

Private Client— The Bahamas—Q&A guide

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Taxation regime

What factors determine tax liability in your jurisdiction (eg domicile, residence or citizenship)?

For individuals, residence is the main determinative factor of tax liability, along with ownership of property in The Bahamas, the two factors are mutually exclusive.

For companies, tax liability is mainly determined by the place of business operations along with property ownership.

What taxes apply to an individual's income?

The Bahamas has no general income tax regime. The National Insurance Act, Ch.350 and the National Health Insurance Act 2016 (NHI Act) provide for contributions to be paid into the respective funds by employers on behalf of the beneficiaries out of individuals' income. While there are regulations mandating the rates of contributions under the National Insurance Act, there have been no such regulations promulgated to fix the rates of contribution under the National Health Insurance Plan since the 2016 passage of the NHI Act.

What taxes apply to an individual's capital gains?

None. The Bahamas is has no capital gains taxes.

What taxes apply to lifetime gifts (outright or into trust) made by an individual?

Stamp Duty is payable upon outright transfer of realty or personalty by an individual. Stamp duty is payable at the rate of 2.5% where the value of the real property or personalty being transferred does not exceed US\$ 100,000 or 10% where the value of the real property or personalty being transferred exceeds US\$ 100,000. Additionally, Value Added Tax is payable at a rate of 12% on the transfer of a taxable supply, which in most cases will apply to the transfer of realty or personalty.

No stamp duty is payable by individuals making transfers:

- to a company all of whose shares of every class are beneficially owned by the transferor and in relation to which no other person owns or has agreed to acquire any right, power, title, option or other interest in, over or concerning:
 - the shares
 - any of the property of the company, or
 - any of the property of the transferor

or

- to trustees upon trust where the express and unalterable terms of the trust instrument permanently excludes from taking or receiving any title to the trust property or income, or any power, right or benefit relating to the trust, every person except for:
 - the transferor
 - the transferor's spouse, and
 - the transferor's children or remoter issue

What taxes apply to transfers on death and to an individual's estate following death?

At present, no taxes are payable on the distribution of assets in accordance with the terms of a valid Will.

What taxes apply to an individual's real property?

The following taxes are payable on an individual's real property:

- stamp duty on transfers of real property, subject to certain exemptions—for example, where the transfer will not result in any change in beneficial ownership
- stamp duty on leases of real property at the rate of 2.5% of the annual rent
- real property tax is payable annually at the following rates:

TYPE OF LAND	MARKET VALUE OF LAND	RATE OF TAX
Vacant—Bahamian Owned		Exempt
Property in the Family Islands (ie Islands other than New Providence)—Bahamian owned		Exempt
Unimproved property, ie vacant non-Bahamian owned land	First US\$ 7,000	US\$ 100
	On the part of the market value of the property in excess of US\$ 7,000	2%
Owner-occupied	First US\$ 250,000	Exempted
	On the part of the market value of the property in excess of US\$ 250,000 but not exceeding US\$ 500,000	0.625%
	On the part of the market value of the property in excess of US\$ 500,000	1% (subject to a maximum of US\$ 50,000)
Other/Commercial	First US\$ 500,000	0.75%
	On the part of the market value of the property in excess of US\$ 500,000	2%
Residential Property (non-owner occupied with under four units)	Where the market value of the property does not exceed US\$ 75,000	\$300
	Where the market value of the property exceeds US\$ 75,000	0.625%

- subject to certain exemptions, VAT is payable on commercial leases of real property at the rate of 12% of the annual rent reserved where the landlord is VAT registered

Are there any other direct or indirect taxes that apply to individuals in your jurisdiction?

- business license tax is payable in circumstances where an individual carries on business within The Bahamas for the purpose of creating a turnover (that is total revenue in money or money's worth) subject to certain statutory exemptions
- VAT is payable on the supply of certain goods and services and on certain leases and transfers of real property
- persons leaving The Bahamas must pay a Government departure tax in the amount of B\$29, which is usually incorporated in the cost of the ticket
- customs duties are payable on most goods imported into The Bahamas, subject to certain exemptions

How are charities taxed in your jurisdiction?

