

Private Client Tax

Jurisdictional comparisons

Third edition 2015

Foreword John Rhodes Stonehage Law Ltd

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Foreword

John Rhodes Stonehage Law Ltd

Welcome to the third edition of *Private Client Tax* in the European Lawyer Reference Series. In the foreword to the first edition in 2010, I recounted how, against the advice of my peers, I had opted for a career on the private client side of the City of London law firm I joined after studying law at Cambridge. This proved to be an immensely stimulating choice, opening a world of challenging clients and problems with which I am still engaged some 47 years later.

Anyone opening this volume needs no convincing about the relevance and excitement of acting for wealthy private clients. Amongst them we count the wealth and job creators, whose role in our societies has never been more important than today.

Politicians spend at least as much time in aeroplanes as private client lawyers, but swept along in their motorcades from one meeting to another they fail to pick up the essential message that what western economies need at this stage of the cycle is less government interference, regulation and taxation and more stimulus from entrepreneurs. This is despite the clear evidence of history that countries adopting a tax-cutting, smaller government approach by and large provide more choice and a better standard of living for their citizens. In the foreword to the second edition in 2012, I questioned whether the policies advocated by François Hollande would serve his country well. The outcome is clear whatever statistics you choose – the French economy, his popularity rankings, or the number of his countrymen who have recently brought their families and their ingenuity across the Channel to England.

The simple truth is that western governments have become addicted to spending more than they raise in taxes. This, combined with dramatic increases in longevity, is a toxic brew, leaving them with two obvious solutions: increasing taxes or cutting expenditure, neither of which appeal to their electorates. But whatever combination of these two main policy strands governments adopt, the third weapon in their arsenal is making dramatic improvements in tax collection. In the years since our first edition was published, the focus on this last subject has been unrelenting, with the US authorities taking the lead after finally and very publicly losing patience with those who brokered the “banking secrecy” model. A new era of transparency has been ushered in via multiple Tax Information Exchange Agreements, complex Foreign Account Tax Compliance Act regulations and headline-grabbing penalty settlements paid by Swiss and other banks for encouraging past tax evasions.

All this was predictable, and indeed predicted by me and others from the early 1990s onwards. Some banks have responded by significantly reducing

the services provided for wealthy international families. All such families have to rethink their objectives and their strategies depending where they and their assets are located. One function of this volume is to enable such families and those who advise them to keep abreast of developments in this respect.

One general comment I would make is that, whilst it is still possible for families to organise their affairs so they quite legitimately pay well under the standard level of tax levied on permanent residents of the main western jurisdictions, it will undoubtedly become increasingly difficult to maintain such a lifestyle. This is a result not only of the greater transparency I have already mentioned, but also of hardening attitudes even in those jurisdictions which have traditionally welcomed foreign wealth, such as the UK and Switzerland. In the 2014 UK Autumn Statement, the cost of the Remittance Basis Charge for non-UK domiciled taxpayers was increased, for those who have been resident in 17 of the past 20 years to £90,000 a year. Already we see clear evidence that only the extremely rich are prepared to pay such an annual levy. In Switzerland, the November 2014 referendum on the forfait has allowed cantons to continue that regime if they so wish, but the mere fact that the question was ever put to a country-wide vote underlines a general perception that too much wealth has become concentrated in the hands of too few. This same theme was highlighted by President Obama in a recent major speech and I am told also lies behind current political unrest in Hong Kong, where wage earners can no longer afford to live centrally.

Does all this mean that if the very wealthy are to head-off a concerted attack they should willingly contribute more generously towards their share of the social contract?

As before, the authors of our different chapters are all experts in their own jurisdictions. One sure sign of competence is an ability to distil a complex subject down to its essentials. That you will find here. None of the chapters however is intended to provide more than an overview: any detailed case will have to be analysed on its own facts. But the list of authors here provides a ready guide to those who are well able to undertake that task, jurisdiction by jurisdiction and across jurisdictions too.

The publishers and I were delighted with the enthusiastic reaction received to the first and second volumes, which has given us the confidence to move ahead with the third. I have no doubt it will be similarly well received. Thanks are due to all our contributors for making time in their busy schedules to enable us to do this.

*John Rhodes
London
March 2015*

Guernsey

Carey Olsen Laila Arstall

1. NON-TAX ISSUES

1.1 Domestic law

1.1.1 Briefly describe your legal system and its origins

Guernsey law is broadly similar to English law but differs substantially from it in many important respects.

The source of Guernsey law dates from the 10th century and the common law of Normandy. Since then Guernsey law has developed away from its continental base and has followed English principles in recent years (particularly in tort, criminal and company law). This process has accelerated through the adoption of English as the main language in Guernsey and the training of advocates as barristers or solicitors in England and Wales, Scotland or Northern Ireland, as a prerequisite of their being called to the Guernsey Bar.

Guernsey law is also found in statute. Although the United Kingdom Parliament retains power to legislate on matters of international relations and national security, the freedom of Guernsey from taxation and fiscal control by the United Kingdom is well established by a series of Royal Charters. Therefore, enacted law most often originates with Guernsey's States of Deliberation (the States) leading to royal sanction by Her Majesty in Privy Council.

1.1.2 What is the scope of your succession law?

Guernsey inheritance laws were based on Norman customary law. Unlike England, Guernsey operates a forced heirship regime. It distinguishes between personalty and realty.

