities listed in a recognised stock exchange in India and unlisted shares, the period of holding shall be 12 months and 24 months respectively instead of 36 months.

Short-term capital gains means a gain arising from an asset that is not a long-term capital asset.

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

Presently, there is no gift tax applicable on gifts made by an individual.

However, a recipient of a gift would be liable to tax as income unless such gift is received:

- from a relative;
- on the occasion of marriage;
- under a will or inheritance; or
- from a fund or foundation or university or other education institution, or hospital or medical institution or charitable trust, etc.

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

There is no estate duty or inheritance tax on the transfer of an individual's estate on death.

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

Generally there are no income taxes applicable on an individual's real property that is occupied for his or her personal use or business. However, if more than one real property owned by the individual is occupied for personal use, only one property at his or her option shall be exempt from tax and other property shall be chargeable to tax on the basis of notional rent.

### 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?

There is import duty on items imported in India. Rates of tax range from zero to 40 per cent depending upon the nature of product imported in India. Duty free import of goods is allowed up to the value of 5,000 rupees as gift. There are certain items that are prohibited for import in India.

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

Apart from income tax, individuals are liable to pay profession tax levied by state government. There are other taxes that are generally borne by an individual indirectly on consumption of goods or services that is, VAT, excise duty, custom duty, service tax, octroi, etc. In India wealth tax was abolished effective from 1 April 2015.

### 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 specific taxes on trusts or other asset-holding vehicle. They are usually taxed at rates applicable to beneficiaries or at maximum marginal rate (currently 30 per cent), depending upon circumstances.

## 10 How are charities taxed in your jurisdiction?

Charities enjoy exemption from tax if they fulfil required conditions. Generally, they are required to spend 85 per cent of their income on their objects. They can also accumulate income and spend them in a period of five years provided required notice is given and accumulated income is invested in a prescribed manner. There are various regulations relating to the activities that charities can carry on and the manner in which they are required to invest their funds.

## Trusts and foundations

### 11 Does your jurisdiction recognise trusts?

Trusts are well established and recognised in India.

A trust (private or public) may be set up under the Indian Trust Act, 1882. A Public Charitable trust can also be set up under Societies Registration Act, 1860. It may be noted that a public trust for private religious or charitable endowments is governed by the Religious Endowments Act 1863, Charitable and Religious Trust Act 1920, Multi State Societies Act and certain local state laws.

India does not recognise trust as a separate entity (except for tax purposes). A trust is identified as a legal obligation that is attached to the ownership of property arising out of a confidence placed in by the settlor in the trustee for the benefit of the beneficiaries (as identified by the settlor), or the beneficiaries and the settlor. The trustee is the legal owner of such trust property, whereas the beneficiaries have beneficial interest in the trust property.

A person may set up a private trust either orally or under a written instrument, that is, either through a will (testamentary trust) or through a written trust deed during the person's lifetime. A trust having immoveable property and created through a non-testamentary instrument requires to be declared through a registered written instrument (section 5 of the Indian Trusts Act 1882). However, the registration (under the Indian Registration Act 1908) is not compulsory as in the case of a testamentary trust.

India, being a common law jurisdiction, not only acknowledges the concept of trust, but also recognises trusts governed by other jurisdictions. Depending upon the need of the settlor or family various trust structures are prevalent which include discretionary, non-discretionary, revocable, irrevocable, specific, general, determination linked to happening of an event or non-occurrence of an event. In a private trust, one is to be conscious to address the rule against perpetuity as provided for Indian laws, which impose a time limit on the age of the trust.

Trust formation is an important tool in the hands of private client practitioners and is gaining momentum in India as most wealthy families, HNIs and UHNIs wish to adopt an appropriate trust structure to address the needs arising in the area of estate planning, family succession and business succession. There is a growing need for a trust platform for promoters or families to have a bankruptcy remote vehicle for wealth protection and preservation by creating legally valid structures at the right time. A need for trusts has also arisen owing to the large non-resident Indian population, which is subject to different laws in the respective jurisdiction where it is located and the people desire to address their succession issues by creating suitably fitting structures in India.

Owing to new regulations relating to corporate social responsibility activities to be undertaken by organisations, there has been an increase in the setting-up of not-for-profit organisations (NPOs) or public charitable trusts.

### 12 Does your jurisdiction recognise private foundations?

India recognises private foundations in the form of NPOs. Generally, the NPOs are in three forms: trusts, societies and limited companies.

- Trust: a public charitable trust is usually irrevocably established for various purposes including: poverty relief, education, yoga, medical relief, preservation of environment, monuments, etc, and the advancement of any other object of general public utility. There is no central act that governs public charitable trusts in India. Certain states in India (eg, Maharashtra, Rajasthan) have public trusts acts in force and an office of charities commission supervises the functioning of such trusts. In the absence of a trust act in any particular state or Union territory, the general principles of the Indian Trusts Act 1882 are then applicable.

- Society: a society for charitable purposes may be registered for charitable purposes under the Societies Registration Act 1860, and are usually managed by a governing council or a managing committee.
- Company: under section 8 of the Companies Act 2013 (earlier section 25 of the Companies Act 1956), the central government may issue a licence to a registered limited or private limited company or an NPO for the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or such other object.

## Same-sex marriages and civil unions

### 13 Does your jurisdiction have any form of legally recognised same-sex relationship?

India does not yet legally recognise any form of same-sex relationship. Marriage laws only consider heterosexual relationships.

The Supreme Court of India in the matter of *Suresh Kumar Koushal v Naz Foundation* 2014 has upheld the validity of section 377 of the Indian Penal Code that criminalises 'carnal' (legal for sex) intercourse 'against the order of nature', which relates to same-sex relationships and held section 377 non-violative of the Constitution of India.

Further, the Court stated that the decision to repeal section 377 is left to the Parliament of India to protect the rights of the minority (lesbian, gay, bisexual, transgendered (LGBTs)).

However, we see regular initiatives being taken in the country for addressing this concern.

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

India does not yet recognise any form of legal relationship for heterosexual couples other than marriage, with the exception of recognition given by the Indian courts to the children born to heterosexual couples in live-in relationships.

See our response to question 13.

## Succession

### 15 What property constitutes an individual's estate for succession purposes?

All immoveable assets (all forms of real estate and land) and moveable assets (eg, fixed deposits, money in bank accounts securities, bonds, proceeds of insurance policies, retirement benefits, art, artefacts precious metals, brands, goodwill, digital assets (photographs, sketches, blogs, websites, email accounts such as Gmail, Yahoo, etc, social websites such as Facebook, Twitter, etc) and intellectual property rights, etc, constitute an individual's estate for succession purposes. All assets (immoveable and moveable) owned by a person can be bequeathed by an individual subject to his or her personal laws.

An individual cannot bequeath ancestral property not owned by him, unless such property or a share in such property has devolved upon him.

Further, individuals who are governed by their personal laws (eg, shariah or the Muslim personal law) can bequeath only as per the limited extent as restricted under their personal laws.

Assets in which an individual is a joint or co-owner, can be bequeathed only to the extent of such individual's share in the joint property. If an individual does not execute a will, then post his or her demise, the assets are distributed to his or her successors as per his or her applicable personal law.

### 16 To what extent do individuals have freedom of disposition over their estate during their lifetime?

An individual who owns assets in his or her own name whether acquired out of his or her own income, inherited or received as gift and a married woman in respect of her *streedhan* (property, assets or estate gifted to her during or after her marriage - over which the husband has no claim), both have complete authority and freedom of disposition over their own estate during their lifetime.

However, any fraudulent disposition by an individual, including disposition to defraud creditors or to avoid attachment orders by a court are not permitted.



India being a common law jurisdiction, marriage is a societal obligation and a sacred union forming an institution, and hence, any contractual arrangement in relation to marriages (eg, prenuptial or post nuptial contracts) is considered void. However, codified Muslim law allows for marriage as a contract between individuals and provides that only upon divorce shall the wife receive the property given to her directly and an amount equal to the sum of mahar or dower agreed during marriage to be paid to her.

Presently, in India, only the state of Goa recognises the community of property of spouses under the Goa Civil Code, which follows the Portuguese Civil Code.

#### 17 **To what extent do individuals have freedom of disposition over their estate on death?**

Only individuals falling under the shariah or the Muslim personal law are restricted from disposing their estate on death due to forced heirship rules basis the sub-sect of the shariah the individual falls under.

Majority of Indian Muslims follow the Hanafi doctrine of Sunni law as opposed to the Shia law. The courts presume that Muslims are governed by Hanafi law unless the contrary is established.

Upon the death of a Muslim, it becomes incumbent upon the deceased's family members to ensure that, according to shariah law as prescribed in the *Qur'an* and authentic Sunnah, the wealth and property left behind in the estate of the deceased are distributed. After meeting the initial expenses incurred in giving the deceased an Islamic burial, and, after paying all of his debts and the mahar (dowry) that may still be due to his wife, up to one-third of the remaining estate only may be expended according to the deceased dying wishes or a legal will that is left behind, for those who are entitled not only by the shariah. The remainder of the estate must be distributed to all the legal heirs.

A Muslim can make a bequest to anyone including a stranger, without the consent of the legal heirs provided the bequest does not exceed one-third of the estate, but a bequest to a legal heir without the consent of other legal heirs is invalid.

Property held in the name of Hindu undivided families (HUF) is not available for disposition by a member or coparcener under a will except upon the actual partition of the HUF property, though his or her undivided share can be bequeathed by a will.

#### 18 **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?**

An individual who dies without leaving a will or valid instructions for disposition of his or her estate, that is, individual has died 'intestate', then his or her legal heirs are entitled to a share in the assets of the deceased as per the applicable personal law of the deceased. The individual share for each of the legal heirs shall be decided upon as per the applicable personal law governing the intestate.

In the case of Hindus, Buddhist, Jains or Sikh, the Hindu Succession Act 1956 (HSA) is applicable. The Indian Succession Act 1925, consolidated the law in respect of succession to property (eg, Indian Christians, Jews and persons married under the Special Marriage Act 1954) and the law relating to succession rights of Parsis. Muslims are governed by their own personal laws.

Please see question 17.

The HSA lists the order of succession for the division of property of an intestate, according to the Schedule and specified Rules. The Class I heirs shall take simultaneously and to the exclusion of all other heirs; those in the first entry in Class II shall be preferred to those in the second entry and those in the second entry shall be preferred to those in the third entry, and so on.

The Class I heirs inherit simultaneously: son; daughter, widow, mother, son of a pre-deceased son, daughter of a pre-deceased son; so of a pre-deceased daughter, daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a pre-deceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son; son of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased son of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased son.

Only if the heirs of Class I are not available, then the property goes to the Class II heirs, where an heir in a higher entry is preferred over an heir in a lower entry.

##### I. Father

II. (1) Son's daughter's son, (2) son's daughter's daughter, (3) brother, (4) sister.

III. (1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter's daughter's son, (4) daughter's daughter's daughter.

IV. (1) Brother's son, (2) sister's son, (3) brother's daughter, (4) sister's daughter.

V. Father's father; father's mother.

VI. Father's widow, brother's widow.

VII. Father's brother; father's sister.

VIII. Mother's brother; mother's sister.

In case there are no Class I or Class II heirs, then the property passes on to the his or her relatives who are agnates (descended from the male line). If there are no agnates, then the property shall pass onto his or her relatives who are cognates (descended from the female line).

When a person dies intestate, the Indian Succession Act 1925 provides for various rules for devolution of property in cases when the intestate has left behind a widow, lineal descendant, kindred, parents, siblings and grandchildren as listed under a schedule. The right to the property of the intestate, however, may be established only when the legal heir has obtained the requisite letters of administration to the estate granted by a court of competent jurisdiction.

If an individual has no heir qualified to succeed to his or her property, such property shall then devolve upon the government. The estate of the deceased shall then devolve upon the state government or the Union Territory government within whose territorial jurisdiction the estate is situated subject to all the obligations and liabilities of the deceased individual.

#### 19 **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?**

In relation to the disposition of an individual's estate, the adopted or illegitimate children are treated the same as natural legitimate children, with some restrictions.

The Hindu Marriage Act 1955 has been amended to empower children of void or voidable marriages to inherit the property of their parents though these children do not have the right to seek any partition of ancestral property during the lifetime of their parents. The Supreme Court of India has also upheld the validity of this amendment in the matter of *Revanasiddappa v Mallikarjun*. The Supreme Court has also held that if a man and woman live together for a long time, there would be a presumption of marriage and their children could not be called illegitimate.

Further, an individual can exclude his or her immediate family members from being the beneficiaries in his or her self-acquired assets. However, in the case of inherited assets, the rights of the family members who are legal heirs, including adopted, illegitimate and disinherited children, shall prevail and an individual has to abide by the prevalent law dictating such rights.

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

Depending upon the type of property, the *lex situs* or *lex domicilii*, as applicable, governs the distribution of an individual's estate.

The Indian Succession Act 1925 regulates the succession to a deceased persons' immovable and moveable property respectively. There are different rules for moveable and immovable assets. The law of India governs succession to immovable property situated in India (ie, the *lex situs*). Whereas, the succession to moveable property is governed by the law of the country in which the deceased had domicile at the time of his or her death (ie, the *lex domicilii*).

#### 21 **What formalities are required for an individual to make a valid will in your jurisdiction?**

It is important that an individual should be an adult and of sound mind at the time of making his or her will. It is also important that such a will should not be made under coercion or influence from anyone. A will

### Update and trends

#### Portfolio investments

The Securities and Exchange Board of India (SEBI) permits a foreign investor (non-resident) to invest in India through the Portfolio Investment route. For the same the foreign portfolio investor (FPI) needs to register with a designated depository participant notified by the SEBI for the purpose. There are three categories of FPI, and category three, inter alia, permits endowments, charitable societies, charitable trusts, foundations, corporate bodies, trusts, individuals and family offices that are not eligible under other categories to be registered as an FPI.

#### AIF

The SEBI permits foreign investors to invest in an alternate investment fund (AIF) registered with the SEBI. The AIF investments are treated on a par with Indian investments. This window is also available for high net worth individuals, and it has certain tax advantages.

#### Start-up India schemes

The government of India has announced start-up India schemes, which provide tax incentives to investors in early stage ventures categorised as start-up ventures and promoting innovation.

#### Liberalisation trends in the Foreign Direct Investment (FDI) regime

The government of India has liberalised norms pertaining to capitalisation, sectorial caps, etc, in many sectors, for example, real estate, NBFC, defence, etc. Also there are changes to norms prescribed for investments by non-resident Indians. Investments by non-resident Indians in few sectors are treated on a par with Indian investment from an FDI point of view. Based on the increasing popularity of India as a global business and IT hub, there are proposed amendments to existing Acts and introduction of new laws to help commerce and build investor confidence.

can be made on plain paper and should be attested by two witnesses who should sign the will in the presence of the individual making the will at the time of execution. Lifetime interest in an asset under a will may be given to a beneficiary. As per the current trend, videography of execution of wills is being encouraged and accepted in the courts. Registration of a will with the Sub-Registrar of Assurances, though not compulsory, proves to be beneficial in certain cases for the change of name for ownership in government records.

### 22 Are foreign wills recognised in your jurisdiction and how is this achieved?

Foreign wills are recognised in India in respect of assets or properties held in India by a foreigner. A foreigner need not have a separate Indian will for his or her assets in India, and he or she can have a foreign will for all his or her assets.

The Indian law permits enforceability of a foreign probate order through Indian courts.

A foreign judgment given by a competent court of a country having reciprocity arrangement with India is enforceable in India unless it falls under the exception mentioned therein. For example, when the foreign judgment has not been given on the merits of the case, or is based on an incorrect view of international law or a refusal to recognise the law of India in cases where such law is applicable, or the judgment is opposed to natural justice or where it has been obtained by fraud or where it sustains a claim founded in breach of law in India.

If a probate or a court order from the foreign court on the will has already been obtained, then such probate or court order is to be produced in the Indian court of appropriate jurisdiction. In the case of *Sukumar Banerji v Rajeswari Debi* the Calcutta High Court held that to grant probate in common form of a foreign will, the court will be satisfied with prima facie proof that a foreign court has adopted the document as a valid testament, without any regard to the form in which such adoption is signified. It does not require that the form of approval should be the same as its own grant of probate.

### 23 Who has the right to administer an estate?

Any person of 18 years and above, of sound mind and capable of entering into a contract, or a professional agency, can be appointed as an executor or an administrator, under a will or a trust to administer the estate.

Under the Indian Succession Act, if the deceased died intestate and was a Hindu, Muslim, Buddhist, Sikh, Jain or an exempted person, the competent court may grant letters of administration of his or her estate to any person who would be entitled to the whole or any part of such deceased's estate in accordance with the personal succession laws of the deceased. When several persons apply for such administration, the court may grant it to any one or more of them. When no such person applies, the letters of administration may be granted to a creditor of the deceased.

### 24 How does title to a deceased's assets pass to the heirs and successors? What are the rules for administration of the estate?

The title to an immoveable property passes on to the legal heirs and successors based on nomination, succession as applicable personal laws, wills, probate from the court of appropriate jurisdiction, letters of administration and succession certificate. On the same basis, the mutation entry is carried out for immoveable property in the relevant municipal records made by the Tehsildar or district officer based on the original will or probate granted by the court.

This point is to be read along with the answers to questions 17, 18 and 23.

### 25 Is there a procedure for disappointed heirs and beneficiaries to make a claim against an estate?

Legal heirs or beneficiaries excluded under a will can approach appropriate court in India to challenge a will or make a claim against an estate.

It is compulsory to issue public notice during ongoing court probate proceedings whereby any person disputing the validity of a will has the right to object.

Separate suit for partition or right in property can also be filed by legal heirs or beneficiaries before the appropriate court subject to compliance with the Indian Limitation Act.

### Capacity and power of attorney

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

A minor (child under 18 years of age) can hold and manage property during his or her minority either through:

- a natural guardian, that is, their father or mother;
- a guardian appointed through a will; or
- a court-appointed guardian.

A contract for transfer of the minor's property entered into by the minor's guardian is specifically enforceable against the minor if it was entered by a guardian competent in law to bind the minor and the transfer was for legal necessity or for the minor's benefit. A guardian, however, cannot sell an immoveable property owned by a minor without the permission of the court.

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

An individual attains legal capacity for the purposes of holding and managing property is when he or she:

- is a major - 18 years of age or above;
- is of sound mind; and
- is not otherwise debarred by any competent authority.

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

When an individual loses his or her physical capacity or becomes incapable of managing his or her affairs (has sound mind), the individual can give a power of attorney for someone to manage his or her affairs. An individual can also set up a living trust.

However, in case of mental incapacity, such individual would be dependent on his or her friends and family.

**Immigration**

**29 Do foreign nationals require a visa to visit your jurisdiction?**

Foreign nationals require a visa to visit India (except Nepal).

Separate requirements are prescribed for (country, penalty to stay, etc) for registration of persons visiting India with the foreigners' registered office.

**30 How long can a foreign national spend in your jurisdiction on a visitors' visa?**

Foreign nationals can spend maximum 180 days on a single visit on a visitor's or a tourist visa.

**31 Is there a visa programme targeted specifically at high net worth individuals?**

India does not have a visa programme targeted specifically at high net worth individuals.

The Indian government has recently with an objective to attract investments from abroad and facilitate the 'Make in India' initiative by the government of India, approved a scheme under the foreign direct

investment policy to grant permanent residency status to foreign investors. In order to avail of the scheme, foreign investors will be required to invest minimum of 100 million rupees within 18 months and generate 20 jobs every year or 250 million rupees within 36 months from the time the foreign investor arrives in India. The permanent residence status initially available for 10 years can be extended by another 10 years.

This investment is meant to encourage job creation in the country and includes permanent residence status to the foreign investors for up to 20 years with the option for multiple visits. Further, the permanent residence status will serve as a multiple entry visa without any stay stipulation and the holders will be exempted from registration requirements. They will be allowed to purchase one residential property for dwelling purposes. A spouse and dependants will be allowed to take up employment in the private sector (with a relaxation of salary stipulations for an employment visa) and undertake studies in India.

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

The scheme mentioned in question 31 allows the spouse and dependents of the foreign investor to settle in India.

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

See question 31.

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

See question 31.



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# Italy

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## Tax

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

Tax liability in Italy is determined by the concept of residence. For income tax and wealth tax purposes, an individual is regarded as a resident of Italy if, for most of the tax period (ie, the calendar year) he or she:

- is registered with the Official Register of Italian residents;
- has his or her habitual abode in Italy; or
- has the main seat of his or her business and interests in Italy (similar to the OECD concept of 'centre of vital interests').

Resident individuals are subject to income tax on their worldwide income, including capital gains. Non-resident individuals are subject to income only on their Italian-sourced income (see questions 2 and 3).

Italian legislation does not provide for a comprehensive wealth tax. In very general terms, Italian-resident individuals are subject to wealth tax on financial assets held both in Italy and abroad, and real estate located both in Italy and abroad, while non-resident individuals are taxed only on financial assets and real estate located in Italy (other taxes apply on aircrafts, boats and other motor vehicles).

Inheritance and gift tax is levied on worldwide assets if the deceased or donor had his or her habitual abode in Italy on the date of demise or gift, otherwise it applies only to Italian-situs assets (see questions 4 and 5).

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

Individual income tax applies to the following categories of income:

- income from immoveable property;
- income from capital;
- income from employment;
- professional income;
- business income; and
- miscellaneous income, including capital gains.

The total taxable income of individuals is subject to income tax at progressive rates ranging from 23 to 43 per cent. A further 3 per cent surcharge is applicable to the total taxable income exceeding €300,000. In addition, local surcharges are due: their amount depends on the municipality of residence.

A favourable regime applies to financial income if some conditions are satisfied (see question 3).

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

Italy taxes capital gains realised by individuals upon the sale of financial assets and real estate. Assets other than financial assets and real estate (such as paintings or statues) are not subject to tax unless such gains are realised in the context of a business or of a professional activity.

Income from financial assets, as well as capital gains upon the sale of such assets, is generally taxed in the hands of individuals at a flat rate of 26 per cent (12.5 per cent on the interest and capital gains on Italian governmental bonds and bonds issued by foreign states providing for exchange of information). This favourable regime does not, however, apply to dividends and capital gains from substantial participations in companies and partnerships (in general terms, more than 20 per cent ownership) of which 49.72 per cent of their total is subject to tax at

progressive rates. The 26 per cent flat rate does not apply to dividends and capital gains from participations in unlisted companies and partnerships established in blacklisted jurisdictions, which are computed entirely in the total taxable income subject to progressive tax rates.

Capital gains realised by individuals upon the sale of real estate, either owned for more than five years or inherited, are generally exempt from income tax. Otherwise, capital gains are taxed at progressive taxation.

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

See question 5.

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

Inheritance and gift tax apply to transfers of assets and rights by way of succession or lifetime gifts. Taxable inter vivos transfers include:

- formal donations;
- gratuitous transfers other than formal donations; and
- liens on property for a specific purpose or for the benefit of donees or beneficiaries (including, according to the tax authorities and the Supreme Court, transfers into a trust).

The taxable basis is constituted by the value of the assets and rights transferred, after the deduction of burdens and charges which the heir or the donee may be subject to.

Special rules govern the determination of the value of some assets and rights.

The following rates are applicable:

- 4 per cent, if the transfer is made to spouses (or partners joined by a civil union) and direct descendants or ancestors; here, the transfer is subject to tax on the value exceeding €1 million (this exempt amount applies to each beneficiary);
- 6 per cent, if the transfer is made to brothers and sisters; here, the transfer is subject to tax on the value exceeding €100,000 (this exempt amount applies to each beneficiary);
- 6 per cent, if the transfer is made to relatives up to the fourth degree, to persons related by direct affinity as well as to persons related by collateral affinity up to the third degree; and
- 8 per cent, in all other cases.

The following transfers are exempt from inheritance and gift tax:

- transfers in favour of the Italian state or related local government;
- transfers in favour of foundations or other associations that have the purpose of assistance, scientific research, education or other public benefit;
- transfers in favour of individuals affected by severe disability;
- transfers of bonds issued by the Italian state (only in case of transfers on death); and
- transfers of controlling participations in favour of spouses (or partners joined by a civil union) or direct descendants (other conditions are required).

Inheritance and gift tax can be reduced by transferring bare ownership with retention of usufruct (that is, right to use and enjoy the property). Life insurance policies can also be used to reduce the impact of inheritance and gift tax.



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

Income from real estate is generally computed in the total taxable income, subject to progressive tax rates (see question 2). The income from Italian real estate is equal to the higher between the actual rental income cashed in the calendar year, reduced by 5 per cent as a forfeit deduction of costs, and the cadastral income, ie, the rent value resulting from the buildings register (which tends to be far lower than the fair market rent). If the immovable property is not rented out no income tax is levied and wealth tax on real estate located in Italy applies at the 0.76 per cent rate (see question 8).

Immovable property located in another jurisdiction only yields taxable income in Italy if either the property is rented out, or its availability triggers the taxation on a deemed rental income pursuant to the tax legislation of the state where the property is situated. The Italian taxable income is equal to the taxable income computed pursuant to the foreign legislation. If the foreign state does not levy tax on the rental income, the taxable income is the actual rental income cashed in the calendar year, reduced by 15 per cent as a forfeit deduction of costs. If the immovable property is not rented out no income tax is levied and wealth tax on real estate located abroad applies at the 0.76 per cent rate (see question 8).

As for capital gain realised by individuals upon the sale of real estate, see question 3.

The acquisition of real estate property in Italy is subject to transfer taxes (that is, a combination of either VAT or registration tax, and mortgage – even if no mortgage is undertaken – and cadastral taxes).

If real estate property is acquired by an individual not carrying on a business or professional activity, transfer taxes are due at a proportional rate of 9 per cent on the cadastral value (that is, a rated value of the property provided by the tax authorities of the property), plus a fixed €100 tax. A reduced rate of 2 per cent plus a fixed €100 tax is applicable if the immovable property qualifies for the primary abode regime. In both cases, €1,000 is the maximum tax applied.

Specific provisions apply if the real estate property is acquired via a corporate structure or trust.

For wealth tax on real estate, please see question 8.

## 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?

All assets imported into Italy are, in principle, subject to VAT.

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

Wealth taxes apply on the following assets:

- financial assets held in Italy. The annual rate is 0.2 per cent. The taxable base is calculated on the basis of the value of the assets laid down in the periodic reports issued by the Italian financial intermediary with which the assets are deposited. Current accounts are subject to tax at a fixed negligible amount;
- financial assets held abroad by resident individuals. The annual rate is 0.2 per cent. The taxable base depends on the type of financial asset. In general terms, the taxable base is the trading value for listed assets. In other cases, the taxable base is generally the nominal value. Current accounts held in a EU or EEA member state providing for exchange of information, are subject to tax at a fixed negligible amount;
- real estate located in Italy. This is applied at the general 0.76 per cent annual rate (such rate can be increased or decreased by the local municipality, within a certain range) on the value of Italian real estate, calculated on the basis of the value resulting from the cadastral registers. Favourable tax regimes may apply to, for example, the main abode; and
- real estate located abroad held by resident individuals. The annual rate is 0.76 per cent. The taxable base is generally equal to the purchase price of the real estate, but if the real estate is located in a EU or EEA member state providing for exchange of information, the taxable base is equal to the value resulting from foreign cadastral registers or other deemed value relevant to foreign income, wealth or transfer taxes and, in the absence of such value, is generally equal to the purchase price.

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

Income tax provisions recognise trusts as taxable persons for corporate income tax purposes (corporate income tax is levied at 27.5 per cent), subject to the comments below on transparent and disregarded trusts.

A trust qualifies as resident if either its seat of management (similar to the OECD notion of 'place of effective management') or its main object (the place where the day-by-day activities mainly take place) is located in Italy for most of the tax period. Deeming rules may apply to trusts established in jurisdictions not providing for exchange of information.

Income tax law provides for a sort of transparency regime for trusts that have 'identified beneficiaries'. The income imputed to the identified beneficiaries qualifies as income from capital and is subject to progressive tax rates if the beneficiaries are individuals. A beneficiary qualifies as an 'identified beneficiary' to the extent that he or she holds a current unconditional right to claim a share of the income generated by the assets held in trust; for example, the whole or a percentage of the income of the trust or the income from certain assets held in trust.

Revocable trusts are disregarded for income tax purposes so that the income from the trust assets is imputed directly to the settlor. Furthermore, the income can be imputed directly to the settlor or the beneficiaries should the overall analysis show that either the settlor or the beneficiaries have a de facto power or influence to manage the trust assets or dispose of either the assets held in trust or the income from such assets.

The tax authorities hold that inheritance and gift tax will be due by the trustee at the time of the addition of the assets to the trust fund and that the applicable rate and the possible exempt amounts are calculated by making reference to the relationship between the settlor and the beneficiaries. The Supreme Court recently confirmed such a view.

## 10 How are charities taxed in your jurisdiction?

As a general consideration, it should be considered that non-profit entities (ie, whose main activity is not a business activity) are qualified as non-commercial bodies subject to corporate income tax. A specific regime applies to entities that assume the status of 'non-profit organisation with a social relevance' (ONLUS).

The status of ONLUS can be obtained by associations, committees, foundations, cooperatives and other private bodies, with or without a legal personality, whose bylaws, drafted in the form of public deed or authenticated or registered private deed, provide for:

- the carrying out of a 'qualifying' institutional activity (which includes, inter alia, social assistance, charitable activities and civil rights defence) and the prohibition to carry out other activities;
- the exclusive pursuit of a social solidarity purpose;
- the prohibition to distribute, directly or indirectly, funds or positive results unless this is required by the law or the distributions are made to another ONLUS; and
- the obligation to use positive results to carry out the institutional aims.

Income arising from institutional activities is completely irrelevant for tax purposes, whereas income from the carrying out of 'connected' activities qualifies in principle as business income (and is thus subject to accounting obligations), but is not taxable.

## Trusts and foundations

### 11 Does your jurisdiction recognise trusts?

The Italian Civil Code does not provide for the trust institution. However, trusts regulated by foreign law may be recognised in Italy under the 1985 Hague Convention on the Law Applicable to Trusts and on their Recognition (the Hague Trusts Convention).

### 12 Does your jurisdiction recognise private foundations?

Under Italian law, foundations are body corporates subject to governmental recognition and control, and governed by a special set of rules laid down in the Italian Civil Code. Foundations in Italy may be set up for the achievement of charitable, cultural or other socially appreciable purposes only. Though the Civil Code makes a laconic reference to foundations 'established for the benefit of one or more specific families', the general view is that 'family foundations' may be set up

not to pursue the segregation and conservation of family wealth, but only to achieve purposes of social benefit, though limited to members of certain families. For these reasons, foundations are not set up for the achievement of purely private or family purposes (which is different to what happens in other countries). Consequently, while they can, *mutatis mutandis*, be used as an alternative to charitable purpose trusts, they are by no means appropriate to achieve the various objectives attached to private trusts.

### Same-sex marriages and civil unions

#### 13 Does your jurisdiction have any form of legally recognised same-sex relationship?

Under Italian law, marriage was traditionally considered the only personal relationship having any legal effect. However, since 5 June 2016 Italy has recognised same-sex civil unions. This new regulations basically give same-sex couples most of the legal protections enjoyed by married couples.

Furthermore, new regulations have also been introduced on cohabitation. In particular, cohabitation are between two individuals (same or different sex), who are not married or joined by a civil union, who are involved in a stable affective relationship and that have the habitual abode in the same municipality. Very few rights are provided for and these refer mainly to the right to continue to inhabit the common home.

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

Legal relationships for couples other than marriage do not exist under Italian law.

### Succession

#### 15 What property constitutes an individual's estate for succession purposes?

The Italian legal system is drafted on the basis of the principle of unity of the succession, according to which the same laws apply to the entire succession, regardless of the place in which the estate is located. Therefore, an individual's estate is constituted by his or her property as a whole (universal succession into the rights and obligations of the deceased person).

Legal ownership determines whether an asset belongs to the estate. Debts and other liabilities, as well as the individual's interest, are part of the estate to the extent the individual was their legal owner.

In case of co-ownership, the deceased's share devolves to his or her heirs.

#### 16 To what extent do individuals have freedom of disposition over their estate during their lifetime?

Generally, an individual can dispose of his or her estate during his or her lifetime without restrictions.

However, assets that fall within the community property under the matrimonial regime can be sold or gifted only with the consent of both spouses (since 1975, the Italian community property regime is the default regime applicable to all property acquired during marriage, unless the spouses have elected for the separation of property regime).