Charities are subject to:

- customs duties on imported items
- VAT, stamp duties and business licence fees are payable where they are not registered as non-profit organisations under the provisions of the Companies Act 1992

Non-profit organisations which are incorporated under the Companies Act 1992 and designated as a non-profit organisation by the Attorney General are exempt from the payment of customs duties on certain imported items and the payment of business licence fees.

Where a non-profit organisation has registered with the VAT Department, it is exempted from the requirement to charge VAT on services provided that directly relate to the charitable functions of the charity. Additionally, registered charities may recover VAT paid on utility services (including electricity, water and telecommunication services) and on construction of and repairs to occupied premises.

Properties used exclusively for the purposes of charitable or public service from which no profit is derived are exempt from real property taxes.

Is there any general anti-avoidance or anti-abuse rule that applies in your jurisdiction?

No.

Are there any taxes that apply to a non-resident individual purchasing real property or other assets in your jurisdiction?

Yes, a non-resident purchasing real property or a "resident" business in The Bahamas is required to pay (i) stamp duty at the rates outlined above in respect of the real estate, (ii) stamp duty at the rate of 6% on non-real estate assets held by the business and (iii) VAT.

Does your jurisdiction have any tax efficient structures in which non-resident individuals can hold real estate?

Non-residents can hold real estate in their own names, through a Bahamian incorporated or registered company or through a trust. However, the taxes outlined above would still be payable by such entities.

What taxes are there on the importation of assets into your jurisdiction for personal use and enjoyment?

Assets imported into The Bahamas for personal use and enjoyment are subject to customs duties at the applicable rate unless the asset is exempt from the payment of customs duties and VAT at 12% unless exempt.

Are there any tax rules in your jurisdiction affecting temporary residents?

Taxes which apply to temporary residents include customs duties, stamp duty, real property tax, Government departure tax, business license tax (if the temporary resident conducts business in The Bahamas) and VAT.

Are there any tax anti-avoidance provisions that apply to the offshore arrangements of persons resident in your jurisdiction?

No.

Has your jurisdiction entered into any tax treaties relating to the taxation of individuals and, if so, do these treaties generally follow the OECD model or another model?

The Common Reporting Standards (CRS) developed by the Organisation for Economic Co-operation and Development (OECD) were incorporated into Bahamian law through the Automatic Exchange of Financial Account Information Act 2016 and the Automatic Exchange of Financial Account Information Regulations 2017 as amended in 2019 and 2020 to increase the number of jurisdictions with which there is cooperation.

The Bahamas also enacted The Bahamas and the United States of America Foreign Account Tax Compliance Agreement Act 2015, which gave legislative effect to the terms of a Model 1 Intergovernmental Agreement with the United States of America to facilitate the reporting requirements under the United States Foreign Account Tax Compliance Act (FATCA).

Additionally, The Bahamas is a party to 38 tax information exchange agreements (TIEAs). The TIEAs generally follow the OECD model.

Trusts and foundations

Are trusts recognised in your jurisdiction?

Yes.

Does your jurisdiction recognise any alternative structures such as foundations?

Yes, The Bahamas recognises alternative structures such as foundations, investment funds, executive entities, exempted limited partnerships and investment condominiums.

If trusts are recognised in your jurisdiction:

- **What taxes apply to trusts in your jurisdiction?** Trusts are exempt from taxation (except for a trust duty of \$50 on the creation of a trust). However, in the case of the transfer of real property or other assets in The Bahamas to the trustees, stamp duty must be paid at the following rates, based on the consideration (ie the greater of the purchase price or the value of the property or business), unless the express and unalterable terms of the trust permanently exclude everyone except the transferor, their spouse, children or remoter issue, from taking or receiving title to the trust assets or the income of the trust:
 - on the assignment or transfer of personalty or real property, at the rate of (i) 2.5%, where the value of the personalty or real property does not exceed US\$ 100,000 or (ii) 10% where the value of the personalty or real property exceeds US\$ 100,000
- **How are such taxes imposed?** The trust duty described above is imposed on the trust instrument. Where stamp duty is payable, every party to the transaction or instrument is jointly and severally liable to cause the transaction or instrument to be stamped. Parties to transactions or instruments where stamp duty is payable may generally agree by contract between themselves which party will be responsible for the payment of any stamp duty and carriage of stamping
- **How is the trust affected by succession and any forced heirship rules that apply in your jurisdiction?** There are no applicable forced heirship rules in The Bahamas. The Trusts (Choice of Governing Law) Act 1989 specifically provides that heirship rights conferred by foreign law do not affect Bahamian law governed trusts nor immovable Bahamian property
- **Does your jurisdiction's trust law provide for the creation of non-charitable purpose trusts?** Yes
- **Are there any rules restricting the perpetuity period within which gifts in trusts must vest, or the period during which income may be accumulated?** The rule against perpetuities has been abolished in The Bahamas with respect to every trust made on or after 30 December 2011. A trustee may apply to the court for (i) an order that the abolition of the rule against perpetuities will apply to trusts created before 30 December 2011, or (ii) an extension of the perpetuity period of an existing trust to no more than 150 years where such trust is incapable of amendment.

Trusts established before 30 December 2011, which are not subject to any of the orders described above remain subject to a perpetuity period which could be measured by a period determined by a life or lives in being plus 21 years or a period of a fixed number of years not exceeding 150 years

- **Does your jurisdiction's trust law allow the trust document to restrict the beneficiaries' rights to information about the trust?** Under Bahamian law, trustees must take reasonable steps to (i) inform each beneficiary with a vested interest under the trust (vested beneficiary) of the existence of the trust and the general nature of that vested

beneficiary's interest, or (ii) where there are no vested beneficiaries, to ensure that at least one person who is capable of enforcing the trust is aware of the existence of the trust and the general nature of the interest entitling such beneficiary to enforce them. However, a trustee has an absolute discretion to refuse to disclose such information if the trustee considers that it would not be in the best interest of a beneficiary to do so

Does your jurisdiction recognise trusts that are governed by another jurisdiction's laws and are created for foreign persons?

Bahamian law recognises trusts that are governed by the laws of another jurisdiction and created for foreign persons unless: (i) the laws of any foreign jurisdiction prohibit or do not recognise the concept of a trust, or (ii) the trust or disposition avoids or defeats rights, claims or interest conferred by foreign law upon any person by reason of a personal relationship to the settlor or by way of heirship rights or contravenes any rule of foreign law or any foreign, judicial or administrative order or action intended to recognise, protect, enforce or give effect to any such rights, claims or interest.

What are the tax consequences of trustees of a trust becoming resident in/leaving your jurisdiction?

There are no adverse tax consequences to the trust if the trustee becomes resident in or leaves The Bahamas.

Does the law in your jurisdiction recognise claims against trust assets by the spouse or civil partner of a settlor or beneficiary on the dissolution of the marriage or civil partnership?

Where a trust is governed by Bahamian law, no disposition of property to be held on trust that is valid under Bahamian law is void, voidable or liable to be set aside or defective in any manner by reference to a foreign law (Trusts (Choice of Governing Law) Act 1989, section 8). No settlor or beneficiary is to be subjected to any liability or deprived of any right under a Bahamian law trust by reason that the laws of any foreign jurisdiction does not recognise a trust.

If properly structured as an irrevocable trust, Bahamian law would not recognise claims against trust assets by the spouse or civil partner of a settlor or beneficiary on the dissolution of the marriage or civil partnership under a foreign law. However, should a Bahamian court be satisfied that the settlor or beneficiary exerts sufficient control over the trust assets or that the trust was established as a means to disenfranchise a spouse in contemplation of a divorce/separation it may be prepared to make a declaration that the trust be deemed a sham and/or that the assets of the trust form part of the assets which are the subject matter of the financial ancillary proceedings on dissolution of a marriage. Accordingly the Bahamian Supreme Court has ruled in 2018 BHS J No. 203 at [30] per Charles J that a claim based on forced heirship rights may properly form the basis of an interpleader action as the provisions of the Trust Choice of Governing Law Act do not make a trust absolutely unimpeachable.