Different rules also apply depending on whether there is a will or not. A spouse is entitled to receive a life interest in at least one half of any solely-owned realty, "life interest" meaning enjoyment until death or remarriage. Jointly-held property automatically passes to the survivor. Most dwellings purchased by a husband and wife are owned jointly and for the survivor. If a person leaves children then he can only leave his realty to his spouse, descendants, stepchildren and adopted children. Under intestacy rules a surviving spouse never inherits real property but takes a life interest in at least half of the realty. Subject to this interest, on intestacy realty passes to the deceased's children equally. If there are no descendants, potential heirs are divided into classes, which are called upon successively to inherit. The classes, in order of priority, are the brothers and sisters, then parents, then other family members.

In terms of personalty, if a deceased leaves spouse and children, the spouse is entitled to one-third and the children one-third. The remaining third may be disposed of as desired by will. If a deceased leaves either a spouse or children but not both, the spouse or children (between them) is entitled to take at least one half of the personalty; the remainder may be disposed of as desired. If a deceased leaves neither spouse nor children he may dispose of his personalty as he wishes. On intestacy, where the deceased leaves a spouse but no children, the spouse is entitled to take one half of the personalty and the remaining half will pass to members of his family in accordance with a set of priorities (as mentioned above). If a deceased leaves children but no spouse, the children take the whole of the personalty in equal shares between them. If a deceased leaves both spouse and children, the spouse will take one-third of the personalty and the children two-thirds.

The Inheritance (Guernsey) Law 2011 (the Inheritance Law), which came into force on 2 April 2012, creates a new regime for succession and applies to those individuals whose wills are executed after 2 April 2012 or who die after that date domiciled in Guernsey and intestate. The Inheritance Law abandons much of Guernsey's historic laws, in favour of English-style freedom of testamentary disposition. This is, however, subject to new provisions in the Inheritance Law which permit certain family members and dependants of the deceased to apply to the Guernsey court for provision, if they feel they have not been adequately provided for under the terms of the will. This application can only be made if the deceased died domiciled in Guernsey. The application should be made within six months after the date of death (subject to certain court approved extensions in time). It is important to note that jointly held property, passing by survivorship (as opposed to under the terms of the will alone), may now be subject to such a claim.

The Inheritance Law preserves the regime for wills executed before the commencement date.

1.1.3 When are individuals and their property subject to succession rules?

Subject to the provisions of the Inheritance Law, Guernsey rules of succession applicable to personalty only apply where a person dies domiciled in Guernsey, otherwise Guernsey applies the law of a person's last domicile. Guernsey rules applicable to realty apply to property on the island regardless of where the owner resides or is domiciled

1.2 Private international law

1.2.1 What is the jurisdiction of local courts in international disputes?

Not being an EU member, Guernsey does not fall under the Brussels regime, nor does Council Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters apply. Guernsey private international law instead draws upon English common law principles. For example, questions as to which court has jurisdiction and what the applicable law might be in any given dispute would be answered in light of prominent English cases such as *Spiliada Maritime Corp v Cansulex*

Ltd [1987] A.C. 460 and *Konamaneni v Rolls-Royce Industrial Power (India) Ltd* [2002] 1 W.L.R. 1269.

1.2.2 What approach do local courts take to conflict of laws?

Section 14 of the Trusts (Guernsey) Law 2007 specifically states that all questions relating to trusts governed by Guernsey law are to be determined by Guernsey law without reference to the law of any other jurisdiction.

2. TAXATION

2.1 What are the criteria for liability to main taxes?

Apart from the taxation of income derived from the development and/or rental of land and buildings situated in Guernsey and income arising from a source in Guernsey, the basis of assessment for Guernsey tax for both individuals and companies is the test of residence in the year of charge. The year of charge is the calendar year from 1 January to 31 December.

Individuals

The test for residence for individuals is based on the number of days that an individual spends in Guernsey or elsewhere. There are the following types of residents:

- Resident (sometimes referred to as resident only): where an individual spends between 91 to 181 days in Guernsey in a year of charge or spends 35 days or more in Guernsey in that year of charge and, during the four preceding years of charge, has spent 365 days or more in Guernsey.
- Solely resident: where an individual is resident and does not reside for 91 days or more elsewhere in a year of charge.
- Principally resident: where an individual is resident, but not solely resident, and spends 182 or more days in Guernsey or spends 91 days or more in Guernsey in that year of charge and, during the four preceding years of charge, has spent 730 days or more in Guernsey or has taken up permanent residence in Guernsey.
- Non-resident: where an individual does not fall in any of the above categories of residence in Guernsey.

A person resident only in one year of charge then solely or principally resident in the next year of charge is treated as having taken up permanent residence, and is thus principally resident in that earlier year of charge. If an individual takes up, or ceases to be solely or principally resident in Guernsey part way through a year of charge, his income will be examined on a time basis so that only income arising whilst resident in Guernsey is assessable to Guernsey tax.

Companies

The basis for taxation of companies is residence. A company is resident in Guernsey for tax purposes if it is incorporated or controlled in Guernsey and is not an “exempt company”. Exempt companies are generally companies operating as part of a collective investments scheme.