Likewise the assets segregated into a family fund for the benefit of the family members, unless otherwise indicated in the deed of creation of the fund, can only be disposed of with the consent of both spouses and, in the case of minor children, if a judge's authorisation is obtained.

It is worth noting that gifts made in violation of forced heirship rules (see question 17) are subject to a clawback action.

#### 17 To what extent do individuals have freedom of disposition over their estate on death?

Italian succession law provides for forced heirship rules. Under such regime, a person cannot freely dispose of all his or her assets by will or gift, since a quota of the estate must be transferred to forced heirs (including the spouse or the partner joined by a civil union, the legitimate, natural and adopted children, and, under certain conditions, the ascendants).

The reserved quota of the estate (that is, the quota of the estate that must be transferred to the forced heirs) varies according to the number

### Update and trends

A special tax regime to attract non-resident high net worth individuals into Italy seems to be under discussion. Also under analysis is the introduction of cooperative compliance programme aimed at encouraging tax authorities to establish a relationship with high net worth individuals based on trust and cooperation.

and nature of the heirs. If, for example, the forced heirs are the spouse and two or more children, half of the entire estate of the deceased is reserved to the descendants (to be equally divided among them) and one-quarter of such estate is reserved to the spouse.

The settlement of assets into a trust is considered a gift from a succession law perspective, therefore it is relevant to the calculation of the value of the estate of the deceased for the purpose of calculating the reserved quota. Italian law provides for the discretionary right of the forced heirs to claim the transfers made during lifetime or by way of will that prejudice their reserved quota (clawback action).

#### 18 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?

If there is no will, the Civil Code regulates succession. The heirs may include, depending on the circumstances, the spouse or the partner joined by a civil union, the legitimate and the natural descendants, the legitimate ascendants, the collaterals, other relatives and the state. For instance, under an intestate succession, the estate is transferred as follows:

- if the heirs are the spouse (or the partner joined by a civil union) and only one (legitimate, natural or adopted) child, half of the estate is inherited by each;
- if the heirs are the spouse (or the partner joined by a civil union) and more than one child, the children inherit two-thirds and the spouse one-third;
- if the spouse (or the partner joined by a civil union) survives but there are no children, the spouse succeeds the deceased together with the ascendants and siblings; and
- lacking a spouse (or the partner joined by a civil union) and children, the ascendants and siblings inherit the estate.

#### 19 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?

The Italian law system, as recently reformed, provides for the principle of the equality of the status of children, abolishing the difference between children born out of wedlock and those of parents who are married. Thus, illegitimate and adopted children have basically the same rights to succeed as legitimate children (some restrictions apply to adoption of persons who have already reached the majority of age).

#### 20 What law governs the distribution of an individual's estate and does this depend on the type of property within it?

The provisions of the EU Regulation No. 650/2012 of 4 July 2012 apply to succession of persons who deceased on or after 17 August 2015.

The EU Regulation provides the general rule whereby the law applicable to the succession as a whole shall be the law of the state of habitual residence of the deceased at the date of death (or, in limited circumstances, the law of the state the deceased was manifestly more closely connected with at the date of death).

#### 21 What formalities are required for an individual to make a valid will in your jurisdiction?

Italian law provides for the following types of will:

- holograph will: this is a private deed. It must be handwritten, as well as dated and signed by the testator. It can be kept by the testator, but it is more convenient for the testator to deliver the will to a public notary to avoid destruction before or after death;
- public will: the formalities for a public will require it to be delivered to a public notary in the presence of two witnesses and signed by the testator. The advantage of a public will is that the notary personally collects the will in the presence of witnesses and the will

immediately provides compliance with Italian law in respecting the wishes of the testator; and

- secret will: this must be delivered to a public notary in the presence of two witnesses. Other formalities are provided by the Italian Civil Code. This form of will is rarely used.

#### **22 Are foreign wills recognised in your jurisdiction and how is this achieved?**

In order to be recognised under the Italian law, a will must comply with the formal requirements laid down by article 27 of the EU Regulation No. 650/2012 of 4 July 2012.

#### **23 Who has the right to administer an estate?**

As a general rule, the power of administration belongs to any heir who has accepted his or her status.

The court can appoint a hereditary administrator if the person entitled to inherit:

- has not yet accepted the status of heir; and
- is not in possession of the estate property.

With the prior authority of the judge, the hereditary administrator can deal with payment of the estate's debts and legacies.

The testator may also appoint in his or her will one or more executors responsible for ensuring that the wishes are followed through, whether in relation to the entire will or part of it.

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

The party to succeed, either by law or by will, can either accept (expressly or implicitly) or renounce the estate, but is not allowed to sell or gift his or her position. In the meantime, unless the deceased has appointed one or more executors by will, he or she is also entitled to administer the estate.

The party to succeed can accept the estate with or without the benefit of the inventory. In the former case, the heir is liable for the debts inherited (and for the legacies) up to the value of the inherited assets.

#### **25 Is there a procedure for disappointed heirs and beneficiaries to make a claim against an estate?**

In general, the heirs can challenge the validity of a will before a court only in certain specific circumstances provided for by the Italian Civil Code (eg, formal defects). If the court declares the will null and void, then intestacy rules will apply, if there is no other valid will.

Italian law provides for the discretionary right of the forced heirs to claim the 'reduction' of the transfers made during lifetime or by way of will that prejudice their reserved quota (see question 17).

### **Capacity and power of attorney**

#### **26 What are the rules for holding and managing the property of a minor in your jurisdiction?**

A minor can own assets. Legal administration is attributed to either:

- parents; or
- a legal guardian (in certain circumstances).

Certain acts require the authorisation of the minor tribunal (child court). Minors can only accept the inheritance with reservation (that is, subject to limitation of liability for debts of the estate up to the amount of the net assets actually received).

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

Each individual attains legal capacity when he or she reaches the age of majority (18).

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

When a person loses capacity, his or her protection is organised by law and, depending on the degree of incapacity, different regimes apply. For example, if the person is of totally unsound mind, he or she must be represented by another person. In other cases, he or she will only be advised or controlled.

### **Immigration**

#### **29 Do foreign nationals require a visa to visit your jurisdiction?**

EU citizens generally do not require a visa to visit Italy. Non-EU citizens, however, need a visa and permit in order to enter and stay in Italy (some exceptions apply, eg, US citizens staying or traveling within Italy for less than three months are not required to get a specific visa).

#### **30 How long can a foreign national spend in your jurisdiction on a visitors' visa?**

A visa enables the holder entry and short stays in Italy of up to 90 days.

#### **31 Is there a visa programme targeted specifically at high net worth individuals?**

Italy does not have a visa programme targeted at high net worth individuals.

#### **32 If so, does this programme entitle individuals to bring their family members with them? Give details.**

Not applicable.

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

Not applicable.

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

Not applicable.



# Japan

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## Tax

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

The main tax imposed on incomes of individuals is income tax under the Income Tax Act of Japan. An individual's taxability is generally determined by the location of his or her residence and source of income.

A resident individual is defined as a natural person who is domiciled in Japan or a natural person who has resided in Japan continuously for more than one year. Resident individuals are further classified into permanent residents and non-permanent residents. A non-resident individual is defined as a natural person other than a resident individual. Income taxation for these groups is applied as follows:

- permanent resident individuals are taxed on a worldwide income basis. Non-Japanese citizens residing in Japan are presumed to be permanent residents when they have resided in Japan for a cumulative period of five years (measured within a 10-year time period). Japanese citizens are presumed to be permanent residents from the moment they reside in Japan;
- non-permanent resident individuals are subject to Japanese taxation with regard to Japan-sourced income and non-Japan-sourced income paid in or remitted to Japan. Non-Japanese citizens who have resided in Japan for less than five years on a cumulative basis (measured within a 10-year time period) are treated as non-permanent resident individuals; and
- non-resident individuals are taxed on Japan-sourced income only.

Upon the death of a decedent, inheritance tax will be imposed on the legal heirs and the testamentary donees (in this tax section, the word 'testamentary donees' shall refer to individuals entitled to receive testamentary gifts, irrespective of whether they are the legal heirs, and shall not include any legal entities) under the Inheritance Tax Act of Japan. The taxability of legal heirs and testamentary donees of decedents is generally determined by the location of their residence, their nationality, the location of the decedent's residence and the location of the assets.

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

In addition to income tax referred to in question 1 (imposed at a national level), a special reconstruction tax (also imposed at a national level), equivalent to 2.1 per cent of income tax, is payable from 1 January 2013 to 31 December 2037. Local inhabitant taxes will also apply to an individual's income if the individual resides in Japan. There are two categories of local inhabitant taxes: one at the prefectural level and the other at the municipal level. The tax base for income tax and local inhabitant taxes are almost identical. The overall income-based tax rate (including national tax and local taxes) is progressive and reaches a maximum rate which is currently 55.945 per cent (comprising a 45 per cent income tax rate, a 0.945 per cent special reconstruction tax rate and a 10 per cent local inhabitant tax rate).

In the case of an individual entrepreneur operating a business in Japan, a local enterprise tax will also be imposed on his or her business income by the prefectural tax authority where his or her office is located. The applicable tax rate differs based on the category of business operated by the sole entrepreneur, as well as the location of his or her office, but generally ranges between 3 and 5 per cent.

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

Capital gains are derived from the sale of assets. Assets from the viewpoint of capital gains include real properties, land lease rights, shares of corporations, certain kinds of bonds, gold bullion, jewels, vessels and ships, machines and equipment, golf course membership, and intellectual property.

Income tax at the national level and local inhabitant taxes are applicable to capital gains. Tax preferential treatments are available for certain capital gains, such as gain as a result of the rise in value of shares of corporations. With regard to individuals, capital gains derived from the sale of shares or derived from the sale of bonds are taxed at the rate of 20.315 per cent (comprising a 15 per cent income tax rate, a 0.315 per cent special reconstruction tax rate and a 5 per cent local inhabitant tax rate) until 31 December 2037. Capital gains derived from the sale of real property will be subject to tax at the rate of 20.315 per cent (comprising a 15 per cent income tax rate, a 0.315 per cent special reconstruction tax rate and a 5 per cent local inhabitant tax rate) from the present, up to 31 December 2037 if the real property is held for more than five years. Reduced tax rates will be applicable to capital gains derived from the sale of land for residential purposes if certain requirements are met. Capital gains derived from the sale of real property held for five years or less will be taxed at 39.63 per cent (comprising a 30 per cent income tax rate, a 0.63 per cent special reconstruction tax rate and a 9 per cent local inhabitant tax rate).

In order to prevent wealthy resident individuals from avoiding tax on capital gains by moving out of Japan with appreciated financial assets (eg, securities), and subsequently selling those assets overseas, the 2015 tax legislation has amended the Income Tax Act of Japan and introduced a new 'exit tax', which imposes income tax on unrealised capital gains on certain financial assets at the time of departure. Under the new rule, a resident individual are subject to income tax on capital gains on financial assets at the time of their departure (as if the individual sold the securities or settled the derivative transactions at the fair market value) if they satisfy both of the following conditions:

- the total value of certain financial assets held by the person as of departure from Japan is ¥100 million or more; and
- the person has lived in Japan for more than five of the last 10 years prior to departure.

For a similar purpose, income tax shall also be imposed on unrealised capital gains on certain financial assets if a resident individual who satisfies the conditions stated above donates certain financial assets to non-residents, or if a resident individual who satisfies the conditions stated above dies and, in a succession procedure, his or her legal heirs and testamentary donees who are non-residents of Japan come to acquire the financial assets.

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

If an individual makes lifetime gifts, different tax consequences will arise between:

- an individual who makes gifts to another individual; and
- an individual who makes gifts to a legal entity.

In the case of (i), the recipient of gifts will be subject to a gift tax under the Inheritance Tax Act of Japan. As set out in the table below and the table in question 5, the gift tax rate is much higher than the inheritance

tax rate. When certain requirements are met (such as where the provider of the gift is a parent or grandparent who is aged 60 or older and the recipient of the gift is at least 20), the recipient can elect to enjoy the reduced gift tax rate and to credit such gift tax against the inheritance tax after the death of the decedent.

A provider of gifts will not generally be subject to tax. However, if the recipient of gifts does not pay the gift tax, the provider of gifts will be jointly liable.

The present gift tax rate is as follows (although it should be noted that reduced rates are applicable to gifts from lineal ascendants to lineal descendants who are 20 years of age or older):

Tax base after basic deduction* applicable to all gifts	Tax rate
¥2 million or less	10%
¥3 million or less	15%
¥4 million or less	20%
¥6 million or less	30%
¥10 million or less	40%
¥15 million or less	45%
¥30 million or less	50%
More than ¥30 million	55%

\* Basic deduction is ¥1.1 million (ie, no tax is payable for gifts of amounts up to ¥1.1 million).

In the case of (ii), the recipient legal entity will be subject to corporate income tax. The tax base is fair market value of the gifts. The individual provider of gifts is also subject to income tax (deemed capital gains tax) if the gifts provided are property other than cash. The tax base is unrealised capital gains (ie, the fair market value less acquisition costs and other related expenses). However, if the recipient legal entity falls within the category of certain charities, deemed capital gains tax will not be levied.

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

If an estate is gifted to a legal entity on the death of the testator, the recipient legal entity and the individual testator will be subject to corporate income tax and deemed capital gain tax, respectively, in the same manner set forth in (ii) in question 4. The tax obligation of the individual testator will be borne by his or her heirs.

Inheritance tax will be imposed upon each of the legal heirs and testamentary donees and not upon the estate itself. The following sets out the method of calculating inheritance tax where an estate is gifted to individuals and inheritance tax is payable.

The basic calculation method of inheritance tax is as follows:

- (i) the tax base must be determined. The total value of the estate less debts incurred by the decedent, untaxable properties and costs incurred for the funeral plus gifts made within three years of death will be the tax base;
- (ii) a deduction of ¥30 million and ¥6 million multiplied by the number of legal heirs will be applied to the tax base. Legal heirs in this case include illegitimate children and adopted children. However, there are certain restrictions on the number of adopted children who may be included in this calculation in order to prevent inheritance tax avoidance;
- (iii) assuming that the tax base determined in (i) and (ii) above is divided among the legal heirs pursuant to the legal inheritance ratio provided in the Civil Code of Japan (see question 18), the total inheritance tax amount to be imposed is then calculated. The inheritance tax amount is allocated based on the actual assets acquired by each of the heirs and the testamentary donees. If the amount of the assets acquired by a certain legal heir is more (or less) than his or her legal inheritance ratio, then the inheritance tax to be imposed upon him or her will increase (or decrease) accordingly, although the total amount of the inheritance tax to be imposed upon all the legal heirs will, in principle, remain the same as where the division is faithful to each legal heir's legal inheritance ratio;
- (iv) in calculating the inheritance tax amount, special deductions or exemptions are available. In particular, the surviving spouse can

be exempted if the amount of the assets he or she acquires is less than ¥160 million or the amount of the spouse's legal inheritance ratio. If gift tax has already been paid for gifts made within three years of death, such gift tax is creditable against the inheritance tax to be paid by the gift tax payer. On the other hand, a person who receives assets by inheritance or testament who is not a spouse or a first-degree family member (including an heir per stirpes set out in question 18 below) of the decedent will be liable for an additional 20 per cent of inheritance tax; and

- (v) as stated above, inheritance tax is imposed upon each of the heirs and testamentary donees of a decedent. However, in the event that a certain heir or a testamentary donee does not pay the inheritance tax due, the other heirs and testamentary donees are severally and jointly liable to a certain extent.

The current basic inheritance tax rates are as follows:

Tax base after applicable deduction	Tax rate
¥10 million or less	10%
¥30 million or less	15%
¥50 million or less	20%
¥100 million or less	30%
¥200 million or less	40%
¥300 million or less	45%
¥600 million or less	50%
More than ¥600 million	55%

It should be noted that preferential tax treatments apply to cases of inheritance involving business succession. Such preferential treatment is intended to facilitate business succession by reducing the inheritance tax burden. This treatment may be applied to the inheritance of medium to small-sized businesses (defined as, for example, a business of which the stated capital is a specified amount or less and the number of employees is a specified number or less). Under such preferential treatment, 80 per cent of the inheritance tax will be deferred upon certain requirements being met (such as the approval of the Minister of Economy, Trade and Industry being obtained, the decedent being the representative of the business who held at least 50 per cent of the shares or interest in the business and the heir or the testamentary donee succeeded the business as such a representative).

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

Upon acquisition, a real property acquisition tax will be imposed. The tax rate is generally 3 or 4 per cent. Upon registration, a registration and licence tax will be imposed. The tax rate varies depending on the type of registration made. For example, if the registration relates to the transfer of ownership, the tax rate is 2 per cent of the value of the real property (reduced tax rates may apply depending on the type of real property; eg, land, dwelling house). If the ground for the acquisition of real property is inheritance, inheritance tax will be imposed as described above and registration and licence tax will also be imposed (the tax rate is 0.4 per cent of the value of the real property), while the real property acquisition tax will not be imposed.

In the period in which real property is held, a fixed assets tax will be imposed generally at the rate of 1.4 per cent of the value of such real property. Various tax preferential treatments are available for a fixed assets tax. In addition, real property located in certain areas, such as Tokyo, will be subject to urban planning tax at the rate of 0.3 per cent of the value of real property.

When disposing of real property, a capital gains tax (income tax and local inhabitant tax) will be imposed, as stated in question 3.

##### 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?

There are neither taxes nor duties on exportation in Japan.

Regarding importation, customs and duties are levied depending on the goods to be imported into Japan. In addition, upon importation, a consumption tax will be levied at a rate of 8 per cent (the tax rate will increase to 10 per cent on or after 1 October 2019).

The rates of customs and duties are provided in the Customs Tariff Act of Japan. Certain economic partnership agreements (EPAs) to which Japan is a signatory (such as with Indonesia, Malaysia, Singapore, Thailand, Vietnam, other ASEAN countries, Chile, India, Mexico and Switzerland) provide preferential treatment in terms of tariff rates. The customs and duties are applicable regardless of the purpose of importation (ie, duties and customs are applicable even if the importation is for personal use and enjoyment). However, if goods are imported using the general cargo or postal package and the value of such goods is less than ¥200,000, a simplified tariff code will be applied. No customs and duties are payable on imported goods that have a value of ¥10,000 or less, except alcohol and cigarettes.

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

Consumption tax (the present rate of which is 8 per cent, but on or after 1 October 2019 will increase to 10 per cent) may be relevant to an individual. The payer of consumption tax is:

- a person or a legal person who, as a business, with consideration, sells or leases assets and provides services within Japan; or
- a person or a legal person who receives goods from a bonded area.

Therefore, an individual who purchases goods or receives services is not a taxpayer under the Consumption Tax Act of Japan. Generally speaking, such an individual simply bears the economic burden of the consumption tax passed onto consumers by businesses.

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

For Japanese tax purposes, there are generally three types of trusts:

- transparent type trusts;
- non-transparent type trusts; and
- corporate trusts.

Transparent type trusts are disregarded in the taxation process and the beneficiaries may directly obtain gains and losses at the time such gains and losses are realised (ie, gains and losses attributable to the trust are considered to be gains and losses of the beneficiaries). All trusts other than trusts classified into (ii) and (iii) are included in this category.

Beneficiaries of non-transparent type trusts are taxed at the time when the distribution of profits is made to the beneficiaries. This type of trust includes collective investment trusts, retirement pension trusts and qualified public interest trusts.

The treatment of corporate trusts is largely similar to the treatment of ordinary corporations. Therefore, corporate trusts are taxable entities. Corporate trusts include certain securities-issued trusts, trusts with no beneficiaries, certain trusts the trustee of which is a corporation, and certain specific purpose trusts.

### 10 How are charities taxed in your jurisdiction?

There are various types of charities recognised in Japan, as long as the respective legal requirements are met. Generally speaking, charities are tax-exempt entities, including the donations and charitable contributions they receive (see questions 4 and 5). However, if such charities have certain premises established as an office and continuously conduct business in certain areas for profit as stipulated in the Corporate Tax Act of Japan, such businesses are taxable to the extent profits are derived from such businesses. Such businesses include the sale of goods and real properties, money lending, leasing of real property, manufacturing, communication services, transportation, warehousing, printing, publishing, photography, the hotel industry, agency, commissionaire-related businesses, restaurants, mining, hairdressing, medical insurance businesses and the provision of parking spaces.

## Trusts and foundations

### 11 Does your jurisdiction recognise trusts?

Trusts are recognised in Japan, and are regulated by the Trust Act. In general, trusts can be established by settlors transferring their properties to trustees who then hold legal title to the properties for the benefit of the beneficiaries, who may or may not be the settlors. Trust properties, the legal title of which have been transferred from settlors to trustees, become remote from the settlors' bankruptcy. If the property

to be transferred to a trustee falls under a category of assets that are capable of being registered in Japan (such as real property and patents), then the transfer of titles to such assets must, for purposes of perfection against third parties, be registered.

Trustees manage or dispose of trust property in accordance with certain trust objectives, and carry out the necessary acts to achieve such objectives in accordance with the trustees' duties (such as the duties of care and loyalty). Although trust properties are incapable of being legal entities, they must be segregated from trustees' own properties, and must be kept free from seizure by trustees' own creditors and bankruptcy. There are three methods by which to establish a trust in Japan:

- a trust established by way of a contract between the settlor and trustee;
- a trust established by way of the will of a settlor; and
- a trust established by way of a declaration (where the settlor declares, in a notarised deed or such other prescribed form, that it manages or disposes of property in accordance with certain objectives and carries out the necessary acts to achieve such objectives).

Additionally, trusts governed by the laws of another jurisdiction may be recognised in Japan (although the validity of such trusts is ultimately determined by a Japanese court in the event of disputes regarding these trusts).

### 12 Does your jurisdiction recognise private foundations?

A general incorporated foundation (GIF), which is a legal personality, can be established under the Act on General Incorporated Associations and General Incorporated Foundations. There are no limits to the objectives of a GIF, whose objectives can be driven by, among others, public interest, mutual benefit for specified members and commercial purposes, as long as such objectives are legal. A GIF can be established by one or more founders contributing ¥3 million or more. A founder can also establish a GIF by way of a will, in which case the executor carries out the procedures necessary to establish the GIF. A GIF can be operated by a representative director or an operating director depending on the determination of a board of directors. A board of councillors determines certain fundamental matters in relation to the GIF (such as the election of directors and amendments to the GIF's articles of incorporation) in accordance with applicable law or the GIF's articles of incorporation.

Private foundations governed by the laws of another jurisdiction may also be recognised in Japan (although the validity of such foundations is ultimately determined by a Japanese court in the event of disputes regarding the foundations).

## Same-sex marriages and civil unions

### 13 Does your jurisdiction have any form of legally recognised same-sex relationship?

In Japan, a same-sex marriage is treated as invalid. If a person with gender identity disorder changes their gender pursuant to the Gender Identity Disorder Act, then the person may enter into a marriage with a person who is biologically the same sex as the person was before they changed their gender. The Gender Identity Disorder Act provides the requirements for a person with gender identity disorder to legally change their gender. The requirements are as follows:

- the person is at least 20 years old;
- the person is unmarried at the time they wish to legally change the original gender;
- the person does not have a child under 20 years old;
- the person does not have reproductive organs or reproductive ability; and
- the person has external genital organs similar to the other sex.

These requirements may be hard for a person with gender identity disorder to satisfy.

Under Japanese tax law, the term 'spouse' has the same meaning as in the Civil Code of Japan (ie, a spouse in a marital relationship). Accordingly, a person in a same-sex relationship is not eligible for tax benefits granted for a spouse or a marital relationship, such as spouse tax deductions under the Income Tax Act and a spouse's amount of tax reductions under the Inheritance Tax Act.



It should be noted, however, that some progressive movements in relation to same-sex marriage have been occurring at local governments' level. In March 2015, Shibuya Ward, a ward in Tokyo, enacted the same-sex partnership ordinance. Under this ordinance, Shibuya Ward issues a 'partnership certificate' to same-sex couples who satisfy certain requirements, and then such same-sex couples may be treated by Shibuya Ward and business operators located in Shibuya Ward as equivalent to a formally married couple, in limited situations. However, such same-sex couples are not treated as married couples within the meaning of the Civil Code of Japan and accordingly, they do not receive the same legal protection as married couples. Such progressive movements have gradually been expanding to other local governments, although some people object to such movements by referring to article 24 of The Constitution of Japan, which provides: 'Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis.'

#### **14 Does your jurisdiction recognise any form of legal relationship for heterosexual couples other than marriage?**

In Japan, heterosexual couples who intend to marry are required to submit a marriage notification to a government office in order for the marriage to be formally admitted as a marital relationship under Japanese law. If heterosexual couples live together with an intention to marry but have not submitted a marriage notification, the relationship is not treated as a marital relationship but as a *de facto* marriage. Although to a limited extent, such couples are also eligible for protections and obligations that are substantially similar to those provided for a marital relationship, for example:

- if a *de facto* marriage is terminated without justifiable reasons, the terminated party to the *de facto* marriage may seek damages against the terminating party;
- if a *de facto* marriage is terminated, a party may ask the other party to distribute community property and joint property;
- partners to the *de facto* marriage shall share expenses that arise from the relationship, taking into account their property, income and all other circumstances; and
- for social security purposes, it is often the case that a *de facto* marriage is treated the same as a marital relationship (eg, a partner to a *de facto* marriage is eligible to obtain pensions and industrial injury insurance after the death of the other party).

However, there is a big difference between marriage and *de facto* marriage: a partner to a *de facto* marriage is not treated as an heir. That said, it is possible to give an estate to the partner by way of testament.

Under Japanese tax law, the term 'spouse' has the same meaning as in the Civil Code of Japan (ie, a spouse in a marital relationship). Accordingly, a partner to a *de facto* marriage is not eligible for tax benefits granted for a spouse or a marital relationship, such as spouse tax reductions under the Income Tax Act and a spouse's amount of tax reductions under the Inheritance Tax Act.

### **Succession**

#### **15 What property constitutes an individual's estate for succession purposes?**

In principle, any and all rights and duties attached to the property of the decedent, including a legal title to tangible and intangible property and co-ownership interest in property, claims and obligations, are succeeded to at the time of the death of the decedent. This, however, shall not apply to rights or duties of the decedent that are purely personal, such as the right to welfare or public assistance.

#### **16 To what extent do individuals have freedom of disposition over their estate during their lifetime?**

In principle, individuals may make any and all dispositions over their estate, whether by sale or through gifts, during their lifetime, except where such disposition is against public policy (eg, a lifetime gift for the purposes of maintaining an adulterous relationship) and should be considered void. However, if the heirs who are entitled to a statutory reserved share claim for abatement of the gift so request, the recipient must return the gift or make compensation for the value of the gift to

the extent required by the Civil Code of Japan. For details of the statutory reserved share, see question 25.

#### **17 To what extent do individuals have freedom of disposition over their estate on death?**

In principle, individuals have testamentary freedom over their estate, except in cases where such disposition is against public policy. However, if the heirs who are entitled to a statutory reserved share claim for abatement of the gift so request, the recipient must return the gift or make compensation for the value of the gift to the extent required by the Civil Code of Japan. For details of the statutory reserved share, see question 25.

#### **18 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?**

If the intestate decedent is survived by his or her spouse, such spouse shall, in principle, always be an heir. As to other heirs, it depends who survives the decedent.

##### **Intestate decedent survived by spouse and children**

In this case, the spouse and the children of the decedent become heirs. If the decedent is survived by his or her spouse and one or more children, the surviving spouse takes half of the estate and the surviving children take the other half in equal shares. If any of the decedent's children has died prior to the death of the decedent, or has lost the right to inheritance by disqualification or disinheritance, and if any of his or her lineal descendants is surviving, then such lineal descendant (ie, a grandchild or a further descendant of the decedent) will be an heir per stirpes.

##### **Intestate decedent survived by spouse and lineal ascendants with no surviving children**

The lineal ascendants of the decedent, such as his or her father or mother, may become heirs only if the decedent has no children (and no heirs per stirpes). In this case, the surviving spouse takes two-thirds of the estate and the surviving lineal ascendants take one-third of the estate in equal shares.

##### **Intestate decedent survived by spouse and siblings with no surviving children or surviving lineal ascendants**

The siblings of the decedent may become heirs only if the decedent has neither surviving children (and not heirs per stirpes) nor surviving lineal ascendants. If the decedent is survived by his or her spouse and siblings, the surviving spouse takes three-quarters of the estate and the surviving siblings take one-quarter of the estate in equal shares. If any of the decedent's siblings has died prior to the death of the decedent, or has lost the right to inheritance by disqualification or disinheritance, and if his or her children are surviving, then the child (ie, a nephew or a niece of the decedent) will be an heir per stirpes.

##### **Special benefit and contributory portion**

The above-mentioned shares of each heir are subject to adjustment by the amount of special benefit that heirs have already received from the decedent and the amount of contributory portion of heirs who have made a special contribution relating to the decedent's business, medical treatment or nursing of the decedent or other means.

#### **19 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?**

Adopted and illegitimate children are now treated in the same way as natural legitimate children. In the past, article 900 of the Civil Code stipulated that an illegitimate child was only entitled to half the estate to which a legitimate child is entitled. There were, for many years, strong criticisms of the fairness of this clause, and the Supreme Court of Japan finally decided on 4 September 2013 that this unequal treatment was in violation of article 14 of the Constitution of Japan, which provides for equal protection for all. After this Supreme Court decision, article 900 was formally amended in December 2013, and the distinction between the legitimate child and the illegitimate child was abolished.



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

It depends on the nationality of the decedent. If the decedent's nationality is Japanese, the Civil Code of Japan governs the distribution of an individual's estate. Our explanations in this 'Succession' section are all based upon the Civil Code of Japan. Even if a foreign law governs the succession or distribution of an individual's estate because of the nationality of the decedent, the heirs, testamentary donees and the recipient legal entities who succeed to real property within Japan must complete its registration to perfect changes in rights through the procedure required by the laws of Japan.

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

This depends on which law governs the formality of a will. Under Japanese law, a will is considered valid in its formality if it complies with:

- the law of the place where the act was performed;
- the law of the country where the testator had nationality, either at the time he or she made the will or at the time of his or her death;
- the law of the place where the testator is domiciled, either at the time he or she made the will or at the time of his or her death;
- the law of the place where the testator was habitually resident, either at the time he or she made the will or at the time of his or her death; or
- in the case of a will concerning real property, the law of the place where the real property is located.

If the law of Japan (the Civil Code) applies to a will in question, then (i) a holograph document, (ii) a notarised document or (iii) a sealed and notarised envelope document is considered valid in terms of formality.

With regard to (i), the testator must write the entire text, the date and his or her name in his or her own hand, and affix his or her seal.

With regard to (ii), the following requirements must be satisfied:

- no fewer than two witnesses must be in attendance;
- the testator must give oral instruction of the tenor of the will to a notary public;
- the notary public must take dictation from the testator and read this aloud, or allow inspection, to the testator and witnesses;
- the testator and witnesses must each sign, and affix his or her seal to, the certificate after having approved its accuracy; and
- the notary public must give supplementary registration to the effect that the certificate has been made in compliance with the formalities listed in each of the preceding items, sign it, and affix his or her seal thereto.

With regard to (iii), the following requirements must be satisfied:

- the testator must sign and affix his or her seal to the certificate;
- the testator must seal the certificate and affix the same seal;
- the testator must submit the sealed certificate before one notary public and not less than two witnesses, with a statement to the effect that it is his or her own will, giving the author's name and address; and
- after having entered the date of submission of the certificate and the statement of the testator upon the sealed document, the notary public must, together with the testator and witnesses, sign it and affix his or her seal thereto.

Apart from a will, which is required to comply with considerable formality in order to be valid, it is possible to make a gift in the form of a gift agreement by and between a donor and a recipient, which becomes effective at the time of the donor's death. This gift agreement is required to comply with relatively lower standards of formality in order to be valid.

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**22 Are foreign wills recognised in your jurisdiction and how is this achieved?**

The law of the nationality of the testator governs the execution and effect of foreign wills. In terms of the formality of wills, refer to question 21.

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**23 Who has the right to administer an estate?**

Where there is only one heir and there is no will, he or she inherits the entire estate and is allowed to administer it. If there are two or more heirs and there is no will, most of the inherited estate, such as real estate, belong to those heirs in co-ownership, and such co-ownership is terminated only after it is decided which of the heirs should take which specific assets by the effect of an out-of-court agreement or the completion of a formal court procedure. Until such decision is made, those joint heirs administer the inherited estate. However, the family court may appoint, if it thinks it necessary to preserve such an estate, a manager of such estate.