To what extent is it possible under the law of your jurisdiction for trusts to be used to shelter assets from the creditors of a settlor or beneficiary?

Whilst Bahamian law does not shelter assets from the creditors of a settlor or beneficiary, limitations have been placed on the ability of a creditor to claw back trust assets; for example, pursuant to the Fraudulent Dispositions Act of The Bahamas, a creditor cannot commence an action or proceedings to have a fraudulent transaction set aside after the expiration of two years from the date of the relevant transaction.

Does your jurisdiction recognise any form of legal relationship for same-sex couples?

No. Marriage as a union between a male and female is the only form of legal relationship recognised in The Bahamas, otherwise the marriage will be void.

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

No. As previously stated, marriage is the only form of legal relationship recognised in The Bahamas and the parties to the marriage must be male and female (among other requirements) otherwise the marriage will be void.

Succession

What formalities are required for an individual to make a valid Will in your jurisdiction?

The following formalities must be complied with for an individual to make a valid Will in The Bahamas:

- the individual must be at least 18 years old
- the individual must be of sound disposing mind
- the Will must be in writing
- the Will must be signed at the foot of the document by the individual or another person in their presence and at their direction
- the signature must be made in the presence of two or more witnesses present at the same time
- after the individual has signed the Will, the two witnesses must either attest and sign the Will or acknowledge the individual's signature

Is it essential for an owner of assets in your jurisdiction to make a Will in your jurisdiction? Does the Will have to be governed by the laws of your jurisdiction?

It is not a legal requirement but strongly advised where an individual owns assets in The Bahamas for that individual to make a Bahamian law governed Will with respect to those assets.

To what extent is a Will made in another jurisdiction recognised in your jurisdiction?

A Will made in another jurisdiction will be recognised in The Bahamas once a grant of probate or an equivalent document has been obtained in the foreign jurisdiction and such grant of probate or equivalent document is resealed in The Bahamas.

If an individual dies in your jurisdiction without leaving a valid Will, to whom will the estate pass and in what shares?

If an individual dies in The Bahamas without leaving a valid Will ('intestate'), their real and personal property located within The Bahamas will be distributed according to the Bahamian laws on intestacy as follows:

- if the intestate dies leaving a spouse and no children, all of the intestate's estate will be distributed to their surviving spouse
- if the intestate dies leaving a spouse and one child, the spouse receives half of the intestate's estate and the remainder is distributed to the child
- if the intestate dies leaving a spouse and multiple children, the spouse receives one half of the intestate's estate and the remainder is shared equally among the children
- if the intestate dies leaving children but no spouse, the intestate's estate is divided equally among the children. If there is only one child, all of the intestate's estate will be distributed to that one child. Where the intestate's child predeceased them leaving issue and such issue is alive at the date of the intestate's death, that issue is entitled to the share in the intestate's estate which their parent would have received if the parent had survived the intestate
- if the intestate dies leaving grandchildren but no spouse and no children, all of the intestate's estate will be distributed equally among the intestate's grandchildren—if there is only one grandchild, that grandchild will receive the entirety of the intestate's estate

- if the intestate dies leaving no spouse, no children and no grandchildren, the intestate's estate will be shared equally among the intestate's parents—if there is only one surviving parent, they will receive the entirety of the intestate's estate
- if the intestate dies leaving no spouse, no children, no grandchildren and no parents, the intestate's estate is shared equally among the intestate's siblings
- if the intestate dies leaving no siblings, the intestate's estate is distributed among their nieces and nephews in equal shares
- if the intestate dies leaving no nieces or nephews, the intestate's estate is distributed among their grandparents in equal shares
- if the intestate dies leaving no grandparents, the intestate's estate is distributed among their aunts and uncles in equal shares
- if the intestate dies leaving no aunts or uncles, the intestate's estate is distributed among their first cousins in equal shares
- if the intestate's estate is not absolutely distributed, then the entirety of the intestate's estate is distributed to the intestate's next of kin being their closest living relative