2.2 What are the relevant main taxes in your jurisdiction?

The principal direct tax in Guernsey is income tax, applicable to individuals and companies resident in Guernsey on their worldwide income. For individuals, income tax is charged at a flat rate of 20% of assessable income (less personal and other allowances and deductions). For most companies, the standard rate of income tax, currently 0%, applies. Income from certain types of banking business; the carrying on of regulated activities by a licensed fiduciary; domestic business by a licensed insurer; business of an insurance intermediary and from licensed fund administration are subject to the company intermediate rate, currently 10%. Income from land or real property in Guernsey or from trading activities regulated by the Guernsey Competition and Regulatory Authority (that is, postal, electricity and telecoms services) is taxable at the company higher rate, currently 20%. Guernsey has no taxes chargeable upon capital or wealth. There is no capital gains tax. There is no gift tax or inheritance tax.

Income tax on resident only individuals

A resident only individual is taxable on income arising in Guernsey and income remitted to Guernsey. This is so for years of charge up to and including 2009. From 2010 the taxation of persons who are resident only has changed:

- Resident only individuals who come to Guernsey for the purposes of employment (migrant workers) and whose only income arising in Guernsey (other than bank interest) is employment income which is taxed at source under Guernsey's ETI Scheme (see section 2.3.1 below), are taxed on their Guernsey earnings and remittances to Guernsey. They are required to file a tax return for the year of charge which covers income arising in Guernsey and non-Guernsey income remitted to Guernsey during that year.
- Resident only individuals who are not migrant workers may elect to be taxable on the total income arising or accruing in Guernsey in that year of charge (ignoring bank interest and without deduction for allowances or reliefs) and not taxable in Guernsey on income arising or accruing elsewhere (but subject to a minimum standard charge of, currently, £27,500). The election must be made within two years from the end of the year of charge to which it relates and must be accompanied by a declaration of Guernsey source income (other than bank interest, which for these purposes is treated as if it arose from a non-Guernsey source).
- The standard charge is regarded as a tax and can be offset against the amount of tax payable on the individual's Guernsey source income. The individual may also be able to claim a credit for the amount paid as the standard charge against his tax liability in another jurisdiction, subject to the laws of that jurisdiction.
- An individual who does not make the election must file a tax return on his worldwide income for the relevant year of charge. He will be liable to tax on his worldwide income and will be able to claim allowances, reliefs

and deductions against that income (including, with certain restrictions, relief for overseas taxes paid – see below).

Taxation of solely or principally resident individuals

These are taxable on worldwide income. The cap on the total tax payable may apply (see 8.1 below). Double taxation relief may be available.

Taxation of non-resident individuals

A non-resident is taxed only on Guernsey source income but certain types of income are disregarded for the purposes of calculating the liability.

Income in the form of distributions (both actual and deemed from Guernsey companies), interest, royalties and directors' remuneration, are all paid to non-residents without deduction for tax in Guernsey.

This does not apply where the non-resident individual carries on a business in Guernsey through a permanent establishment in Guernsey and the income is part of the assessable income of that permanent establishment. Permanent establishment includes a branch, factory, shop or building site and a place of management. A body's directors regularly meeting in a particular place does not, in itself, make the place a permanent establishment of that body. It is a question of fact whether a business is carried on and each case should be analysed accordingly.

Income tax for companies

Guernsey currently operates the "0-10" regime. The rate of tax is 0% for most companies, provided the income does not include income from:

- Certain banking business as defined (which is taxed at 10%).
- Income arising from the carrying on of regulated activities by a licensed fiduciary as defined (which is taxed at 10%).
- Income from the carrying on of insurance business which is domestic business by a licensed insurer as defined (which is taxed at 10%).
- Income from the carrying on of business as an insurance intermediary or as an insurance manager by a licensed insurance intermediary or manager as defined (which is taxed at 10%).
- From licensed fund administration businesses as defined (which is taxed at 10%).
- Trading activities of regulated utilities (that is, postal, electricity and telecoms services) (which is taxed at 20%).
- The ownership of land and buildings situate in Guernsey (which is taxed at 20%).

If a non-exempt company (which is therefore resident in Guernsey) is able to confirm to the Income Tax Office in Guernsey that the company has no Guernsey-resident beneficial members, Guernsey employees (other than local directors), has made no qualifying loans and has no source of income which would give rise to a liability to pay tax in Guernsey, the company will not be required to submit annual financial statements to the Income Tax Office as a matter of course.

With effect from 1 January 2013, the deemed distribution regime which attributed income of a company to Guernsey-resident individuals who had a beneficial interest in the company, was repealed.

Value added tax

Guernsey does not currently have a VAT regime and there are no general sales taxes.

Document duty on purchase of real property

Transfers of real property (other than by way of gift) are generally subject to document duty of 3% of the value of the property transferred. Where the property includes a dwelling, reduced rates may apply, depending upon the purchase price.

Import duties

There are duties upon alcohol, tobacco and petroleum spirit.

Social security contributions

Social security contributions are payable in Guernsey by employed persons, self-employed and non-employed persons depending on their gross earnings.

2.3 Enforcement/collection of taxes

2.3.1 What are the basic procedures for collection and enforcement?

Personal tax returns are issued at the beginning of the year following the relevant year of charge and must be completed within the specified time limit. The filing deadline is 30 November and returns must be submitted online. Automatic penalties will be imposed from the following 15 January if the return is still outstanding. The Director of Income Tax is responsible for issuing the returns, the assessment and the collection of tax. However, it is the taxpayer's responsibility to ensure the Income Tax Office supplies a tax return for completion if he does not receive one. Taxpayers may appeal against assessments to the Guernsey Tax Tribunal. Determinations of fact by the Tribunal are final and conclusive but its determinations of law are subject to appeal to the Royal Court and thereafter to the Court of Appeal. Penalties may be incurred for failure to deliver a completed return and surcharges are imposed upon late payment of tax. Unpaid tax, surcharges or penalties may be pursued like any other civil debt.