Where there is a will, an executor, in principle, has the right and duty to administer the estate until the time the succession of the estate under the will is fully completed. An executor may be designated by the will itself, or be appointed by the family court.

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

In principle, if a person dies intestate, his or her estate automatically and directly passes to heirs upon the commencement of the inheritance and, if there are two or more heirs, they will co-own the deceased's assets. However, a divisible claim such as a monetary claim (eg, a bank deposit), will not be co-owned, but will be automatically divided among those heirs. If a person dies testate, his or her estate will be passed to his or her heirs, testamentary donees and recipient legal entities in accordance with his or her will. For the process of the division and the rules for administration of the estate, refer to question 23.

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**25 Is there a procedure for disappointed heirs and beneficiaries to make a claim against an estate?**

Heirs other than siblings have statutory reserved shares. If only lineal ascendants are heirs, they have statutory reserved shares that are equal to one-third of the decedent's estate. In the other cases, heirs have statutory reserved shares that are equal to half of the decedent's estate. Heirs must claim for statutory reserved shares, in principle, within one year of having knowledge of the commencement of inheritance and the existence of a gift or of a testamentary gift to be abated.

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**Capacity and power of attorney**


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

The legal capacity of a person to act is governed, in principle, by his or her national law. In the case of a Japanese citizen, the Civil Code of Japan will apply, under which a minor's act without the consent of his or her statutory agent (in principle, his or her parents) may be rescinded unless such act grants only a right or discharges his or her duty.

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

An individual attains legal capacity for the purposes of holding and managing property at the age of 20. However, if a minor is married, he or she will be deemed to have attained majority. The minimum legal age of marriage for a man is 18 and for a woman, 16. A minor who is permitted to carry out business has the same capacity to act as a person who has reached the age of 20, as far as such business is concerned.

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

If someone loses the capacity to discern right and wrong due to any mental disability, the family court may order the commencement of guardianship upon the request of related parties. Acts of a person under guardianship may, in principle, be rescinded.

If a person's capacity to appreciate right and wrong is severely insufficient due to any mental disability, the family court may order the commencement of curatorship upon the request of related parties. A person under curatorship must obtain the consent of his or her curator if he or she intends to do important acts such as borrowing money. If there is no consent, acts of a person under the curatorship may, in principle, be rescinded.

## Update and trends

### Amendments to the inheritance rules

Considering the increasing ageing population and changes to public awareness on issues concerning inheritance in Japan, amendments to the inheritance rules contained in the Civil Code of Japan have been discussed by the Japanese government. In 2014, the Ministry of Justice set up a working team to review the inheritance rules. These discussions concluded in January 2015, and were followed by discussions of the Legislative Council of the Ministry of Justice (Legislative Council), starting in February 2015. The working team released 'The interim discussion draft in relation to the Civil Code (Inheritance Matters)' on 21 June 2016 and Ministry of Justice also issued 'The Supplemental Explanation for the interim discussion draft in relation to the Civil Code (Inheritance Matters)'. Further discussion will be made on these documents, and it is expected that an amendment bill to the Civil Code of Japan, which reflects matters including the following points, will be presented before the Diet, perhaps as early as 2017.

### Measures to protect rights to housing of the spouse of the deceased

Under the current inheritance rules, there is a possibility that the spouse of the deceased may be forcibly evicted from the house in which the spouse had lived with the deceased. In order to strengthen the spouse's rights to housing, the Legislative Council has been discussing measures to protect (at least short-term) rights to housing before the division of the estate and, further, measures to protect long-term rights to housing after the division of the estate.

### Measures to realise the division of estate based on the contributions made by the spouse of the deceased

Under the current inheritance rules, in case of intestacy, the spouse of the deceased has a statutorily determined share in the estate (see question 18), and such a share is not generally adjusted to take into account the contributions made by the spouse. In order to properly reflect the contributions made by the spouse in the shares of the estate, the Legislative Council has been discussing measures to realise the division of the estate based on contributions actually made by the spouse.

### Measures to make clear the power of an executor of a will

Under the current inheritance rules, the power of an executor is not necessarily clear. The Legislative Council has been discussing amendments to make it clear.

### Lowering the age of majority

An amendment to the Civil Code where the age of majority will be lowered from 20 to 18 has been discussed and it is reported that the amendment bill will be presented before the Diet, perhaps as early as 2017. The public comments procedure on how to effectuate the bill commenced as of 1 September 2016.

### New reporting system for automatic exchange of non-residents' financial account information

As the world becomes increasingly globalised, it is becoming easier for taxpayers to evade taxes by hiding their assets and income in foreign

financial institutions and foreign shell companies. In 2014, in order to crack down on such tax evasion, the Organisation for Economic Co-operation and Development created and published the common reporting standard concerning automatic information exchange between tax authorities (CRS), and the G20 summit approved the CRS. As of September 2016, more than 100 countries and jurisdictions including Japan have announced that they are scheduled to commence the automatic information exchange in accordance with the CRS by 2018. In order to implement the CRS, Japan revised the tax laws by the 2015 tax reform and introduced the reporting system for automatic exchange of non-residents' financial account information.

Under the new reporting system, on or after 1 January 2017, a financial institution in Japan will be required to specify the reportable accounts. More specifically, a person (including a corporation) who wishes to newly open accounts with the financial institution will be required to submit to the financial institution a notice including the required information including the name, address, country of residence and foreign tax identification number of the person, and the financial institution will be required to confirm whether the information is correct. The financial institution will also be required to specify the countries of residence of the persons who have pre-existing accounts based on the information and records held by the financial institution by 31 December 2018. The financial institution will determine the reportable accounts as of 31 December of each year and report to the Japanese tax authorities by 30 April of the next year the required information including the name, address, country of residence, foreign tax identification number, balance of the account, aggregate amount of interest and dividends received for that year. In order to crack down on tax evasion through the use of foreign shell companies, even in cases where an account is held by a corporation the country of residence of which does not execute a tax treaty with Japan, if the country of residence of the beneficial owner of the account executes a tax treaty with Japan, such account will be treated as a reportable account. The Japanese tax authorities will provide the information obtained from the financial institutions to the foreign tax authorities of the countries of residence of the account holders once a year based on the applicable tax treaties, and the Japanese tax authorities will receive the same type of information concerning the financial accounts held by residents in Japan from the foreign tax authorities based on the applicable tax treaties. As a result, it is expected that taxpayers will not easily evade taxes through the use of foreign financial institutions and foreign shell companies.

### Plan to accept foreign people engaging in nursing care

Japanese cabinet has decided to introduce a new visa status to be granted to a foreign person who has been certified as a care worker and engaging in nursing care or the instruction of nursing care. With the new visa, a foreign care worker or instructor will be allowed to stay in Japan for five years at the longest. Though the bill for this new type visa was submitted to the diet in March 2015, it is still under discussion and has not yet been passed as of September 2016.

If someone has insufficient capacity to appreciate right or wrong due to any mental disability, the family court may order the commencement of assistance upon the request of related parties. A person under assistance must obtain the consent of his or her assistant if he or she intends to do any particular act determined by the court. If there is no consent, such an act of a person under assistance may, in principle, be rescinded.

## Immigration

### 29 Do foreign nationals require a visa to visit your jurisdiction?

In principle, a visa is required. However, if persons from certain visa waiver countries intend to visit Japan for certain purposes (eg, business, conference, sightseeing purposes) for a limited period of time, then a visa is not required.

### 30 How long can a foreign national spend in your jurisdiction on a visitors' visa?

It depends on the status of the visitor. Examples of status and permitted terms are as follows:

Status	Term
Short stay	15, 30 or 90 days
Highly skilled foreign professional	Five years for highly skilled foreign professional (i); unlimited for highly skilled foreign professional (ii) - see question 31 for details
Business manager	Three or four months or one, three or five years
Researcher, instructor, engineer, specialist in humanities, international services, intra-company transferee	Three months or one, three or five years
Spouse or child of Japanese national, spouse or child of permanent resident	Six months or one, three or five years
Permanent resident	Permanent

**31 Is there a visa programme targeted specifically at high net worth individuals?**

A designated activities long-stay visa for sightseeing and recreation became available from 2015. Under this visa, nationals and citizens of visa waiver countries or regions are entitled to stay in Japan for up to one year if they meet certain requirements, such as:

- the individual is aged 18 or older and has savings equivalent to more than ¥30 million owned by him or herself and his or her spouse;
- he or she will come as an accompanying spouse of the individual who is mentioned in the point above (they must have the same place of residence and travel together in Japan); and
- the individual and the accompanying spouse have sufficient medical insurance to cover their stay in Japan.

In addition, significant developments were made to facilitate the acceptance of highly skilled foreign professionals in Japan. Further to the adoption of the points-based system in 2012, a new category of visa status, highly skilled foreign professionals, was formally introduced in 2015. The highly skilled foreign professionals visa has the following three sub-categories depending upon the activities of the foreign individuals:

- advanced academic research activities;
- advanced specialised or technical activities; and
- advanced business management activities.

In determining whether a highly skilled foreign professionals visa should be issued, the points-based system shall be used. For example, in the case of a foreign individual applying for the highly skilled foreign professionals (advanced specialised or technical activities) visa, if he or she is 30 years old, the amount of his or her promised annual salary is ¥10 million and he or she has a doctoral degree, then 10 points, 40 points and 30 points will be given for each element. The applicant may also earn points for other factors listed in the relevant ordinance, such as their academic background, professional career (research or business experience), age, achievements and qualifications. If the total points awarded are 70 or more, a highly skilled foreign professionals visa may be issued, in which case various types of preferential treatment will be available, including:

- permission for multiple-purpose activities during their stay in Japan (ie, permission not only for the intended professional activities, but also for other certain activities which are related to the intended professional activities but may require, in principle, other types of visas);
- the grant of a five-year period of stay;

- relaxed requirements for the grant of permission for permanent residence (from 10 years down to five years);
- preferential and expeditious processing of immigration and stay procedures;
- permission for a spouse to work;
- permission to bring a parent under certain circumstances; and
- permission for a domestic servant under certain requirements.

After engaging in activities as a highly skilled professional for three years or more, the foreign individual may be promoted from highly skilled foreign professional (i) (lower status) to highly skilled foreign professional (ii) (higher status), in which case additional preferential treatment will be available, including:

- permission for almost all-purpose activities during their stay in Japan (ie, permission not only for the intended professional activities, but also for other certain activities which are related or unrelated to the intended professional activities and require, in principle, other types of visas) in addition to those permitted under the Highly Skilled Foreign Professional (i) visa; and
- an unlimited period of stay.

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

A holder of a designated activities long-stay visa for sightseeing and recreation, as outlined in question 31, may bring his or her spouse to Japan under certain circumstances. However, there is no special treatment for children.

A holder of the highly skilled foreign professionals visa may bring his or her spouse and children to Japan. Further, it is possible to bring his or her parent to Japan for certain reasons and under certain requirements, whereas a foreign national with an ordinary working immigration status is, generally, not allowed to.

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

Holders of the highly skilled foreign professionals visa who have engaged in the activities of a highly skilled person in Japan for approximately five consecutive years, may apply for a permanent resident visa. Further, holders of the highly skilled foreign professionals (ii) visa can stay in Japan indefinitely without changing visa status.

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

Not applicable.

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# Jersey

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## Tax

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

The Bailiwick of Jersey, which is a British Crown dependency, is a self-governing parliamentary democracy with its own financial, legal and judicial systems. The States of Jersey, being the local parliament, has exclusive responsibility for setting the applicable rates of tax in the Island each year. See 'Update & Trends' for commentary in relation to the consequences for Jersey of the vote by the British electorate on 23 June 2016 to leave the EU (Brexit).

Domicile is not relevant for Jersey tax purposes.

A person ordinarily resident in Jersey is liable to Jersey income tax on their worldwide income. However, if the person is not ordinarily resident in Jersey, income which arises from sources outside Jersey is chargeable to tax only on the amount of that income that is received in, or remitted to, Jersey.

There is no statutory definition of 'resident' or 'ordinarily resident' but guidance issued by the Jersey tax authority (the Comptroller of Taxes) indicates that the residence status of a person for the purposes of Jersey income tax is dependent on the frequency of visits to Jersey and whether or not the person maintains a place of abode in Jersey.

If a person maintains a place of abode in Jersey which is available for the person's own use, the person is regarded as resident for any year in which the person makes a visit, of whatever length, to Jersey.

A person is not regarded as resident in Jersey if the person maintains no place of abode in Jersey and visits Jersey only on an occasional (ie, not habitual) basis. Visits to Jersey will not be regarded as occasional if they are for a period (or periods) equal in the whole to six months or more in the income tax year (beginning 1 January).

If a person does not maintain a place of abode in Jersey which is available for his own use, and stays in Jersey for less than six months in any calendar year, the person will still be regarded as becoming resident if he visits Jersey year after year (so that visits become in effect part of the person's habit of life) and the annual visits are for a substantial period (or periods) of time.

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

A person ordinarily resident in Jersey is liable to Jersey income tax on their worldwide income. However, if the person is not ordinarily resident in Jersey, income which arises from sources outside Jersey is chargeable to tax only on the amount of that income that is received in, or remitted to, Jersey.

Subject to certain caps and lower limits, income tax in Jersey is levied at 20 per cent with limited deductions and personal allowances. There is a marginal rate of income tax at 26 per cent applicable for individuals earning just above the annual exempt amount of £14,350 (£15,900 for those aged 65 and over). The lower of the amount assessable to tax under the 26 per cent marginal tax calculation, and that payable under the normal 20 per cent tax calculation rules, is payable.

Wealthy individuals moving to Jersey who have been approved under the Control of Housing and Work (Jersey) Law 2012 by Jersey's Population Office, may be permitted to pay income tax at the rate of 20 per cent on the first £625,000 of annual worldwide income and 1 per cent on all income over and above that amount, with the minimum annual tax yield being £125,000. Such individuals are also subject to 20 per cent tax on income derived from Jersey property.

Personal allowances for persons with incomes over £150,000 per annum are very restricted.

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

There are no capital gains taxes in Jersey.

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

There are no gift taxes in Jersey other than a stamp duty liability in the case of gifts of Jersey immovable property.

Gifts of immovable (broadly meaning freehold) residential property in Jersey attract stamp duty on an ascending sliding scale. At the lower end of the scale, stamp duty on a property not exceeding £50,000 is payable at a rate of 50p for each £100 or part of £100, subject to a minimum payment of £10. At the highest end of the scale, stamp duty on a property exceeding £3,000,000 is payable at £127,000 in respect of the first £3 million plus 7 per cent for each £100 or part of £100 in excess thereof.

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

Stamp duty may be payable on a deceased person's moveable property. This is calculated on an ascending sliding scale. For net moveable estates (broadly meaning non-real estate) not exceeding £100,000 in value the stamp duty rate is £50 for each £10,000 or part of £10,000 thereof, whether that person dies domiciled in Jersey or not. Where a deceased person was, at the time of his or her death, domiciled in Jersey, stamp duty is payable in respect of the net value of his or her worldwide moveable estate. The maximum stamp duty liability in this regard is capped at £100,000 for moveable estates exceeding £13,360,000. Planning to mitigate probate stamp duty can take place whether pre-entry or not.

Stamp duty may also be payable, in certain circumstances, on a deceased person's Jersey immovable property. This again is calculated on an ascending sliding scale. At the lower end of the scale, stamp duty on the net value of the immovable property devised at the time of the death of the testator which does not exceed £50,000 is 50p for each £100 or part of £100, with a minimum fee of £12. At the highest end of the scale, stamp duty on the net value of the immovable property devised at the time of the death of the testator which exceeds £3 million is £127,000 in respect of the first £3 million plus £7 for each £100 or part in excess thereof.

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

Buyers of immovable (broadly meaning freehold) residential property in Jersey pay stamp duty on an ascending sliding scale subject to a qualifying first-time buyer discount applicable when purchasing a property under £450,000 (such discount threshold being reviewed annually). At the lower end of the scale, stamp duty on a property not exceeding £50,000 is payable at a rate of 50p for each £100 or part of £100 subject to a minimum payment of £10. At the highest end of the scale, stamp duty on a property exceeding £3,000,000 is payable at £127,000 in respect of the first £3,000,000 plus 7 per cent for each £100 or part of £100 in excess thereof.

Annual parish rates are also chargeable in respect of Jersey immovable property, based on the rental value.



**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?**

By virtue of the United Kingdom's Treaty of Accession to the European Community, Jersey is within the Common Customs Area and Common External Tariff of the EU, and so the EU's rules on customs matters apply. Therefore, goods imported to Jersey from outside an EU country are subject to EU rates. Equally, those in free circulation within the EU are imported without customs charges, save as provided below. Following Brexit (see 'Update and trends') this may be subject to change.

Jersey has a goods and services tax on the domestic consumption of imported and Jersey-produced goods and services. This is paid at 5 per cent of their value at the time the goods or services are sold or exchanged or imported. There is also a customs and import duty applicable on certain imports including fuel (but not marine fuel), cigarettes and tobacco.

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

Apart from those taxes already mentioned, there are no other relevant taxes.

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

Where trustees are resident in Jersey (as will frequently be the case for Jersey law trusts), the trustees are, strictly speaking, chargeable to tax in respect of all the income arising to them in that capacity. However, by concession, the taxation of the trustees is adjusted to reflect the tax position of the beneficiaries of the trust and, where the beneficiaries include legal bodies, the ultimate individual beneficial owners of those legal bodies. Therefore, the tax treatment of the income arising to the trustees will reflect the tax treatment which would have applied to the beneficiaries (or the ultimate individual beneficial owners of any legal bodies which are beneficiaries) if the income had arisen to them directly.

Where all of the life tenants of a trust or all of the beneficiaries of a discretionary trust are:

- non-Jersey resident individuals;
- legal bodies ultimately wholly owned by non-resident individuals; and/or
- Jersey charities exempt from income tax under article 115 of the Income Tax (Jersey) Law 1961 (subject to amendment following the coming into force of article 41 of the Charities (Jersey) Law 2014),
- by concession, the trustees will not be taxed on any non-Jersey source income and the statutory exemptions in article 118B of the Income Tax (Jersey) Law 1961 will be treated as being available to the trustees.

In this context, 'life tenants' means beneficiaries of a trust having a right to trust income as it arises.

The statutory exemptions in article 118B include an exemption from Jersey income tax for:

- Jersey bank interest;
- any distribution received from a Jersey resident company which is made out of profit or gains taxed at the rate of zero per cent in the company; and
- interest paid by a Jersey resident company.

Where a Jersey resident individual is entitled to income from any part of the trust as it arises, is a beneficiary of a discretionary trust, or the ultimate beneficial owner of an interest in a legal body which is a beneficiary, the concessional exemption described above will be restricted. The restriction operates so as to charge tax on the total income of the trust less any non-Jersey source income or any income falling within the statutory exemptions in article 118B paid to, or expressly designated or accumulated for the exclusive benefit of, a non-resident individual beneficiary, or a beneficiary which is a legal body wholly owned by non-resident individuals.

Generally speaking, Jersey companies are liable to income tax at the rate of zero per cent, but certain companies that are regulated by the Jersey Financial Services Commission are taxed at 10 per cent (this

is known as the 'Zero/Ten' tax treatment). Jersey utility companies are liable to income tax at the rate of 20 per cent.

**10 How are charities taxed in your jurisdiction?**

Under article 115 of the Income Tax (Jersey) Law 1961, the income of a charity may be exempt from Jersey income tax. At present, there is no formal system for the registration of charities, although the legislative framework for such a system was enacted in 2014. When the registration system is brought into force, exemption from income tax will depend upon the presence of a registration.

**Trusts and foundations**

**11 Does your jurisdiction recognise trusts?**

The courts of Jersey have recognised trusts for many years and, since 1984, such recognition has been on a statutory footing under the Trusts (Jersey) Law, 1984. That statute is a leading and extremely well recognised statute in the international offshore trusts world.

Jersey is a signatory to the Hague Convention on the Law Applicable to Trusts and on their Recognition, and, accordingly, Jersey law recognises trusts not governed by Jersey law.

**12 Does your jurisdiction recognise private foundations?**

It has been possible to create a Jersey foundation under the Foundations (Jersey) Law 2009 since 17 July 2009.

The statute is very flexible and allows for the creation of foundations with beneficiaries or which exist to further a purpose, whether charitable or non-charitable. It is possible to redomicile a foundation from certain jurisdictions to Jersey, and vice versa.

**Same-sex marriages and civil unions**

**13 Does your jurisdiction have any form of legally recognised same-sex relationship?**

Civil partnerships are permitted and recognised in Jersey under the Civil Partnership (Jersey) Law 2012. That Law affords civil partners the same rights (including all civil, fiscal and succession rights) as a married couple. However, those wishing for their overseas civil partnership to be recognised in Jersey will need to satisfy certain conditions set out in Schedule 1 of the Law.

Currently, same-sex couples cannot get married in Jersey, but there have been calls for same-sex marriage to become available in Jersey and this possibility has been debated by the States Assembly in Jersey with 37 votes for, 4 votes against and 1 abstention in relation to same-sex marriage. The draft legislation is expected to be presented to the States of Jersey prior to January 2017.

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

Not at present.

**Succession**

**15 What property constitutes an individual's estate for succession purposes?**

Jersey has a separation of property regime (save for the application of dower rights as referred to below). Jersey does not apply a community property regime as between spouses.

The assets in a trust (other than a bare nominee) do not form part of a person's estate and therefore, as a general rule, are not affected by succession rules in Jersey.

Jersey law also recognises the distinction between legal and beneficial ownership.

**16 To what extent do individuals have freedom of disposition over their estate during their lifetime?**

Jersey-domiciled individuals are free to dispose of their estate during their lifetime as they choose, but to the extent that an individual makes a gift during their lifetime to an heir, the gift is potentially voidable at the option of the co-heirs after the death of the individual (a doctrine known as *rapport à la masse*).

**17 To what extent do individuals have freedom of disposition over their estate on death?**

Jersey law confers complete testamentary freedom upon the testator of a will of Jersey immoveable property, subject only to a right of dower for a surviving spouse or civil partner which, if claimed, entitles him or her to a life enjoyment (a 'usufruit') of one third of the deceased's immoveable estate at the date of the deceased's death.

Jersey has a forced heirship regime relating to the moveable property of those who die domiciled there. The ability of those persons to dispose of their moveable property is restricted broadly as follows.

Where a person dies testate as to moveable estate and is survived by:

- a spouse but no issue, the surviving spouse is entitled to claim:
  - the household effects; and
  - two-thirds of the rest of the net moveable estate (the testator has free power of disposition over the remaining one third); or
- a spouse and issue:
  - the surviving spouse is entitled to claim the household effects and one-third of the rest of the net moveable estate; and
  - the issue are entitled to claim one-third of the rest of the net moveable estate (the testator has free power of disposition over the remaining one third); or
- issue but no spouse, the issue are entitled to claim two-thirds of the net moveable estate (the testator has free power of disposition over the remaining one third).

Technically, a Jersey domiciled testator could leave a will dealing with their moveable property as they wish. However, they need to be mindful to the fact that a claim could be brought by their surviving spouse and issue to enforce their rights under the regime. Such a claim must be made within a year and a day from the grant of probate at the latest.

**18 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?**

Subject to rules on spouses living apart at the date of death, where a spouse (including for these purposes a civil partner) dies intestate and domiciled in Jersey, their Jersey moveable estate devolves as follows:

- where the deceased spouse leaves a surviving spouse but no issue, the surviving spouse takes the whole of the net moveable estate; or
- where the deceased spouse leaves a surviving spouse and issue, the surviving spouse is entitled to:
  - the household effects;
  - other moveable estate to a value of £30,000; and
  - one-half of the rest of the net moveable estate;
- and the issue take the other half of the rest of the net moveable estate.

If a person dies leaving neither a surviving spouse nor issue, the moveable estate devolves to that person's nearest blood relatives in equal shares per stirpes. If there are no heirs, the net moveable estate falls to the Crown.

As regards Jersey immoveable property, generally on intestacy such property devolves, subject to exceptions, to the heirs at law in equal shares and as tenants in common.

**19 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?**

Under the Wills and Successions (Jersey) Law 1993, an illegitimate child has the same rights of succession as if he or she were the legitimate issue of his or her parents.

Under the Adoption (Jersey) Law 1961, an adopted child is regarded as being the legitimate child of the adopters for all purposes.

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

Succession to moveable property situated in Jersey is governed (as a matter of Jersey law) by the law of the testator's domicile (*lex domicilii*), whereas, succession to immoveable property is governed by the law of the place where the immoveable property is situated (*lex situs*).

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

With regard to formal validity, wills of immoveable estate in Jersey must follow strict rules, including a requirement that the will must be read aloud to the testator or testatrix by a Jersey advocate or solicitor or member of the States of Jersey and executed in the presence of two independent witnesses (one being a specially qualified one). Wills of Jersey moveable estate have more relaxed execution rules, broadly similar to those of England and Wales.

**22 Are foreign wills recognised in your jurisdiction and how is this achieved?**

The original will is normally retained by the court of the country where it has first been proved. The Jersey Court will usually satisfy itself as to the validity of the foreign will on receipt of a copy of the original will, sealed and certified by the court where it was first proved, together with the sealed and certified copy of the grant of probate issued by the foreign court.

**23 Who has the right to administer an estate?**

As regards moveable property, Jersey (like in England and Wales) distinguishes between persons who have a right to administer and the ultimate beneficiaries.

The executor is the person entitled to administer the estate if a testator left a valid will. In the case of an intestacy, letters of administration are normally granted to the surviving spouse, eldest son or the next closest heir.

As far as Jersey immoveable property is concerned, ownership passes by operation of law to the persons entitled by will or on intestacy. There is no need for a person to establish a separate right to administer the immoveable estate. Registration of the will with the Royal Court automatically evidences ownership by those entitled to it.

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

As noted above, ownership of Jersey immoveable property vests immediately by operation of law in the persons entitled to that property by will or on intestacy. The production of a grant of probate or letters of administration is necessary to establish title to recover or receive the moveable estate in Jersey of a deceased testator.

**25 Is there a procedure for disappointed heirs and beneficiaries to make a claim against an estate?**

Yes. See question 17.

**Capacity and power of attorney**

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

Jersey has a tutelle procedure, which protects the interests of minors. Generally, a tutelle is formed by application to the Royal Court when a minor receives property (eg, by will or gift). The Royal Court will appoint a tuteur/tutrice (who must be a Jersey resident) to take responsibility for the minor's property. The tutelle usually ends when the minor reaches majority (18).

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

The age of majority is 18 in Jersey.

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

The Royal Court has the power to appoint a curator to administer the property of a person incapable of managing and administering his or her own affairs. The curator must keep proper and accurate accounts of the person's property and obtain consent from the Royal Court before entering into any significant transactions with that person's property. The curatorship ends on the death of the incapacitated person or further order of the Royal Court.

### Update and trends

Jersey's constitutional relationship with the UK will not be directly affected by the result of the Brexit referendum, nor is it envisaged that the Brexit will impact on Jersey's existing market access rights.

While Jersey is not a member of the EU, some EU legislation applies to the Island to the extent it is covered by Protocol 3 to the United Kingdom's Treaty of Accession to the European Economic Community. In broad terms, Protocol 3 brings Jersey within the Customs Union, and therefore essentially within the Single Market, for the purposes of trade in goods (eg, agriculture and fisheries). The government of Jersey has confirmed that, for the purposes of sustaining trade in goods, it believes the Island's best interests lie in maintaining the substance of Jersey's current relationship with the EU, as set out in Protocol 3, and with the United Kingdom.

Protocol 3 is silent, however, on trade in services and the Island therefore has, and following Brexit will retain, 'third country' status for the purposes of trade in services and, in particular, financial services. Typically, Jersey's finance industry gains access to EU markets by means of EU legislation providing for third country access, granted after the assessment of whether the Island has regulatory (and other) standards in place that are considered equivalent to the relevant EU legislative counterpart. Following Brexit, this position will simply continue as before.

By way of example in the area of investment funds, the potential access of Jersey alternative investment fund managers (AIFMs) to the EU market by way of EU-wide marketing passport under the Alternative Investment Fund Managers Directive (AIFMD) is currently subject to assessment by ESMA on the basis of the equivalence of regulatory standards, including Jersey's local AIFMD regime. Pending the outcome of that assessment, Jersey AIFMs continue to enjoy EU market access via national private placement regimes existing in EU Member States (whilst offering unfettered access to important non-EU markets). Brexit has not altered that position. Following Brexit, however, Jersey's access to the important UK investment fund market may well become easier, unfettered by any requirement to meet EU standards as the UK

itself becomes a third country, just as Jersey's access to other non-EU global markets in other areas is currently largely unimpeded by EU financial services legislation.

Not all EU legislation provides for third country market access and, similarly, Jersey does not apply to be assessed in respect of each piece of EU legislation, partly due to the finite resources available to the Island's government and regulator and partly because it is not always desirable to meet an EU standard in the context of Jersey's global financial services offering. Where Jersey does implement and abide by EU legislation under third country access rules, it does so entirely independently of its relationship with the UK.

The impact of Brexit on Jersey's financial services industry is therefore likely to be felt through short-term changes in activity levels, rather than in any changes to Jersey's market access, regulation or constitutional position. The decision by the UK to leave the EU inevitably means a period of uncertainty as a new relationship with the EU is agreed and new trade agreements are negotiated (within and outside of the EU).

Consequently, while it would not be altogether surprising if Jersey experiences a temporary slowdown in business activity facilitating investment into the UK, the impact on Jersey's finance industry is likely to be minimised owing to the industry's increasingly global outlook. Indeed, other uncertainties surrounding Brexit may result in an influx of funds into Jersey (as a relatively stable 'safe haven' close to but outside the UK and EU) looking to seize other global investment opportunities.

The sources of Jersey's business increasingly extend beyond the UK and are truly global, with the majority of assets held, administered or managed locally being located in jurisdictions other than the UK. The steady diversification of the Island's finance industry offerings stand it in good stead, even if the UK economy stumbles in the short term. In the longer term, the UK's infrastructure and expertise mean there is every chance it will remain the world's leading jurisdiction for financial services and Jersey intends to continue to play its role as a symbiotic facilitator of UK financial services activity and growth.

Furthermore, Jersey Courts generally recognise and give effect to foreign powers of attorney (or their equivalent), provided the power has been approved/ratified by a foreign court with the requisite jurisdiction.

### Immigration

#### 29 Do foreign nationals require a visa to visit your jurisdiction?

Certain nationalities require visas regardless of the purpose of their stay in Jersey. The Jersey visa requirements are the same as the UK visa requirements. Because Jersey forms part of the Common Travel Area (with the UK, Guernsey, the Isle of Man and Ireland), an individual that has a visa to visit the UK is also permitted to visit Jersey. An individual can find out if they require a visa by visiting the UK visas website. Persons with the relevant visa can enter as visitors, business visitors, students and for other reasons provided that certain requirements are satisfied in accordance with the Immigration Rules issued by the Island's Lieutenant-Governor (the 'Immigration Rules').

Those intending to work in Jersey may require a work permit in addition to a visa. Generally, nationals of EU and EEA member states, together with Swiss nationals and certain other British Commonwealth citizens, enjoy work and settlement rights in Jersey and will not require a work permit. Other persons require specific leave to enter and work in Jersey. In so far as EU nationals are concerned, this may be subject to change following Brexit (see 'Update & Trends' below).

#### 30 How long can a foreign national spend in your jurisdiction on a visitors' visa?

A general visitor, holding the relevant visa, may enter Jersey for a period not exceeding six months or not exceeding 12 months in the case of a person seeking entry to accompany an academic visitor. Certain other conditions relating to their stay are required to be met in accordance with the Immigration Rules.

A business visitor to Jersey must live and work abroad and have no intention of transferring their base to Jersey, even for a short period of time. A business visitor is entitled to stay for a limited period not exceeding six months or not exceeding 12 months in the case of an academic visitor.

If an individual wishes to enter Jersey to get married or enter into a civil partnership, that person will need to satisfy certain additional requirements set out in the Immigration Rules. A person seeking leave to enter on this basis may be admitted for a period not exceeding six months and their entry will be subject to conditions in respect of employment and recourse to public funds.