It is likely that the intestate's personal property will be distributed in accordance with the laws of their domicile. Furthermore, in cases where the intestate dies while in The Bahamas but is domiciled in another jurisdiction, the laws of intestacy applicable will be applied to the real and personal property of the intestate, provided: (i) that the foreign jurisdiction rules regarding the disposition of real property are not in conflict with the rules currently in effect in The Bahamas, and (ii) that there is no conflict regarding which rules should be adopted by those entitled to receive the Bahamian based real property.

Does your jurisdiction recognise a foreign grant of probate or equivalent document? If not, what additional formalities are required?

In order for a foreign grant of probate or equivalent document to be recognised in The Bahamas, the foreign grant of probate or equivalent document must be resealed in the Bahamas. Resealing is the process whereby the foreign grant of the estate is sealed and made effective by the Supreme Court of The Bahamas. The applicant for resealing must publish notice of intention to apply for resealing, which specifies the name, place and date of death of the deceased. After the publishing of the aforementioned notice, the applicant must apply to the Bahamian court, submit the prescribed documents along with the petition and pay the relevant fees.

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

For succession purposes, an individual's estate includes any interest in real and personal property which the deceased owns at the time of their death save for:

- a life insurance policy where the deceased has named beneficiaries on the policy
- a retirement/pension plan where the deceased has named beneficiaries on the plan, and
- property owned as joint tenants

Is there any forced heirship regime that affects an individual's ability to dispose of their estate during their lifetime or on death? If so, what are the main characteristics of the regime?

No.

Are adopted or illegitimate children treated the same as natural legitimate children in respect of succession laws and entitlement under a Will?

Yes, subject to, in the case of illegitimate children, proof of paternity.

To what extent are immovable and/or movable assets located in your jurisdiction but owned by a foreign national subject to your succession laws?

Immovable assets situated in The Bahamas are subject to the succession laws of The Bahamas regardless of whether they are owned by a foreign national.

Moveable assets situated in The Bahamas would likely be subject to the laws of succession of the foreign national's domicile.

Who has the right to administer an estate and in whom does the estate property initially vest?

The duly appointed personal representative of the deceased has the right to administer an estate. In addition, the property of the estate initially vests in the personal representative. A personal representative may be:

- an executor named in the Will of an individual, or
- an administrator appointed by the court where an individual dies without leaving a Will

Is there a procedure for disappointed relatives or dependents to make a claim against an estate?

In The Bahamas, certain categories of relatives or dependents (including a deceased's spouse, a child under the age of 18, a child between the ages of 18 and 23 who at the time of the deceased's death is enrolled full-time at an educational establishment or undergoing training for a trade, an incapacitated child or a child of the family) may apply to the court for an order that the deceased's Will does not make reasonable provision for the applicant.

Factors which the court will consider in determining whether a Will made reasonable provision for an applicant include:

- financial resources and financial needs of the applicant, any other applicant and other beneficiaries of the estate
- obligations and responsibilities of the deceased to the applicant and other beneficiaries of the estate
- the size and nature of the deceased's estate
- any physical or mental disability of the applicant and other beneficiaries of the estate, and
- any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the court may consider relevant

What rules apply to the post-death redirection of beneficial entitlements?

A beneficiary is free to relinquish their beneficial entitlement under a Will and direct that the same be transferred to a person designated by them. However, stamp duty would be payable on the transfer of any real property or a 'resident' business in The Bahamas.

Capacity and powers of attorney

What rules apply in your jurisdiction in respect of receiving, holding and managing property for minors?

Property can be held on trust for the benefit of a minor (a person under 18 years of age).

If a person loses capacity to manage their affairs in your jurisdiction, what procedures apply to enable someone else to manage them on their behalf?

Before losing the capacity to manage their affairs, an individual can execute an enduring power of attorney, which will enable the attorney to manage that individual's affairs in the event of their incapacity.

