



INTERNATIONAL COMPARATIVE LEGAL GUIDES



Private Client 2021

A practical cross-border insight into
private client work

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British Virgin Islands



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1 Connection Factors

1.1 To what extent is domicile or habitual residence relevant in determining liability to taxation in your jurisdiction?

There is currently no form of direct taxation in the British Virgin Islands (save for that specified in question 2.3).

1.2 If domicile or habitual residence is relevant, how is it defined for taxation purposes?

This is not applicable (see question 1.1).

1.3 To what extent is residence relevant in determining liability to taxation in your jurisdiction?

There is currently no form of direct taxation in the British Virgin Islands (save for that specified in question 2.3).

1.4 If residence is relevant, how is it defined for taxation purposes?

This is not applicable (see question 1.3).

1.5 To what extent is nationality relevant in determining liability to taxation in your jurisdiction?

There is currently no form of direct taxation in the British Virgin Islands (save for that specified in question 2.3).

1.6 If nationality is relevant, how is it defined for taxation purposes?

This is not applicable (see question 1.5).

1.7 What other connecting factors (if any) are relevant in determining a person's liability to tax in your jurisdiction?

There is currently no form of direct taxation in the British Virgin Islands (save for that specified in question 2.3).

1.8 Have the definitions or requirements in relation to any connecting factors been amended to take account of involuntary presence in (or absence from) your jurisdiction as a result of the coronavirus pandemic?

This is not applicable (see question 1.7).

2 General Taxation Regime

2.1 What gift, estate or wealth taxes apply that are relevant to persons becoming established in your jurisdiction?

There are currently no gift, estate or wealth taxes in the British Virgin Islands. However, there is a stamp duty of US\$5 payable on the transfer of land as a gift of natural love and affection to a 'Belonger' in the British Virgin Islands executed prior to 7 May 2020 or after 31 May 2021.

2.2 How and to what extent are persons who become established in your jurisdiction liable to income and capital gains tax?

There are currently no income or capital gains taxes in the British Virgin Islands.

2.3 What other direct taxes (if any) apply to persons who become established in your jurisdiction?

While there is no income tax in the British Virgin Islands, there is payroll tax and social security imposed on every self-employed person and on employers operating in the British Virgin Islands.

The first US\$10,000 of an employee's salary is exempt from tax; however, thereafter, a payroll tax is charged on every Class 1 employer (employers who employ fewer than seven persons) and self-employed persons at a rate of 10 per cent of the employee's annual salary. For Class 2 employers and self-employed persons, the rate charged is 14 per cent of the employee's annual salary. Payroll tax is split between the employer and employee, with up to 8 per cent being deducted from an employee's annual salary and the rest being payable by the employer or self-employed persons.

Social security is payable at a rate of 4.5 per cent of the employee's salary by the employer and 4 per cent by the employee. Additionally, both the employer and employee pay contributions towards national health insurance at a rate of 7.5 per cent of the employee's salary split equally between the employer and employee.

2.4 What indirect taxes (sales taxes/VAT and customs & excise duties) apply to persons becoming established in your jurisdiction?

Individuals that reside in the British Virgin Islands will be subject to customs duties on most imported goods. There are a wide range of duty charges on items such as electronics, automobiles, furniture and clothing that range from 5 per cent to 20 per cent of their value. However, there are exemptions on items such as books, computers and construction materials, to encourage investment, rebuilding efforts and infrastructural development within the Territory.

In relation to individuals that are becoming established in the British Virgin Islands, there are exemptions on custom duties for the following:

- (a) professional equipment and tools of trade for use by the individual;
- (b) personal and used household effects of immigrants to the value of US\$1,000 per adult and US\$250 per person intending to stay in the British Virgin Islands for a period of more than six months;
- (c) personal effects and baggage of returning residents who have been abroad for no more than 72 hours;
- (d) personal effects and baggage of returning residents who have been outside of the British Virgin Islands for more than 72 hours and purchases and gifts to the value of US\$50 for each adult and US\$10 for each child; and
- (e) personal effects and baggage compatible with the intended length of stay of tourists and other visitors not intending to stay more than six months.

2.5 Are there any anti-avoidance taxation provisions that apply to the offshore arrangements of persons who have become established in your jurisdiction?