Employees tax instalment (ETI) scheme

An employer is obliged to deduct tax at source from employees' earnings and benefits in kind through the ETI scheme. Every individual is required to complete a tax return that will form the basis of an assessment to tax and will include details of other assessable income received and claims for allowances or deductions. The tax return is filed on an annual basis and will relate to the previous calendar year. Any additional tax is payable following the issue of an assessment in accordance with the statement that accompanies the assessment.

Withholding tax

There are withholding tax provisions on:

- Rental income from land and property in Guernsey.
- Distributions by a company.
- Upstream loans by companies to, or deemed to be to, “participators” who are resident in Guernsey.

Retention tax

Although not a member state of the EU, Guernsey, in common with certain other jurisdictions, entered into agreements with EU member states on the taxation of savings income. Retention tax, which was an alternative option in place of automatic exchange of information, was abolished with effect from 1 July 2011. From that date onwards paying agents in Guernsey must automatically report to the Director of Income Tax in Guernsey any interest payment which falls within the scope of the Council Directive 2003/48/EC on taxation of savings income in the form of interest payments (EU Tax Savings Directive) as applied in Guernsey.

2.3.2 To what extent is non-compliance an issue?

It was reported that as at the beginning of 2014 approximately 16,000 people were using the online filing and assessment methods for tax compliance. This has led to an improvement in compliance and the filing of tax submissions online. Whilst the majority of Guernsey taxpayers pay their tax, a minority do not. Tax evasion is illegal.

The Income Tax Office introduced a Compliance and Investigation Unit in the late 1980s to address domestic tax evasion, and also tax avoidance. Since then the activities of the unit have raised more than £35.4 million in unpaid tax, penalties and late payment surcharges from those 4,300 persons who chose not to pay their tax as required by law.

2.3.3 In which circumstances can default result in imprisonment?

A person who fails to make a return without reasonable excuse or provides information which he knows or has reasonable cause to believe to be false, deceptive or misleading is guilty of an offence and may be prosecuted at the discretion of the Director of Income Tax, which may lead to conviction and imprisonment. In addition, a person who, having deducted tax in accordance with applicable withholding provisions, fails to pay that tax to the Director of Income Tax is guilty of an offence and liable on conviction to imprisonment.

2.3.4 What are your laws on extradition for tax offences?

There are no specific laws that deal with extradition for tax offences. However, extradition in Guernsey is governed by the UK's Extradition Act 1989, which extends to Guernsey. The 1989 Act has been replaced in England by the Extradition Act 2003. For the time being, Guernsey remains covered by the 1989 Act, which requires a requesting country to provide evidence to establish a prima facie case (that is, one which would be sufficient to

convict if no defence was offered). However, there has been an on-going review of the position by the Guernsey authorities since 2007, including whether to introduce extradition for a wide range of offences, based on, for example, the less onerous provisions of the US-UK Extradition Treaty 2003, which requires the US to provide information as to the particular offence concerned, as opposed to evidence, in support of extradition.

2.3.5 Have there been any recent changes of behaviour by tax authorities?

The Income Tax Office is committed to tackling tax evasion. In the last couple of years, it has established the Stop Tax Evasion Programme – STEP, the purpose of which is to:

- Bring into the public arena the action that the Income Tax Office is taking to tackle tax evasion.
- Raise awareness of the additional sources of information that are, and are continuing to become, available to the Income Tax Office, making the detection of tax evaders more likely.
- Introduce two new facilities to allow anyone with irregularities in their income tax affairs to disclose such irregularities and avoid penalties or prosecution.

In addition, the introduction in 2012 of a penalty system for late submission of income tax returns has led to a significant increase in the number of returns received. Nearly 5,000 additional returns were received in 2013 compared to 2012, which itself had seen an increase of 4,000 over the previous year. Over two years this is an increase of some 18% in the number of returns filed.

2.3.6 Are there any voluntary disclosure or amnesty programmes?

The Director of Income Tax may make adjustments in respect of a tax liability where the effect of a transaction is the avoidance, reduction or deferral of tax liability. The Income Tax Office of Guernsey has launched the Stop Tax Evasion Programme (STEP) under which certain initiatives will be made available to address our tax evasion, which is illegal in Guernsey. There are currently two disclosure facilities that have been made available by the Director of Income Tax for a limited time, namely the Bank Interest Reporting Disclosure (BIRD) and the Excess Mortgage Interest Reporting Disclosure (EMIRD) both of which were established on 1 July 2014 and will run until 31 March 2015. The Income Tax Office has a dedicated Compliance and Investigation Unit which is tasked to address tax evasion.

3. EXEMPTIONS AND/OR EXIT TAXES FOR NEW IMMIGRANTS AND EMIGRANTS

3.1 Which taxes are relevant in your jurisdiction?

There are no specific exemption and/or exit taxes for new immigrants and emigrants. However, if an individual takes up, or ceases to be solely or principally resident in Guernsey part way through a year of charge he will be assessed to tax in Guernsey on income arising whilst he is resident in Guernsey.