#### 31 Is there a visa programme targeted specifically at high net worth individuals?

Migration to Jersey cannot be fully understood without taking into account the Control of Housing and Work (Jersey) Law 2012 (the 'Housing and Work Law'). The Housing and Work Law creates four categories of residential and employment status:

- Entitled – someone who was born in Jersey and/or has lived in Jersey for 10 consecutive years (subject to certain rules);
- Licensed – someone who has been approved by the Population Office as an 'essential employee';
- Entitled for Work – someone who has lived in Jersey for five consecutive years or is married to someone who is 'Entitled', 'Licensed' or 'Entitled for Work'; and
- Registered – someone who does not qualify under the other categories.

Entitled status may be granted on social or economic grounds. In particular, a person may be granted Entitled status on the grounds of being a high value resident, depending on the annual tax contribution to be made by the applicant (see the response to question 2). Such person will still be required to satisfy immigration requirements for entry. Someone granted Entitled status can buy or lease property in Jersey as their main place of residence. The Population Office will normally require such a person to buy or lease a high-value property.

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

Yes, provided that the relevant members of their family satisfy any necessary immigration requirements.

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

Yes. If an individual is granted Entitled status on social or economic grounds (see the response to question 31) they have the right to reside permanently in Jersey provided they continue to satisfy the requirements relating to that status. A person may lose their status if they live away from Jersey for a period of 5 years (in aggregate) after being granted their status.

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

As Jersey is not a sovereign state, it does not have its own 'nationals'. Accordingly, the indigenous Jersey population are British nationals. A person granted Entitled status does not automatically obtain British nationality; they must undertake the British nationality test, which is conducted locally with some local questions.

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# Liechtenstein

Philip Georg Raich

Gasser Partner

## Tax

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

Individuals are taxed on their worldwide income and assets if they are domiciled or resident in Liechtenstein. Individuals with a domicile or residence abroad are taxed with their domestic assets. Liability to taxation first accrues as of creation of the start of domestic domicile or domestic residence (unlimited tax liability), or on possession of domestic assets or the receipt of domestic income (limited tax liability). The tax rate is subject to income and is divided into several tax levels less than tax exempt amount as follows:

- less than 15,000 Swiss francs per annum: zero per cent;
- between 15,000 and 20,000 francs: 1 per cent (minus 150 francs);
- between 20,001 and 40,000 francs: 3 per cent (minus 550 francs);
- between 40,001 and 70,000 francs: 4 per cent (minus 950 francs);
- between 70,001 and 100,000 francs: 5 per cent (minus 1,650 francs);
- between 100,001 and 130,000 francs: 6 per cent (minus 2,650 francs);
- between 130,001 and CHF 160,000 francs: 6.5 per cent (minus 3,300 francs);
- between 160,001 and 200,000 francs: 7 per cent (minus 4,100 francs); and
- more than 200,000 francs: 8 per cent (minus 6,100 francs).

The tax rate shall be reduced by a specific tax-free amount as specified below. Individuals are either taxed as a single person, a single parent or with their spouse as a couple. Couples have different tax levels and higher tax-free amounts than singles and single parents. The poverty line amounts 2,000 francs (singles), 2,500 francs (single parents) and 3,000 francs (couples).

In addition to the domestic tax, each commune imposes a communal tax supplement equal to a certain percentage of the domestic tax amount. The communal supplement amounts to between 150 and 200 per cent of the domestic tax amount (eg, for an income of 110,000 Swiss francs, domestic tax of 5 per cent, minus the tax-free amount of 1,950 francs = 3,550 francs, plus 150 per cent of 3,550 francs = total tax of 8,875 francs).

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

In Liechtenstein, individuals are subject to profit, income and wealth tax. The wealth tax applies to all kinds of assets, including real and personal property. With regard to income and profit taxation, Liechtenstein recognises the taxation of liquid funds and monetary gains. However, many proceeds are not subject to profit and income tax, but to wealth tax (no double taxation). Income and profit tax are usually not applicable to, inter alia, profits from foreign agricultural and forestry businesses, foreign branches, inheritance or gifts.

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

Generally, individuals' capital gains on the disposition or liquidation of domestic or foreign legal persons are not subject to income taxation. Individuals' capital gains on the disposition of moveable and immovable personal assets are also not subject to income taxation.

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

Since 1 January 2011, gift tax no longer applies in Liechtenstein. There is still, however, an obligation to disclose the giving or receiving of gifts that exceed the value of 10,000 Swiss francs. Individuals must list all endowments and benefits given or received during the tax year in their tax declaration.

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

Liechtenstein repealed the inheritance tax as of 1 January 2011. There is still an obligation to disclose inherited assets. Recipients must include details of their inheritance in their tax declaration only if the inheritance amounts to more than 10,000 Swiss francs.

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

Liechtenstein recognises real estate gains tax, which must be paid by individuals selling the whole or parts of domestic real estate. Specific regulation exists to avoid double taxation.

The seller always bears the cost of the tax because he or she receives the final profit of the disposal. The tax burden consists of the tax amount plus 200 per cent of the value of the property. Communal tax is not applicable on real estate transactions.

### 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?

In terms of tax on imported items, Liechtenstein is subject to Swiss regulations and the obligatory regulations of the European Economic Area. An individual is entitled to bring goods with a value of up to 300 Swiss francs across the border for personal use or as gifts, without import taxation (duty-free limit). Each individual (including children) may use the duty-free limit once a day (ie, four persons may import goods with a value of 1,200 Swiss francs, as that would be 300 Swiss francs each). Value added tax (VAT) must be paid for all goods exceeding the duty-free limit. Lower duty-free limits apply to alcohol, tobacco products and certain agricultural products.

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

Wealth tax is part of income tax, and applies to the assets of all taxpayers in Liechtenstein, with regards to their real and personal property. Consumer goods and motor vehicles with a value of less than 25,000 Swiss francs (or 50,000 Swiss francs if spouses are taxed as a couple), foreign real property and establishments are all wealth-tax free. The tax rate varies for individuals and legal persons.

VAT is applicable in Liechtenstein at a rate of 8 per cent. The purpose of VAT is to rate the final consumption of a consumer, such as internal or service import taxes. Some services are also free from VAT, such as the transportation of items or hospital treatment and treatments by doctors, dentists.

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

Assets without personality (trusts) are not liable to income tax because they are not defined as a legal person. Domestic trusts with offices or

locations of administration in Liechtenstein, or trusts with domestic income, are liable to the minimum capital yield tax, in the same way that foundations are.

#### **10 How are charities taxed in your jurisdiction?**

Charities are tax-exempt. Non-profit institutions, foundations or other non-profit organisations can apply for tax exemption if the main purpose of the organisation is non-profit oriented and for charitable objectives. Income tax is not exempt if the net amount exceeds 300,000 Swiss francs.

### **Trusts and foundations**

#### **11 Does your jurisdiction recognise trusts?**

Liechtenstein has a national trust law. Liechtenstein recognises:

- trust companies providing trustee services and are registered with the Financial Market Authority; and
- trusts with operating businesses in accordance with statutes of the trust. Such trusts are either legal persons or trusts without legal personality.

Trusts have a good reputation in Liechtenstein. Detailed laws and judgements exist. The former private foundation law referred to the trust law.

#### **12 Does your jurisdiction recognise private foundations?**

Liechtenstein recognises private foundations with sophisticated and highly recommended opportunities for investors. Liechtenstein recognises family foundations for the benefit of the founder or third beneficiaries, and charitable foundations for non-profit-making services for the public good. The sophisticated private foundation law allows for the founder or the beneficiaries to have greater or restricted influence, grants restricted or extensive representation rights to the board of the foundations, and enables tailor-made asset management and succession planning.

### **Same-sex marriages and civil unions**

#### **13 Does your jurisdiction have any form of legally recognised same-sex relationship?**

Same-sex relationships are recognised by Liechtenstein laws. The law on registered partnerships came into force in 2011. Two persons of the same sex are entitled to register their partnership with mutual rights and obligations. The status of such a relationship is 'in registered partnership'. Registration of the partnership is applied for at the civil registry office. The written agreement regarding the registered partnership is signed by both partners and legalised by the civil registry office. Each partner owns their own property and assets and is liable for debts concerning their own property. Registered partners are treated as spouses and their property is added together for tax purposes. The registered partners are also treated as spouses for succession purposes.

#### **14 Does your jurisdiction recognise any form of legal relationship for heterosexual couples other than marriage?**

Liechtenstein law does not provide for any legal relationship for heterosexual couples other than marriage.

### **Succession**

#### **15 What property constitutes an individual's estate for succession purposes?**

All assets, moveable and immovable, regardless of location, fall into the individual's estate for succession purposes. Liechtenstein recognises the concept of co-ownership or joint ownership. Such collective ownership is recognised in the succession procedure. As a result, the heirs can only inherit the part of a jointly owned asset that belonged to the deceased.

#### **16 To what extent do individuals have freedom of disposition over their estate during their lifetime?**

Adult individuals have freedom of disposition over their estate in accordance with general rules. Spouses do not have marital property by law, however marital property can be agreed upon by the spouses.

#### **17 To what extent do individuals have freedom of disposition over their estate on death?**

Liechtenstein recognises protected heirs. Individuals have freedom of disposition over their estate on death, subject to the protection of the heirs by law. The children and spouse of the deceased each own one-half of the distributive share of the estate. If the spouse or registered partner participated substantially in acquiring the estate and the estate acquired during the marriage or partnership represents the major part of the legal estate, they will then receive the full distributive share as protected heirs. Parents and other relatives own one-third of the distributive share of the estate.

Liechtenstein succession law allows the protected heirs to claw back gifts or legacies that are in breach of their compulsory portion. Protected heirs may file a clawback claim to receive the balance of their compulsory portion if they receive less than their compulsory share in the estate.

#### **18 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?**

Liechtenstein provides a legal order of succession in cases where no valid instruction is left by the deceased individual. The legal heirs are the spouse or registered partner and the closest relatives. By law there are four lines of relationship. The first line contains the deceased's descendants. The children inherit in equal shares and predeceased children are represented by their own descendants. Alongside this first line, the spouse or registered partner is entitled to one-half of the heritage. If the deceased leaves no descendants, the second line is inheritable. Those are the deceased's parents, who inherit in equal shares, or if one or both of them are predeceased, their descendants represent them. The spouse or registered partner is entitled to two-thirds of the heritage alongside this line, as well as alongside the third line, who are the grandparents and their descendants. The third line inherits from the deceased if there is no remaining second-line relative. If there are no third-line relatives, inheritance passes to the fourth line, the great-grandparents (who if predeceased are not represented by their descendants); however, alongside the fourth line, the spouse or registered partner is entitled to the whole inheritance. In other words, the great-grandparents do not inherit any of the estate if the deceased is survived by a spouse or a registered partner. If the deceased leaves no spouse or registered partner and no relative in any of the four lines, there are no entitled legal heirs. In this case the estate falls to the state.

#### **19 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?**

Regarding the law of succession, Liechtenstein does not distinguish between legitimate and illegitimate children. Adopted children are treated like natural children in relation to their adoptive parents and siblings, but they are not entitled to inherit from their adoptive parents' ancestors (grandparents and their descendants). A descendant shall be entitled to inherit from their natural ancestors, regardless of his or her adoption by third persons.

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

The applicable law of succession is determined by nationality. The laws of Liechtenstein are applicable unless the deceased was either a foreign citizen or a Liechtenstein citizen living abroad. Please note that Liechtenstein is not subject to the European Succession Regulation.

#### **21 What formalities are required for an individual to make a valid will in your jurisdiction?**

A valid will is required to be either written and signed by one's own hand, or signed by the testator and testified by three capable witnesses, who also need to sign the document if the last will is written by someone other than the testator, or written by the testator but not by hand. Additionally there is the possibility of making either a verbal or written will in court.

**22 Are foreign wills recognised in your jurisdiction and how is this achieved?**

Foreign wills are recognised if they meet the formal requirements either of the testator's country of origin or the testator's residence. If the inheritance procedure is executed by a Liechtenstein court the will must comply with the formalities required by Liechtenstein law.

**23 Who has the right to administer an estate?**

Heirs accepting the succession have the right to administer the estate individually, or jointly if there is more than one heir. If the heirs are at odds with each other, or if the titles of inheritance are ambiguous, a curator will be appointed by the court.

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

The estate is transferred in accordance with the formal requirements for the transfer of assets under Liechtenstein law. Regarding the administration, after the declaration of acceptance, the heirs have the right to administer the estate together by making consensual decisions. In the case of conflict, the court appoints a trustee of the estate as a representative. Disposal of any part of the estate is not allowed without the approval of court.

**25 Is there a procedure for disappointed heirs and beneficiaries to make a claim against an estate?**

After the devolution, Liechtenstein law provides a special succession proceeding against persons gaining the estate or a share of it. In this suit any other person can claim a better or equal right to the estate. Someone who claims a single item of the estate shall only use the regular civil proceeding.

**Capacity and power of attorney****26 What are the rules for holding and managing the property of a minor in your jurisdiction?**

The parents hold and manage the minor's property, as the minor's representatives. They are obliged to manage the property prudently. They should preserve and increase the value of the property, if possible. The law also provides that it is the parents' duty to annually render account to the court, if the property contains real estate or shares of entities, or if the revenues can provide the financial support of the child. The court can relieve the parents of this duty if they administer the property prudently.

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

An individual attains full legal capacity for the purposes of holding and managing property at the age of 18. At the age of 14, individuals have limited legal capacity for holding and managing property.

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

If someone loses capacity to manage their affairs, those affairs should be managed by a legal representative or a relative. The law recognises a special power of attorney whereby someone gives directions as to how and by whom their affairs should be managed. If the above is not possible, the court may appoint a guardian to act on the person's behalf.

**Immigration****29 Do foreign nationals require a visa to visit your jurisdiction?**

Visas are required from foreign nationals from certain countries. No visa is required from, inter alia, EU member state nationals, Swiss nationals and nationals of the United States of America. Inter alia, nationals from Belarus, China, Cuba, Russia, South Africa, Turkey and Ukraine do require visas.

**30 How long can a foreign national spend in your jurisdiction on a visitors' visa?**

A visitors' visa, category C, has a limit of stay of 90 days. Countries that are members of the Schengen Agreement can enter with a valid passport unless an entry ban has been imposed.

**31 Is there a visa programme targeted specifically at high net worth individuals?**

There is no visa programme targeted at high net worth individuals in Liechtenstein, but there are different ways to receive a permit to stay. A short-term permit allows the bearer to stay in Liechtenstein, in employment, for up to one year. A long-term permit allows the individual to stay for more than one year, either in or out of employment. These permits are generally limited to a period of five years for EEA and Swiss citizens, and one year for citizens of third countries. The permit can be extended if certain requirements are fulfilled. The requirements for the employment permit are stricter for third-country citizens (eg, the requirements include an application by the employer and job qualifications). One of the requirements for a third-country national to obtain a non-employment permit is that it must be in Liechtenstein's interest to offer the particular individual residence in the country. Liechtenstein offers a biannual lottery for a permanent residence permit for EEA citizens only.

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

The programmes mentioned above also allow those with a valid permit to bring family members. In accordance with the law, EEA and Swiss citizens are allowed to bring their spouses or registered partners, and children under 21 and first-line ancestors whom the individual supports financially.

For third-country citizens conditions are stricter, they are not allowed to bring their relatives with them on the short-term permit and

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they are only allowed to bring their spouse or registered partner and their mutual child under 18 years of age on the long-term permit.

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

Permanent residency may be granted. An individual is entitled to file a request for permanent residency after living in the country with a permit for five years. Third-country citizens must pass a civic education exam and prove their knowledge of the German language. They may get their settlement permit granted if they are in sufficient funds and did not commit any crime in the preceding five years.

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

There are different procedures to obtain Liechtenstein nationality (ie, the extraordinary short-term residence with additional requirements, and the ordinary long-term residence procedure). For the extraordinary procedure, the individual shall be a permanent resident for at least 10 years and provide an agreement for nationality by the municipality of residence. The ordinary procedure requires permanent residency during at least 30 years without further onerous requirements (eg, having committed no crimes, an ability to speak German). In either of those procedures the individual is required to relinquish his or her former citizenship to obtain Liechtenstein citizenship.



# Monaco

Christine Pasquier-Ciulla & Regina Griciuc

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## Tax

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

One of the major attractions of the Principality of Monaco for private clients is a favourable taxation regime for individuals.

Monaco law does not provide for an income tax for individuals acting within their private activities. There is no wealth tax, no capital gains tax, no local taxes (no property tax and no dwelling tax). There is no inheritance or gift tax between ascendants and descendants or between spouses.

An individual may be taxable on the profits of industrial and commercial activities. A business profit tax is applied to those commercial and industrial activities whose turnover is generated at more than 25 per cent outside Monaco.

Monaco applies the European Directive on taxation of savings income in the form of interest payments. The Amending Protocol to the Agreement between the EU and the Principality of Monaco providing for measures equivalent to those laid down in Council Directive 2003/48/EC was signed in July 2016.

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

Monaco law does not provide for any income tax for individuals, with the exception of French nationals, subject to the 1963 Bilateral Tax Convention between France and Monaco. French nationals are deemed to be residents of France. Other nationalities do not pay income tax in Monaco.

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

Monaco levies no capital gains tax.

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

Tax on lifetime gifts only applies to assets that are situated in Monaco, regardless of the domicile, residence or nationality of the donor.

Gift tax is applicable to lifetime gifts evidenced in writing and/or by notarised deed. Gifts that can be made by a physical transfer of property (which does not require a written deed, such as a gift of a chattel) are not subject to tax.

No tax is levied on gifts between ascendants and descendants in direct line (ie, parents and children) or between spouses. Gift tax is otherwise applied at the rate of:

- 8 per cent between brothers and sisters;
- 10 per cent between uncles or aunts, nephews or nieces;
- 13 per cent between other collateral relatives; and
- 16 per cent between unrelated persons.

In addition, Monegasque public notaries charge an ad valorem fee for preparing the notarial deed.

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

Inheritance or succession tax is payable at the same rate as lifetime gift tax.

Succession tax only applies to assets that are situated in Monaco, regardless of the domicile, residence or nationality of the deceased.

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

Monaco does not levy any wealth tax or local taxes on properties.

Stamp duties are levied upon transfer of ownership of real property. The applicable tax rates vary depending on whether or not the transaction is carried out for the benefit of persons that meet the transparency criteria set out by the legislation enacted in 2011.

Prior to the 2011 reform, all real estate transactions were taxed at a rate of 7.5 per cent of the purchase price, to which a notarial ad valorem fee of 1.5 per cent was added. This led to a practice whereby foreign entities, mostly offshore companies, which acquired Monaco real estate, could avoid paying tax on transfers of real property where the sale was realised by means of transfer of shares of the foreign entities which owned the Monaco real estate.

To combat this practice, the Law No. 1.381 of 2011 introduced an annual reporting obligation for foreign companies, trusts and other such entities holding real estate in Monaco to appoint a local fiscal agent whose duty is to file an annual declaration regarding the change or the absence of change of beneficial ownership. Subject to certain exemptions, if there has been a change of beneficial ownership, a duty of 4.5 per cent of the value of the property is due.

If the change in the beneficial ownership of a non-transparent entity is the result of a lifetime gift or a transfer upon death in favour of the spouse, the ascendants or the descendants in direct line of the donor or the deceased, no such transfer tax is due.

The 2011 law reduced tax rates on real estate transfers carried out to the benefit of 'transparent' entities. The sale of a property situated in Monaco is subject to a proportional registration duty of 4.5 per cent on the purchase of Monaco real estate property by individuals or by Monegasque civil companies (general partnerships) owned by physical persons. Real estate purchases by non-transparent structures, such as foreign companies, trusts and any other such entities are still subject to transfer duty at 7.5 per cent.

### 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?

Monaco has a customs union with the European Union (through France). The EU customs law is therefore applicable in Monaco.

VAT and other import duties are levied on the same basis and at the same rates as in France (20 per cent for the standard rate).

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

As mentioned in question 1, Monaco levies no wealth tax.

VAT is levied on the same basis and at the same rates as in France.

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

As a civil law country, Monaco does not have a substantive trust law. However, Monaco enacted special legislation (Law No. 214 of 1936) designed to recognise trusts and allow certain foreigners who are resident in Monaco to take advantage of their national law which enables them to create trusts either during their lifetime or by a will.

In addition, in 2007 Monaco has acceded to the Hague Convention on the Law Applicable to Trusts and on their Recognition, which entered into force in 2008.

Trusts, whether inter vivos or testamentary (will trusts), created pursuant to Law 214 are subject to proportional registration duties which are payable as a percentage of the total value of the assets placed in trust. Registration duties depend on the number of beneficiaries and vary between 1.30 per cent and 1.70 per cent as follows:

- one beneficiary – 1.30 per cent;
- two beneficiaries – 1.50 per cent; and
- more than two beneficiaries – 1.70 per cent.

Alternatively, at the parties' request, an annual tax of 0.20 per cent of the value of the trust assets may be paid.

This duty or tax is levied to the exclusion of any gift or succession duties.

In the case of a will trust, the duties and taxes are levied after the death of the testator.

For trusts other than those subject to Law 214, the Monaco tax administration applies the highest tax rate of 16 per cent (as between unrelated persons) to any assets passing into a trust, irrespective of the relationship between the settlor and the trustee or the beneficiary, which is arguable technically.

In addition to registration duties, Monegasque public notaries charge an ad valorem fee which is determined depending on the nature of the transaction.

When trusts own Monaco real estate, directly or through underlying asset-holding vehicles, they are subject to the 2011 law referred to in question 6.

#### 10 How are charities taxed in your jurisdiction?

A charity may be created in Monaco in the form of an association or a foundation.

No income tax or capital gains tax is levied.

Gifts and bequests of Monaco-based assets to charities (other than specific foundations exempted under Monaco law) are subject to gift and succession tax at 16 per cent.

### Trusts and foundations

#### 11 Does your jurisdiction recognise trusts?

In 2007, Monaco has acceded to the 1985 Hague Convention on the Law Applicable to Trusts and on their Recognition. Foreign trusts are therefore fully recognised in Monaco.

As mentioned in question 9, Monaco does not have a substantive trust law.

However, Monaco has enacted legislation (Law 214) designed to allow certain foreigners (generally nationals of common law countries) to take advantage of their national law, which enables them to create trusts and thus provide for the disposal of their estate on death or during their lifetime, according to their wishes, free of the restrictions imposed by the Monegasque rules of forced heirship. The use of trusts (both inter vivos and will trusts) is therefore reserved to those persons whose national law provides for the possibility for settling one's estate in a trust. Foreign residents who qualify may thus create a Monaco-based trust according to their national (foreign) law. For example, an English national, resident in Monaco, may establish an inter vivos trust or a will trust, pursuant to Monaco Law 214, governed by the English law. Such a trust will however be subject to the jurisdiction of the Monaco courts. Nevertheless, the Monegasque case law on trusts is very limited and there is some uncertainty as to the treatment of trust property by Monaco courts.

#### 12 Does your jurisdiction recognise private foundations?

There are no specific legal provisions with regard to the recognition of foreign private foundations. It may be inferred that such foundations would be treated as any other foreign legal entities.

### Same-sex marriages and civil unions

#### 13 Does your jurisdiction have any form of legally recognised same-sex relationship?

No.

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

No.

### Succession

#### 15 What property constitutes an individual's estate for succession purposes?

As a general rule, assets that are registered in an individual's name or are in his or her possession are deemed to belong to that individual and thus form part of his or her estate, unless proved otherwise.

Monaco law does not provide for a distinction between legal and beneficial ownership.

An asset in co-ownership is deemed to be owned by the co-owners in equal shares.

#### 16 To what extent do individuals have freedom of disposition over their estate during their lifetime?

As a general rule, individuals are free to dispose of their estates as they think fit during their lifetime. However, the freedom of disposition may be subject to certain restrictions depending on the matrimonial property regime that the donor adopted with his or her spouse as well as on mandatory rules which cannot be derogated from by voluntary act such as forced heirship rules. For example, the community of property regime may prevent one spouse from alienating or unilaterally settling property on trust without the consent of the other spouse.

Also, lifetime gifts can be reclaimed after the death of the donor by the legal heirs and returned to the estate. This is regardless of the intention of the gifts or how long before death the gifts were made. Gifts made in trust may also be subject to clawback. Hence, whenever the value of the estate is inadequate to meet the reserved portions (see question 17 for more details on Monaco forced heirship rules), the disappointed heirs can make a clawback claim against the value of any gifts made by the deceased.

#### 17 To what extent do individuals have freedom of disposition over their estate on death?

Under Monaco law, the freedom of disposition over one's estate on death is subject to statutory forced heirship rules. Forced heirship rules compel a particular distribution of a deceased's estate which cannot be derogated from by will.

An individual's assets on death consist of the reserved portion and the disposable portion. The reserved portion limits the testator's right to dispose freely of his or her estate by will. It is determined by law.

The reserved portion must go to the protected or forced heirs, regardless of the provisions of the will. Children are legally entitled to inherit a reserved portion of their parents' estates on death. In the absence of children, a certain portion of the deceased's estate is reserved to his or her ascendants in each paternal and maternal line. No other relatives are reserved heirs. In particular, the surviving spouse is not a reserved heir. The surviving spouse can only benefit from the disposable portion of the estate.

If the deceased makes gifts or bequests which infringe on the reserved portion, the reserved heirs may, when the succession is opened, cause such gifts or bequests to be reduced in order to protect their share. Whenever the value of the estate is inadequate to meet the reserved portion, the disappointed heirs can make a clawback claim against the value of any gifts made by the deceased. Lifetime gifts as well as gifts made in trust may be subject to clawback after the death of the donor. The claim is made first against the most recent gifts, always clawing back gifts made closest to the date of death, until the reserved portion is met.

The reserved portion in the presence of one child is half of the estate and the disposable part is therefore also half. If the deceased leaves two children, the reserved portion is two-thirds of the estate and the disposable part is the remaining one-third. If there are three or more children, the reserved portion is three-quarters and the disposable part is only one-quarter. If a child predeceases the deceased, leaving descendants of his or her own, his or her descendants represent the deceased child and are entitled, on a stirpital basis, to the share that the deceased child would have taken had he or she survived.

If there are no children but the deceased is survived by ascendants, they are the forced heirs. The reserved portion is half of the estate if

there are ascendants alive in both the paternal and maternal lines. If there are ascendants only in one line, their reserved portion is three-quarters. Other remoter ascendants are entitled to a reserved portion only if the deceased leaves no siblings or their issue.

Rules of forced heirship are often of particular concern to the settlors of trusts and may be a prime reason for the adoption of a trust structure which is governed by the law of a jurisdiction other than the settlor's domicile. As mentioned in questions 11 and 22, *inter vivos* and will trusts established under Law 214 offer the possibility to certain foreign nationals who are Monaco residents to overcome the local heirship rules, thus providing greater freedom of disposition over their estate on death.

**18 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?**

If an individual dies without a will and Monaco internal law applies to the succession pursuant to the existing conflict-of-law rules (see question 20 on Monegasque conflict-of-law rules applicable to successions), the estate is distributed between the surviving members of the deceased's family, according to the following rules of intestate succession as provided by the Monaco Civil Code:

**In the presence of the surviving spouse**

If the deceased leaves a spouse who was not judicially separated from the deceased at the time of his or her death, and also children, the surviving spouse receives the same share as a child. The spouse's share cannot be less than one-quarter of the estate.

The following distribution is prescribed by law: if the deceased leaves a spouse and a child, each receives half of the estate; if the deceased leaves a spouse and two children, each receives one-third of the estate; if the deceased leaves a spouse and three or more children, the spouse receives one-quarter and the remaining three quarters are divided between the children in equal shares.

If the deceased leaves no descendants and no collaterals, but leaves one or both parents and also a spouse, each parent takes one-quarter and the spouse takes the remaining half. There are also specific rules to determine the distribution of the estate in the event when the deceased leaves a surviving spouse and other ascendants than his or her parents.

If the deceased leaves one or both parents and brothers or sisters or their descendants, the surviving spouse receives half of the estate, with one-quarter going to each parent and any remaining balance (if only one parent survives) going to the deceased's brothers or sisters or their descendants. The descendants of predeceased brothers and sisters inherit *per stirpes* on the same basis as descendants in direct line.

The surviving spouse will inherit the entire estate if the deceased is survived by no descendants, no ascendants, no brothers or sisters or their descendants.

**In the absence of the surviving spouse**

If the deceased leaves children, they take equally. If a child predeceases the deceased, leaving descendants of his or her own, the share attributable to that child is distributed equally between the descendants of the deceased's child.

If there are no descendants, no brothers or sisters and no descendants of brothers or sisters, the surviving ascendants in the paternal and maternal lines take in equal shares. In the absence of closer ascendants, the remoter ascendants will inherit.

If the deceased leaves no descendants or parents, the estate is distributed in equal shares between the brothers and sisters or their descendants.

If there are no descendants, but the deceased is survived by one or both parents and by brothers and sisters or their descendants, the surviving parents will take half of the estate and the remaining half will be split equally among the brothers and sisters or their descendants. If only one parent survives, he or she takes one-quarter and the remaining three-quarters are equally divided among the siblings born of the same parents. In other cases, the estate is divided by half between the paternal and maternal lines. Siblings born of the same parents inherit from both lines. Half-brothers and half-sisters take only from one line.

If none of these relatives survives, remoter collaterals (uncles, aunts, cousins) may inherit up to the sixth degree of consanguinity, with the exception of descendants of brothers and sisters.

In there are no heirs, the estate belongs to the state.

**19 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?**

The filiation only gives rise to succession rights if it is legally established.

Adopted children are treated as legitimate children of the adopting parents.

Children born outside of marriage are treated, for all legal purposes, the same as legitimate children if they were legitimated by the marriage of their parents or recognised by their parents.

Under Monaco law, the recognition is a legal way to establish filiation. The natural filiation is established either by voluntary recognition of the child effected by formal deed executed before a notary or by court decision following an action to establish paternity or maternity.

The legitimation confers on legitimated children the same rights and obligations as natural legitimate children.

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

Under Monaco law, the place of the opening of the succession is the domicile of the deceased. Monegasque courts have jurisdiction to rule on successions opened on the territory of Monaco.

The *lex fori* defines the conflict-of-law rules applicable to successions. The estate of a foreigner resident or domiciled in Monaco is subject to Monaco private international law rules.

According to the existing Monegasque rules of private international law, the law applicable to movable estate is the national law of the deceased. The law applicable to immovable estate is *lex loci rei sitae*, ie, the law of the place where the immovable property is situated.

The Monegasque law accepts the *renvoi*. Under the principle of *renvoi*, the national law of the deceased applicable to his or her movable estate may refer back to the law of domicile, in which case Monaco law will apply to the entirety of a decedent's estate.

In addition, the Monegasque law is applicable to the disposition of real property situated in Monaco.

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

Three types of will can be made under Monaco law: holographic, authentic and mystic.

A holographic will must be fully hand written by the testator, signed and dated, without witnesses.

An authentic will may be received by two notaries in the presence of two witnesses or by one notary in the presence of four witnesses. Its contents must be read out to the testator. The will must be signed by the testator, the notaries and the witnesses.

A mystic will must be written and signed by the testator or another person on his or her behalf and sealed. The signed will must be handed to the notary in a sealed envelope in the presence of four witnesses.

A will must be registered with the Monaco courts after the death of the testator.

The concept of probate does not exist under Monaco law.

As mentioned in question 11, Monaco has adopted legislation allowing residents whose national law incorporates trust law to create will trusts in Monaco under their national law. The creation of will trusts under Law 214 must comply with the forms prescribed by law for authentic and mystic wills.

**22 Are foreign wills recognised in your jurisdiction and how is this achieved?**

Foreign wills executed in accordance with the foreigner's national law are regarded as formally valid in Monaco.

As a result of the Law 214 on trusts, any will that seeks to create a trust and which is subject to Monegasque law is void, unless it is made in accordance with the formalities prescribed by Law 214.

The substantive validity of a foreign will must be considered from the perspective of the Monegasque forced heirship rules which are subject to public policy considerations. Will trusts established under



Law 214 may override the Monegasque mandatory heirship rules. Consequently, for those Monaco residents who qualify, will trusts under Law 214 provide more freedom of disposition and better protection for the intended beneficiaries.

### 23 Who has the right to administer an estate?

Generally the heirs have the right to administer the deceased's estate.

The testator may also appoint one or more testamentary executors.

In case of a will trust established under Law 214, it is accepted that the executors and the trustees have the right to administer the estate.

A judicial administrator may be appointed by the court when the estate has not yet been accepted by the beneficiaries.

### 24 How does title to a deceased's assets pass to the heirs and successors? What are the rules for administration of the estate?

