



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Singapore: Private Client (3rd edition)

This country-specific Q&A provides an overview of the legal framework and key issues surrounding Private Client law in Singapore.

This Q&A is part of the global guide to Private Client.

For a full list of jurisdictional Q&As
visit <http://www.inhouselawyer.co.uk/index.php/practice-areas/private-client-3rd-edition/>



Country Author:
WongPartnership LLP

The Legal 500



Sim Bock Eng, Partner

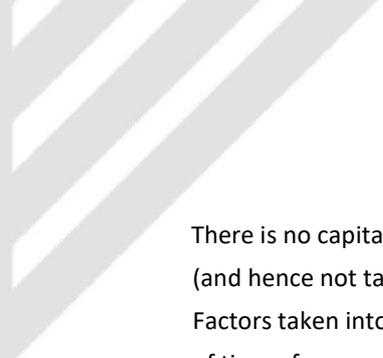
bockeng.sim@wongpartnership.com

The Legal 500

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

Singapore taxes income which is accrued in or derived from Singapore, or is received in Singapore from outside Singapore. Foreign-sourced income received by individuals in Singapore is exempt from Singapore income tax. Income derived from investments such as interest from debt securities and qualifying distributions from REITs by individuals are also exempt from Singapore income tax.

Tax residents and non-tax residents are subject to income tax on income falling within the foregoing definition, but potentially at different rates as different exemptions/relief may apply. Domicile or habitual residence is less relevant to determining liability to taxation, save to the extent that only Singapore tax residents would be entitled to relief from double taxation under Singapore's double tax treaties with other jurisdictions.



There is no capital gains tax in Singapore. Whether a gain on the disposal of an asset is capital in nature (and hence not taxable) or income in nature (which is taxable) depends on the circumstances of each case. Factors taken into account in the determination include the intention at the time of acquisition, the length of time of ownership of the asset, frequency of similar transactions, nature of the assets, any improvements made to the asset, means of financing the acquisition and the circumstances of the disposal.

2. **What are the taxes and rates of tax to which an individual is subject in respect of income and capital gains and, in relation to those taxes, when does the tax year start and end, and when must tax returns be submitted and tax paid?**

A resident individual taxpayer is taxed at a graduated margin tax rate depending on the quantum of chargeable income. The current highest income tax rate for individuals is 22%. The tax year is from 1 January to 31 December, and tax returns generally have to be filed between 1 March and 18 April every year for the preceding tax year, depending on whether it is filed online or by way of a paper form.

There is no capital gains tax in Singapore, but see also question 1 above.

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

Generally, withholding tax rates of 15% and 10% are imposed on interest and royalties respectively that are paid to non-residents. For certain payments such as technical and management fees, the withholding tax rate is the prevailing corporate rate of 17%, unless the services are performed outside Singapore.

4. **Is there a wealth tax and, if so, which factors bring an individual within the scope of that tax, at what rate or rates is it charged, and when must tax returns be submitted and tax paid?**

Singapore does not have wealth taxes.

5. Is tax charged on death or on gifts by individuals and, if so, which factors cause the tax to apply, when must a tax return be submitted, and at what rate, by whom and when must the tax be paid?

Singapore does not have death or gift taxes.

However, stamp duties are payable on documents transferring interests in shares in Singapore companies and in Singapore immovable properties whether by way of gift or for consideration. The stamp duty rate for shares in companies is 0.2% computed on the higher of the actual price and net asset value of the shares. The buyer's stamp duty rate for residential properties and non-residential properties is tiered and capped at 4% and 3% respectively, computed on the higher of the purchase price and the market value of the residential property. In addition, additional buyer's stamp duty of 20% (also computed on the higher of the purchase price and market value) applies to foreigners buying any residential property. Nationals and Permanent Residents of Iceland, Liechtenstein, Norway or Switzerland and Nationals of the United States of America are eligible for remission of additional buyer's stamp duty under their respective Free Trade Agreements. Corporates buying residential property are also subject to additional buyer's stamp duty at the rate of 25% to 30%.

Further, seller's stamp duty is payable where a seller sells or disposes of a residential or industrial property within a prescribed holding period. For residential properties purchased on or after 11 March 2017, seller's stamp duty is payable at a tiered rate of between 12% and 4% where the residential property is sold or disposed within 3 years after the date of purchase. For industrial properties purchased on or after 12 January 2013, seller's stamp duty is payable at a tiered rate of between 15% to 5% where the industrial property is similarly sold or disposed of within 3 years after the date of purchase.

