

Barbados Trusts in the new era

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So, what's up?

When Barbados decided to harmonise and fuse its non-resident and resident tax codes, the island took a step forward to the modern world of international tax. Gone were favourable tax (and other) treatments for the wealthy jurisdiction hoppers and in came a fair platform for nationals of Barbados together with the approval of the OECD.

The new regime creates a new benchmark in the quality of trust law, provides additional certainty compared to the previous regime, certainty and increases the scope for estate planning and asset protection.

Why Barbados in the past?

The International Trusts Act (ITA) was introduced in 1995, and provided the following advantages:

1. Asset protection
2. Zero capital gains tax; and
3. Zero estate duties.

There were three generally accepted types of trusts in Barbados, namely (i) Domestic, (ii) International and (iii) Offshore trusts.

From 1 January 2019, the ITA has been repealed and replaced by the Trusts (Miscellaneous Provisions) Act, 2018 (TMPA). As a result, all international trusts created under the ITA are deemed created under TMPA.

Why Barbados now?

Since the Trustee Act is still valid and is also applicable to trusts set up under TMPA, certain key features have been included in the new regime. We feel it important to list some useful features of using a Barbados trust as follows:

- reserved powers to settlors incl. protector appointment
- dealing with the Investment by Trustees is permitted
- 100 years perpetuity period
- purpose trusts for non-charitable purposes, with no ascertainable beneficiaries
- appointment of protectors thereof
- asset protection (no action can be brought after 3 years from the disposition of the relevant assets)
- Trustees must always be licenced licensed under the Financial Institutions Act Cap. 324A, or the Corporate and Trust Service Providers Act 2015.
- no restrictions on the residence of the settlor or the beneficiaries
- no restrictions on the types of assets (movable or immovable) which can be held by the trust in Barbados

Licensed regime only -confidentiality with confidence

Trusts must be registered with the Ministry of International Business however, critically, the TMPA provides for confidentiality of the registered details of the trust, with disclosure only in certain instances set out in TMPA.

MIBA will be informed, on registration of the trust, these three facts: name of settlor, name of protector, and a summary of the purposes of the trust. Such information is recognised in the statute as being confidential and will not be available to the public.

Taxation

This article would be incomplete without mentioning tax, not least Barbados is not a zero-tax jurisdiction. Far from it, individuals pay a rate of 28,5% top rate of income tax, albeit this was also reduced in January 2019.

While TMPA does not specifically provide for taxation of trusts, a beneficiary resident in Barbados will pay taxes on distributions made by the trust.

Only income with a Barbados source will be taxable when distributions are made to non-resident beneficiaries. Trusts created under TMPA that are both resident and domiciled in Barbados are subject to tax on worldwide income. Trusts that are resident, but not domiciled in Barbados are taxed on worldwide income, to the extent that the income is remitted to Barbados. Usually no income is remitted to Barbados in the usual trust situation for UHNWIs i.e. no tax is payable.

If trust income is remitted to the island or has Barbados source, it will be taxed at current taxation rates in Barbados, but taxation may be alleviated by exploring the benefits of Barbados' extensive network of double taxation treaties.

As a further caveat, now that we live in a BEPS as well as CRS WORLD, trustees should be mindful of the provisions of the Business Companies (Economic Substance) Act, 2018 and the established principles of central management and control of the trust as well as its underlying companies.

Summary

Barbados works brilliantly for trusts now. One current snag is that underlying companies should probably be managed and controlled outside of Barbados if one wishes to minimise Barbados' wider tax net. We understand the Government is working to address this issue.

Highlights of Barbados trusts include the ability to have protector, 3-year time limits for lawsuits to be brought against trust assets, 100-year perpetuity period, and non-charitable purpose trusts. We hope you find Barbados' new legislation, more progressive taxation regime and deeper pool of local substance and talent a more attractive alternative to its neighbouring competitors!

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