In theory, Monaco law provides for the property of the deceased to pass automatically to the legal heirs according to the will or the rules of intestate succession. In practice however certain formalities need to be accomplished especially when the estate comprises real estate.

While forced heirs are deemed to automatically take possession of the deceased's estate, special formalities must be accomplished by legatees in order to request the delivery of bequests pursuant to the will.

The heirs, unless they renounce the estate, are obliged to pay the debts and charges of the estate as well as any bequests given by the testator.

A will must be registered with the Monaco courts after the death of the testator.

The division of the estate and the payment of bequests are carried out before a Monaco notary.

### 25 Is there a procedure for disappointed heirs and beneficiaries to make a claim against an estate?

When a person makes a will in Monaco (other than a will trust under Law 214), his or her heirs who qualify as 'reserved heirs' are entitled to a reserved portion of the testator's estate. The rights of the reserved heirs are protected and cannot be overridden by will. (See question 17 for details on the categories of reserved heirs and their reserved shares of the estate.)

As mentioned in question 17, if the deceased makes gifts or bequests which infringe on the reserved portion, the reserved heirs may claim that any such gifts or bequests be returned to the estate after the death of the donor. Therefore, whenever the value of the estate is inadequate to meet the reserved portion, the disappointed heirs can make a clawback claim against the value of any gifts or bequests made by the deceased.

The reserved portion is calculated based on the aggregate of the net estate on death and the total of lifetime gifts. The clawback is first made against the part of the estate which is left to persons other than the reserved heirs. The claim is made first against the most recent gifts until the reserved portion is met, always clawing back lifetime gifts made closest to the date of death.

Although the surviving spouse is not a reserved heir, he or she can make a claim for maintenance against the deceased spouse's estate. The Monaco Civil Code provides that the estate of the predeceased spouse has the duty to provide financial support to the surviving spouse. Such claim must be made within a year from the date of death.

## Capacity and power of attorney

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

The management of a minor's property is generally entrusted by law to his or her parents. This is known as the legal administration of a minor's assets.

There is, however, an important exception to this principle. The Monegasque law allows any person to exclude from the legal administration by the parents the assets that he or she donates or bequests to a minor, provided that they are administered by a third party designated by will or deed of donation.

## Update and trends

Legislation is being considered to codify the principles of private international law. A proposal of private international law is currently under consideration before the Monegasque parliament. This law is intended to set up specific rules that would more efficiently determine the competent court and the applicable law to personal status and estate-planning matters. The major trend is to allow foreign nationals residing in Monaco to choose to apply their national law to the entirety of their estates (both moveable and immovable). These new provisions aim at enhancing the juridical security and the legal protection for Monegasque residents while providing for a legal framework that would meet their legitimate expectations in terms of estate planning and organisation according to their will.

No significant changes are expected tax-wise. Monaco will maintain its current tax status.

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

At age 18.

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

An application to the court can be made for the appointment of a guardian, curator or a judicial administrator.

## Immigration

### 29 Do foreign nationals require a visa to visit your jurisdiction?

By virtue of treaties between Monaco and France, foreign nationals wishing to visit Monaco must be in possession of the same travel documents and visas as required for entry into France.

### 30 How long can a foreign national spend in your jurisdiction on a visitors' visa?

Three months.

Foreign nationals wishing to reside in Monaco for more than three months in a year must apply for a residence card with the Monegasque authorities.

### 31 Is there a visa programme targeted specifically at high net worth individuals?

There is no specific programme targeted at HNWI.

However, foreign nationals who wish to reside in Monaco must meet certain requirements and provide an extensive list of documents and background information.

Foreigners wishing to settle in Monaco without a work permit or without receiving the permission to set up a business activity must demonstrate that they have sufficient financial resources to live in Monaco without a revenue-generating activity. A reference letter from a Monaco bank is necessary to confirm that the applicant has sufficient funds to live in Monaco. There is no statutory minimum threshold required. Monaco banks have established internal policies with regard to the minimum amount of funds required for residency purposes which may vary from €100,000 to €1 million or more depending on the bank.

Visa requirements for settling in Monaco vary depending on the nationality of the applicant.

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

Each spouse would need to file his or her own application for a long-stay visa (as appropriate) and for Monaco residence card.

When a long-stay visa is required (depending on the nationality of the applicant) for the application for a residence card, the legal representatives of minor children need to apply for a long-stay visa for the minors. Minor children are allowed to stay in Monaco on their parents' residency status and are registered on their dossier.



Residence cards are not issued to minors under the age of 16. A travel document for a foreign minor may be issued to enable overseas travel.

The Monegasque residence card allows its holder to move freely within the Schengen area.

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

Only Monegasque nationals have the right to reside permanently in Monaco.

Any foreigner aged 16 and over who intends to stay in Monaco for more than three months shall apply for a residence card (carte de résident). If granted, the applicant will be issued a 'temporary' residence card valid for one year and renewable twice upon request. The holder of a 'temporary' residence card will have the status of a 'temporary

resident'. After three years of residence, an 'ordinary' residence card is usually granted, which is valid for a period of three years, renewable upon request. The holder of an 'ordinary' residence card will have the status of an 'ordinary resident'. After 10 years of residence, the status of 'privileged resident' may be given and the residence card will then be valid for 10 years.

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

Neither residency nor birth in the Principality of Monaco grants the right to Monegasque nationality.

A foreign national who has been ordinarily resident in Monaco for at least 10 years after reaching the age of 18 may apply to HSH the Sovereign Prince for naturalisation as a citizen of Monaco. Naturalisation is at the discretion of the Sovereign Prince, who may also grant an exemption of the residency requirement.



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# Netherlands

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## Tax

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

Resident individuals are subject to tax on their worldwide income. Non-resident individuals pay tax on their domestic income. In the Netherlands there is no concept of domicile. Residence is important for tax purposes and is determined 'according to the facts and circumstances'. The decisive factor for determining residence is the taxpayer's centre of vital interests. This is the country in which his or her closest economic and family relationships are located. Under case law, the following circumstances are considered particularly relevant: the availability of a permanent home, the place where the individual's spouse and children live and the location of the individual's personal and economic relations (eg, the place of employment).

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

The taxes levied in the Netherlands on an individual's income are personal income tax; wage withholding tax; and dividend withholding tax.

#### Personal income tax

Resident individuals are subject to tax on their global income. The aggregate income consists of the income in box 1 (income from employment and dwellings), box 2 (income from substantial shareholdings) and box 3 (income from savings and investments), less personal deductible amounts.

#### Box 1: income from employment and dwellings

In this box, the following categories of income are taxed:

- income from business activities;
- income from present and past employment;
- income from other activities that cannot be qualified as business activities or employment, such as:
  - any freelance activity;
  - capital gains that result from activities that go beyond normal asset management; or
  - making assets available to a 'substantial shareholding' company (see under box 2);
- periodical payments received from individuals (eg, alimony) or insurance companies (eg, a pension);
- periodical payments received from the state or a public body (eg, the state pension); and
- income from owner-occupied dwellings.

The Dutch income tax rates for box 1 are progressive. The total income is divided into four brackets, each with its own tax rate (2016). Social security rates are 28.15 per cent (if applicable).

Income above	But below	Tax rate
€0	€19,922	36,55%*
€19,922	€33,715	40,4%*
€33,715	€66,421	40,4%
€66,421	-	52%

\* Social security contributions are included in the first two brackets.

Capital gains are included in 'income from business activities'. Gains resulting from the normal administration of private wealth are generally tax-free as such, unless they result from activities that go beyond normal asset management.

#### Box 2: income from substantial shareholdings

Income from a substantial shareholding (that is, at least 5 per cent in a company's share capital) includes dividends and capital gains, and is taxed at a flat rate of 25 per cent. For non-resident taxpayers, this box only applies to shares held in resident companies. Dividends received from a substantial shareholding are taxed when they are received, and capital gains on a substantial shareholding are taxed in the year in which the shares are (deemed) disposed of.

Dividends paid by resident companies are subject to a 15 per cent dividend withholding tax. This withholding tax may be offset against Dutch income tax by resident taxpayers.

Emigrating individuals with a substantial shareholding are deemed to dispose of their shareholding. The capital gain resulting from this is provisionally subject to a 25 per cent tax. The emigrating individual will receive a protective tax assessment that is not collected immediately. The taxpayer must provide security if he or she emigrates outside the European Economic Area. The assessment will be collected if, inter alia, the individual disposes of (part of) the shareholding. If the shareholding value decreases after the individual's emigration, the tax rate is in principle reduced by 25 per cent of the amount that the share value has decreased by. The protective tax assessment used to be waived at the beginning of the tenth year following the year of emigration. However, since 15 September 2015, the protective tax assessment, if not paid, remains in place for an indefinite period. Furthermore, for protective assessments raised as of this date, each dividend distribution results in a euro-for-euro collection of the assessment. In case of a collection of the assessment, treaties for the avoidance of double taxation are respected. In as far as the Netherlands is limited in its right to tax, the protective tax assessment remains in place. Protective assessments raised before 15 September 2015 are grandfathered. For these assessments the conditions do not change, which means these assessments will be waived at the beginning of the tenth year following the year of the emigration of the shareholder.

#### Box 3: income from savings and investments

Property and assets in this category are deemed to produce a fixed net yield of 4 per cent per year of their actual value. Assets and debts are valued on 1 January of that particular year. The net fixed yield is taxed at a flat rate of 30 per cent. This translates into an annual tax of 1.2 per cent on the actual value of the capital assets. This tax cannot be negative (ie, where liabilities exceed assets). Assets include all tangible and intangible assets. Second ownership houses are also subject to taxation in box 3. Excluded from the yield assessment base is moveable property used for personal use (eg, cars, yachts and art collections), unless such property is mainly held as an investment.

Certain approved investments and monies below a certain value may be excluded from the yield assessment base. The first €24,437 (2016 amounts) of the assessment base is tax-free. These exemptions apply per person. A married couple is, therefore, eligible for a double exemption.

For non-resident taxpayers, taxation in box 3 is limited to Dutch real estate and direct or indirect rights thereto, and profit entitlements in Dutch-administered businesses.

Deductible amounts, such as interest, are generally assigned to the box of the income to which they are related.

The Dutch government has introduced an amendment of the box 3 taxation as part of the budget for 2016. Under the amended box 3 taxation, which will apply as of 1 January 2017, the deemed yield is made progressive depending on the amount of net wealth, using the following thresholds:

- up to €100,000 the deemed yield is 2.9 per cent;
- from €100,000 to €1 million the deemed yield is 4.7 per cent; and
- above €1 million the deemed yield is 5.5 per cent.

The yield in the different brackets is based on a five-year rolling average of several market benchmarks.

The deemed yield in box 3 is heavily criticised at the moment given the low-risk free yield in recent years. Several Court cases are under way in which taxpayers claim that the application of a deemed yield of 4 per cent in this low-yield environment forms an excessive tax burden. Up to now the courts and the Supreme Court have ruled that the choice for a deemed yield is within the wide margin of appreciation given to the legislator. However, the Supreme Court indicated that the legislator should evaluate the deemed yield on a recurring basis in order to ensure that it is in line with market rates. The parliament has asked the government to come up with an alternative for the deemed yield before 1 January 2018.

#### Personal deductible amounts

Certain personal allowances are deductible in box 1, box 3 or box 2 (in this order) if the income from the preceding box is not sufficient for deduction. These allowances are: alimony, medical expenses, maintenance costs for historic monuments and gifts.

#### Other

Partners (spouses, registered partners and certain cohabitants) are, in principle, taxed individually. However, categories of joint income and deductible expenditure also exist. Partners can apportion this joint income and deductible expenditure among themselves, and as such choose the most beneficial division between the two of them.

Married persons or persons that have entered into a registered partnership recorded in the municipal register of births, deaths and marriages, automatically qualify as partners (unless they live permanently separated from each other). Persons living together without being married can qualify as partners for tax purposes if they meet specific conditions.

If a person lives in the Netherlands, that person will generally be subject to the Dutch compulsory social security system. This system comprises the general old age pension (AOW), surviving dependants allowance (Anw), child benefits and exceptional medical expenses allowance (AWBZ) schemes. Contributions to these insurance schemes are levied on earnings. The contributions are ultimately collected via the annual Dutch income tax assessment. Social security contributions are only calculated on the first two brackets in box 1.

The Netherlands grants tax credits. The most important tax credits are the general tax credit granted to all resident taxpayers of (in general) €2,242 (2016 amount) and the employment tax credit granted to resident, employed taxpayers of (in general) €3,103 (maximum 2016 amount).

#### Wage withholding tax

Wage withholding tax is levied as a deduction at source. For employees, wage withholding tax is withheld on all income derived from employment or former employment. Social security contributions are included in the wage withholding tax. Withheld wage taxes are deducted in the final income tax assessment.

Employees from abroad who are temporarily assigned in the Netherlands are known as extraterritorial employees. If these employees meet certain conditions, they are eligible for a special expense allowance scheme: the 30 per cent facility. Under this facility, 30 per cent of the wages may be provided tax-free as compensation for the additional costs of a temporary stay in the Netherlands. Furthermore, the employee can opt to be treated as a foreign taxpayer for Box 2 and

box 3, which means that substantial shareholdings in foreign resident companies and private wealth (unless it consists of real estate in the Netherlands) remains outside the scope of income taxation in the Netherlands.

The employee must have a specific expertise that is rare in the domestic labour market or must be part of a job rotation scheme. Scarcity of the expertise is in principle measured with reference to the salary offered to the incoming employee.

#### Dividend withholding tax

Dividend withholding tax is levied as a deduction at source. Dividend withholding tax is due on the proceeds of shares (including profit-sharing certificates and profit-sharing bonds) in public limited companies and private companies with limited liability established in the Netherlands, whose capital, or part of it, is divided into shares. The dividend withholding tax rate amounts to 15 per cent. Withheld dividend tax is deducted in the final income tax assessment.

#### Double taxation treaties

The Netherlands has entered into many double taxation treaties in relation to personal income tax, for example, with Belgium, China, Switzerland, the United Kingdom and the United States. Tax treaties override domestic law. Under most tax treaties concluded by the Netherlands, double taxation is generally avoided by the 'exemption with progression' method. The relief is granted in the form of a reduction of the tax amount by a percentage equal to the percentage that the foreign-source income bears to the worldwide income. However, the 'credit method' generally applies to withholding taxes on dividends, interest and royalties (that is, the individual is taxed in both states but the state of residence gives credit for the tax suffered in the other state).

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

The Netherlands does not levy a separate capital gains tax, unless it relates to profit from business activities (see under box 1), income from other activities that cannot be qualified as business activities or employment (see under box 1) and income from a substantial shareholding (see under box 2).

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

Gift tax is levied on gifts from a donor who is deemed to be a resident of the Netherlands. A person who leaves the Netherlands is deemed to be a resident for up to 10 years after leaving if he or she is still a Dutch national at the time of the gift. If a non-Dutch national leaves the Netherlands, he or she is deemed to be tax-resident for the following year. For the calculation of gift tax, assets are valued at fair market value at the time of the gift. For some properties, the Inheritance Tax Act 1956 (ITA 1956) provides specific valuation rules.

Gift tax is imposed at a progressive rate, depending on both the size of the gift and the relation between the donor and the beneficiary. The following rates apply, depending on the beneficiary:

- 10 to 20 per cent for transfers to partners (including spouses) and children;
- 18 to 36 per cent for transfers to descendants in the second or further degree (for example, grandchildren); and
- 30 to 40 per cent for transfers to parents, brothers and sisters, and non-related persons.

Gifts to or from charitable institutions are exempted of gift tax.

For gift tax, the following annual tax-free allowances apply (in 2016):

- for children: €5,304; and
- for others: €2,122.

In relation to gift tax, the Netherlands has entered into treaties with Austria and the United Kingdom.

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

Inheritance tax is payable on the worldwide property of the deceased, who is (deemed to be) a resident of the Netherlands at the time of death. A person who dies within 10 years after leaving the Netherlands is deemed resident in the Netherlands if he or she was still a Dutch

national at the time of emigration and death. Inheritance tax is not only due on what is acquired directly from an estate. The ITA 1956 contains various provisions to prevent tax avoidance by transactions during lifetime.

For calculation of inheritance tax, assets are valued at fair market value at the time of death. For some properties, the ITA 1956 provides specific valuation rules.

For inheritance tax, the most important tax-free allowances are (in 2016):

- for partners: €636,180. Half of the cash value of pension rights derived by a partner from the death of the deceased is deducted from this amount. However, a minimum allowance of €164,348 always remains. Any acquisition of pension rights or certain annuities comparable to pension rights is exempt from inheritance tax;
- €60,439 for children whose costs of living were, for the greater part, paid by the deceased, and for whom it is expected that within the next three years will not be able to earn half the income that a physically and mentally healthy person could earn;
- for other children and grandchildren: €20,148;
- for parents: €47,715; and
- for others: €2,122.

For certain objects of art that are essential to Dutch art and historical heritage, inheritance tax will be waived up to 120 per cent of the value of the object of art, provided that the state confirms that the object of art is indeed essential, and the ownership of the object of art is handed over to the state.

Beside spouses and registered partners, cohabitants may also qualify for partnership within the ITA 1956 if they meet several requirements.

In relation to inheritance tax, the Netherlands has entered into double taxation treaties with Austria, Finland, Israel, Sweden, Switzerland, the United Kingdom and the United States.

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

Real estate transfer tax is levied on the acquisition of immovable property located in the Netherlands or the real rights of enjoyment of such property. The rate is 6 per cent and is calculated on the value of the immovable property or the right acquired. The transfer tax rate is 2 per cent for the acquisition of dwellings. It is not relevant whether or not the dwelling is held for private use or as an investment.

If a resident transfers real property as a gift, gift tax (and real estate transfer tax) is due. It is possible to (partially) offset the real estate transfer tax against the gift tax.

If a non-resident taxpayer transfers real property as a gift, no gift tax is due. However the acquisition of such real property is taxable for real estate transfer tax.

No inheritance tax is payable on a non-resident's immovable assets that are situated in the Netherlands. A resident's worldwide property, however, is subject to inheritance tax. If Dutch real estate is acquired by way of inheritance, this is not a taxable acquisition for Dutch real estate transfer tax.

Apart from the acquisition of actual real property, the acquisition of an economic interest in immovable property and the acquisition of fictitious immovable property is also taxed. Fictitious immovable property can, for example, consist of shares in a (public or private) limited liability company whose immovable property interests exceed 50 per cent of its total 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?

Travelling within the EU is the same as travelling within the Netherlands. Customs are not involved.

Travellers who are entering the Netherlands from a non-EU country (a country that is not a member of the European Union) may bring in the following goods without having to pay tax:

- usual travel baggage;
- a restricted quantity of alcoholic beverages and cigarettes (ie, one litre of spirits and 200 cigarettes);
- other goods with a maximum value of €430; and
- the means of transport that they are travelling with (with one exception).

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

Value added tax (VAT) is due in respect of the transfer of goods and services in the Netherlands performed by entrepreneurs within the scope of their enterprise and in respect of the importation of goods. The rate is, depending on the nature of the goods transferred or the services rendered, 21 per cent, 6 per cent or nil.

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

Dutch tax law provides for specific regulations for trusts (and trust-like entities). Under this regulation, the trust assets are attributed to the settlor of the trust during his or her lifetime for income tax purposes. In fact, the trust is considered transparent towards its settlor. Upon his or her death, the assets are attributed to his or her heirs, according to their share in the estate. This is considered a deemed acquisition for inheritance tax purposes. If an heir can prove that he or she will not acquire wealth from the trust, the trust assets will not be attributed to him or her, but to the other heirs, if any. In the absence of heirs, the trust assets will be attributed to the beneficiaries of the trust. Any distributions of trust assets during the lifetime of the settlor are considered taxable donations by the persons to whom the trust assets are attributed. Given the system of attribution, the discretionary settlement of assets into a trust itself is not considered a taxable gift. The attribution rules do not apply for personal income tax purposes (but do apply for inheritance and gift tax) if and insofar as the trust's profit or income is effectively taxed (abroad or in the Netherlands) at a rate of 10 per cent calculated at Dutch standards.

## 10 How are charities taxed in your jurisdiction?

Charities are not subject to the levy of corporate income tax, except if and insofar as the charities run business activities. Charities that have been classified as such by the Dutch tax authorities do not pay gift or inheritance tax. The charity can be classified as such if it serves the public benefit for more than 90 per cent and satisfies further requirements. The definition of public benefit is not further defined but includes ecclesiastical, philosophical, charitable, cultural, scientific or public institutions in the Netherlands.

## Trusts and foundations

### 11 Does your jurisdiction recognise trusts?

Although Dutch law does not have a trust concept of its own, foreign trusts are recognised in the Netherlands, as the Netherlands is a party to the HCCH Convention on the Law Applicable to Trusts and on their Recognition of 1 July 1985 (the Hague Trust Convention).

Generally speaking, trust assets are not affected by succession and forced heirship rules. However, it is theoretically possible that the settlement of assets into trust is regarded as a gift that harms forced heirship entitlements. This could result in a claim of a forced heir to the trust assets. Under the Hague Trust Convention, a trust may not need to be recognised if it harms forced heirship entitlements.

### 12 Does your jurisdiction recognise private foundations?

Foundations are recognised in the Netherlands. This also applies to foundations governed by the laws of another jurisdiction. A foundation under Dutch law is a legal entity with two main characteristics:

- the foundation does not have any members or shareholders; and
- the foundation's aim is to realise a goal, as defined in its articles of association, by using capital designated for that purpose.

Foundations are legal entities mainly associated with activities other than businesses (eg, charitable, cultural and social activities). A foundation may stipulate its own goal (as long as such a goal does not contravene the law). Its goal is not necessarily limited to charitable purposes and may also include commercial activities.

The only mandatory corporate body of a foundation is its board. The foundation being a legal entity of its own means that, in principle, the liability of persons involved with it (as board members or otherwise) is limited.

A foundation is to be incorporated through the execution of a notarial deed by a Dutch civil-law notary, which must contain the



articles of association of the foundation. The foundation and its board members must be registered with the Trade Register of the Dutch Chamber of Commerce.

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### Same-sex marriages and civil unions

#### 13 Does your jurisdiction have any form of legally recognised same-sex relationship?

Same-sex couples can enter into a registered civil partnership or marriage. In relation to property law, succession law and tax law, same-sex couples are treated in exactly the same way as heterosexual couples.

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

Couples, both heterosexual and same-sex, may enter into a registered civil partnership. For property law, succession law and tax law, a registered civil partnership has the same legal consequences as a marriage.

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### Succession

#### 15 What property constitutes an individual's estate for succession purposes?

For succession purposes, an individual's estate consists of the property the individual has legal ownership of. Whether beneficial ownership is eligible for inheritance depends on the arrangements made between the legal owner and the beneficial owner. In principle, the usufruct of property ends upon the death of the usufructuary. Co-owners can agree upon an accrual clause, as a result of which the share of a co-owner in the jointly owned property accrues to the other co-owners upon death.

#### 16 To what extent do individuals have freedom of disposition over their estate during their lifetime?

A spouse requires the other spouse's consent for gifts during lifetime, with the exception of usual, non-excessive gifts. Certain gifts need to be taken into account in calculating the children's statutory share (see question 17). Agreements disposing of (a proportionate part of) an estate that has not yet devolved are null and void.

#### 17 To what extent do individuals have freedom of disposition over their estate on death?

The basic principle is an individual's freedom to dispose of his or her estate. There are no forced heirs. However, children as well as disinherited spouses and registered civil partners do have a number of statutory rights.

The children of the deceased are entitled to 50 per cent of the share that they would have received on intestacy (see question 18). Therefore, 50 per cent of the estate can be freely distributed. The children's statutory shares take effect as claims against their deceased parent's estate. The children can recover their claims from estate assets. If these are insufficient to recover the entire claim, the children can recover their claims from the gifts that were made by the deceased:

- within five years preceding his or her death; and
- if the intention of the gift was to infringe the children's statutory rights.

The children can recover their claims from trust assets if the trust settlement is considered a donation by the deceased.

Children can collect their statutory share six months after the parent's death. However, the parent's will may contain a provision that the children can only claim their statutory share after the death of their parent's:

- surviving spouse or registered partner; or
- life partner with whom the parent entered into a notarial cohabitation agreement.

This provision also applies when the surviving spouse or partner is not a parent of the children but a stepparent.

If a couple is married in the statutory community of property under Dutch law, the estate consists of half of the total assets of the spouses, except for any private property, for instance, as a result of an exclusion clause stipulated by a donor or testator from which the individual received a donation, legacy or inheritance.

A disinherited spouse or registered partner has a number of statutory rights. For example, he or she can claim:

- the usufruct of the family home and household effects; and
- the usufruct of other estate assets if he or she, when considering all circumstances, needs this for his or her maintenance.

#### 18 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?

If there is no will, the intestacy rules apply. These provide that the deceased's spouse (or registered partner) and children inherit equal shares in the estate. However, the children do not immediately receive this share. Rather, the deceased's spouse or registered partner receives, by right, all assets of the estate and must discharge all liabilities, the so-called statutory division.

The children receive a claim equal to the value of their share. However, this claim can only be collected after:

- the death of the deceased parent's spouse or registered partner; or
- another event stipulated in the deceased's will (such as remarriage of the surviving spouse or partner).

Stepchildren and cohabitants are not entitled to a share of the deceased's estate, in the absence of a will.

If the deceased is not married or registered as a civil partner and has no children, his or her parents and brothers and sisters will inherit his or her estate. In principle they will each inherit an equal share, with the provision that a parent is entitled to at least a quarter share of the child's estate.

#### 19 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?

The determining factor for a child's legal position is whether legal familial ties exist between the child and the deceased.

Legal familial ties arise between the child and his or her mother as a result of birth or adoption.

Legal familial ties between the child and his or her father arise as a result of:

- birth of the child within wedlock or during a registered civil partnership;
- formal recognition of the child by the father;
- judicial establishment of paternity; or
- adoption.

As long as a child has legal familial ties with a parent, regardless of the way these arose, the child is an intestate heir and is entitled to a statutory share.

Natural children (ie, biological) and stepchildren are not intestate heirs and are not entitled to a statutory share. However, they may be appointed as beneficiaries in the will.

#### 20 What law governs the distribution of an individual's estate and does this depend on the type of property within it?

On 17 August 2015 the EU Succession Regulation (Brussels IV) came into force, also applying to the Netherlands. Under the Regulation, as a default rule, the whole of the succession to an individual is governed by the law of his or her last habitual residence. An individual may, however, designate the law of a state he or she possesses nationality of to govern the whole of his or her succession. Under the Regulation, no distinction is made in the succession of moveable and immoveable property.

#### 21 What formalities are required for an individual to make a valid will in your jurisdiction?

Generally, a will is made in the form of a deed, prepared and executed by a Dutch civil-law notary. A holographic will (that is a will, handwritten by the testator) is also possible, although very uncommon. This type of will must be deposited by a Dutch civil-law notary. In a deed of deposit the testator must declare, among other things, that his or her holographic will both:

- meets the statutory standards; and
- is deposited by the civil-law notary executing the deed.

Dispositions of clothing, personal objects, jewellery, furniture and specific books can be made in a codicil that needs to be handwritten, dated and signed by the testator.

**22 Are foreign wills recognised in your jurisdiction and how is this achieved?**

The Netherlands is party to the HCCH Convention on the Conflicts of Law Relating to the Form of Testamentary Dispositions 1961 (the Hague Testamentary Dispositions Convention). Under the Convention, a will made in another jurisdiction is recognised as valid if its form complies with the internal law of:

- the place where the testator made it;
- the country of the testator's nationality, domicile or habitual residence (either at the time when he or she made the will or at the time of his or her death); or
- the place where the assets are located (for immovable property).

The declaration of inheritance (see question 24), *inter alia*, refers to the formal validity of the foreign will.

**23 Who has the right to administer an estate?**

If the deceased has appointed an executor with the authority to administer the estate, the executor represents the heirs during administration. The executor can sell the deceased's assets if there are insufficient funds to discharge all liabilities, including legacies. In all other cases, the executor requires the heirs' unanimous consent to dispose of the assets. The deceased can limit the executor's authority. For example, the executor may be responsible only for handling the funeral or the payment of a specific legacy. Once the executor completes his or her task, he or she must submit an account of the estate administration.

If the deceased has expressly authorised the executor to act as a settlement administrator, the executor can dispose of the estate without the heirs' consent.

If no executor or settlement administrator has been appointed, the heirs jointly administer the estate.

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

The deceased's estate passes directly to the heirs, unless the deceased provides otherwise. Usually a declaration of inheritance, prepared and executed by a Dutch civil-law notary, is required to prove entitlement to the estate.

The testator may appoint an executor or settlement administrator (see question 23).

**25 Is there a procedure for disappointed heirs and beneficiaries to make a claim against an estate?**

A beneficiary can challenge a will on the following grounds:

- the testator's incapacity; or
- forbidden provisions (eg, a provision for the benefit of a medical doctor during the treatment of the deceased or to a clergyman while ministering the deceased).

Children and disinherited spouses and registered partners have a number of statutory rights (see question 17).

**Capacity and power of attorney**

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

Children are legally represented by their parents or a guardian during their minority (until they reach the age of 18). The parents (or a guardian) need a sub-district court's authorisation for certain legal acts (listed in the Civil Code) that significantly affect the minor's property, such as donations on behalf of the minor.

A minor can own assets. These assets are managed by the administrator of the assets, generally the minor's parents or a guardian. In a will, a testator can appoint someone other than the minor's parent or guardian as an administrator of the assets acquired from the estate. This provision can also be made in the case of a donation.

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

An individual attains full legal capacity at the age of 18. A will can be made after attaining the age of 16.

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

If a person is put under legal restraint by a sub-district court, the court appoints a legal guardian to represent him or her. A sub-district court can impose an administrator for the adult's property if the adult cannot administer his or her own property. The administrator manages the property.

A power of attorney, given before the loss of capacity, remains valid. Foreign powers of attorney are normally recognised, but a notarial power of attorney is required for certain legal acts, such as providing a mortgage over Dutch immovable property.

**Immigration**

**29 Do foreign nationals require a visa to visit your jurisdiction?**

Foreign nationals who wish to reside in the Netherlands for more than three months require a residence permit. An application must be filed with the Immigration and Naturalisation Service (IND). Most foreign nationals need to apply for a regular provisional residence permit (MVV) before entering the Netherlands. For a stay of less than three months, no residence permit or MVV is required. In such cases a visa will suffice. For EU (except for Romanian and Bulgarian) nationals, EER nationals and Swiss nationals, specific rules apply. These persons do not require a residence permit.

Employers are required to obtain work permits before hiring employees from outside the EU. In most cases the employer is required to demonstrate that no qualified Dutch or EU nationals are available to fill the vacancy. The maximum length of a work permit is three years.

Work permits are not required for employees qualifying as 'highly skilled migrants' or 'knowledge migrants' and for certain scientific researchers.

A foreign national must register with the local municipal authority if he or she remains in the Netherlands for longer than four months.

Certain professions may only be practised in the Netherlands if the employee has the correct certificate.

**30 How long can a foreign national spend in your jurisdiction on a visitors' visa?**

For a stay of less than three months, no residence permit or MVV is required. In such a case a visa will suffice. Foreign nationals who wish to reside in the Netherlands for more than three months require a residence permit (see question 29).

**31 Is there a visa programme targeted specifically at high net worth individuals?**

Work permits are not required for employees qualifying as highly skilled or knowledge migrants and for certain scientific researchers. They do, however, require a residence permit. There is a specific visa programme for foreign investors who invest at least €1.25 million in the Dutch economy, who may apply for a regular temporary residence permit. A provisional residence permit is issued for a stay longer than three months.

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

A spouse of a highly skilled or knowledge migrant does not require a work permit.

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

For a highly skilled or knowledge migrant, the residence permit is granted for the same duration as the employment contract, with a maximum of five years. The residence permit for a stay as a foreign investor will initially be issued for a maximum period of one year. It is possible

to extend this stay for another five years if the applicant complies with certain requirements.

These programmes do not give an individual the right to reside permanently or indefinitely in the Netherlands.

In general, a residence permit can be granted for an indefinite period. After five years of uninterrupted residence in the Netherlands with a Dutch residence permit for a definite period, it is possible to request a residence permit for an indefinite period. If an applicant complies with all EU requirements, then the inscription 'EU long-term resident' will be put on his or her residence permit. In the case of non-compliance with EU requirements, an applicant will be tested on conformity with the national grounds for application for an indefinite period residence permit.