6. Are tax reliefs available on gifts (either during the donor's lifetime or on death) to a spouse, civil partner, or to any other relation, or of particular kinds of assets (e.g. business or agricultural assets), and how do any such reliefs apply?

There is no tax relief for stamp duties payable on the transfer of shares in companies or immovable properties during the donor's lifetime, whether by way of a gift or otherwise.

There is however tax relief on the stamp duties payable in the event of the donor's death or pursuant to a court order in divorce proceedings. There are no stamp duties payable where shares in a company or immovable properties are transferred as a consequence of death, whether pursuant to a Will or intestacy, or pursuant to an order of the Singapore courts in divorce proceedings.

7. Do the tax laws encourage gifts (either during the donor's lifetime or on death) to a charity, public foundation or similar entity, and how do the relevant tax rules apply?

There are several tax incentives that have been put in place in Singapore to encourage charitable giving. Until 31 December 2021, donors to charities that are designated as institutions of public character or qualifying grant-making philanthropic organisations are entitled to a 250% tax deduction of the amount of their donation. Where the tax deduction exceeds the income for the year, the donor is entitled to utilise the remaining tax deductions in the next five years.

Donations of immovable properties and shares to approved institutions of public character are also exempted from stamp duties.

8. How is real property situated in the jurisdiction taxed, in particular where it is owned by an individual who has no connection with the jurisdiction other than ownership of property there?

Property tax is payable in respect of ownership of Singapore immovable properties. Property tax

is assessed based on the Annual Value of the property (being the estimated gross annual rent of the property if it were to be rented out as determined by the Inland Revenue Authority of Singapore), multiplied by the applicable tax rates. The applicable property tax rates is dependent on whether the property is owner-occupied or if it is owned for non-residential or commercial purposes. Rental received from the renting out of properties is taxed as income.

9. Are taxes other than those described above imposed on individuals and, if so, how do they apply?

Goods and services tax of 7% is applicable to the supply of goods and services in Singapore. Customs and excise duties also apply, but only to dutiable goods such as intoxicating liquors, tobacco products, motor vehicles, as well as petroleum products and biodiesel blends.

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

There are no specific tax regimes for individuals who have recently arrived in or are only partially connected with Singapore. However, new start-up companies can enjoy a partial tax exemption on corporate income tax and there are certain corporate income tax rebates that are applicable.

There are also various income tax incentive schemes that can be utilised to effectively reduce the income tax payable. These include the schemes under Section 13G of the Income Tax Act for foreign trusts, Section 13Q of the Income Tax Act for locally administered trusts and Sections 13R and 13X for funds which are managed in Singapore. These tax incentives are often utilised in the wealth and succession planning for high net worth individuals.

Singapore has more than 80 double tax treaties with other jurisdictions, which reduces the tax burden on many types of cross jurisdictional transactions and entities.

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

See question 10 above. Singapore is a relatively foreigner-friendly and tax-friendly jurisdiction. Before establishing residence or becoming connected with Singapore for tax purposes, an individual would be well advised to look into the various incentives and exemptions available to such an individual.

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

There is no restriction on the manner by which non-Muslims in Singapore may choose to provide for their succession. The rule as to testamentary freedom for non-Muslims is subject to the provisions of the Inheritance (Family Provision) Act (Cap. 138) which allows the court to provide reasonable maintenance to the deceased's dependant out of the deceased's net estate. "Dependent" is defined as a spouse, a child (of any gender or age) who is by reason of physical or mental incapacity incapable of maintaining himself or herself, an infant son or an unmarried daughter.

Funds held through a deceased's Central Provident Fund account (applicable to Singapore citizens and permanent residents) cannot be disposed of via a will, but only through the appropriate instrument of nomination.

Forced heirship rules apply to Muslim persons who are domiciled in Singapore at the time of their death. The estate for such persons must be distributed in accordance with Islamic inheritance laws, or *faraid* laws, which generally set out fixed rules, based on the relations who survive the deceased Muslim, the relatives who should inherit and the proportion of their inheritance.

Generally, a Muslim domiciled in Singapore can only give away up to one third of his estate by his will, and only to persons who are not related to him by blood (such as one's parents, spouses, siblings and children). This is so unless all his eligible *faraid* beneficiaries consent to the Muslim dealing with more than one third of his estate in his will. This exception was endorsed in Singapore, in the case of *Mohamed Ismail bin Ibrahim v Mohammad Taha bin Ibrahim* [2004] SGHC 210.

