

Estate Planning



Now, for tomorrow





Baker Tilly in the Dutch Caribbean is active in Aruba, Bonaire, Curaçao and St. Maarten.

Specialized in these four markets we complement our local expertise with the benefits of our extensive international Baker Tilly network. Sharing knowledge and information throughout the markets, while we connect to important financial, fiscal and legal developments in the world. We distinguish ourselves in being profoundly competent in several specialist fields, one of which is Estate Planning.

Estate planning is the process of transferring wealth to another (legal) person. In this brochure we introduce you to the key legal and tax aspects of estate planning in the Dutch Caribbean. Estate planning is important to make sure that your wealth is transferred in a proper legal way and also under the most favorable tax conditions for the (legal) persons involved. The experts at Baker Tilly Dutch Caribbean can assist you with the estate planning of two types of wealth: Private wealth and business wealth.

Private wealth succession

There are several ways to transfer private wealth. The most common ones are by way of a gift or by inheritance. Without proper planning, gifts or inheritances may become subject to taxation in the form of either a gift tax or an inheritance tax (hereinafter both referred to as 'estate tax'). Estate tax is the tax paid on the value of the assets transferred.

The taxable base for estate tax purposes is generally the market value of the wealth received. In certain situations an exemption of a few hundred to a few thousand guilders may apply. This depends, among other things, on whether the transfer is received as a gift or as an inheritance and/or whether it is transferred to a close relative or a third party.

The estate tax rates are progressive and can, in certain situations, run up

to a maximum of 24%. In general, estate tax may be levied by the jurisdiction in which the person or entity that transfers the wealth, resides.

The place of residency of the receiver is not relevant for estate tax. Some markets have incorporated a provision in their tax law that allows estate tax to be levied for some years after the (legal) person has moved out of the jurisdiction.

Private succession through gift

It is possible to transfer wealth during life by way of a gift.

The advantage of transferring smaller portions of wealth during life is that estate tax can be saved (by avoiding the higher progressive rates). In addition, the transferred assets are no longer part of the inheritance and the capital growth on the gifts does not need to be transferred anymore and is therefore free of estate tax.

Through careful estate planning, even lesser taxes are possible.

Private succession through will

It is possible to regulate the distribution of the inheritance to your heirs through a will. In certain markets inheritance rules may regulate to whom an inheritance may be transferred, for example to the spouse, the children or the parents. This group, together with brothers and sisters, is generally referred to as blood relatives.

The inheritance includes all of the possessions of the testator and (almost) all of the debts.

In certain cases it may not be favorable to accept an inheritance. Proper estate planning could be the solution to avoid having to make this choice.

Baker Tilly is here to assist you with this in an early stage.





Involving a private foundation or trust in your estate planning

Both the Private Foundation (PF) and the trust are ideal entities to seclude wealth. If planned properly, the contribution and growth, as well as the transfer of the wealth to beneficiaries can take place without tax consequences.

What is a Private Foundation?

Similar to a regular foundation, the PF is a legal entity. The name of such a foundation must contain the words 'Stichting Particulier Fonds' or 'Private Foundation'.

A PF is founded by a notarial deed drafted by a local notary and has no members or shareholders. Its objective is the realization of certain (estate planning) goals as mentioned in the notarial deed.

The main task of the board of the PF is simply to execute or realize its goals. Contrary to a regular foundation, and if the notarial deed so dictates, the PF may make payments to beneficiaries (including the founder(s) of the PF) without charitable or social reasons. This makes a PF highly suitable for estate planning.

What is a Trust?

The trust is a legal relationship created inter vivos or upon death by a person - the settlor- whereby assets are placed under the control of a trustee for the benefit of a beneficiary or for a specified (estate planning) purpose. A trust can be used for multiple purposes but is highly suitable for estate planning.

It has the following characteristics:

- The assets (e.g. securities, bonds, cash, real estate, intellectual property rights, etc.) of the trust constitute a separate capital and are legally separated from the private assets of the trustee;
- The trustee is the legal owner of the assets of the trust;
- The trustee has the power and the duty, in respect of which he is accountable, to manage the assets of the trust.

A trust is created by notarial deed.

The deed must, amongst others, include the following trust particulars:

- The allocation of a beneficiary or specified purpose;

- A provision in which it is assured that the trust will always have a local trustee;
- A description of the assets of the trust;
- The name of the trust should include the word 'trust'.

Upon creating the trust, the settlor may reserve certain rights and powers for himself with regard to the assets of the trust.

Adjusting the particulars of a trust or revoking a trust is solely possible if allowed for and carried out by a person mentioned in the deed of the trust.