No, there are not.

2.6 Is there any general anti-avoidance or anti-abuse rule to counteract tax advantages?

No, there is not.

2.7 Are there any arrangements in place in your jurisdiction for the disclosure of aggressive tax planning schemes?

No, there are not.

3 Pre-entry Tax Planning

3.1 In your jurisdiction, what pre-entry estate, gift and/or wealth tax planning can be undertaken?

There is currently no form of estate, gift or wealth tax in the British Virgin Islands.

3.2 In your jurisdiction, what pre-entry income and capital gains tax planning can be undertaken?

There is currently no form of income or capital gains tax in the British Virgin Islands.

3.3 In your jurisdiction, can pre-entry planning be undertaken for any other taxes?

There are currently no other relevant taxes in the British Virgin Islands.

4 Taxation Issues on Inward Investment

4.1 What liabilities are there to tax on the acquisition, holding or disposal of, or receipt of income from investments made by a non-resident in your jurisdiction?

There is currently no form of direct taxation on a non-resident in the British Virgin Islands.

4.2 What taxes are there on the importation of assets into your jurisdiction, including excise taxes?

Customs duties on imports into the British Virgin Islands are subject to a tax within the range of 5 per cent to 20 per cent, depending on the items (computers and reading materials are duty free) and there are exemptions for visitors and residents (as specified in question 2.4).

There is also an exemption on taxes for the importation of assets (personal and household effects) for returning Belongers (as defined in question 10.3) who have not been resident in the British Virgin Islands for a period of three years or more and who intend to permanently reside in the Territory for at least 12 months; including one motor vehicle owned and used abroad for at least 12 months prior to their importation.

4.3 Are there any particular tax issues in relation to the purchase of residential properties by non-residents?

Stamp duty is imposed on transactions involving the transfer of land and is payable at a rate of 12 per cent for Non-Belongers (as purchasers) on the price or market value (whichever is higher) of the property. Anti-avoidance rules ensure this also applies to the acquisition of shares in land-owning companies.

The following taxes also apply in relation to the purchase of land and residential properties by Non-Belongers/Non-residents:

- **Leasehold Property**
Non-Belongers pay 1.5 per cent of the purchase price plus the first 20 years of rent.
- **Annual Land Tax**
Annual land tax for Non-Belongers is US\$50 per half-acre or less and US\$150 for more than a half-acre but less than an acre. Any additional acre will incur an additional US\$50 per year.
- **House Tax**
House tax is also imposed on both categories of individual at a rate of 1.5 per cent of the assessed annual income value of the house *per annum*).

5 Taxation of Corporate Vehicles

5.1 What is the test for a corporation to be taxable in your jurisdiction?

There is no test as there is currently no form of direct taxation referable to companies or corporations in the British Virgin Islands (save for that specified in question 2.3).

5.2 What are the main tax liabilities payable by a corporation which is subject to tax in your jurisdiction?

There is currently no form of direct taxation referable to companies or corporations in the British Virgin Islands (save for that specified in question 2.3).

5.3 How are branches of foreign corporations taxed in your jurisdiction?

There is currently no form of direct taxation referable to branches of foreign corporations in the British Virgin Islands (save for that specified in question 2.3).

6 Tax Treaties

6.1 Has your jurisdiction entered into income tax and capital gains tax treaties and, if so, what is their impact?

No, it has not, as there are currently no income or capital gains taxes in the British Virgin Islands.

6.2 Do the income tax and capital gains tax treaties generally follow the OECD or another model?

This is not applicable (see question 6.1).

6.3 Has your jurisdiction entered into estate and gift tax treaties and, if so, what is their impact?

No, it has not, as there are currently no estate or gift taxes in the British Virgin Islands.

6.4 Do the estate or gift tax treaties generally follow the OECD or another model?

This is not applicable (see question 6.3).

7 Succession Planning

7.1 What are the relevant private international law (conflict of law) rules on succession and wills, including tests of essential validity and formal validity in your jurisdiction?

The rules in the British Virgin Islands relating to wills and succession draw a distinction between movable property (which would include shares in a British Virgin Islands company) and immovable property (land/real estate).