From a succession planning perspective, it is useful to know that the Singapore Court of Appeal in *Shafeeg bin Salim Talbin v Fatimah bte Abud bin Talib* [2010] SGCA 11 has held that survivorship applies to assets that are held by a deceased Muslim in joint names with another party. Upon the death of the Muslim, the surviving joint owner would take legal and beneficial ownership of the whole of the jointly held property and the jointly held property will not be distributed as part of the deceased Muslim's estate. The Court of Appeal further opined that if the settlement of a Muslim's assets into a trust were completed during the deceased's lifetime, such assets will be treated as trust assets and not part of the estate and effects of the Muslim that would be subject to Islamic inheritance laws.

13. Is there a special regime for matrimonial property or the property of a civil partnership, and how does that regime affect succession?

Singapore adopts a deferred community approach where the matrimonial assets may only be divided once the marriage has been legally terminated (see section 112 Women's Charter and *BPC v BPB* [2019] 1 SLR 608).

Matrimonial assets are defined under section 112(10) Women's Charter as: (a) any asset acquired before marriage by either or both parties to the marriage which are ordinarily used or enjoyed by the family or which have been substantially improved during the marriage; and (b) any asset acquired during the marriage. Matrimonial assets excludes gifts and inheritance unless this is the matrimonial home or an asset which has been substantially improved during the marriage by the other party. Gifts between spouses are, however, considered as matrimonial assets.

Civil partnerships/same-sex marriages are neither permitted nor recognised in Singapore (see section 12 of the Women's Charter Cap. 353).

14. **What factors cause the succession law of the jurisdiction to apply on the death of an individual?**

Issues of succession are governed by either the law of the place of the deceased's domicile (the "*lex domicilii*") (in the case of movable property) or the law where the immovable property is situated (the "*lex situs*") (in the case of immovable property) (see *Banque Indosuez v Madam Sumilan Awal* also known as *Aw Kim Lan and Others* [1998] SGHC 22).

The concept of domicile under Singapore law is based on the traditional concept of domicile under English law (see *Peters Roger May v Pinder Lillian Gek Lian* [2009] 3 SLR 765). The Singapore court recognises the domicile of origin (the country of that person's birth) and the domicile of choice (the country that that person determines to be his permanent home and/or home for an indefinite period).

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

See question 14 above. Singapore private international law rules will apply the *lex situs* to real estate wheresoever situated. Whether and how the doctrine of *renvoi* applies in Singapore succession laws has yet to be tested in the Singapore courts.

16. **In what circumstances should an individual make a Will, what are the consequences of dying without having made a Will, and what are the formal requirements for making a Will?**

An individual above the age of 21 years can make a Will to set out his or her wishes as to the disposition of property upon death. Where an individual dies without having made a valid Will, his or her property will be distributed in accordance with the rules under the Intestate Succession Act (Cap. 146).

Under Singapore law, a Will is formally valid if its execution conforms to the law in force of any of the following: (a) the place where the will was executed; (b) the jurisdiction where the testator was domiciled either at the time of the execution of the will or at his death; (c) the jurisdiction in which the testator was habitually resident either at the time of the execution of the will or at his death; or (d) the jurisdiction in which the testator was a national either at the time of the execution of the will or at his death (see section 5 of the Wills Act (Cap. 352)).

An individual whose only connection with Singapore is that he owns real property in Singapore should still make a Will in Singapore, as the *lex situs* will apply to real property. See question 14 above.

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

Where a deceased dies leaving a valid will and has nominated executor(s) and trustee(s) who are willing and able to act, the named persons may apply for and obtain a grant of probate to distribute the deceased's assets according to his testamentary intentions.

Where a deceased dies intestate or where the deceased has a Will but no executors, the grant of Letters of Administration will be issued to the Administrator. The priority of persons who are entitled to be appointed as an Administrator is provided for under the Intestate Succession Act (Cap. 146). Once appointed, the Administrator will distribute the deceased's assets pursuant to the provisions in the Will (if there is one) or the rules for distribution under the Intestate Succession Act.

18. Do the laws of your jurisdiction allow individuals to create trusts, private foundations, family companies, family partnerships or similar structures to hold, administer and regulate succession to private family wealth and, if so, which structures are most commonly or advantageously used?