4. USE OF ASSET HOLDING VEHICLES

4.1 Which vehicles are available in your jurisdiction and how are they treated by the courts?

Trusts

Trusts are used extensively in Guernsey for the purposes of tax-efficient structuring. The Trusts (Guernsey) Law 2007 (Trusts Law) replaced an earlier codification of trust law in Guernsey and takes into account the laws of other offshore jurisdictions, adapting many useful features for use in Guernsey. The methods for creating a trust are flexible and any property may be held on trust. Guernsey also permits the establishment of trusts for non-charitable purposes. The legislation makes it clear that trusts to hold property, or for other purposes, are recognised. In the absence of beneficiaries, it is necessary that enforcers be appointed to ensure the terms of such purpose trusts are carried out correctly.

Some further features of the Trust Law are:

- Trusts can exist indefinitely.
- The reservation or grant of certain powers by or to a settlor or third parties is expressly permitted.
- There is no public register of trusts in Guernsey.
- Trusts may be established over Guernsey land.

Taxation of trusts

Guernsey-resident trustees are assessable to Guernsey tax only on Guernsey source income (excluding Guernsey bank interest) where all the beneficiaries are resident outside Guernsey. For these trusts, foreign source income and interest from Guernsey bank accounts in the hands of Guernsey resident trustees is not taxable by virtue of a concession. This concession is not available where beneficiaries are resident in Guernsey. In this case, Guernsey tax will continue to be chargeable on the trust's worldwide income at the appropriate rate which is determined by reference to the person beneficially entitled to the income. By concession, income may be apportioned between beneficiaries where some are resident in Guernsey and others are not.

Where the settlement is deemed to be revocable, for example, because the settlor and his wife are not excluded from benefiting, or where the settlement is for the benefit of the settlor's infant children, the settlor is liable to tax, depending upon his residence. Guernsey tax may be collected direct from the beneficiaries or trustees, irrespective of whether the settlor is resident in Guernsey or not. Further, income of a company or other underlying entity held by the trustees, is regarded as income of the trust and, where assessable on a Guernsey resident settlor, should be included in his tax return.

Companies

There are five types of companies in Guernsey, all with varying structures and liability:

Company limited by shares

This is the most common type of company in Guernsey. A company limited by shares must have shareholders whose liabilities for the company's debts are limited to the amount unpaid on shares held by them. Pursuant to the Companies (Guernsey) Law 2008 as amended (Companies Law) a company limited by shares may have a minimum of one shareholder and one director. It is, however, common for Guernsey companies to have at least two shareholders, as this used to be a requirement prior to the Companies Law.

A company must have a memorandum of incorporation which sets out the basic constitution of the company. If specific articles of incorporation are not filed at the time of incorporation a simple statutory pro forma applies to set out the internal rules for governance. There is no requirement for a company to have an authorised share capital.

Companies limited by guarantee

A company limited by guarantee has members whose liabilities for the company's debts are limited to the amount the member undertakes to contribute to the assets of the company in the event of it being wound up. Such companies are generally used for charitable purposes.

Unlimited companies

The members of an unlimited company have unlimited liability for the company's debts. These are typically used in intra-group reorganisations and restructurings.

Mixed liability

A mixed liability company is a combination of the above entities and may have guarantee members, unlimited members and, if the company has a share capital, shareholders.

Cell companies

Guernsey pioneered the concept of cell companies. A cell company is one whose assets are kept in separate cells, which operate under the same administration. A cell company can ringfence part of its assets so that the creditors of a cell have recourse only to the assets of that cell. They will have no claim against the assets of any other cell, nor against the non-cellular assets of the company. There are two types of cell companies available in Guernsey – incorporated cell companies and protected cell companies. Both are frequently used in Guernsey's thriving insurance sector.

Insurance companies

The Guernsey insurance sector can be divided broadly into two main areas:

- Domestic insurance comprising local insurers, overseas insurers, recognised insurers and intermediaries who advise on or arrange contracts of insurance in Guernsey.

- International insurers, comprising captive insurers, protected or incorporated cell companies and life assurance companies who arrange contracts of insurance from within Guernsey, covering international risks.

All insurance entities (domestic and international) operating from Guernsey require an insurance licence. There is a policy of selectivity which means that the fitness and propriety of the intended shareholders, directors, officers, insurance managers and/or general representatives is critical to the success of an application for a licence. Information provided with the application concentrates on determining whether the following criteria are met:

- The applicant is fit and proper.
- The insurers plan is commercially acceptable.
- Management and control are resident in Guernsey.

On applying to the Guernsey Financial Services Commission (GFSC) to licence an insurance company, a fee of approximately £5,000 is payable, depending upon the type of company and licence required. Each year, the licensed insurer must file an annual return and a copy of its accounts with the GFSC at which time an annual fee is payable depending upon the type of company and licence required.

Taxation of insurance companies

In practice, an insurance company may be subject to two of the three applicable rates of Guernsey income tax, depending upon the source of income.

- Income from the carrying on of insurance business which is domestic business by a licensed insurer within the meaning of the Insurance Business (Bailiwick of Guernsey) Law, 2002, as amended (which is taxed at 10%).
- Income from the carrying on of business as an insurance intermediary or as an insurance manager by a licensed insurance intermediary or manager within the meaning of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 (which is taxed at 10%).
- The company standard rate, currently 0%, applies to income from all other businesses, offices and employments, and other sources except income from the ownership of land and buildings situated in Guernsey and the trading activities of regulated suppliers of utility services (which is taxed at 20%).