As regards movable property, British Virgin Islands law looks to the *lex domicilii* (that is, the law of the deceased's domicile at the time of their death) in order to determine the succession to that property; consequently, the essential validity of a will disposing of movable property will be governed by the *lex domicilii*. Equally, concerning formal validity, the execution of a will of movable property must comply with formal validity requirements prescribed by the *lex domicilii* and the same law will determine whether or not the testator has the capacity to make the will. An individual's domicile is determined according to the same principles that apply under the law of England and Wales.

On the other hand, the succession to immovable property (wherever situated) is determined by the *lex situs*. Where immovable property is situated in the British Virgin Islands, a will disposing of that property must comply with the formalities required under British Virgin Islands law and the same law will determine the testator's capacity to make the will.

The formal validity requirements for wills under British Virgin Islands law are contained in Part II of the Wills Act, Cap.81. A will must be made in writing and signed by the testator at the foot with the intention of giving effect to the will. The testator must sign in the presence of two witnesses present at the same time, who then sign the will in the presence of the testator.

7.2 Are there particular rules that apply to real estate held in your jurisdiction or elsewhere?

British Virgin Islands law applies the *lex situs* in order to determine the succession to real estate (wherever situated). A will disposing of real estate in the British Virgin Islands must comply with the formal validity requirements under British Virgin Islands law.

There are no restrictions on the ability of Belongers (see question 10.3) to hold real estate in the British Virgin Islands. However, Non-Belongers are required to obtain a Non-Belonger landholding licence before they can purchase or sell property in the British Virgin Islands.

7.3 What rules exist in your jurisdiction which restrict testamentary freedom?

There are none. There is no forced heirship regime in the British Virgin Islands and no legislation equivalent to the United Kingdom's Inheritance (Provision for Family and Dependents) Act 1975.

8 Trusts and Foundations

8.1 Are trusts recognised/permitted in your jurisdiction?

Trusts are recognised and permitted in the British Virgin Islands. British Virgin Islands trust law derives from the principles of English common law and equity supplemented and enhanced by domestic legislation. The principal trust law statutes are the Trustee Act 1961 (which was originally based on the United Kingdom's Trustee Act 1925) and the Virgin Islands Special Trusts Act 2003 (containing the unique VISTA trust regime).

8.2 How are trusts/settlors/beneficiaries taxed in your jurisdiction?

There is currently no form of direct taxation referable to trusts (or settlors and beneficiaries) in the British Virgin Islands. Subject to certain exceptions, trust duty of US\$200 is payable on instruments evidencing or declaring British Virgin Islands trusts.

8.3 How are trusts affected by succession and forced heirship rules in your jurisdiction?

The Trustee Act 1961 contains robust and comprehensive

“firewall” provisions which protect British Virgin Islands trusts (and dispositions of property to their trustees) against claims based on foreign law principles (including non-recognition of trusts, rights arising by reason of a personal relationship to the settlor and forced heirship). These provisions also prevent foreign judgments based on such claims from being recognised or enforced in the British Virgin Islands.

8.4 Are private foundations recognised/permited in your jurisdiction?

The British Virgin Islands has no equivalent to the private foundations found in many civil law and certain common law jurisdictions. It is likely that a foreign private foundation with separate legal personality under its own governing law would be recognised as such in the British Virgin Islands.

8.5 How are foundations/founders/beneficiaries taxed in your jurisdiction?

There is currently no form of direct taxation in the British Virgin Islands (save for that specified in question 2.3).

8.6 How are foundations affected by succession and forced heirship rules in your jurisdiction?

The British Virgin Islands has no equivalent to the private foundations found in many civil law and certain common law jurisdictions.

9 Matrimonial Issues

9.1 Are civil partnerships/same-sex marriages permitted/recognised in your jurisdiction?

There is currently no domestic concept of civil partnership or same-sex marriage in the British Virgin Islands. At present, the issue of the recognition of civil partnerships and same-sex marriages in the British Virgin Islands has not been determined.

9.2 What matrimonial property regimes are permitted/recognised in your jurisdiction?

There is currently no matrimonial property regime in the British Virgin Islands. However, the courts in the British Virgin Islands have a wide discretion to divide and distribute matrimonial property to the divorcing parties. The relevant legislation is the Matrimonial Proceedings and Property Act, 1995 (MPPA), which is similar to UK legislation.