The prevalent structure in tax, wealth or succession planning in Singapore is the trust. This can be revocable (where the settlor reserves a power of revocation under the trust deed), irrevocable, discretionary or fixed interest, depending on the objectives to be achieved. Other structures are available in Singapore, including the company limited by guarantee ("CLG"), limited liability partnership and fund structures. CLGs have members (instead of shareholders) whose liability is limited to a fixed sum of money in the event the company is wound up; this structure tends to be used for charitable objects. Limited liability partnerships have a separate legal personality from their partners, whose liability is limited to their contributions; this structure is an option where the intention is to separate the legal ownership and economic ownership of investments or businesses.

Singapore does not have foundations in the civil law sense; that is, a legal structure (distinct from companies or trusts) that is created for specific purposes. The foundations that are set up in Singapore tend to be charitable structures (either a society or a company limited by guarantee). In accordance with guidelines from the Commissioner of Charities, only organisations that are self-funded by an individual, family or for-profit company to aid the organisation's intended charitable purposes or that are financed by an endowment for said organisation can have the word 'foundation' in their names.

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

A valid trust requires certainty of intention to create the trust, certainty of objects and certainty of subjects. Singapore trusts have a perpetuity period of 100 years. A trust is governed by the terms of the document constituting the trust.

There are no registration requirements and there are no public registers of owners, beneficial owners, trustees or other persons with significant control or influence over trusts established or resident in Singapore. The trust is thus an entirely private and confidential arrangement between the settlor and the trustee.

Whilst it is possible to maintain the confidentiality of wealth and succession planning structures from prying eyes, Singapore supports the movement towards transparency to combat money laundering, terrorist financing and tax evasion. Singapore has legislated to adopt the Common Reporting Standard (CRS) and the Foreign Account Tax Compliance Act (FATCA) reporting regimes.

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

Generally, a settlor would not be subject to income tax in respect of the assets divested into the trust. Trustees (whether an individual or company) are subject to tax at the prevailing corporate rate (currently 17%). If income tax has been imposed on the trust, distributions by the trustee will be regarded as capital and not subject to further Singapore income tax in the hands of the beneficiaries. Trusts can be accorded tax transparency in respect of a beneficiary who is entitled to the trust income and is resident in Singapore (in other words, the trustee is not subject to tax at the trustee level, and instead, the beneficiaries are subject to tax). There are also specific tax incentives and tax exemptions that may apply to trusts.

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

Foreign trusts and private foundations are recognised in Singapore.

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

Singapore levies income tax on income accrued in or derived from Singapore, or received in Singapore from outside Singapore. There are no specific tax implications that arise solely as a result of a person being a fiduciary or a beneficiary or a foreign trust. A fiduciary, if he receives income from such capacity, will be subject to income tax, no different from other forms of income. This applies even if the settlor or donor of the trust, or beneficiary, is also the fiduciary.

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

The trust structure is robust against creditor claims against the settlor of the trust. However, this will not apply where the trust is merely a device, façade or sham intended to give third parties or the court an appearance of creating legal rights and obligations between the parties that are different from the actual rights and obligations that the parties intended to create (see, for example, *Gaye Williams Nee Marks v Cary Donald Williams* [1993] SGHC 190).

The case of *Chng Bee Kheng v Chng Eng Chye* [2013] 2 SLR 715 (“**Chng Bee Kheng**”) specifically addressed the issue of sham trusts. In *Chng Bee Kheng*, the executrices and trustees of a deceased woman claimed that the deceased’s son was holding a property in trust for the deceased pursuant to a trust deed. In response, the son claimed that the trust deed was a sham for the purposes of creditor protection. The High Court, in finding that the trust was not a sham trust, considered that the crux of the sham concept was a subjective “common intention to mislead” on the part of both the settlor and the trustee.

Singapore’s trust law also has firewall provisions in relation to trusts set up in Singapore. Section 90(2) of the Trustees Act provides that no rule relating to inheritance or succession affects the validity of a trust or the transfer of any property to be held in trust if the person creating the trust or transferring the property had the capacity to do so under the law applicable in Singapore, the law of his domicile or nationality, or the proper law of the transfer.

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

Assets can be held and managed for the benefit of minor children and grandchildren by way of a trust.

A child's parents are the natural guardians of the child and have rights to make decisions relating to the child so long as the child is a minor. No application to court is necessary even if the child has disabilities, whether mental or physical.

Under Section 7 of the Guardianship of Infants Act (Cap. 122), the father or mother of a minor may by deed or Will appoint any person to be the guardian of the minor after his or her death. This appointment does not require a court application. In other instances, a person may apply to the court under the Guardianship of Infants Act to be appointed as the guardian of a minor. The court may also exercise its powers to remove any existing guardian and to appoint another guardian in their place. While guardianship does not normally require ongoing court supervision, all guardians must generally act in the best interests of the minor.