Partnerships

Guernsey allows the creation of general, limited and limited liability partnerships. General partnerships exist between persons carrying on business in common with a view to profit. The Partnership (Guernsey) Law 1995 is based upon the English statutory equivalent, and Guernsey courts would refer to English case law on questions of interpretation.

The Limited Partnerships (Guernsey) Law 1995 provides for the registration in Guernsey of limited partnerships which may be formed for the carrying on of any lawful business within Guernsey or elsewhere. A

limited partnership consists of one or more general partners who are jointly and severally liable for all debts of the partnership and are responsible for the conduct of the business of the partnership, and one or more limited partners who invest a specified sum in the capital of the partnership and are not liable for any debts of the partnership beyond the amount they have contributed.

The limited partnership is required to be registered in Guernsey and to maintain a registered office in Guernsey and in many respects is treated in a similar manner to a company. However, the limited partnership is not treated as a separate entity for tax purposes and the rules applicable to partnerships described above apply to the partners of a limited partnership.

Partnerships are usually constituted by written agreement between the partners. The business name of the partnership must be registered at the Companies Registry in Guernsey. There are no restrictions regarding the nationality of the partners, and a company, whether Guernsey incorporated or not, can be a partner. A partnership is dissolved on the death of an individual partner, unless the partnership agreement states otherwise. Limited partnership structures in Guernsey are often used where a fiscally neutral base is required.

In 2014 Guernsey extended the regime of partnership structures to include limited liability partnerships with the introduction of the Limited Liability Partnerships (Guernsey) Law, 2013. The key features of the new limited liability partnership structure (LLP) are that:

- It is a body corporate with unlimited capacity and its own legal personality separate from that of its members.
- It may be formed in Guernsey to carry on lawful business with a view to profit, or any other lawful activity.
- A member is not liable for any debt of the LLP, or of any other member, solely by virtue of their membership of it.
- A member's liability to contribute its funds, and specifically a shortfall on its winding up, will be limited to whatever the member has agreed with the other members or with the LLP to contribute.
- It owns its assets and is subject to the duties and liabilities of the business to the exclusion of its members.
- It carries on business itself with the members acting as its agents.
- A private written agreement must govern the rights and duties of the members as between themselves and the rights and duties between the members and the LLP itself.
- It is not a partnership for the purposes of Guernsey partnership law, which does not apply to it.
- It will be transparent for Guernsey income tax purposes so that each partner is assessed separately on his share of the partnership's profits.

Taxation of partnerships

Each partner is assessed separately on his share of partnership profits. This includes each partner's share of any investment income or capital allowances due to the partnership. On any change in the partnership, the

commencement and cessation provisions applicable to a sole trader are applied.

Any income derived from international operations of a limited partnership in which an individual who is not solely or principally resident in Guernsey or a company which is not resident in Guernsey, is a limited partner, is not regarded as arising or accruing from a source in Guernsey. Any interest paid to that limited partner under a limited partnership arrangement is also not regarded as arising or accruing from a source in Guernsey.

Foundations

The Foundations (Guernsey) Law, 2002 (Foundations Law) came into effect on 9 January 2013. The Foundations Law is intended to reflect accepted civil law characteristics of foundations but is not intended to replicate the laws of other jurisdictions in respect of foundations. Although there are similarities, a foundation is neither a company nor is it a trust. Under Guernsey law trusts, companies and foundations are three distinct and legal structures which have evolved to serve different purposes and to work in different environments.

Set out below are the key features of Guernsey foundations:

- They are ideally suited for private wealth management, succession planning structures and charitable giving.
- They are familiar to those from a civil law background.
- They are more flexible than a company structure in that the Foundations Law allows a substantial degree of bespoke adaptation.
- They have legal personality and may contract or sue, in their own name.
- There is no segregation of legal and beneficial law, as with the trust.
- The concept of “disenfranchised beneficiaries” allows concerned founders to limit the flow of information to certain classes of beneficiaries. This is unique to Guernsey’s Foundations Law.
- They are private structures.
- They require registration but the information that is publically available is restricted.

5. PHILANTHROPIC AND CHARITABLE OPTIONS

5.1 Is there a compulsory registration system for charities?

Under the Charities and Non-Profit Organisations (Registration) (Guernsey) Law 2008, all charities are required to register with the Director of Income Tax. Non-profit organisations (NPOs) whose gross annual income exceeds £5,000 or whose gross assets and funds exceed £10,000 must also register. An NPO is defined as any organisation established solely or principally either for the non-financial benefit of its members or for the benefit of society or any class or part of society and, without limitation, includes any organisation established solely or principally for social, fraternal, educational, cultural or religious purposes, or for the carrying out of any other types of good works. Failure to register constitutes an offence and may make the charity or NPO subject to prosecution and, if convicted, liable to a fine.

5.2 Are there any tax reliefs available?

Whilst NPOs are subject to income tax, registered charities benefit from an exemption to income tax if and so far as the income is applied to charitable purposes only.

5.3 Are there any particular distribution requirements and can domestic charities apply funds outside your jurisdiction?

Distribution by charities and NPOs must be in accordance with the terms governing their constitution. Subject to such terms, domestic charities may apply funds outside Guernsey.

6. REGULATORY ENVIRONMENT

6.1 What is the financial environment like for funds and other investment vehicles?

Guernsey's taxation regime is designed to ensure that Guernsey meets international standards and obligations for the conduct of business.