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

The aforementioned programmes (focused on highly skilled or knowledge migrants and foreign investors) do not provide for a specific possibility to obtain Dutch nationality.

In general, if a foreign national who has attained the age of majority wants to acquire (or regain) Dutch nationality, there are two alternative routes to follow: the option procedure or naturalisation.

For the option procedure, one must state his or her wish to become a Dutch national by filing a declaration obtainable from the town hall. If all conditions are fulfilled, the mayor will confirm that the applicant has become a Dutch national. The option procedure is the fastest and easiest way of acquiring Dutch nationality, taking about three months to complete. It costs much less than naturalisation and there is no need to submit proof of civic integration. However, not everyone qualifies for this procedure. One may qualify after living in the Netherlands for a certain period of time or if one is a former Dutch national.

The naturalisation process takes up to one year. If one fulfils all conditions, he or she can start the procedure by filing an application form at the town hall. Official documents need to be presented, such as a passport or residence permit, and if applicable a marriage certificate and a child's birth certificate, along with a civic integration certificate.

The application will be submitted to the municipality. The IND will then consider the application.

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# Poland

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## Tax

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

There are two types of tax obligations in Poland: unlimited and limited.

Individuals with their place of residence in Poland are subject to the unlimited tax obligation, which means that they are taxed on their worldwide income, regardless of where the income is earned. A person passes the residence test for Poland when an individual is a person who is physically present in Poland for more than 183 days during a tax year or has a centre of personal or economic interests in Poland (centre of vital interests). The provisions of the relevant tax treaties should be taken into account while applying this rule.

The limited tax obligation arises when individuals do not have a place of residence in Poland, and they are taxed solely on their income derived from a Polish source. The concept of domicile is not recognised in Poland.

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

Personal income tax (PIT) is paid by individuals. A progressive income tax scale is applied to individuals in Poland. Tax rates vary depending on income earned, defined as: 'the total revenue minus tax deductible costs, earned in a given taxable year'.

The Polish tax bands are relatively low: 18 per cent and 32 per cent. When taxpayers earn less than 85,528 zlotys during the fiscal year, they are in the first tax band, and if more than 85,528 zlotys they are in the second band. It is worth stressing that according to statistics, only approximately 3 per cent of taxpayers pay the higher tax band of 32 per cent. Most wealthy taxpayers optimise their profits using regulations intended for natural persons conducting a business activity. These individuals are taxed according to the tax scale; however, at their request, they may tax their income at a 19 per cent flat-rate tax rate that is dedicated to natural persons conducting a business activity. It may be assumed that the most affluent Polish taxpayers are self-employed in Poland for tax purposes.

PIT is imposed on different sources of income such as: a labour-based relationship and an employment relationship, including a cooperative employment relationship; retirement or disability pension; personal services; non-agricultural business activity; special departments of agricultural production; lease, sublease, tenancy, subtenancy and other similar agreements; monetary capital and property rights; paid disposal of, among other things real property or parts thereof, and real property interests; moveables; activity conducted through controlled foreign company; and other sources.

A taxpayer's personal and family situation may be taken into account in the tax system, especially in income taxes, in the form of reliefs and tax exemptions. Poland, like most other EU countries, provides various tax credits such as: internet tax credit, tax credit for an individual retirement security account, and a tax credit for charitable donations. Since the Polish tax system favours families in many tax respects, a large part of tax credits concern a taxpayer's personal situation. Therefore, Polish income tax provides for a child tax credit, joint-taxation (with children) of single parents, and joint-taxation of spouses; with the aim of ensuring a family has a reduced financial burden.

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

Income on capital gains is subject to personal income tax at a flat rate of 19 per cent. Such income is not aggregated with income taxable pursuant to general Polish income tax rules. Income on capital gains should be calculated separately in an annual tax return.

It is noteworthy that according to Polish law, gains derived from the sale of real property are treated as separate income from capital gains.

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

Lifetime gifts are taxable in accordance with transfer upon death under the Polish Inheritance and Gift Tax Act (the answer to that question is provided in more detail in question 5).

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

Natural persons are the only taxpayers of inheritance tax. Inheritance tax is imposed on acquisition as a result of inheritance of property (moveable and immovable) located in Poland, and property rights exercised in Poland, including money. Tax is also applied to the acquisition of property located outside of Poland and rights exercised abroad when at the time of the decedent's death, the beneficiary was a Polish national or had a permanent place of residence in Poland. If neither the decedent nor the beneficiary were Polish citizens or had a permanent residence in Poland at the moment of death, inheritance tax is not levied.

Payers of inheritance tax are grouped into three categories depending on their relationship with the testator.

The first group consists of the spouse, descendants (children, grandchildren, etc), ascendants (parents, grandparents, etc), son-in-law, daughter-in-law, siblings, stepfather, stepmother, and parents-in-law.

The second includes descendants of siblings (niece, nephew, etc), siblings' spouses, siblings of spouses' spouses, the spouse's siblings' spouses, other descendants' spouses siblings of parents (aunties, uncles, etc), and the stepchildren's descendants and spouses.

Finally, the third group comprises other acquiring parties, including unrelated parties.

Determining the base and the rate of Polish inheritance tax depends on the specific tax group to which the testator belongs and on the minimum tax-exempt amount. Currently, tax-exempt amounts are as follows: for acquirers from tax group 1 – 9,637 zlotys; for tax group 2 – 7,276 zlotys; and for tax group 3 – 4,902 zlotys. Tax on inheritance applies to the acquisition of ownership of assets over the tax-free amount.

The table below presents the rates of Polish inheritance tax.

Taxable base		Tax scale
Above	Up to	
(1) from acquirers in group I		
-	10,278 zloty	3%
10,278 zlotys	20,556 zloty	308,30 zlotys + 5% of the surplus over 10,278 zlotys
20,556 zlotys	-	822.20 zlotys + 7% of the surplus over 20,556 zlotys



(2) from acquirers in group II		
-	10,278 zlotys	7%
10,278 zlotys	PLN 20,556 zlotys	719,50 zlotys + 9 per cent of the surplus over 10,278 zlotys
20,556 zlotys	-	1,644 zlotys + 12 per cent of the surplus over 20,556 zlotys
(3) from acquirers in group III		
-	10,278 zlotys	12 per cent
10,278 zlotys	20,556 zlotys	1,233.40 zlotys + 16 per cent of the surplus over 10,278 zlotys
20,556 zlotys	-	2,877.90 zlotys + 20 per cent of the surplus over 20,556 zlotys

The taxpayer has 14 days from the day the decision of the revenue office determining the tax rate has been delivered to pay the inheritance tax (unless the notary collected it earlier).

Poland is unique among tax jurisdictions across the world for exempting the testator's immediate family members from inheritance tax. Such solution aims to allow a family to accumulate wealth across generations, and therefore the provisions of inheritance tax give preference to the family. The beneficiaries need to report the acquisition to the competent head of their tax office within six months from the day the tax obligation has arisen.

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

Real estate tax (RET) is a local tax, which is classified in the wealth tax group. RET is levied on buildings or their parts, lands and constructions by the local tax authorities. Tax on a building or plot of land is calculated separately for each area. For fixed installations or constructions, the book value is taken into account.

Natural persons are RET taxpayers when they are owners, freeholders or usufructuaries of the real property, or they are dependent holders of real estate being in the ownership of the state treasury or municipalities.

Each local authority sets its own tax rate which is binding within their jurisdictions only. The maximum rates are specified in the RET Act. Real estate tax is an annual tax; however, taxpayers should pay instalments proportionate to the duration of the tax obligation. Moreover, they should submit information on the real property within a specified period.

Some properties are exempted from RET such as: sheltered workshops, research institutes, and entrepreneurs with a 'research and development centre' status.

The sale of real property is subject to 19 per cent income tax.

#### 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?

When an individual imports or exports assets other than cash for personal use and enjoyment, no specific taxes will be imposed. However, when the purchase is carried out within the scope of the entrepreneur's business activity, it may trigger VAT and customs duty.

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

Poland does not provide for either wealth tax or exit tax.

VAT is a broad-based tax levied on the supply of goods and services in Poland. The rate depends on the nature of the goods or the services rendered. The standard rate is 23 per cent and it is charged on most goods and services. A reduced rate of 8 per cent or 5 per cent is imposed on supplies such as: certain food, medicines and certain transport services. A zero per cent rate applies to the intra-community supply of goods, exports of goods, some international transportation and related services.

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

Trusts and private foundations are unknown to the Polish legal system, and therefore they are not used in Poland. For this reason, other asset-holding vehicles such as closed-end funds are used in Polish law.

Closed-end funds are legal persons, operating pursuant to the Polish Investment Fund Act, which enjoy corporate tax exemption (without any additional conditions). It means that they are not taxed at 19 per cent. Entrepreneurs or companies may transfer various assets such as: shares, immovable property, bonds, and other financial instruments into closed-end funds and then they may make transactions with those assets within the funds. Income from such transactions is not taxed directly. Investors or entrepreneurs are obliged to pay tax only when fund certificates are decumulated. The 19 per cent flat-rate tax on the income from capital gains is collected by the tax remitter (ie, the closed-end fund). Therefore, this structure is used more and more frequently in succession as private wealth may be easily and promptly transferred through the fund (for example, a seriously ill owner of several companies may contribute shares to the fund and pass funds certificates on to his or her heirs).

#### 10 How are charities taxed in your jurisdiction?

Polish law provides for two primary forms of not-for-profit non-governmental organisations (NPOs): associations and public foundations. Polish NPOs may apply for public benefit organisation (PBO) status.

PBOs are exempt from paying taxes (such as: CIT, real estate tax, transfer tax, etc) devoted to their statutory goals. Associations and foundations that do not acquire PBO status are exempt from paying CIT under the condition that their statutory objectives fall within particular categories such as: science, education, culture, sports, environmental protection, support for technical infrastructure in rural areas, healthcare, social care, religious worship, the occupational and social rehabilitation of the disabled, and charity.

The NPOs will be obliged to pay tax on unrelated business income. In addition, foundations and associations are not subject to inheritance and gift tax in Poland.

#### Trusts and foundations

##### 11 Does your jurisdiction recognise trusts?

Not applicable in Poland.

##### 12 Does your jurisdiction recognise private foundations?

Not applicable in Poland.

#### Same-sex marriages and civil unions

##### 13 Does your jurisdiction have any form of legally recognised same-sex relationship?

Same-sex marriages are illegal in Poland; therefore, the people in such relationships are not privileged in scope of succession and taxes.

Homosexuals are not subject to intestate succession. However, there are no obstacles to prevent either party in such a relationship from drawing up a will which decides who will receive a party's estate. Nevertheless, a person in a same-sex relationship can receive the right to a tenancy from the deceased partner. This was confirmed by the Supreme Court in its resolution, in which it was held that the person of the same sex who is connected through emotional, physical and economic ties with the tenant, may receive the right to the tenancy from the deceased partner just as a wife or a cohabiting partner can.

Both income tax and gift and inheritance tax preclude the more favourable treatment of people in a same-sex relationship. This means that people in such relationship may not benefit either from the joint-taxation of spouses for income tax purposes, or the exemption from gift and inheritance tax. Gift and inheritance tax is levied on a person in a same-sex relationship at the highest amount, since these people are classified in the third tax group and they are treated as other acquiring parties.

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

No, Poland does not provide any regulations of legal relationship for heterosexual couples other than marriage. Individuals in such relationships do not enjoy any tax and succession benefits. They are treated as single and unprivileged taxpayers.

**Succession**

**15 What property constitutes an individual's estate for succession purposes?**

An individual's estate for succession purposes includes all the decedent's property rights and obligations of a civil law character.

An estate may consist of the right of ownership in immovable property or moveable property (including among other: perpetual usufruct, lien and mortgage, and the cooperative right of ownership to the premises).

It should be noted that both autonomous possession and dependent possession may be included in the individual's estate.

Also receivables resulting from concluded contractual relations or unjust enrichment constitute an individual's estate.

Moreover, heirs acquire the rights of the testator connected with the work performed by the testator. This means that the estate relates to property claims to which the worker is entitled due to an employment relationship (eg, the outstanding remuneration for work which the testator has undertaken).

The decedent's securities (cheques and bills) and copyrights are inheritable.

However, the decedent's rights and obligations that are personal in nature (eg, support duty) are excluded from the estate. It should be noted that decedent's debt is also inheritable.

**16 To what extent do individuals have freedom of disposition over their estate during their lifetime?**

In general, mutual wills and contracts of inheritance are forbidden under Polish law. There is only one exception to this rule (ie, a contract of renunciation of inheritance), in which a person who is a statutory heir – renounces the statutory inheritance after the death of the testator. This agreement should be concluded in the form of a notarial deed. Unless otherwise agreed, the renunciation of inheritance includes also descendants of the person who renounces the estate.

The testator may dispose its estate during its lifetime in the form of legal donations. Such legal donations may take the form of a disposal of all or a large part of estate's assets accumulated over the life of the testator.

Moreover, if the decedent was married at the time of the death and a marital property regime was set out between spouses, the decedent's estate consists of its separate property and its share of the community property. The other half passes automatically to the surviving spouse – as the surviving spouse's share of the marital property.

**17 To what extent do individuals have freedom of disposition over their estate on death?**

The guiding principle of Polish succession law is the testament's freedom. It means that the testator has the right to withdraw from statutory succession and it may dispose freely its own estate on death.

Nevertheless, Polish succession law protects the closest relatives of a decedent by forced share. Only descendants, a surviving spouse and the decedent's parents have the right to a statutory portion (ie, these heirs that would have inherited statutorily in the absence of a will). The forced share takes the form of a financial claim directed to a testamentary heir and is equivalent to one-half or two-thirds of the share that would have been received by a claimant under statutory rules. A claim for a forced share should be brought to a court within three years from the date of the estate's opening.

Polish succession law protects the testator's testamentary freedom in such a way that a will is invalid if it was concluded in a state excluding conscious or free decision-making or the testator expresses its intent under the influence of error or threat. Two other important principles affect the interpretation of a will. First, a will should be interpreted in a manner as to ensure that the testator's intentions are satisfied at the maximum level. Second, if a will may be interpreted in various ways, the interpretation should reflect the testator's binding dispositions.

**18 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?**

Statutory succession should be applied when no (valid) testament exists or the persons, who were appointed as heirs in the testament, disclaimed the testament, or they are unable to become heirs. There are four groups of heirs under Polish succession law. The range of these entities is determined by family ties such as: blood ties, marriage or adoption.

In the first group, the surviving spouse and descendants will inherit. Here, the principle that children and a spouse inherit in equal parts applies; however, the spouse's share cannot be less than one-quarter of the entire estate.

In the second group – in the absence of descendants, the spouse and decedent's parents will inherit. In this case, the inheritance attributable to the spouse must correspond to half of the decedent's estate. If the decedent's parents have died, the inheritance attributable to this parent goes to the decedent's siblings or, if the decedent's siblings have died, their children.

The third group of heirs is entitled to the succession solely when there are no heirs in the first two groups. This category includes: the decedent's grandparents or, if they are also deceased, their children.

The fourth group consists of children of the decedent's spouse whose parents were not alive when the estate is opened. Last of all, the municipality in which the decedent last resided will inherit, or if the decedent's residence cannot be determined or it is located abroad, the State Treasury.

Here, it should be indicated that the sequence of the inheritance and the range of the entities entitled to the succession presented above is a result of amendments to the Polish succession law from 2009. So far, provisions in the scope of statutory succession have been rigorous and have prevented grandparents and their descendants from succession. Another key change is the testator's stepchildren's entitlement to the succession; however, they inherit only when their parents have passed away. The amendment was designed to strengthen family ties and to limit the municipality's and state treasury's access to the succession in a situation where a member of the testator's family is still alive.

**19 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?**

Adopted and illegitimate children are treated the same as natural legitimate children under Polish succession law.

Children adopted in a full manner inherit on the same terms as the testator's own children. They do not inherit from their biological parents and their relatives. It should be noted that when the spouse adopts the other spouse's child (eg, from the previous relationship) – the above rule is not applied.

In the case of a partial adoption (eg, someone from the family takes care of a child), the adopted child will always inherit from its adopter, but not from the adopter's family (ie, other children, spouse or parents). This is because partial adoption creates a bond only between the adopter and the adopted child.

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

Key changes have been introduced in the area of international succession. The European Union's Succession Regulation came into force in 17 August 2015, which is a binding act for 25 EU countries (with the exception of Denmark, Ireland and the United Kingdom). Under the new regulation, the decedent's habitual residence at the time of its death is relevant to determine the proper succession law.

Until 17 August 2015, the applicable succession law was that of the testator's nationality and in the case of real property – the country where the property was located. This means that Polish courts have had jurisdiction to rule on the succession when the decedent had Polish citizenship at the time of death, the decedent's habitual abode was in Poland or the decedent's property or assets were held in Poland.

### Update and trends

Poland is a neutral jurisdiction to individuals of significant wealth, which means that Poland provides neither positive nor negative regulations for the wealthiest individuals. On one hand, the lack of such taxes as wealth tax and exit tax, tax exemption for closed-end funds and relatively low tax rates, makes Poland an attractive place to locate personal wealth. On the other hand, Poland fits into current global trends aimed at closing the remaining loopholes in its tax system through the introduction of various regulations such as: CFC rules, general anti-abuse rules (GAAR); new transfer pricing documentation requirements; and taxation of joint-stock partnerships. It is significant that Poland participates in the base erosion and profit shifting project and implements the Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards the mandatory automatic exchange of information in the field of taxation. Poland has signed many double tax treaties (more than 80 conventions) and international agreements on the exchange of information on tax matters. These act as a deterrent to individuals who intend to locate their wealth in Poland.

Poland does not have a national tax policy for the richest individuals; most wealthy Poles tax their wealth outside the territory of Poland in countries which provide more advantageous tax treatment such as: Luxembourg, Cyprus or the Netherlands. There is no indication that Poland will introduce new legislation or regulation in areas of law related to high-net worth individuals.

#### 21 What formalities are required for an individual to make a valid will in your jurisdiction?

To make a valid will in Poland, a testator should be a person over 18 years old with full legal capacity, who prepares the will personally. The will may be revoked at any time.

The testator may express its last will through one of three ordinary forms of will.

The first is the simplest and the most popular – the will should be written entirely by the hand of the testator, who must sign and date it.

The second may be made in the form of a notarial deed. This type of a testament is the safest, since it is more difficult to give rise to contesting the validity of a testament prepared in a notarial deed. Moreover, a testament drawn up as a notarial deed assures that the testament's substance precisely reflects the testator's intention.

The last type of ordinary will is not widely used. It is based on making a will by declaring its content orally before a local government officer in the presence of two witnesses. The document needs to be signed by the testator, the local government officer, and the witness.

The Polish Civil Code provides also three types of special wills:

- the first is a nuncupative will, which may be prepared only when the testator is unable to make a testament in an ordinary form or is in immediate danger of death;
- second, the will of soldier, which may be prepared only during a time of war or mobilisation; and
- third, in certain situations, while travelling, a testament may be prepared on a Polish ship or plane. The testator should make an oral declaration to the captain of the ship or the plane or his deputy in the presence of two witnesses.

#### 22 Are foreign wills recognised in your jurisdiction and how is this achieved?

Yes, foreign wills are recognised in Poland. Under article 27 of the European Union's Succession Regulation, a will is valid when it complies with the law of the state where the testator made the will, the testator's nationality, the testator's residence or habitual abode or the location of the assets (in the case of real property). If the will is valid under the above-mentioned conditions, the will is also valid under Polish law.

#### 23 Who has the right to administer an estate?

A testator may appoint an executor of the will to ensure that all the testamentary provisions will be properly conducted; nevertheless, this institution is not widely exercised in Polish succession law. Under Polish civil law, the executor may be an adult natural person with full legal capacity, who cannot be treated as a fiduciary or a trustee. No legal education is required. The testator may appoint the executor in his will.

The testator may appoint more than one executor, which means that the powers of each executor of the will may relate to different parts of the testator's estate. The executor of the will is a party to all proceedings concerning the rights and duties of persons involved in the process of managing the division of the estate.

#### 24 How does title to a deceased's assets pass to the heirs and successors? What are the rules for administration of the estate?

The acquisition of the title to a decedent's assets does not require the completion of any formalities. This means that an heir is not obliged to submit a declaration on the acceptance or rejection of an estate. However, for practical reasons the heir should request for confirming inheritance acquisition in the court. When heirs do not do anything within the prescribed time limit, they are deemed to have accepted the inheritance and are liable for debts to the assets of inheritance (acceptance with benefit of inventory).

The executor of the will is primarily an administrator of the estate and it is responsible for custody of the estate. Moreover, the scope of the executor's responsibilities includes payment of the debts under the succession, execution of the legacies and the handover of the ownership of succession property to the heirs pursuant to the testator's will and the Polish Civil Code. When the testator appoints the executor, until the distribution of the estate, the heirs are deprived of the right to dispose of the estate's assets. In particular, they may not sell succession property, but they may dispose their share in the estate.

The executor of the will may sue and be sued on matters arising in connection with the administration of the estate, debts under the succession, and the rights regarding the estate. The executor is entitled to remuneration due to the performed function.

#### 25 Is there a procedure for disappointed heirs and beneficiaries to make a claim against an estate?

Heirs and beneficiaries may challenge the validity of a will before a civil court. They may claim that a given testamentary disposition is invalid on the grounds that it was made:

- in a state precluding conscious or free decision making and expression of intent;
- under the influence of an error, justifying the supposition that if the testator had not acted under the influence of an error, the testator would not have made a will of that content; or
- under the influence of a threat.

It should be noted that the invalidity of a will for the abovementioned reasons cannot be relied on after three years have passed from the day on which the person having an interest therein learns of the cause of the invalidity, and in any case after 10 years have passed from the opening of the succession.

### Capacity and power of attorney

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

A statutory representative is responsible for holding and managing the property of a minor. In most cases, a statutory representative will be one of the parents.

When none of the parents may represent the child, the guardianship court appoints a guardian for a child. In the case when parental custody is suspended, limited or deprived by the court, the court appoints a custodian to represent the minor.

It is a basic rule that a legal act performed through a representative within the limits of its authorisation, produces a direct effect for the minor. The consent of the statutory representative is required when a person with a limited capacity for legal acts (ie, minor) assumes an obligation or disposes of its right.

Nevertheless, when a child executes a contract of a type commonly executed in minor current day-to-day matters, this contract becomes valid at the moment it is performed, unless it causes serious harm to that person. A minor may, without the consent of his or her statutory representative, dispose of its earnings (such as: scholarships, casual seasonal work) unless the guardianship court rules otherwise for good cause. Also, when the statutory representative of a minor gives him specific property items for unrestricted use, that child acquires full



capacity for legal acts concerning these property items. According to the law, legal acts for which the consent of the statutory representative is insufficient constitute an exception.

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

According to Polish civil law, full capacity for legal acts is acquired at the moment of becoming an adult (18 years old).

Minors who have reached 13 years of age and persons who are partially legally incapacitated have limited capacity for legal acts. Nevertheless, when a person who does not have capacity for legal acts executes a contract of a type commonly executed in minor current day-to-day matters, this contract becomes valid at the moment it is performed unless it causes serious harm to that person. A minor may, without the consent of his or her statutory representative, dispose of his or her earnings unless the guardianship court rules otherwise for good cause.

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

Under Polish civil law, there are two cases when someone may lose their capacity: full or partial legal incapacitation.

A person may be fully legally incapacitated, when the person has reached 13 years of age and is incapable of controlling his or her behaviour due to mental illness, mental retardation or other mental disorder – such as alcoholism or drug addiction. A guardian is appointed for that person unless the person is still under parental authority.

A partial legal incapacitation may arise when an adult (a person, who has reached 18 years of age) requires assistance to manage their affairs due to mental illness, mental retardation or other mental disorder, in particular alcoholism or drug addiction. A curator is appointed for an individual who is partially legally incapacitated.

**Immigration**

**29 Do foreign nationals require a visa to visit your jurisdiction?**

Poland is part of the Schengen Area, a zone without controls on internal borders which comprises of 28 countries. Third-country nationals may enter Poland if they are in possession of a valid travel document and a visa (if required).

Citizens of the following countries are not required to be in possession of a visa when entering Poland for fewer than 90 days: the EU countries, the candidate countries for accession to the EU (ie, Albania, Bosnia and Herzegovina, Macedonia, Montenegro and Serbia); for holders of biometric passports: Andorra, Antigua Barbuda, Argentina, Australia, Bahamas, Barbados, Brazil, Brunei, Canada, Chile, Costa Rica, El Salvador, Guatemala, Honduras, Hong Kong, Iceland, Israel, Japan, Liechtenstein, Macao, Malaysia, Mauritius, Mexico, Monaco, New Zealand, Nicaragua, Norway, Panama, Paraguay, Saint Kitts and Nevis, San Marino, Seychelles, Singapore, South Korea, Switzerland,

Taiwan (for holders of passports which include an identity card number), the United States of America, Uruguay, the Vatican and Venezuela.

This means that foreigners from countries such as Russia, Belarus, Ukraine, Georgia, Turkey, India or Vietnam should provide a visa before entering Poland's territory. Council Regulation (EC) No. 539/2001 includes a list of third countries whose nationals must possess valid visas.

There are three types of visas in Poland:

- A transit airport visa for citizens from: Afghanistan, Bangladesh, Democratic Republic of the Congo, Eritrea, Ethiopia, Ghana, Iran, Iraq, Nigeria, Pakistan, Sudan or Sri Lanka, who do not intend to leave the international transit area of the airport while travelling by air from a third state to another third state with a stopover at an airport in the Schengen area (in the territory of the Republic of Poland).
- The Schengen C-type visa – the most common type of visa, which is valid for stays of no more than 90 days per period of 180 days. The unified Schengen visa entitles the holder to stay in the territory of all Schengen states or only in the territory of Poland. Uniform visas are issued for travellers going to Poland for reasons of tourism, visiting, carrying out economic or cultural activities, participation in international conferences or sport events, business, education, etc. The visa permits a continuous stay on the territory of the Republic of Poland or multiple consecutive periods of stay not exceeding 90 days jointly within the period of 180 days.
- The last type of visa – national D-type visa for foreigners who intend to stay in the territory of Poland for a total of more than 90 days (at least 91 days) during one or more visits within a half-year period calculated from the date of first entry.

**30 How long can a foreign national spend in your jurisdiction on a visitors' visa?**

See question 29.

**31 Is there a visa programme targeted specifically at high net worth individuals?**

No, Poland does not provide such a programme.

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

Not relevant.

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

Not relevant.

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

Not relevant.

# Sołtysiński Kawecki & Szlęzak

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# Switzerland

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## Tax

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

An individual is considered resident in Switzerland if he or she takes up residence there with the intention of permanently staying, even if the residence is limited to a certain period of time.

A resident individual is subject to unlimited taxation in Switzerland on his or her worldwide income and assets.

An individual can also be subject to unlimited taxation if he or she is physically present in Switzerland for a minimum of 30 days, and is in gainful employment, or if he or she is physically present for a minimum of 90 days in Switzerland without being gainfully employed.

Individuals resident outside Switzerland may be subject to limited taxation if they have economic ties to Switzerland (eg, real property, business premises).

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

An individual is subject to income tax on a federal, a cantonal and a communal level. While the tax rates are the same on a federal level, they vary substantially between cantons, and even within a canton, between communities. The income tax rates are progressive and, particularly for average salaries, modest by international standards. The top rates are comparable with rates of other jurisdictions, but they are applicable on comparatively much higher taxable income.

As an example, tax rates for a taxable income of 100,000 Swiss francs, of a family with two children, vary from 1.32 per cent to 11.63 per cent, and for a taxable income of 250,000 Swiss francs, between 10.35 per cent and 26.33 per cent.

The same income tax rates apply to all types of income. Thus, for federal as well as cantonal and communal taxes, all taxable income such as employment income, investment income (except capital gains), rental income, pensions, and alimony payments, are added up in order to determine and apply the respective applicable tax rate.

Some income from foreign sources is exempt from taxation (typically rental income from property abroad or some employment income), if an applicable double taxation agreement exists between Switzerland and the relevant country.

On the federal level as well as in most cantons (except Zurich, Basel Stadt, Appenzell Ausserrhoden and Schaffhausen), foreign individuals taking up residence in Switzerland for the first time, or after an absence of more than 10 years, may opt for what is known as a 'lump sum taxation', provided they have no gainful activity in Switzerland. Under this regime, the taxable income is predetermined based on the worldwide cost of living. In most cantons, the minimum taxable income is, however, fixed at 400,000 Swiss francs or higher.

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

Capital gains realised from the sale of private moveable assets are exempt from income taxation. As a consequence, realised losses are not deductible.

Gains realised on the sale of real estate located in Switzerland are subject to a separate capital gains tax on a cantonal and communal level. In order to avoid speculation, the tax is increased for short holding periods. On the other hand, the applicable tax rate is reduced under 50 per cent if the taxpayer held his or her property for 20 years or longer.

If a taxpayer is frequently trading securities or buying and selling real estate, capital gains realised may qualify as income from self-employment. These gains would then be subject to the ordinary income tax rates, in addition to social security contributions.

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

Gifts made by a resident in Switzerland are typically subject to gift tax in the canton of his or her residence. Only the cantons of Schwyz and Lucerne do not impose any gift taxes.

It is important to note that the donee is the taxpayer, not the donor. The latter is jointly liable to the gift tax. If the donor bears the gift tax, this would qualify as another gift to the donee, meaning that gift tax would be applicable again on that.

While gifts to spouses and to civil partners are exempt from gift tax in all cantons, gifts to descendants are exempt in most of the cantons, except Vaud, Neuchâtel and Appenzell Innerrhoden.

The canton of Geneva has a special rule for lump sum taxpayers: gifts from a lump sum taxpayer in Geneva are never tax-free, even if the donees are the descendants, the spouse or the civil partner of the donor.

The tax-free amounts are typically low, and the tax rates are progressive, reflecting the relationship between the donor and the recipient. Various gifts over the years are added up, and the possibly higher tax rate is applied to the entire gift. The rates vary from zero to over 50 per cent.

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

Inheritance tax is levied on a cantonal level only. The canton of Schwyz is the only canton not levying any inheritance tax. Like gift tax, spouses, civil partners and descendants are typically exempt from inheritance tax.

The tax rates are the same as the gift tax rates (see question 4), reflecting the relation between the deceased and his or her heirs. Taxpayers are the heirs based on their relation to the deceased and the size of their bequest, not the estate. The rates vary from zero to over 50 per cent.

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

Real estate is always taxed in the canton where it is located. Thus, an individual resident in another canton is subject to limited taxation in the canton where the real estate is located.

If the taxpayer is living in his or her own property, a notional rental value has to be taken into account when determining the taxable income. The notional rental income is typically calculated in relation to the tax value of the property, and is lower than the rent that could be received if rented out. Mortgage interest and maintenance costs are deductible.

The same notional rental value has to be included for holiday homes, even if those homes are located outside Switzerland. In the latter case, neither the notional rental value nor the tax value will be taxed in Switzerland. These values are only taken into account for determining the applicable tax rate.

If the property is rented out, the net income received after debt interest and maintenance costs is subject to income tax at the rates of the worldwide income in the canton where the property is located.

If the property is sold, the special capital gains tax applies as outlined in question 3.

### 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?

If a person is importing goods for his or her own personal use or as gifts, no tax applies up to a value of 300 Swiss francs per day and person, including children. However, if the duty-free limit of 300 Swiss francs is exceeded, value added tax of 8 per cent is payable on the entire amount.

Special rules and lower duty-free limits apply to alcoholic beverages, tobacco and certain agricultural products such as meat, milk and cream, fruit, vegetables, oils and fat products that exceed certain maximum quantities.

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

Unlike most other jurisdictions, Switzerland applies a net wealth tax on an individual's worldwide assets net of any debts, including mortgages, loans and private borrowings. There is no wealth tax at federal level, but there is at cantonal and communal levels.

The applicable tax rates are progressive and vary again from canton to canton, and within cantons, between communities. The range is between 0.1 per cent and 1 per cent of the taxable net assets.

Taxable assets include the fair market value of bankable assets, the tax value of real estate, gold, cars, airplanes, boats, horses, art or jewellery collections (in some cantons even one piece of art if the value exceeds a certain threshold) and life insurance.

On the federal level, value added tax (VAT) is levied. The standard rate is 8 per cent. However, tax on food and drinks (excluding alcohol), medication and printed products, is subject to a lower tax of 2.5 per cent. Hotel services are subject to 3.8 per cent VAT.