9.3 Are pre-/post-marital agreements/marriage contracts permitted/recognised in your jurisdiction?

There is no domestic legislation or concept of pre-marital agreements or contracts in the British Virgin Islands. However, they may be recognised if validly contracted by the parties following the decision of the Supreme Court in *Radmacher (formerly Grantino) v Grantino* [2010] UKSC 42 in contrast to the ruling of the *Privy Council in MacLeod v MacLeod* [2008] and would be persuasive on the courts in the British Virgin Islands.

9.4 What are the main principles which will apply in your jurisdiction in relation to financial provision on divorce?

The main legislation which deals with divorce in the British Virgin Islands is the MPPA, which sets out the main principles of the financial provision on divorce. Section 24–25 of the MPPA specifically provides the courts with the power to make financial provisions for a child of the family upon divorce.

The court will act in the best interest of the children of the marriage and consider the financial needs and other financial resources of the children, the income and earning capacity of the parties, the standard of living enjoyed by the family before the breakdown of the marriage and the manner in which the children were being educated and are expected to be educated.

10 Immigration Issues

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

Visitors can enter the Territory from 1 December 2020 for up to a month once evidence of their return passage is provided. Certain visitors will also require a visa to enter the British Virgin Islands. However, all visitors will need to adhere to the COVID-19 measures and entry requirements put in place by the Government of the Virgin Islands. Visitors wishing to remain in the Territory for longer will need to apply for an extension with the BVI Immigration Department. Visitors intending to work in the British Virgin Islands will also require a work permit to allow them to enter and work in the British Virgin Islands for a specified period.

Residents who possess Belonger status or permanent resident status and have been approved to re-enter the Territory will have no restrictions on entry into the Territory save for the COVID-19 entry requirements (which at this time include a quarantine for 14 days after arrival at a pre-approved accommodation monitored by security). An application may be made for permanent residence once an individual has resided in the British Virgin Islands consecutively for a period of 20 years. Belonger status can be granted through marriage, birth, descent or by residency upon application to the BVI Civil Registry & Passport Office or Immigration Department.

Moreover, the Minister for Natural Resources, Labour and Immigration has the discretionary power to permit leave to any person to enter and remain in the British Virgin Islands for such period as he determines.

10.2 Does your jurisdiction have any investor and/or other special categories for entry?

There are special categories for entry for persons employed in certain jobs which may include:

- diplomatic corps and their accompanying family;
- those serving and on duty in the Territory in Her Majesty's Armed Forces; and
- skilled workers entering the Territory for relief purposes and to provide assistance with the rebuilding efforts in the British Virgin Islands on the Skilled Workers Programme.

10.3 What are the requirements in your jurisdiction in order to qualify for nationality?

Generally speaking, citizenship is conferred by marriage, birth, adoption, descent or by residency in the British Virgin Islands.

A Belonger is an individual born in the British Virgin Islands or an individual who was born outside of the British Virgin Islands and is granted Belonger status through marriage, adoption, descent or by residency. In order to apply for Belonger status, an application must be made to the Immigration Department (if by marriage or residency) or to the BVI Civil Registry and Passport Office confirming that the applicant:

- is of good character;
- is not less than 18 years of age;
- is ordinarily resident in the Territory for a period of not less than 10 years immediately prior to his application;
- has held a Certificate of Residence for at least one year immediately preceding the date of his application; and
- has intentions of making the Territory their permanent home and has satisfied the Board of Immigration of that intention.

Once an individual has resided in the British Virgin Islands consecutively for a period of 20 years, they may apply for permanent residency status with the BVI Immigration Department and after a year of being granted residence status may apply for Belonger status or naturalisation as a British Overseas Territories Citizen.

The Governor has the power to grant a certificate of naturalisation to a person who has Belonger status or a Certificate of Residence and meets the following requirements set out in the British Nationality Act 1981, to become a British Overseas Territories Citizen:

- the applicant is of good character;
- he has a sufficient knowledge of the English language;
- he has sufficient knowledge and connection to the British Virgin Islands;
- he has resided in the British Virgin Islands for a significant period of time; and
- he has intentions upon receipt of a certificate of naturalisation as a British Overseas Territories Citizen to make the Territory his principal home.