Open-ended and closed-ended collective investment schemes continue to be eligible to apply for exempt status. By maintaining exempt status where eligible, a company continues to be treated as not resident in Guernsey. An exempt company will not be liable to pay tax in Guernsey provided it does not hold any investment or other property situated in Guernsey which generates taxable income, other than from a relevant bank deposit or from an interest in another body to which an exemption from tax applies or from a subsidiary which itself is taxed at the company standard rate, currently 0%. Guernsey residents are taxable on distributions received from an exempt company.

Applications for exempt status under categories A, B or C are made annually at the beginning of the year and the Income Tax Office sends application forms to those bodies that are currently exempt. Those eligible to renew their exemption may do so on payment of the required fee, currently £1,200. For those companies which do not renew their exempt tax status, they then become resident in Guernsey for tax purposes and will be issued with an annual tax return in the following January in respect of income arising during the previous year in which they are resident in Guernsey.

6.2 What is the impact of anti-money laundering legislation on professional/banking confidentiality?

In accordance with Recommendation 20 of the Financial Action Task Force on Money Laundering and Terrorist Financing and the 3rd EU Money Laundering Directive, anti-money laundering legislation applies to financial services business as well as certain non-financial business, such as auditors, accountants and tax advisers.

Firms and their staff are legally protected from breaking any obligation of confidentiality when making disclosures to the Financial Intelligence Service pursuant to anti-money laundering legislation.

6.3 Is it necessary to comply with tax and other information exchanges?

While Guernsey is not within the EU's fiscal territory it agreed to introduce the same measures as the EU Savings Tax Directive, by entering into a series of bilateral treaties with EU member states and introducing new domestic legislation. Where an individual recipient of an interest payment is resident in Guernsey, the measures reflecting the Directive are only relevant if the interest payment is cross-border and falls within the scope of the Directive. From 1 July 2011, paying agents in Guernsey must automatically report to the Director of Income Tax in Guernsey any interest payment which falls within the scope of the Directive. The alternative option to deduct and pay over retention tax has been repealed.

On 24 March 2014 the Council of the European Union formally adopted a directive to amend the EU Savings Tax Directive. The amendments significantly widen the scope of the EU Savings Tax Directive. EU member states are required to adopt national legislation to comply with the amended EU Savings Tax Directive by 1 January 2016. The amended Directive is anticipated to be applicable in EU member states from 2017. Guernsey, along with other dependent and associated territories, will consider the effect of the amendments to the EU Savings Directive in the context of existing bilateral agreements and domestic law.

6.4 What is the impact of US and other FATCA rules?

On 13 December 2013, the Chief Minister of Guernsey signed an intergovernmental agreement with the US (US-Guernsey IGA) regarding the implementation of the US law provisions commonly referred to as Foreign Account Tax Compliance Act (FATCA), under which certain disclosure requirements will be imposed in respect of certain holders of financial accounts who are, or being entities controlled by one or more, residents or citizens of the US. The US-Guernsey IGA is implemented through Guernsey's domestic legislation, in accordance with guidance which is currently published in draft form.

On 13 February 2014, the OECD released the Common Reporting Standard (CRS) designed to create a global standard for the automatic exchange of financial account information, similar to the information to be reported under FATCA. On 29 October 2014, 51 jurisdictions signed the multilateral competent authority agreement (Multilateral Agreement) that activates this automatic exchange of FATCA-like information in line with the CRS. As at the date of writing, both Guernsey and the UK have signed up to the Multilateral Agreement, but the US has not signed it. Early adopters (including Guernsey) have pledged to work towards the first information exchanges taking place by September 2017. Others are expected to follow with information exchange starting in 2018. Guidance and domestic legislation regarding the implementation of the CRS and the Multilateral Agreement in Guernsey are yet to be published in final form.

7. KEY PLANNING POINTS FOR LONG TERM RESIDENT FAMILIES

Guernsey estate planning

The absence of capital taxes means that local taxation is not a consideration in estate planning for Guernsey residents.

The type of structure used will depend upon considerations such as the residence and domicile of the estate owner and his dependants and the nature and location of the assets. Tax neutrality, coupled with simple and flexible trust and company laws, has created the following examples of uses for Guernsey structures:

- Investment/property holding (to minimise transfer fees and duties).
- Asset protection (to protect against creditors, exchange control, forced heirship, and so on).
- Foreign capital gains tax mitigation for certain types of assets.
- Foreign inheritance tax planning.
- Confidentiality.

In addition:

- UK anti-avoidance provisions have less impact for persons resident but not domiciled in the UK, and such persons may be able to mitigate their tax liability by keeping income and/or gains offshore.
- Tax-efficient arrangements can still often be made for the benefit of people who are not closely related to the benefactor.
- Incentive schemes established by companies for the benefit of employees are often more tax-efficient if established offshore.
- People who expect to realise substantial capital gains on certain types of assets or who already have substantial income generating assets may wish to move offshore.
- Wealthy individuals who spend only short periods of time in any particular jurisdiction and/or negotiate special arrangements with domestic tax authorities may find that Guernsey is a suitable place for them to hold their investments.
- The availability of the statutorily-backed tax cap and standard charge for Guernsey residents makes Guernsey an attractive jurisdiction in which to establish residence.

Pension arrangements

Guernsey has a number of reciprocal pension agreements with different jurisdictions. Guernsey's legislative framework for pensions enables pension arrangements to be structured in Guernsey to meet a variety of requirements. Relief is given for income contributed to approved occupational or personal pension schemes by Guernsey residents.