Once, however, a child reaches the age of majority (that is, above the age of 21 years), the parent no longer has decision-making rights for the child. In such circumstances and where the child is mentally incapable, the parent will need to apply to court to be appointed as deputy for their adult-child in order that they can continue to make decisions for that child.

25. **Are individuals advised to create documents or take other steps in view of their possible mental incapacity and, if so, what are the main features of the advisable arrangements?**

The Mental Capacity Act (Cap. 177A) allows a person who has mental capacity to execute a lasting power of attorney to appoint donees who would be authorised to make decisions for him in respect of his personal welfare and/or his property and affairs, in the event that he should lose his mental capacity. This allows a person to plan for what he wishes to be done and by whom in the event that he should lose his mental capacity.

A person may also may make an Advanced Medical Directive ("**AMD**"), which is a legal document that a person signs in advance to inform the treating doctor (in the event the person become terminally ill and unconscious) that the person does not want any extraordinary life sustaining treatment to be used to prolong his life. A person who is above 21 years old and who is not mentally disordered can make an AMD.

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

The three most common legal structures for non-profit organisations in Singapore are that of (i) a society, (ii) a company limited by guarantee ("**CLG**") or (iii) a charitable trust.

Of the three, only CLGs benefit from limited liability (limited to such an amount that the members had guaranteed to contribute to the assets of the company in the event that it is wound up). CLGs may also be registered as charities, allowing them to benefit from income tax exemptions. However, CLGs also suffer from a greater number of administrative requirements in their setting up, including the need for a registered office, requirements as to directors and more complex annual reporting requirements.

Like CLGs, societies may be registered as charities and benefit from the associated tax exemptions. An advantage that societies have over charities is their fewer administrative requirements (for example, their officers are not subject to statutory qualifications). However, societies do not have a separate legal identity from their members and members may be personally liable for any liability incurred.

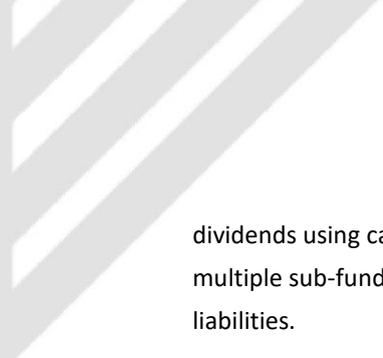
Finally, charitable trusts are a useful structure for the investment and disbursements of assets for the purpose of charity. They also benefit from limited public disclosure and tighter control; generally, there need not be an auditor or audited financial statements unless required by the trust deed, and control resides entirely with the trustees. Like societies, however, charitable trusts have no independent legal personality and trustees must bear all legal liabilities.

Oftentimes, it is not just a question of selecting a structure for the charitable intents of the client. Charities and the manner of giving have developed over the years and many clients' philanthropic objects have devolved beyond the traditional concept of giving. Most charities presently include the concept of empowerment: giving in a manner such that the project would generate profit to be self-sustaining, or running a social enterprise that will benefit the underprivileged without sacrificing profits entirely. A structure would thus have to be created to allow such entrepreneurial intents whilst capitalising on the incentive schemes and benefits that a charity is entitled to.

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

Save in the area relating to stamp duties for transfer of real properties in Singapore, the estate and transfer tax laws have not seen any substantial variation or changes in the past ten years. These have remained stable, transparent and consistent. Most tax incentives have a sunset date and are generally reviewed every five years. Generally, any change in laws would not have a retrospective effect. This stability and transparency is an attraction for high net worth individuals to base their wealth and succession planning structures in Singapore.

Singapore has also been proactively attracting funds to its shores. The various tax incentive schemes together with the introduction of the Variable Capital Company ("VCC") furthers this attraction. The VCC is a new corporate structure that is able to issue and redeem shares without shareholders' approval, and pay



dividends using capital and not just profits. It can be a standalone structure or an umbrella structure with multiple sub-funds (suitably ring-fenced) with different investment objectives, investors, assets and liabilities.

The Singapore Academy of Law's Law Reform Committee issued a report in April 2019 recommending that Singapore should enact a Variation of Trusts Act, modelled on the United Kingdom's Variation of Trusts Act 1957 with certain modifications, to confer jurisdiction on the Singapore High Court to approve consensual variation of trusts where these will benefit beneficiaries who are unable to consent to the variation. There is yet to be any public indication as to when the draft bill will be debated in Parliament and subsequently enacted.