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

The taxation of trusts in Switzerland depends on whether the trust is a revocable or an irrevocable discretionary or fixed interest trust. Neither the trust nor a Swiss resident trustee is ever taxable. Depending on its nature, the trust assets and the respective income can be attributed for tax purposes to the beneficiary or the settlor in certain cases:

- a revocable trust is transparent for tax purposes, thus the assets and income are attributed to the settlor for income and wealth tax purposes;
- the Swiss resident beneficiary of a fixed interest trust has to include the distribution as well as the capital value of his claim in his personal tax return;
- a Swiss resident settlor, taxed under the ordinary regime, is considered not to have disposed of his or her assets when settling an irrevocable discretionary trust. The assets as well as the income thereof will remain taxable in his or her hands; and
- a foreign resident settlor settling an irrevocable discretionary trust is only considered to have disposed of his or her assets if he is not a beneficiary himself or herself, and has not retained any powers, such as power to amend the trust documents, or power to add or remove beneficiaries, trustees or protectors.

### 10 How are charities taxed in your jurisdiction?

Swiss resident charities are typically exempt from profits and wealth tax, on the federal level, as well as on the cantonal and communal levels. Certain criteria have to be met in order to receive an exemption status. In particular, charities have to pursue public or charitable purposes that are in the interests of Switzerland. Profits have to be exclusively and irrevocably devoted to these particular interests. Charities can have activities in Switzerland or abroad. However, some cantons only grant an exemption from taxation if the activity is limited to certain Third World countries.

Donations of individuals and entities to tax-exempt charities in Switzerland are, in general, deductible for income tax purposes up to 20 per cent of the taxable income of a taxpayer.

## Trusts and foundations

### 11 Does your jurisdiction recognise trusts?

Switzerland as a civil law jurisdiction has no tradition with trusts and does not directly provide for trusts in its laws. Even though Swiss courts have recognised foreign trusts for a long period of time, Switzerland ratified the Hague Convention on the Law Applicable to Trusts and on their Recognition (the Trust Convention), with legal effect as of 1 July 2007. Since then, Switzerland recognises trusts that have been validly established according to the applicable law. As a consequence, the Swiss Private International Law, as well as the Federal Debt Enforcement and Bankruptcy Act, was amended in order to provide for internal rules. Although Swiss law still does not provide for trusts, the amendments in the federal law introduced predictable rules on the registration of trust property in Switzerland, and allow for the recognition of foreign court orders relating to trusts. The Trust Convention and the amendments further clarify that trust property is separate from the personal assets of a trustee.

### 12 Does your jurisdiction recognise private foundations?

In Switzerland, the landscape is largely predominated by Swiss charitable foundations that pursue a non-profit objective. Less common are Swiss family foundations that, pursuant to article 335, paragraph 1 of the Swiss Civil Code (SCC), are only permitted to cover the costs of education, endowment to family members, or similar objectives. Swiss family foundations are not permitted to pursue further-reaching objectives. In particular, 'maintenance foundations' that are intended to bring about a higher living standard, or greater prestige for the family, are not permitted.

Swiss foundations that impermissibly benefit the members of a family are void from the very outset, even if they are registered in the Commercial Register. They must, however, be declared void and therefore non-existent in court proceedings. A foundation that is illegal or immoral from the outset would be declared non-existent, which would lead to a return of any relevant assets to the founder or the founder's legal successors.

## Same-sex marriages and civil unions

### 13 Does your jurisdiction have any form of legally recognised same-sex relationship?

Yes, same-sex couples can register their partnership and therewith achieve almost the same rights and obligations as those of spouses. However, unlike spouses, civil partners are neither allowed to adopt children, nor to benefit from assisted reproductive technology. For tax and inheritance purposes, the registered same-sex couples are treated in the same way as spouses.

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

No. Due to the number of couples choosing not to marry, the introduction of new legislation is being discussed. It is uncertain, however, whether such legislation will pass, or even be proposed. Up until then, heterosexual couples who do not wish to get married are left to organise their affairs in bilateral agreements.

## Succession

### 15 What property constitutes an individual's estate for succession purposes?

According to Swiss law, upon the death of an individual the heirs acquire the worldwide estate in its entirety, by operation of law. The estate consists of all moveable and immovable assets owned by the deceased at the time of his or her death, as well as limited rights in rem or claims. In order to determine the net estate value to be divided among all the beneficiaries, liabilities such as outstanding debts, funeral expenses, administrative costs and taxes are deducted from the gross estate value.

If the deceased was married, the dissolution of the property regime needs to be taken care of in order to determine the estate of the deceased. According to Swiss law, the ordinary marital property regime is the sharing of acquired property regime. By way of marriage contract, the spouses can also agree on a different regime, such as the

separation of assets or the joint property regime. The ordinary regime includes the acquired property of each spouse and the individual property of each spouse.

#### **16 To what extent do individuals have freedom of disposition over their estate during their lifetime?**

In general, there are no restrictions during an individual's lifetime. However, if the deceased individual, due to some dispositions during their lifetime, violates the compulsory share of a protected heir (forced heirship), this heir may file, within a certain period of time, a claim for abatement.

During marriage, each spouse manages and uses his or her acquired property, and his or her individual property, at his or her sole discretion. If, however, the spouses are co-owners of an asset, they each have a right of pre-emption against any third party acquiring the share of the other spouse. Moreover, donations without compensation made by the deceased spouse within the five years prior to the dissolution of the marital property regime, and without consent of the other spouse, are virtually added to his or her property acquired during marriage. Customary gifts are excluded.

#### **17 To what extent do individuals have freedom of disposition over their estate on death?**

The deceased is free to dispose of his or her estate up to the free quota only. Legal heirs closely related to the testator, such as descendants, parents, spouses or registered partners, are entitled to receive a compulsory share of the estate.

The mandatory portions are as follows:

- for a descendant of the deceased: three-quarters of his or her statutory portion;
- for each parent of the deceased: one-half of their statutory portion; and
- for the surviving spouse or the registered partner of the deceased: one-half of his or her statutory portion.

Under certain conditions, each protected heir may bring a claim that his or her compulsory portion is not satisfied owing to testamentary dispositions or dispositions made by the deceased *inter vivos*.

#### **18 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?**

In the case of intestacy, Swiss law provides that the closest relatives (descendants, parents and grandparents) and the surviving spouse or registered partner are statutory heirs. The closest statutory heirs are the deceased's descendants. They inherit in equal parts. Predeceased children are replaced by their descendants in all degrees per stirpes.

If the deceased leaves no issue, the estate passes to the parental line. Each parent inherits one-half of the estate. Predeceased parents are replaced by their issue in all degrees per stirpes. Where there is no issue on one side, the entire estate passes to the heirs on the other side.

If there are neither descendants nor heirs in the parental line, the estate passes to the line of the grandparents.

Surviving spouses and registered partners are entitled to one-half of the estate if they have to share the estate with the deceased's issue. If there are no descendants, the surviving spouse or registered partner inherits three-quarters of the estate, whereas the deceased's parents inherit one-quarter. If the deceased neither leaves descendants nor parents, the surviving spouse or registered partner inherits the entire estate.

Where the deceased leaves no statutory heirs at all, the estate passes to the state authority of the canton or community of the decedent's last residence.

#### **19 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?**

Once the parent-child relationship exists, there are no differences in the treatment of the deceased's descendants, irrespective of whether the child's parents were married or not at the time of birth.

Between child and mother, the parent-child relationship is created by birth. The paternity is either created by assumption, or paternity

acknowledgment, or judgement. It is presumed that the husband is the father of a child born during marriage.

An adopted child acquires the legal status of a natural child. Therefore, there is no difference in succession rights of adopted children, compared with natural children of the deceased person.

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

The governing law regarding the distribution of an individual's estate is determined by applying the Swiss Federal Act on International Private Law. This act provides that the estate of a person with last residence in Switzerland is subject to substantive Swiss succession law.

However, a foreign national residing in Switzerland may, by last will or inheritance contract, subject his or her estate to his or her national law. Such disposition shall become void if, at the time of death, the individual is no longer a national of that country or has become a Swiss national.

The estate of a person with last residence abroad is subject to the law to which the provisions of the applicable conflict law of that country refer to.

The mentioned provisions apply irrespective of whether the estate consists of moveable or immovable property or whether it consists of an asset which is co-owned or jointly owned. Co-ownership occurs if several persons own a share of an object that is physically undivided. To the contrary, joint ownership is the consequence of a pre-existing statutory or contractual relationship, such as a simple partnership or a community of heirs, and is exercised collectively.

#### **21 What formalities are required for an individual to make a valid will in your jurisdiction?**

Anyone who has the capacity to make rational judgements and is at least 18 years of age can, within the limits prescribed by law, draw up a will.

The testator may establish his or her will in the form of a public deed, or in holographic form or, in extraordinary circumstances, in oral form.

A will by public deed is drawn up in the presence of two witnesses by a public official, notary public or other person authorised under cantonal law.

A will in holographic form must be written by the decedent by hand, from beginning to end, and must be signed. Furthermore, the holographic will must include an indication of the day, the month and the year of its execution.

A last will may be drawn up in oral form if the deceased person was not able to use the form of public deed or holographic form due to exceptional circumstances, such as imminent death, a car or aeroplane accident, an epidemic or war. For that purpose, the testator must declare his or her last will to two witnesses. As a consequence, the witnesses must write down the last will and notify the court.

#### **22 Are foreign wills recognised in your jurisdiction and how is this achieved?**

Swiss private international law provides that the form of a will is governed *erga omnes* by the Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions.

According to the Convention, the form of a testamentary disposition is valid if its form complies with the internal law of:

- the country where the testator made the will;
- a nationality possessed by the testator, either at the time of making the disposition, or at the time of death;
- the country in which the testator had his or her domicile, either at the time of making the disposition or at the time of death;
- the country in which the testator had his or her habitual residence, either at the time of making the disposition or at the time of death; or
- as far as real estate is concerned, the state where it is situated.

As long as one of the aforementioned criteria is fulfilled, foreign wills are recognised by Swiss courts as formally valid.

### Update and trends

On 6 July 2016 the Federal Council adopted the dispatch on the introduction of the automatic exchange of financial account information with Iceland, Norway, Guernsey, Jersey, the Isle of Man, Japan, Canada and the Republic of Korea, and submitted it to parliament for approval. Switzerland signed joint declarations with these states and territories in January and February 2016 with a view to introducing the automatic exchange of financial account information. The associated federal decrees were subsequently put out for consultation.

The automatic exchange of information with the eight states and territories is due to enter into force on 1 January 2017. The first exchange of data should take place in 2018, provided the approval processes in Switzerland and the eight partner states and territories have been completed by then. Switzerland's first automatic exchange with the EU (28 member states) and Australia is also scheduled for then. Switzerland and the eight partner states and territories will exchange information automatically based on the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information (MCAA). The MCAA in turn is based on the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters (administrative assistance convention). Both the administrative assistance convention and the MCAA were adopted by parliament in December 2015 together with the Federal Act on the International Automatic Exchange of Information on Tax Matters. The referendum deadline expired on 9 April 2016 without a referendum being called.

Switzerland intends to agree on the automatic exchange of information with further states and territories. It is important for the

Federal Council that a level playing field will be created among states and that all major financial centres, in particular, are included.

Switzerland also supports international efforts to achieve greater transparency and a level playing field with regard to the taxation of multinational companies. As a member of the OECD, it actively participated in the base erosion and profit shifting (BEPS) project. The Federal Council instructed the Federal Department of Finance to deliver analyses and proposals for implementation. The minimum requirements that all G20 and OECD member states undertake to comply concern country-by-country reports, criteria for taxing intangible property (patent boxes), the spontaneous exchange of information on advance tax rulings, access to the mutual agreement procedure for resolving disputes and the inclusion of anti-abuse clauses in double taxation agreements.

There is currently a third series of corporate tax reforms under way in Switzerland that already takes account of certain BEPS requirements. For example, provision is made for a standard-compliant patent box (or royalty box), as well as the abolition of tax regimes criticised internationally. With regard to the exchange of information on tax rulings, Switzerland will create the necessary legal basis with the approval of the OECD/Council of Europe multilateral administrative assistance convention. The legal foundations for implementing country-by-country reports are also being prepared. This country-by-country reporting will provide a complete overview of multinationals' global allocation of income and taxes paid.

### 23 Who has the right to administer an estate?

In general, unless the deceased appointed an executor in his or her will or an official administrator or a common representative has been appointed by the competent authority, the heirs themselves administer the estate of the deceased. Such administration requires always anonymous decisions.

### 24 How does title to a deceased's assets pass to the heirs and successors? What are the rules for administration of the estate?

Based on the principle of universality of succession, upon the death of an individual, the heirs become the legal owners of the deceased's estate in its entirety. All assets and liabilities automatically pass to the heirs directly and immediately on the day of death. Where there are several heirs, they form what is known as a community of heirs until the estate is wholly divided among them. As a consequence, a joint ownership is formed, which means that all heirs are collectively entitled to the entire estate. However, any dispositions over the estate require unanimous approval of all heirs. In addition, the estate is jointly administered by the heirs if neither an executor, nor an administrator, nor a common representative has been appointed.

No heir has the duty to remain in the community of heirs and may request the division of the estate at any time. If the heirs cannot agree on the division of the estate, an action for partition must be filed with the competent court.

The heirs can freely agree on the method of division, unless ordered differently by the testator. If the latter made no provisions, the heirs form as many portions or lots as there are heirs or stirpes. The aim of the estate division is to liquidate the community of heirs and to distribute the assets to the individual heirs.

As a part of the partition procedure, the statutory heirs are mutually obliged to place into hotchpot any assets, gifts or grants received from the deceased during his or her lifetime, unless the deceased expressly disposed otherwise.

### 25 Is there a procedure for disappointed heirs and beneficiaries to make a claim against an estate?

An heir is usually disappointed by dispositions exceeding the free quota or invalid testamentary dispositions.

Whoever leaves descendants, parents, a surviving spouse or a registered partner may dispose of his or her assets up to their compulsory share (see question 17). However, within the free quota the testator can freely dispose of his or her estate. Only if the decedent is not survived by any such heirs, he or she may dispose of his or her entire

estate. If the protected heirs do not receive the amount of the mandatory portion stated by the law, they have the possibility to enforce the protected heirship rights. Heirs may file a claim with the court for proportionate reduction of testamentary dispositions or dispositions inter vivos. The action in abatement is brought against the person benefiting from the testamentary disposition or the dispositions inter vivos (and not against the estate itself). Neither the testamentary provisions nor the dispositions inter vivos are automatically void, which means that the right of receiving the mandatory portion of the estate needs to be actively claimed at court.

Alternatively, or in addition, heirs can claim that a given testamentary disposition is null and void due to the incapacity of the testator at the time of its execution, lack of free will, illegality or immorality. The action for annulment may be brought by any interested heir or legatee against the person benefiting from the testamentary disposition.

### Capacity and power of attorney

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

As long as the parents have custody of the child, the parents have the right and the duty to administer the child's property.

However, the child that has capacity to consent manages and enjoys the benefits of all fruits of his or her own labour, and of those of his or her assets that are released by his or her parents for use in the child's professional or business activities.

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

A person reaches full legal age at 18 years. On termination of parental custody or the parents' management, the parents must hand over the child's property, together with a final statement of account to the adult child or to the child's legal representative.

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

The adult protection authority shall order a measure when the person in need is no longer capable of judgement, he or she has failed to make any or sufficient private arrangements for his or her own care and the statutory measures are insufficient.

The adult protection authority shall establish a deputyship if an adult:



- due to a learning disability, a mental disorder or a similar inherent debility is wholly or partially unable to manage his or her own affairs; or
- due to a temporary loss of the capacity of judgement or temporary absence, is neither able to take care of matters that must be dealt with, nor has appointed a representative.

The deputyship shall be established at the request of the person concerned (the client) or a closely associated person or ex officio.

## Immigration

### 29 Do foreign nationals require a visa to visit your jurisdiction?

Whether or not a visa is required to visit Switzerland depends on the citizenship of the applicant. A basic distinction can be made between citizens of a Schengen state and those of other countries (third-state citizens):

Schengen states include all members of the EU (except the United Kingdom, Ireland, Bulgaria, Romania, Cyprus and Croatia), the EFTA states Norway, Iceland and Switzerland, as well as associated small states such as Monaco and Liechtenstein. Citizens of a Schengen state do not need a visa to visit Switzerland, provided that the stay will not exceed a total of 90 days within a period of six months, and the purpose of the visit is for tourism or another accepted purpose, such as for participation in a sporting event. However, anyone may be questioned by border guards about the purpose of his or her visit and financial means.

For third-state citizens it depends if Switzerland has entered into a short-stay visa waiver agreement with the relevant country. Third state citizens holding a residence permit issued by a Schengen country do not need a visa since this is considered to be equivalent to a visa. As an overview, a comprehensive list has been published on the website of the State Secretariat for Migration, detailing the visa requirements for each nationality. There are some exceptions where no visa will be needed. For example, citizens of the United States and the United Kingdom do not need a visa to visit Switzerland, provided that the stay will not exceed a total of 90 days within a period of six months, and that the purpose of the visit is touristic.

### 30 How long can a foreign national spend in your jurisdiction on a visitors' visa?

Citizens of a Schengen state may stay in Switzerland without a visa for up to 90 days within a period of six months, provided that the purpose of the visit is touristic or, for example, for the participation in a sporting event. For a stay in Switzerland exceeding 90 days, a residence permit is required.

For third-state citizens the duration of visa varies from state to state but is in general also limited to 90 days within a certain time of period.

There is, in exceptional cases, the possibility of a national visa for individuals who wish to stay more than 90 days. These visas are typically issued to individuals wishing to work or study in Switzerland and for the purposes of family reunification or lengthy medical treatment.

### 31 Is there a visa programme targeted specifically at high net worth individuals?

There is no programme in Switzerland targeted specifically at high net worth individuals. However, there are some rules that may be of interest to them. For example, individuals who wish to stay in Switzerland for more than 90 days may obtain a national visa if they have sufficient financial means. In general, high net worth individuals will be in a better starting position to fulfil the requirements for staying in Switzerland. Generally, different rules apply to citizens from EU and EFTA states and citizens of non-EU and non-EFTA states.

Citizens from EU and EFTA states without any gainful employment, such as retirees, are entitled to a residence permit (permit B) if they can prove that they have sufficient financial means and adequate health and accident insurance. The residence permit is valid for five years.

For citizens of non-EU and non-EFTA states, stricter rules apply. There are special provisions for students, retirees or for individuals seeking lengthy medical treatment. For example, retirees who have reached the age of 55 and demonstrate 'special personal ties with Switzerland' may be granted a permit B, provided they possess the required financial means. In addition, they must not have any gainful employment in Switzerland or abroad, apart from the management of their own assets. The condition 'special personal ties with Switzerland' is fulfilled if the retiree can demonstrate that he or she frequently stays in Switzerland, or if there are close ties to relatives in Switzerland. Additionally, the Foreign Nationals Act allows the cantons to grant permit B if there are important public interests, such as substantial fiscal interests of the canton. Thus, some cantons grant permit B to non-EU and non-EFTA nationals if they agree to pay substantial amounts in taxes. It should be noted that these amounts vary from canton to canton, and can be as high as 1 million Swiss francs per year.

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

If an individual is granted a permit B, he or she can usually bring his or her family members to Switzerland.

For EU and EFTA citizens holding a Swiss residence, the apartment must be large enough to accommodate the family members. Furthermore, proof of adequate financial means to cover the living expenses of all family members is necessary.

EU and EFTA citizens holding a Swiss residence permit may bring to Switzerland:

- spouses;
- children who are under the age of 21 or financially dependent on the EU or EFTA citizen; and
- parents and grandparents, provided that they are financially dependent on the EU or EFTA citizen.

Under the family reunification programme, third-country nationals holding a settlement permit (permit C) may bring spouses or registered partners as well as children under the age of 18, provided they are all living in the same household, to Switzerland. Third-country nationals

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holding a residence permit (permit B) are not entitled to bring family members to Switzerland at all. However, as an exception, the cantonal migration office may grant family reunification under the same conditions outlined above.

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

High net worth individuals must follow the same rules to reside permanently or indefinitely in Switzerland as anyone else. A distinction is made between citizens of EU-17, EFTA and other states.

In the case of citizens of EU-17 (except Cyprus and Malta) and EFTA, settlement permits are granted pursuant to the applicable agreement after five years' regular and uninterrupted residence in Switzerland. There are no such treaties for Cyprus, Malta, the EU-8 member states, Romania and Bulgaria. Therefore, for these and all other states without a treaty, a settlement permit is generally granted after 10 years of regular and uninterrupted residence in Switzerland.

Even though the settlement permit is permanent, in practice, it is issued for the duration of five years and can be extended for another five years.

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

There is no special programme for high net worth individuals to obtain citizenship or nationality. Generally, individuals with no direct blood ties to Switzerland, through either birth or marriage, must live in Switzerland for at least 10 years before they can apply for citizenship. It should be noted that years spent in Switzerland between the ages of 10 and 20 years count for double. In order to obtain citizenship, it is conditional that the applicant is well integrated, familiar with the customs and traditions of Switzerland and does not pose any threat to internal or external security. Additionally, cantons and communities may have further requirements that must be met.

# Ukraine

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## Tax

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

According to Ukrainian law, an individual can be considered a tax resident of Ukraine if he or she meets the Ukrainian tax residency criteria, which are as follows:

- if the individual has a domicile in Ukraine;
- if the individual also has a domicile in another country, the individual is deemed a resident of Ukraine provided he or she has a permanent place of residence in Ukraine;
- if the permanent place of residence is also available in another country, the individual is deemed resident of Ukraine provided his or her centre of vital interests is situated in Ukraine (eg, the place of the permanent residence of the members of an individual's family or the place of an individual's registration as a business entity);
- if it is not possible to determine the actual centre of vital interests, or if the individual does not have a permanent place of residence in any country, the individual is deemed to be tax resident of Ukraine if he or she stays in Ukraine in excess of 183 days during a tax (calendar) year;
- if it is impossible to determine tax residency on the basis of the above provisions, then the individual will be a tax resident of Ukraine if he or she is a Ukrainian citizen;
- a person who fails to qualify as a Ukrainian tax resident will be considered a 'non-resident' for purposes of the Tax Code;
- the Tax Code also provides for a self-recognition procedure, according to which an individual can voluntarily elect to be a Ukrainian tax resident, and
- in conflict cases, the rules of the relevant double taxation treaties may be applied.

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

In Ukraine, individuals are subject to personal income tax, regardless of whether they are tax residents or not. Individuals as tax residents of Ukraine are taxed on their worldwide income, while non-residents are taxed on their Ukraine-sourced income only. Ukrainian laws determine Ukraine-sourced income as income derived by an individual as a result of any business activity performed in Ukraine, which, inter alia, includes remuneration for work performed in Ukraine, whether paid by a Ukrainian or a foreign company.

Both resident and non-resident individuals are taxable at the same base tax rate of 18 per cent, applicable to both active income (eg, employment, commission, benefits) and passive income (eg, interest, royalties, investment income) including dividends, except for those distributed by Ukrainian companies, which are subject to a 5 per cent rate. The tax rate of 18 per cent apply also to the excess on pensions or monthly lifetime allowances in amount exceeding 10 subsistence minimum for persons who are unable to work (as of 1 December 2016 – UAH 12470), and pensions from foreign sources.

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

Gains derived from the sale (exchange) of a real estate are not subject to tax if the sale takes place once during the year, provided the owner has held legal title for at least three years before the sale (the three-year ownership period does not apply to inherited property). Sale (exchange)

of more than one real estate object during the year will be taxed at rates of 5 per cent for residents, and 18 per cent for non-residents.

Gains derived from the sale of moveable property by a resident are subject to a 5 per cent rate; gains derived by a non-resident are subject to an 18 per cent rate. As an exception, income derived by the taxpayer from the sale (exchange) during the year of one of the objects of personal moveable property, such as a car or motorcycle, is not subject to taxation. Sale of two or more motor vehicles by the same person during the year will be taxed at rates of 5 per cent for residents, and 18 per cent for non-residents.

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

In Ukraine, funds, property or property rights, and the cost of work or services presented to the taxpayer as a gift shall be taxable in the same way as inheritance.

Inheritance (real estate, chattels, securities, corporate rights, cash, insurance, etc) and gifts are taxable at the following rates:

- zero per cent if the recipient is a resident defined as a close relative (parent, spouse, children, etc);
- 5 per cent if the recipient is a resident not qualified as a close relative; and
- 18 per cent if the recipient (non-relative) is a non-resident but the testator was a resident (or vice versa).

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

See question 4.

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

Property owners in Ukraine are subject to land tax and real estate tax. The owner of the land (other than the state) is required to pay land tax. Under a land lease agreement, the lessee must pay a rent payment, but is not responsible for the payment of land tax. Land tax rates are established by local councils up to the following maximum rates (from the normative valuation):

- a land plot in any location, the normative valuation of which is held: up to 3 per cent;
- agricultural land: up to 1 per cent;
- a land plot used by a private business: up to 12 per cent; and
- a land plot located outside of human settlements, the normative valuation of which is not held: up to 5 per cent.

The objects of real estate tax are apartments and houses that exceed an area of 60 square metres and 120 square metres respectively, and 180 square metres of mixed residential property (apartments and houses simultaneously owned by a person). Apartments and houses with a smaller area are subject to tax benefits. Consequently, this tax is calculated on the actual number of metres that exceeds such an exemption value, which is not taxed. However, these tax benefits are removed immediately once it is proven that the owner gains income from property, either from renting it out, leasing or commercial use.

Tax rates are set by local councils depending on the type and location of the property, and do not exceed 3 per cent of the minimum salary for 1 square metre of real estate.

There is also an additional annual payment of 25,000 hryvna for the following properties: apartments over 300 square meters, houses – over 500 square metres.

### **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?**

Personal items that are directly imported in accompanied baggage by any means of transport to the customs territory of Ukraine or sent in unaccompanied baggage, declared orally or in writing by the owner, or at the request of a customs officer, are not taxed. The list of an individual's personal items is given in the Customs Code of Ukraine.

An individual may import into the customs territory of Ukraine, in hand luggage or accompanied baggage, goods (except for excisable goods and personal belongings) of which the total value does not exceed the equivalent of €1,000, through checkpoints across the state border of Ukraine opened for air traffic, without paying VAT. They may also import goods to the equivalent of €500, and a total weight not exceeding 50kg, VAT-free through non-air connection checkpoints across the state border of Ukraine.

An individual may import into the territory of Ukraine food for their own consumption of a total value not exceeding the equivalent of €200 per person, in amounts established by the government.

Goods sent in international mail, addressed to one recipient (legal or natural person) in one cargo express carrier from one sender in international express shipments where the total invoice amount does not exceed the equivalent of €150, are not subject to customs duties.

As regards personal motor vehicles, non-residents are allowed to import them into Ukraine for the period of up to one year. Such vehicles must be registered with the competent bodies of foreign state and are not subject to a written declaration and are exempt from the submission of documents needed for customs control.

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

There is no wealth tax or stamp duty in Ukraine.

Income generated by individuals through the conduct of business or independent professional activity is taxed at the basic rate of 18 per cent.

Individuals who own registered (passenger) cars with the market value exceeding 750 minimum monthly salaries established on 1 January of the tax year (UAH 1,450 in 2016) which are less than five years old, must pay an annual fixed tax rate of 25,000 hryvnas.

Value added tax (VAT) is levied on the import and export of goods and auxiliary services, and on the supply and sale of goods and services in Ukraine. The standard VAT rate is 20 per cent. In some circumstances, a reduced rate or exemption may apply. For example, import or export operations in the customs territory of Ukraine, regardless of the chosen customs regime of goods and where the customs value of the goods does not exceed €150 are not subject to VAT.

Temporary military tax at the rate of 1.5 per cent is paid by residents from Ukrainian and foreign-source personal income and by non-residents from their Ukrainian-source income.

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

Trusts are not recognised in Ukraine. However, representative offices (permanent establishments) of trusts may be established in Ukraine. Such offices are subject to corporate income tax. The basic rate of this tax is 18 per cent.

### **10 How are charities taxed in your jurisdiction?**

In general, charity (in the sense of 'aid'), received by the taxpayer in the form of money or property donated, or work or services performed, is not taxable. However, it is subject to the purpose of the charity.

For tax purposes, charity is divided into targeted and non-targeted charity. Neither type of charity is subject to tax when given to a taxpayer who has suffered due to particular circumstances, in limited amounts established by the government.

Non-targeted charity is not taxable when given by individuals in favour of a taxpayer during the year in an aggregate amount not exceeding 1,930 hryvnas.

Targeted charity is not taxable when given by resident individuals in any amount, but only to the exclusive list of taxpayers established by the Tax Code.

## **Trusts and foundations**

### **11 Does your jurisdiction recognise trusts?**

Trusts do not exist in Ukraine in their pure form. Ukrainian legislation has introduced a contract of property management, which may create trust property rights of a trustee. However, this kind of agreement is far from the concept of a trust that is established in common law jurisdictions. Ukraine, which belongs to states with a continental legal system, has entirely different principles of property management. Thus, trusts are not recognised by the Ukrainian jurisdiction.

Foreign entities, such as trusts, with or without the intention to carry out economic activity in Ukraine, are able to open non-commercial representative offices (which are not taxable) and commercial representative offices (also known as 'permanent establishments', which are subject to taxes such as corporate income tax, etc).

### **12 Does your jurisdiction recognise private foundations?**

Charitable funds in Ukraine are subject to special tax treatment. Pursuant to the Tax Code of Ukraine, the following income is exempt from tax:

- funds or property received free of charge or as irrevocable financial aid or donations;
- funds or property received by a fund from the performance of its main activity; and
- grants or subsidies from the state, local budgets and funds or through technical, charitable and humanitarian aid (subject to exceptions).

Other income received by charities is taxed in the general manner. Notably, in the case of the winding up of a fund, its assets must be transferred to another non-profit organisation or included in the state budget, unless otherwise provided by the law that governs the activities of such an entity.

VAT exemptions for charitable funds are: charitable aid, including supplying goods and services to such funds free of charge, and providing such aid by these funds to recipients.

Charitable aid in the form of excise goods, securities (subject to exceptions) and intangible assets and goods and services for use in economic activities are not exempt from taxes. Other taxes and charges are imposed in the usual order.

Foreign charity organisations may open representative offices in Ukraine. Such offices must undergo the procedure of accreditation. This procedure is carried out according to the accreditation of a separate subdivision of a foreign non-governmental organisation without providing the status of legal entity.

## **Same-sex marriages and civil unions**

### **13 Does your jurisdiction have any form of legally recognised same-sex relationship?**

A same-sex relationship is not recognised in Ukraine.

### **14 Does your jurisdiction recognise any form of legal relationship for heterosexual couples other than marriage?**

In Ukraine, a civil union is partially recognised. On the one hand, a couple, living as a family without registering a marriage, will not obtain the rights and responsibilities of spouses. On the other hand, the property obtained by such a couple during the time they lived together belongs to them by right of joint ownership, unless otherwise provided by written agreement between them. Thus, in cases of separation or the death of one of the couple, their partner will have the right to half of the property obtained during the time they lived together.

As regards succession by persons who are in a civil union, it should be borne in mind that the inheritance may be carried out by law or according to the will. If the testator left a will, the rights and obligations regarding all property belonging to him or her shall pass to his or her civil spouse and they will get his or her share of the inheritance.

However, if a will is not drawn up, the inheritance procedure will take place according to the law, in order of priority provided by the



legislation. In this case, a civil partner may be recognised as an heir of the fourth line (there are five lines) of succession only, if he or she lived with the testator as a family for at least five years before the time of the opening of the inheritance (the death of the testator). The fact of living as a family without marriage can be established by the court with enough relevant evidence.

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## Succession

### 15 What property constitutes an individual's estate for succession purposes?

Under the law, the inheritance includes all the testator's rights and responsibilities that existed at the time of its opening, that may appear in future and that have not stopped due to the testator's death. It means that all property rights of an individual constitute his or her estate for succession purposes.

As regards co-ownership rights, the testator's share in joint ownership is passed on a common basis. Moreover, an individual is able to bequeath his or her share in common property before the identification and allocation of his or her part in kind. Further, the heirs acquire all rights and obligations under the lease-buyout housing agreement that the testator had.

Notably, the testator may oblige the successor of property to give another person the right to use it. The right to use such property shall be valid even if the owner has changed. However, such right is not transferable to the heirs of the successor.