Regardless of whether the beneficiaries are blood relatives or not, once the wealth is transferred to the PF or trust, the board of trustees is no longer bound by legal inheritance rules and the wealth forms part of a separate entity and is thus out of scope of creditors.

The wealth in the PF or trust can be used for very specifically determined purposes as desired by the settlor.

Business wealth succession

Part of an individual's wealth may be the ownership of a company. Sooner or later, every business owner will be confronted with business succession. Like all types of transfers, a business can be transferred during life or upon death. A business may be transferred regardless of whether the company is driven in the form of a sole proprietorship or in the form of a legal entity (divided by shares).

Although every situation requires specific attention and advice from our specialists, we highlight two of the options:

The transfer of a business by entering into a partnership

Especially within family relationships, it may be favorable to enter into a limited liability partnership with the family successor several years before the business transfer will take place. A partnership can be used to achieve a gradual and tax friendly business succession for a sole proprietorship. When the final transfer takes place, the partnership will be dissolved and the business will continue as a sole proprietorship of the successor.

The benefit of continuing the company as a partnership is that the former business owner keeps a claim on the company for the amount brought into the company. The former business owner will continue as a limited partner (in Dutch 'commanditaire vennoot'), meaning that he will no longer exert

any influence on the company, but solely has a financial interest in the company. The successor becomes the general partner (in Dutch 'beherend vennoot'), meaning that he is responsible for the daily operations of the company and is personally liable for the debts of the partnership.

This gradual business transfer in the form of a partnership has the following advantages:

- By letting the successor have a direct share in the profits, he can slowly build up capital so that the final acquisition can proceed easier financially;
- The successor becomes familiar with the company under relatively close supervision of the former business owner;
- The successor can use tax facilities for entrepreneurs, such as investment allowance (in Dutch 'investeringsaftrek') and replacement reserve (in Dutch 'vervangingsreserve');
- By allowing a family successor to have a direct share in the profits, the amount of his inheritance and consequently the estate tax will be much lower.

The transfer of a business using a PF or trust

The PF, or a trust, is also highly suitable for business succession. Both can serve as a top holding entity for a business structure, either holding an operating entity directly or holding the shares in a holding company.

If a shareholder would sell his shares in the operating company, he may become subject to substantial interest shareholding tax (in Dutch 'aanmerkelijk belangheffing'). The same applies if the shareholder would like to transfer his shares to for example his son or daughter. A PF or trust is an entity not divided into shares, meaning substantial interest shareholding tax is not relevant.

In addition, a PF or trust can sell the shares in an operating or holding entity without becoming subject to tax. By transferring the beneficial ownership of the PF or trust from the "owner" of the business to his relatives would, in most markets, not have tax consequences.

In addition, all kinds of conditions can be incorporated in the deed of the PF or trust, e.g. the ability to protect the beneficiary against himself, to determine that the right to his part of the wealth or the proceeds thereof may be used for the purpose for which it is set, and that such right only ceases to exist if the beneficiary rights are used for other purposes.



What to expect from us

Private and business estate planning requires pro-active involvement and a long-term vision. It is a complex process that requires thorough financial insight, up-to-date knowledge of the law and the ability to foresee what effect the decisions you make in managing your estate may have on its future value. Baker Tilly combines forces in all these expert fields. In cooperation with estate planning specialists in our international Baker Tilly network, we are able to offer you insightful and accurate advice. We help you see the bigger picture; the entire scope from transferring ownership and division of properties, to making sure you and your beneficiaries will enjoy long-term tax benefits.

Filing estate tax returns

Our tax lawyers are experts in assisting wealthy individuals and business owners. We listen carefully to your wishes and convert them into practical, efficient and tax favorable solutions. When the moment is there, the drafting and filing of the required estate tax return needs to be done with the utmost care.

Our tax compliance department has broad experience in drafting and filing estate tax returns in all Dutch Caribbean markets.

Each jurisdiction has its own form and way of dealing with estate tax returns. Due to our extensive experience, we know how to approach the relevant parties and because of our experience we can provide you with a dedicated service at a reasonable price.

To avoid any misunderstanding, we are happy to offer you a fixed fee for each required estate tax return.





Now, for tomorrow

Creating meaningful experiences by proactively working to solve your most pressing problems and seize new opportunities. Our relationships with clients are genuine and we value great conversations. We understand your world today and provide insights that shape your tomorrow.

Network members collaborate seamlessly to serve our clients across the globe.

If you have any questions, we will gladly explain more in depth how our services may be of interest or beneficial to your business or personal ambition.

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