Ultimately, the process for obtaining citizenship in the British Virgin Islands is usually rather complicated and lengthy and it is recommended that specialised advice is sought to assist with the process.

10.4 Are there any taxation implications in obtaining nationality in your jurisdiction?

There is currently no form of direct taxation in the British Virgin Islands (save for that specified in question 2.3). However, there are indirect benefits for obtaining nationality, for instance, there will be a reduction in stamp duty for transactions that involve the transfer of property. The stamp duty for Non-Belongers will be 12 per cent, whereas Belongers will be exempt from stamp duty during the period specified in question 2.1 or will be charged 4 per cent outside of that exemption period.

10.5 Are there any special tax/immigration/citizenship programmes designed to attract foreigners to become resident in your jurisdiction?

No. There are no special tax, immigration or citizenship by investment programmes in the British Virgin Islands. However,

residence status may be conferred on direct investors before the stipulated 20 years at the discretion of the Minister for Natural Resources, Labour and Immigration and honorary belongingship may be bestowed on foreigners in the British Virgin Islands.

11 Reporting Requirements/Privacy

11.1 What automatic exchange of information agreements has your jurisdiction entered into with other countries?

The British Virgin Islands has made intergovernmental agreements and arrangements for automatic exchange of financial account information with (i) the United States, to implement the provisions of the United States Foreign Account Tax Compliance Act (FATCA), and (ii) other jurisdictions to implement the provisions of the Common Reporting Standard (CRS) as developed by the Organisation for Economic Cooperation and Development (OECD).

An up-to-date list of the countries that have implemented the CRS, with which the Government of the Virgin Islands will exchange tax information automatically in accordance with the CRS, can be accessed at <http://www.oecd.org/tax/exchange-of-tax-information/MCAA-Signatories.pdf>.

11.2 What reporting requirements are imposed by domestic law in your jurisdiction in respect of structures outside your jurisdiction with which a person in your jurisdiction is involved?

As part of the requirements and responsibilities under the rules of the British Virgin Islands on combatting money laundering and terrorist financing, regulated firms in the British Virgin Islands have to establish and maintain customer due diligence (CDD) processes in respect of their clients. Consequently, clients may be required to provide:

- (a) information about the origin and source of funds, the client's identity and, if any, the identity of the client's beneficial owners, controllers, and underlying principals; and
- (b) documentary and other evidence that enables the regulated firm to verify that information in accordance with the CDD.

11.3 Are there any public registers of owners/beneficial owners/trustees/board members of, or of other persons with significant control or influence over companies, foundations or trusts established or resident in your jurisdiction?

No publicly available registers exist. The British Virgin Islands has introduced a secure, confidential, non-public electronic platform, the "Beneficial Ownership Secure Search System" (BOSS), which allows immediate access to beneficial ownership information on all corporate and legal entities incorporated in the British Virgin Islands by designated persons, at the request of certain designated law enforcement and other governmental agencies.



David Pytches is based in Walkers' Cayman Islands office where he is a partner in the Private Capital & Trusts Group. David has over 20 years' experience in wealth and succession planning. He advises institutional trustees, ultra-high-net-worth private clients and family offices on all aspects of BVI and Cayman Islands trusts and succession law, including the formation, administration and restructuring of trusts and foundations, private trust companies, charitable and philanthropic ventures, wills and estate administration. He also advises trustees on the exercise of their powers and assists them when taking difficult decisions. David previously worked at Walkers between 2005 and 2008, with stints in Cayman and Jersey. Prior to re-joining Walkers in 2018, David led the private client practice at another offshore firm in the Isle of Man.

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Walkers' Private Capital and Trusts Group is a multi-jurisdictional team of specialist lawyers which focuses on serving the needs of wealthy families, entrepreneurs, family offices and family businesses, trustees, and their onshore advisers.

We have substantial experience advising clients on:

- preserving private capital: using trusts, foundations and companies for a wide range of wealth planning purposes;
- investing private capital: family investment funds, joint ventures and co-investing, and direct investing; investing in real estate;
- passing on private capital: estate and succession planning, wills and probate;
- resolving disputes; and
- regulatory laws.

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