### 16 To what extent do individuals have freedom of disposition over their estate during their lifetime?

Individuals have freedom of disposition over their estate from the age of 18 and as long as they are not recognised by the court as partially or fully incapable of committing any action. Importantly, the further loss of capacity by a testator after drawing up a will does not make it invalid. The testator has the freedom to make changes to the will, cancel it or make a new will (which would override the previous one) without specifying the reasons for such changes or cancellation.

As regards marital property disposition, the ownership title is passed on a common basis and can be inherited by heirs under the will and also by law. If any of the heirs acts simultaneously as a co-owner of such common property, it does not give him or her any significant advantages in succession.

### 17 To what extent do individuals have freedom of disposition over their estate on death?

Regardless of the contents of the will, minors, juveniles, adult disabled children of the decedent, disabled widows or widowers, or disabled parents are entitled to a compulsory share in the inheritance. Such persons inherit half of the share that belongs to each of them in the case of inheritance by law. However, the size of the compulsory share may be reduced by the court in certain circumstances.

### 18 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?

Succession procedure by law or by a will depends on the existence of the latter. In its absence, inheritance distribution is conducted in the order of priority established by law. There are five succession lines of heirs and each subsequent line is entitled to inherit in the absence of heirs of the previous line, if they are deprived of their rights to inherit, if they miss the deadline or if they refuse to accept the heritage. Such a priority order may be changed by mutual agreement of the heirs or by a court decision in certain cases. The succession lines are as follows:

- first line: the decedent's children (including ones conceived during his or her lifetime and born after his or her death), the spouse who survived him or her, and his or her parents;
- second line: the decedent's brothers and sisters and his or her grandfather and grandmother, both from the father's and mother's side;
- third line: the uncles and aunts of the decedent;
- fourth line: persons who lived with the decedent as one family for at least five years by the time of the opening of the inheritance; and

- fifth line: other relatives of the decedent to the sixth degree of kinship inclusive, as well as dependents of the decedent who were not members of his or her family.

Shares in the inheritance of each of the heirs are equal. However, the size of the shares in the inheritance may be changed by mutual agreement of the heirs.

### 19 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?

In relation to inheritance law, adopted children are equal to the natural children of their adoptive parents. Importantly, adopted children do not inherit after the death of their biological parents or other natural relatives in the ascending line.

Illegitimate children have the same rights to inheritance as natural legitimate children. The only requirement for them to obtain such rights is the record of the decedent parents in a birth certificate. If the testator is not recorded as the child's father, paternity may be established through the court.

### 20 What law governs the distribution of an individual's estate and does this depend on the type of property within it?

If the testator in his or her will has not selected the law of the country of his or her citizenship, then the law of the country in which the testator had his or her last place of residence governs inheritance. However, such choice of law by a testator will be invalid if his or her citizenship changed after drawing up a will.

Inheritance of real estate is governed by the law of the country where such property is situated. Property that is subject to state registration in Ukraine is governed by the law of Ukraine.

### 21 What formalities are required for an individual to make a valid will in your jurisdiction?

The will shall be in writing, specifying the place and time of its compilation and signed by a testator personally. If the person is unable to sign it personally (due to illness, etc), another person may sign it on the testator's behalf. Such signature of another person must be certified by a notary public or an official competent to do this.

A notary public or other competent officials must certify the will. Such wills are subject to state registration in the hereditary registry according to the procedure established by the government.

### 22 Are foreign wills recognised in your jurisdiction and how is this achieved?

In 2009, Ukraine ratified the Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions, according to which a foreign will is valid in Ukraine if the form complies with the domestic law of:

- the place where the testator made it; or
- the nationality of the testator at the time of making the will or time of his or her death; or
- the domicile of the testator at the time of making the will or time of his or her death; or
- the habitual residence of the testator at the time of making the will or time of his or her death; or
- the location of such property insofar as it relates to real estate.

In 2011, Ukraine ratified the Convention on the Introduction of a System of Registration of Wills, according to which, both Ukrainian and foreign wills are subject to registration in the hereditary registers of Ukraine and foreign countries. This means that any person may send a request to the competent national body of a foreign state or Ukraine concerning the availability of a foreign or Ukrainian will, certified and registered in Ukraine or any other state that is party to this Convention.

### 23 Who has the right to administer an estate?

The testator may entitle an individual or legal entity to administer an estate. If the testator does not appoint the executor or if the person appointed refuses to administer an estate, the new executor may be appointed by the heirs.

If there is no mutual consent as to whom to appoint, the court may appoint an executor at the request of one of the heirs. The executor of the will may also be appointed by a notary public if the heirs demand such assistance.

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

The successor has the right to accept the inheritance or not to accept it. The law sets a period of six months from the decedent's death during which the successor must accept the inheritance. This deadline may be extended by the court in certain circumstances.

An heir who lived with the testator at the time of opening the inheritance shall be deemed to have accepted the inheritance if, within the period of six months, he or she does not refuse it. An heir who wishes to accept the inheritance, but at the time of opening of the inheritance has not been living with the testator, must submit an application for acceptance of the inheritance to the notary public.

After a six-month period, the heirs who successfully accepted the inheritance receive the certificate of inheritance. The absence of such a certificate does not deprive an heir of the right to inherit. However, it should be noted that an heir who accepted the inheritance that included real estate is obliged to apply to the notary public for the issuing of a certificate of inheritance of real property.

**25 Is there a procedure for disappointed heirs and beneficiaries to make a claim against an estate?**

Where there is a dispute between the heirs, the contents of the will shall be interpreted by the court. Upon the complaint of an interested person, the court also may find the will or a separate point within the will invalid if it determines that the expressing of the testator was not free and independent.

A person who cared for a decedent for a long time or provided material or other help to a decedent who was in a helpless condition due to his or her age, serious illness or injury, may ask the court to give the right to inherit within the succession line, which has the right of inheritance.

Where the heir inherited the obligation to compensate material or moral damage or to pay any fines or penalties that were caused by the testator, he or she may appeal to the court asking for a reduction if such an amount is excessively large compared to the value of property he or she inherits.

**Capacity and power of attorney**

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

Parents manage the property of a minor without special powers, and they must care for its safety and the use of property in the child's interests. If parents do not properly perform their duties to manage the child's property, they must reimburse the child who suffered pecuniary damage. The competent custody and care authorities have to monitor such cases.

The parents of a minor do not have rights to make any significant deals on behalf of the child without the permission of the custody and care authority. Minors aged between 14 and 18 years may commit the transactions only with the consent (for vehicles or property this must be written and notarised consent) of the parents (including adoptive parents or guardians).

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

An individual attains full legal capacity at the age of 18 and, therefore, legal capacity to hold and manage property independently.

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

If a person loses capacity to manage his or her affairs, the court or custody and care authority have to appoint a guardian or a trustee that will manage them on his or her behalf. Guardians or trustees are appointed

**Update and trends**

Aiming to create favorable conditions and simplify the investment procedure, Ukraine cancelled mandatory state registration of foreign investment.

There is a draft legislation (4496) that aims to remove administrative barriers in the export of services. If adopted, the draft law will make it possible for Ukrainian companies (including freelancers) to conclude agreements with foreign companies by exchange of emails or simply invoicing the client. In addition, the draft will prohibit banks from requiring a Ukrainian translation of documents made in English. Also, according to the draft, the invoice will be recognised as the primary document, which should simplify the procedures for accounting and financial reporting.

Under the proposed changes, the invoice can be signed either with a personal signature, facsimile of someone's handwritten signature or by various forms of an electronic signature provided by law.

Only the signature of the exporter will be required. The very fact of payment of an invoice by a non-resident will be sufficient proof of his or her agreement with the scope and quality of services provided.

In order to stimulate development of the market of second-hand motor vehicles and electric vehicles the following tax preferences were made by the government.

Excise tax on motor vehicles manufactured after 1 January 2010 is temporary reduced (in 2–28 times depending on the type of vehicle and its engine facilities). The reduction remains in force until 31 December 2018 and can be used for one car per year.

Customs duty of 10 per cent of the estimated value of electric cars was cancelled.

mostly from relatives, taking into account personal relations between them and the decedent, as well as the capability of the person who is to serve as guardian or trustee.

The guardian and trustee must take care of the person, create the desired conditions, ensuring care and medical treatment, take measures to protect the civil rights and interests of the person and carry out legal action on behalf and in the interest of the incapacitated person.

The guardian or trustee does not have the right to conclude any significant deals on behalf of the ward or with his or her property without the permission of the custody and care authority. The guardian also cannot make gifts on behalf of the person or incur debts on his or her behalf by the surety.

**Immigration**

**29 Do foreign nationals require a visa to visit your jurisdiction?**

The requirement for a visa depends on the nationality of a visitor. Citizens of Armenia, Azerbaijan, Belarus, Georgia, Moldova and Uzbekistan can enter Ukraine without a visa for an indefinite stay.

Holders of passports of Andorra, Argentina, Brazil, Canada, the European Union, Israel, Japan, Kazakhstan, Kyrgyzstan, Macedonia, Monaco, Montenegro, Panama, Paraguay, Russia, San Marino, South Korea, Tajikistan, the United States and Vatican City can enter Ukraine without a visa for a stay of up to 90 days within a 180-day period.

For all stays longer than the above-mentioned period, foreign nationals need a visa or valid Ukrainian residency permit. Visas are also required for foreign nationals of states not listed above.

There are three types of visa in Ukraine: a transit visa (the allowed period of stay is five days), a short-term visa (the allowed period of stay must not exceed 90 days within 180 days from the date of first entry) and a long-term visa (issued for entry to Ukraine with the purpose of the processing of documents, which entitles a stay or residence in Ukraine for a period exceeding 90 days).

It should be noted that Crimea is under de facto Russian control and the visa policy of Russia applies. From 4 June 2015 foreigners may enter and exit the Crimea from the mainland territory of Ukraine only through special checkpoints, with a passport and a permit issued by the regional office of the State Migration Service of Ukraine. It is worth noting that tourism or recreation is not a reason for the issuance of such a permit. Individuals breaking the order will incur the liability established by law.

**30 How long can a foreign national spend in your jurisdiction on a visitors' visa?**

For all citizens (listed above) who enter Ukraine, if the period of their stay in Ukraine is longer than permitted for their nationality, visas are required.

A foreign national visiting Ukraine for the purpose of tourism may apply for a short-term visa, which is issued for up to 90 days within 180 days of the date of first entry. It can be issued for a single, double and multiple entry for a period of six months or the period specified in the documents that are the basis for issuing such a visa, but not more than five years.

**31 Is there a visa programme targeted specifically at high net worth individuals?**

There is no special visa programme targeted specifically at high net worth individuals.

For investment purposes, a foreign investor may apply for a short-term visa. A short-term visa may be issued if a foreign national makes an investment in Ukraine in an amount of no less than US\$50,000.

For employment and immigration purposes, an individual may apply for a long-term visa. This visa's aim is to enable the foreign national to prepare documents to stay or reside in Ukraine for a period exceeding 90 days (ie, applying for a temporary or permanent residence permit). It may be issued as a single visa for 45 days or a single, double or multiple visa for up to three years.

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

There is no special visa programme and individuals can bring their family members under the general requirements. When the individual gets a temporary or a permanent residence permit in Ukraine, his or her family members may apply for a long-term visa if relevant legalised documents verifying their family member status (marriage certificate, birth certificate, etc), a copy of the relevant permit for temporary or permanent residence in Ukraine and a document that confirms the presence of sufficient funds for the maintenance of family members in Ukraine are provided.

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

There is no special visa programme. Individuals may reside in Ukraine permanently or indefinitely if they have received a permanent residence permit (PRP) or an immigration permit.

In order to obtain a PRP, an individual must first obtain an immigration permit, which is issued within the immigration quota. Once such a permit is obtained, a person will get a permanent residence permit.

In order to obtain a PRP, an individual must invest in the economy of Ukraine not less than US\$100,000 or be a highly qualified specialist, the need for whom is tangible for Ukraine's economy.

If the person applying for the PRP is in Ukraine, then he or she is issued simultaneously with an immigration permit. A person who permanently resides outside Ukraine must first obtain an immigration permit. Following this, the diplomatic agency or consular office of Ukraine, at his or her request, issues an immigrant visa. An immigrant visa is valid for one year from the date of its issuance.

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

There is no special programme for obtaining citizenship. A foreign national may be granted the citizenship of Ukraine, subject to the following conditions:

- a recognition of and adherence to the Constitution and the laws of Ukraine;
- an obligation to terminate foreign citizenship within two years from the date of Ukrainian citizenship registration;
- permanent lawful residence in the territory of Ukraine during the previous five years. This requirement is not applicable to foreign nationals if married to a citizen of Ukraine for over two years or to foreign nationals who were married to a citizen of Ukraine for over two years and their marriage has terminated because of the death of the spouse;
- obtaining an immigration permit;
- knowledge of the national language or its understanding to an extent sufficient for communication; and
- the existence of lawful sources of living.

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# United States

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## Tax

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

The US imposes a tax on income (the income tax) and a tax on the transfer of wealth under the gift, estate and generation skipping transfer tax regimes (collectively transfer taxes). The determination of whether an individual is resident in the US for income tax or for transfer taxes is based on different standards, with the result that each category must be analysed separately.

#### Income tax

Non-resident aliens (NRAs) that are not considered resident in the US for income tax purposes are subject to federal income tax on their US-source fixed and determinable income (eg US-source interest, rent and dividends), and their income effectively connected with a US trade or business. The tax on an NRA's fixed and determinable income is collected through withholding, commonly referred to as the withholding tax. An NRA with effectively connected income must file a US income tax return.

US citizens and income tax residents are subject to federal income tax on their worldwide income.

Non-citizens are deemed to be income tax residents, and therefore subject to taxation on their worldwide income, if:

- they are lawful permanent residents of the US (ie, green card holders); or
- they meet the substantial presence test. Under the substantial presence test, an individual is US income tax resident if he or she is present in the US at least 31 days in the current year and at least a total of 183 days over the prior three years, counting each day in the current year as one day, each day in the prior year as one-third of a day and each day in the second year prior as one-sixth of a day. Partial days count as one day, but days spent in the US as a student, teacher or in transit generally do not count for the purposes of the substantial presence test. An individual who would otherwise meet the substantial presence test but has spent less than 183 days in the US in the current year may still be deemed not to be a US income tax resident if he or she has a closer connection to another jurisdiction.

Finally, individuals who are US income tax residents may qualify under a relevant income tax treaty to file non-resident income tax returns.

#### Transfer taxes

Individuals who are resident for US transfer tax purposes are subject to tax on the gratuitous transfer of their worldwide assets. Non-residents are only subject to US transfer tax on the gratuitous transfer of US situs assets.

An individual is deemed to be a resident of the US for transfer tax purposes if he or she is a US citizen or domiciliary. Unlike income tax residency, domicile is a facts and circumstances test. Courts consider a number of factors in determining an individual's domicile, including, but not limited to, location of family, location of businesses, location of homes, jurisdiction of driver's licence, membership in civic organisations and clubs, location of bank accounts, and voter registration.

US situs assets are defined differently for US gift and estate tax purposes. Generally, US real property and tangible personal property located in the US constitute US situs property for gift tax purposes. For

estate tax purposes, the definition is extended to include US intangible personal property, eg stock of US corporations.

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

As described in question 1, an income tax resident is subject to federal income tax on his or her worldwide income. Income tax is applied on a graduated rate schedule ranging from 10 per cent to 39.6 per cent. As described in question 3, capital gains may be eligible for preferred tax rates. Individuals are also entitled to various exemptions, deductions and credits, including deductions for charitable gifts and credits for foreign taxes paid.

As mentioned in question 1, the tax on a non-resident alien's US-source interest, rent and dividends is generally collected through a 30 per cent withholding at the source. A non-resident alien's income effectively connected with a US trade or business is subject to tax on the same terms as a US income tax resident.

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

Long-term capital gains – gains from the sale of assets held more than one year – of US income tax residents are generally eligible for a preferred tax rate: 15 per cent for some taxpayers, but 20 per cent for those taxpayers in the highest bracket. In addition, the net investment income tax may apply an additional 3.8 per cent tax on the gains from assets held for investments for those taxpayers with income above a certain threshold, currently US\$250,000 for a married couple. Capital gains from the sale of assets held for less than one year are taxed at ordinary income tax rates.

Non-resident aliens are not generally subject to tax on capital gains unless such gains are effectively connected with a US trade or business. Further, NRAs are not subject to the net investment income tax. NRAs who are subject to capital gains tax may take advantage of the preferred capital gains rate.

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

The US applies a gift tax to all gratuitous lifetime transfers from a US citizen or gift tax resident. A US citizen or gift tax resident is entitled to a unified lifetime estate and gift tax credit currently equal to a US\$5.45 million exemption (this is the amount for 2016 but is indexed for inflation). In addition, gifts of up to US\$14,000 per year per donee and certain gifts for educational and medical expenses are excluded from the gift tax.

Gratuitous transfers from individuals who are not US gift tax residents are not subject to the US gift tax unless the transferred property is a US situs asset; US real estate and tangible personal property located in the US.

Gifts to spouses who are US citizens are exempt from the gift tax. Gifts to non-citizen spouses of less than US\$148,000 per year (this is the amount for 2016, but is indexed for inflation) are excluded from the US gift tax. Transfers to charity may also qualify for a deduction from the US gift tax.

The gift tax is currently assessed at a maximum rate of 40 per cent.



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

The US applies an estate tax to a US citizen's or estate tax resident's worldwide assets. A US estate tax resident is a person who is domiciled in the US. As discussed in question 4, the unified estate and gift tax credit applies to a US citizen or estate tax resident's estate, currently US\$5.45 million.

The estate of a non-US estate tax resident is only subject to US estate tax on US situs assets. US situs assets, for estate tax purposes, includes US real property, tangible personal property located in the US and intangible property located in the US; intangible property located in the US includes stock of US corporations. A non-US estate tax resident is entitled to a US estate tax credit equal to US\$60,000 exemption (this amount is not indexed for inflation).

Transfers at death to a US citizen spouse are not subject to the US estate tax. Transfers to a non-citizen spouse are subject to the US estate tax unless the transfer is made to a qualifying domestic trust. Transfers to charity, whether US or foreign, may qualify for a charitable deduction.

The estate tax is imposed at a maximum rate of 40 per cent. The US also imposes an additional tax on lifetime and testamentary transfers to individuals more than one generation removed from the transferor, called the generation skipping transfer tax (GST). Transfers by non-gift and estate tax residents are currently only subject to the GST tax if the transfer would have been subject to US gift or estate tax.

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

Gains from the sale of real property by a US citizen or income tax resident may be subject to federal and state income tax. Generally, gains from the sale of real property will be treated as capital gains and may be eligible for a preferred tax rate. In addition, up to US\$250,000 (US\$500,000 if married) of gains from the sale of a principal residence may be excluded from income.

Gains from the sale of real property by a non-resident alien may also be subject to federal and state income tax. The Foreign Investment in Real Property Tax Act imposes a federal withholding tax regime on the gross proceeds, not gain, from the sale of US real property by NRAs.

Many states impose a tax on sales or transfers of real property. In addition, many state and local jurisdictions impose an annual property tax.

### 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?

The US imposes a duty on the importation of personal use goods by residents and non-residents. Residents generally are entitled to a personal exemption on the importation of goods acquired while traveling abroad; however, the amount of the exemption varies depending on the location of travel. In addition, household effects generally are not subject to duty. There is generally no tax or duty levied on the exportation of personal use goods.

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

The US imposes a generation skipping transfer tax (GST) on gratuitous lifetime and testamentary transfers to persons who are more than one generation removed from the transferor. The GST tax is imposed at the same rate as the gift and estate tax.

The US imposes an 'exit tax' on certain US citizens or long-term residents who expatriate from the US. In broad terms, the exit tax treats the covered expatriate as having sold all of his or her assets on the day before expatriation and imposes a tax on the deemed gain from such sale, less an exemption amount. In addition, the US imposes an inheritance tax on US persons who receive gifts from covered expatriates. This inheritance tax is imposed at the highest gift tax rate.

Many states and localities impose a state or local income tax, sales tax or real estate transfer tax.

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

Trusts are either treated as separate taxpaying entities (non-grantor trusts) or are disregarded as separate entities from their creators (grantor trusts).

A trust is a grantor trust if the creator of the trust retains sufficient control over it (eg the power to revoke, the power to control distributions). In the case of a grantor trust, the settlor is treated as earning the trust's income. The amount of tax actually owed by the settlor depends on whether the settlor is a US person (citizen or resident). A settlor who is a US person will be taxed on the worldwide income of the grantor trust. A non-resident non-citizen settlor will be taxed only on US-source fixed-determinable income and income effectively connected with a US trade or business earned by the grantor trust.

A non-grantor trust, on the other hand, may itself be taxable on recurrent income or may be entitled to a deduction for income distributed to the beneficiaries. The amount of tax owed by the trust depends on whether the trust is foreign or domestic. A beneficiary who is a US person is generally required to report as income the amount of the income earned by the non-grantor trust and distributed to the US person. A non-resident non-citizen beneficiary will generally be taxed only on US-source fixed-determinable income and income effectively connected with a US trade or business distributed by the non-grantor trust to the non-resident non-citizen beneficiary.

Under the two-part test for US federal income tax purposes, a trust must satisfy both the court test and the control test to be a domestic trust; otherwise it is a foreign trust. A trust satisfies the control test if one or more US persons have the authority to control all substantial decisions of the trust.

A trust satisfies the court test if a court within the United States is able to exercise primary supervision over the administration of the trust. Distributions from a foreign non-grantor trust to a US beneficiary may be subject to the 'throwback' tax regime. If the throwback tax applies, income will be taxed at the ordinary income tax rates plus an additional interest charge.

### 10 How are charities taxed in your jurisdiction?

In general, charities that have registered as tax-exempt entities are not subject to US income tax. However, the US does impose an income tax on a charity's business income that is unrelated to its purposes. Contributions to qualified charities are eligible for an income tax deduction.

## Trusts and foundations

### 11 Does your jurisdiction recognise trusts?

Trusts are recognised and widely used in the US. When a trust is created, a settlor separates the legal title from the equitable title to property. The settlor conveys the legal title to a trustee, and the equitable title to a beneficiary or beneficiaries. The settlor may also be a trustee, a beneficiary, or one of several trustees or beneficiaries. The trustee takes title to property only for the purpose of protecting or conserving it for the beneficiaries of the trust. The beneficiaries, however, are usually not the creators of the trust, and as such do no more than accept the benefits of the trust. The trustee, while holding title, is obligated to deal with trust property solely in the beneficiaries' best interest. The beneficiaries, on the other hand, while being the beneficial owners of the property, do not have title to the property itself, and are not able to transfer or otherwise deal with trust property.

Trusts governed by the laws of other jurisdictions are recognised in the US.

### 12 Does your jurisdiction recognise private foundations?

In US custom and practice, foundations formed as non-profit corporations, along with charitable trusts, are the favoured vehicles for managing assets set aside for charitable purposes by a particular individual or subsequent third-party contributors. Since these organisations are usually established to be exempt from income taxes and to provide tax benefits to their contributors, the US tax rules govern a foundation's permitted activities (the purpose may be broad, such as 'educational', but the operations must comply with these purposes), and such entities may not be used to benefit individuals, engage in self-dealing with their major contributors, nor be used to transfer wealth from one generation to another.

A foreign private foundation may qualify as a private foundation under the IRS rules as long as it complies with the requirements of section 501(c)(3).

### Same-sex marriages and civil unions

#### 13 Does your jurisdiction have any form of legally recognised same-sex relationship?

In 2015, the US Supreme Court ruled that all US states must license and recognise same-sex marriages. Accordingly, same-sex marriages are recognised in every US state. As a matter of federal constitutional law, individuals in same-sex marriages are treated the same as individuals in heterosexual marriages for all tax and succession purposes.

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

Many US states also recognise civil unions or domestic partnerships. The rules for establishing such relationships vary depending on the particular jurisdiction but generally involve registering with a state agency. These types of relationships are generally available to both same-sex and heterosexual couples.

While some states recognise these types of relationships for certain tax and succession purposes, the US federal government does not and individuals in a domestic partnership are still required to file individual tax returns.

Finally, some US states recognise common-law marriage, an informal marriage established through habit and time. Common law marriage does not require any formal steps.

### Succession

#### 15 What property constitutes an individual's estate for succession purposes?

An individual's estate for succession purposes consists of all those assets owned directly, and in some cases indirectly, by the individual. In addition to assets held directly by an individual, assets held in a trust over which the individual has a lifetime or testamentary general power of appointment may be considered part of the individual's estate. Property owned through certain legal relationships, such as a joint tenancy with rights of survivorship or a tenancy by the entirety, will not be considered part of an individual's estate.

#### 16 To what extent do individuals have freedom of disposition over their estate during their lifetime?

An individual is generally free to dispose of his or her estate during his or her lifetime. However, in some community property states, an individual may not dispose of community property without consent of the spouse.

#### 17 To what extent do individuals have freedom of disposition over their estate on death?

An individual is generally free to dispose of his or her assets at death. However, many states utilise a concept known as 'elective share' that protects a spouse's interests at death. It is a statutory right giving the surviving spouse a fractional share of the deceased spouse's estate, usually ranging from one-half to one-third depending on the state and the number and percentage of surviving children or other related persons. The elective share right includes real and personal property, and applies to husbands and wives. In addition, many states provide that minor children have a right to a certain amount of the estate. In community property states, a spouse can generally only dispose of one-half of the community property. Furthermore, certain ownership relationships, such as tenancy by the entirety and payable at death bank accounts, eliminate an individual's ability to dispose of such property at death.

#### 18 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?

If an individual dies without a valid will, the individual's estate will be disposed of pursuant to the intestate succession rules of the jurisdiction of the individual's domicile at death. Each US state has different intestate succession laws, but the rules generally provide that the individual's estate will go to his or her closest relatives. For instance, in New York the intestate succession rules provide that a surviving spouse will receive US\$50,000 plus one-half of the remaining assets, and that the descendants will receive one-half of the remaining assets. Note that certain assets are not included in the individual's estate for intestate

### Update and trends

The Foreign Account Tax Compliance Act (FATCA) reporting regime continues to be rolled out and has resulted in significant increases in reporting and compliance requirements.

The IRS has indicated that it intends to issue new regulations requiring the disclosure of the beneficial ownership of all US limited liability companies with a single non-US owner. In addition, the Department of Treasury has issued regulations requiring the disclosure of the beneficial ownership of any all-cash real estate purchases in all boroughs of New York City, and counties in or near Miami FL, Los Angeles CA, San Francisco CA, San Diego CA and San Antonio TX.

succession purposes (eg, life insurance proceeds, certain retirement assets and assets held in trust).

#### 19 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?

An individual can generally leave his or her property to anyone he or she wants, subject to qualifications discussed in question 16. Adopted children are generally treated the same as natural-born children. However, 'illegitimate' children may be treated differently in some states. If a parent of an illegitimate child dies without a will, most states do not protect the child's right of inheritance as strongly as if the child were born to married parents or otherwise legally legitimated. For example, in some states, in the absence of a will or trust, the child can fully inherit from the mother but not from an unmarried father. In light of these differences, many states provide for a legal paternity statement, which can eliminate some of the differences.

#### 20 What law governs the distribution of an individual's estate and does this depend on the type of property within it?

For most of a decedent's property, the law of his or her state of domicile will govern. However, the distribution of certain property (eg real property and tangible personal property) will be governed by the law of the state where the property is located. Under these rules, an individual's estate will often be subject to multiple probate proceedings, one in his or her state of residence and then ancillary probate proceedings in the jurisdictions where his or her other property is located, for instance in the jurisdiction of the vacation home.

For a non-US decedent, original probate will generally be required in his or her home jurisdiction. Ancillary probate proceedings will then be required in the US states where his or her property is located. Generally, these ancillary probate proceedings will require the appointment of a US administrator or executor.

#### 21 What formalities are required for an individual to make a valid will in your jurisdiction?

The most common form of will in the US is a formal written will often called a non-holographic will. Each state has different requirements for executing a non-holographic will, but most states have at least the following requirements:

- the testator is of sound mind;
- the testator is at least 18;
- the testator signs the will at the end; and
- the execution of the will is in the presence of two disinterested witnesses.

In addition to non-holographic wills, certain states permit holographic, also known as handwritten, wills and oral wills. The formalities required for these types of wills are not as rigorous.

#### 22 Are foreign wills recognised in your jurisdiction and how is this achieved?

Foreign wills are recognised in the United States. Each state has different requirements for admitting a foreign will for probate. Generally, probate courts will require a copy of the foreign will, a certified translation of the foreign will by a qualified translator and an affidavit from the qualified translator.

**23 Who has the right to administer an estate?**

The person named in the decedent's will as the estate's executor (alternatively called the administrator or the personal representative) administers the estate. If there is no one named in a will or the named individual is unable to serve, state law will dictate who serves as executor. The probate court will issue letters testamentary (or similar such documents) empowering the executor to act on behalf of the estate. The executor acts in a fiduciary capacity and has broad powers to administer and distribute the estate.

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

With respect to assets included in the probate estate, upon distribution from the estate, the executor transfers title of the assets to the heirs. Title to certain assets that are not included in the probate estate (eg joint tenancy property, community property or pay on death accounts) transfer as a matter of law. Finally, title to assets held in trust is transferred by the trustee of the trust.

**25 Is there a procedure for disappointed heirs and beneficiaries to make a claim against an estate?**

Disappointed heirs can raise their objections in the probate proceedings. However, some form of waiver and consent is generally required in all jurisdictions in order to receive a distribution from the estate.

**Capacity and power of attorney****26 What are the rules for holding and managing the property of a minor in your jurisdiction?**

Minors generally do not have the legal capacity to own property or open bank accounts. Most states have adopted the Uniform Transfers to Minors Act (UTMA) and the Uniform Gifts to Minors Act (UGMA). These laws permit the creation of accounts for the benefit of the minor with a guardian or custodian acting on behalf of the minor until the minor reaches the age of majority, generally age 21 for the purposes of these accounts.

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

Generally, when an individual reaches the age of 18, he or she attains legal capacity to manage property.

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

Prior to losing capacity, an individual may execute a financial power of attorney authorising an agent to manage his or her financial affairs. If an individual becomes incapacitated without having executed a financial power of attorney, a court can appoint a guardian to manage the individual affairs.

**Immigration****29 Do foreign nationals require a visa to visit your jurisdiction?**

Generally, foreign nationals need a visa to visit the US. However, citizens of countries that participate in the Visa Waiver Program do not need a visa to visit the US. Most European countries participate in the Visa Waiver Program.

**30 How long can a foreign national spend in your jurisdiction on a visitors' visa?**

Foreign nationals can generally spend up to six months in the US on a tourist visa. Citizens from countries participating in the Visa Waiver Program can generally spend up to 90 days in the US.

**31 Is there a visa programme targeted specifically at high net worth individuals?**

The EB-5 visa (employment-based fifth preference visa) programme provides a means for individuals who make certain investments in the US to obtain a visa and permanent residency. In order to qualify for the programme, the foreign national must invest at least US\$1 million (less in certain locales in the US) in a new commercial enterprise that generates at least 10 new full-time jobs.

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

Spouses and unmarried children under the age of 21 of the investor may also obtain a visa and permanent residency under the EB-5 programme.

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

A participant in the EB-5 programme is initially granted conditional permanent residency (a green card). After two years, if the applicant has complied with the requirements of the programme, the participant is granted full permanent residency.

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

Five years after having initially been granted conditional permanent residency, an EB-5 participant may apply for US citizenship. In order to qualify for naturalisation, as of the date of filing the green card holder must:

- be at least 18;
- have lived within the state for at least three months;
- have had continuous residence in the United States as a green card holder for at least five years immediately preceding the date of filing the application;
- be physically present in the United States for at least 30 months out of the five years immediately preceding the date of filing the application;
- reside continuously within the United States from the date of application for naturalisation up to the time of naturalisation;
- be able to read, write and speak English and have knowledge and an understanding of US history and government (civics); and
- be a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States during all relevant periods under the law.





## Getting the Deal Through

Acquisition Finance  
Advertising & Marketing  
Air Transport  
Anti-Corruption Regulation  
Anti-Money Laundering  
Arbitration  
Asset Recovery  
Aviation Finance & Leasing  
Banking Regulation  
Cartel Regulation  
Class Actions  
Commercial Contracts  
Construction  
Copyright  
Corporate Governance  
Corporate Immigration  
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Insurance & Reinsurance  
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Right of Publicity  
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Private Client  
ISSN 2051-5472



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