After an individual has already lost the capacity to manage their affairs, another person may make an application to the Bahamian court for (i) a guardianship order in respect of the incapacitated person, which lasts for one year unless renewed, or (ii) recognition of a foreign guardianship order if one has already been granted in another jurisdiction. If the Bahamian court recognises a foreign guardianship order, it will give effect to the duration specified in the foreign guardianship order.

Does your jurisdiction recognise powers of attorney, deputyship orders (or their equivalent) made under the law of other jurisdictions?

In order for a power of attorney or its equivalent to be effective in The Bahamas, it must be executed in accordance with Bahamian law.

Immigration issues

What restrictions or qualifications does your country impose for entry into the country?

Visitors to The Bahamas require a valid passport, a return or onward ticket, (if applicable) documentation (such as a visa, etc.) to enter a country other than The Bahamas for which the visitor is ticketed, sufficient funds to finance their visit to The Bahamas, evidence of accommodation for the duration of the trip and a completed Bahamas immigration card. Visitors that are citizens of the United States of America, the United Kingdom, Canada, most other Commonwealth countries and the European Union do not need a Bahamian visa to enter The Bahamas.

Any non-Bahamians who are not citizens of The Bahamas or the holders of a certificate of permanent residence with an unrestricted right to work require a work visa to engage in gainful employment in The Bahamas.

How long can a foreign national spend in your country on a visitors' visa?

Generally up to three months, subject to the discretion of the Department of Immigration.

Does your country have an investor visa programme or any other visa programme targeted at high net worth individuals?

Not specifically. However, persons investing B\$500,000 or more in The Bahamas are entitled to apply for permanent residence. Persons making an investment of B\$1,500,000 or more are entitled to apply for accelerated consideration of their application for permanent residency. More recently The Bahamas has implemented The Bahamas Extended Access Travel Stay Programme (BEATS) which allows individuals to obtain one year VISA permit to work or study remotely while living in The Bahamas. The BEATS programme expands the criteria to qualify for residence in The Bahamas making it easier and faster to be approved and facilitates the country's response to the current realities of remote work and living.

If your country has such a programme, does this programme:

- **Entitle individuals to bring family members and/or domestic staff with them?** The applicant for permanent residence by investment may apply for their spouse and dependent children under the age of 18 years to be endorsed on their certificate of permanent residence. This programme does not entitle individuals to bring domestic staff with them. Separate work visa applications will have to be made for those individuals.
- **Give the individual the right to reside permanently or indefinitely in your jurisdiction?** Where a certificate of permanent residence is granted, it entitles the holder to reside in The Bahamas indefinitely, subject to any conditions endorsed on the certificate.

- **Enable the individual and their family members, if applicable, to obtain citizenship or nationality in your jurisdiction?** Generally, the policy of the Department of Immigration has been to require an applicant for citizenship to have held permanent residency for at least 10 years.

What are the requirements in your country for obtaining nationality?

In order to apply for citizenship in The Bahamas, an applicant must submit the appropriate application form along with the prescribed documents (including the certificate of permanent residence or work visa, where applicable) to the Department of Immigration and pay the prescribed fee.

Persons eligible to apply for citizenship in The Bahamas are:

- a legal permanent resident in The Bahamas who has held such status for 10 years (including the 12 months immediately preceding the date of application); such applicant must also have resided in The Bahamas for a minimum of 6 years preceding the aforementioned 12 month period
- the wife of a Bahamian citizen
- a person born in The Bahamas after 9th July, 1973 to non-Bahamian parents, or
- a child (adopted or biological) who has at least one Bahamian parent (including a parent who is a naturalised citizen)

Are there any taxation implications in obtaining nationality in your country?

There are no tax implications on obtaining Bahamian citizenship. However, if an individual obtains citizenship in The Bahamas, they will be deemed 'resident' for exchange control purposes and will be subject to restrictions on holdings of foreign currency and foreign assets except where the Central Bank of The Bahamas provides otherwise.

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