With effect from 1 January 2011, the rules relating to Guernsey tax relief on contributions to both occupational and personal pensions and the principles underlying the calculation of benefits available to members of schemes were aligned. Whilst there is now no monetary limit on the amount which may be contributed to an occupational pension scheme or a personal pension scheme, the amount of tax relief for payments made to such

schemes is capped by limits set by the Treasury and Resources Department, currently the lower of £50,000 or 100% of taxable income of the claimant.

This limit applies to the overall contributions made by the individual to all approved occupational pension schemes and approved personal pension schemes in that year.

Unused relief can be carried forward for up to six years, subject to certain limitations. The member may take a tax-free lump sum of up to 30% of the fund value capped at a specified limit (for the year of charge 2014 this limit is £183,000). Again, these limits apply to the aggregate amount of commutations received for all pension schemes by the individual. Tax is due if the sum taken is more than the prescribed limit. Arrangements exist to exempt from tax transfer payments made from or to a Guernsey scheme in connection with changes to an individual's pension provider.

8. KEY POINTS FOR MIGRATING AND TEMPORARILY RESIDENT FAMILIES

Annual cap on tax payable by Guernsey resident taxpayers

For individuals who are resident in Guernsey, non-Guernsey source income will qualify for an annual cap on tax payable of £110,000. This equates to liability on taxable income from such qualifying sources of £550,000. Therefore, those with taxable income from qualifying sources of over £550,000 in a year of charge will benefit from the tax cap of £110,000.

This £110,000 tax cap applies only to non-Guernsey source income. Where the resident individual has both non-Guernsey and Guernsey source income, he may elect that his total tax liability for that year of charge on both qualifying and non-qualifying income is capped at £220,000. This is equivalent to tax at 20% on income of £1.1 million.

The qualifying and non-qualifying income is calculated net of allowances, reliefs and deductions but such allowances, reliefs and deductions are set off against non-qualifying income first. The cap is time-apportioned where an individual is resident in Guernsey for only part of the year.

Housing

There are strict controls on who may occupy dwellings on Guernsey. In recent years a number of measures have been taken, including the introduction of legislation, to control the occupation of dwellings in Guernsey by persons without Guernsey residential qualifications. There are two main types of housing: open market and local market (or controlled dwellings).

- **Open market:** There are approximately 1,600 of the 22,000 dwellings in Guernsey which are freely available for purchase and occupation by anyone with the right of abode in the UK or other EU member state. These open market dwellings inscribed in Part A of the Housing Register are generally the larger dwellings.
- **Local market:** These dwellings can only be occupied by locally qualified residents or licence holders. The Housing Control legislation allows the States of Guernsey Housing Department to grant housing licences to persons brought to the island to fill positions which the Housing

Department considers to be essential to the well-being of the community. These licences enable such persons to occupy local market dwellings which are generally less expensive than open market dwellings.

Licences

There are “essential worker” licences, which are sought by the employer and are tied to a specific post and also the dwelling. There are also short-term licences for periods of up to three years to enable persons in the tourist, horticultural and other industries to occupy board and lodgings accommodation, when there is insufficient local labour available. These licences do not cover dependants. Holders of such licences are required to break residence from the island when the licence expires prior to applying for a further short-term licence.

Right to work

The Right to Work (Limitation and Proof) (Guernsey) Law 1990 provides that if a person wishes to take up employment or become self-employed in Guernsey, or wishes to change employment, he must have a valid right to work which is based on being lawfully housed under the housing control legislation.

The housing legislation is currently being reviewed, but no proposals have yet been published by the States of Guernsey in this area.

9. FORTHCOMING LEGISLATION AND OTHER CHANGES

There are numerous pieces of legislation, some with far-reaching consequences, being proposed for the near future.

Review of European Savings Tax Directive

The scope and operation of the European Savings Tax Directive has been significantly widened as a result of changes agreed by the Council of the European Union on 24 March 2014. The amended EU Savings Tax Directive is anticipated to be applicable in EU member states from 2017.

Guernsey, along with other dependent and associated territories, will consider the effect of the changes to the Directive in the context of existing bilateral treaties and domestic law and the regime of automatic exchange of information established pursuant to intergovernmental agreements with the US and the UK and the OECD’s Common Reporting Standard.

Housing legislation

We understand that the housing legislation which governs the conditions under which local houses can be occupied is currently being reviewed, but no amendments to existing law have been published by the States of Guernsey in this area.

Document duty anti-avoidance provisions

It is anticipated that Guernsey will introduce during 2015 a Share Transfer Duty regime in Guernsey which taxes sales of interests in entities that own either commercial or domestic real property in Guernsey at the same rate as applied under the Document Duty Law for standard conveyances.

Review of personal tax, pensions and benefits

In 2013 the States of Guernsey announced its intention to undertake a review of all taxes, duties and contributions which the government imposes on Guernsey residents with a view to providing a greater degree of equity within the system. Detailed recommendations in the areas of changing the tax base; long-term control of government spending; contributory benefits; and universal and welfare benefits are to be presented for consideration during the course of 2015. The proposals are intended to be compiled on a “net neutral” basis, taking into account demographic changes and an aging population and to ensure that the tax base of the island continues to be robust and sustainable in the face of economic change.

10. USEFUL REFERENCES

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