

Private Client Guide 2022 - Jersey (Legal 500)

Briefing Summary: This guide to Jersey's private client sector includes commentary on tax, trusts, foundations and private wealth structures used within the jurisdiction, including charitable or philanthropic structures. It also looks at capital gains, withholding and wealth tax rules along with issues relating to real property, immigration, succession, making a will and estate planning considerations, legislative changes and disclosure obligations.

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

The charge to income tax in Jersey is assessed by reference to a person's residence status:

- A person who is resident and ordinarily resident in Jersey is charged to income tax on all of his/her Jersey and worldwide source income, whether remitted to Jersey or not.
- A person who is habitually resident in Jersey is charged to income tax on all Jersey source income and any worldwide source income which is remitted to Jersey.
- A non-Jersey resident is charged to income tax on Jersey source income only (although by longstanding concession, Jersey bank interest and social security pensions are deemed to be non-Jersey source income for these purposes).

If an individual whose home has been abroad maintains an abode in Jersey which he/she uses, he/she is regarded as resident for any year in which he visits Jersey, for whatever length of time. Further:

- If his/her visits span one complete calendar year, he/she is regarded as ordinarily resident.
- If his/her visits are habitual after four years, unless intention to make them habitual is shown earlier, he/she is also regarded as ordinarily resident.

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However, an individual whose centre of life is abroad, in the sense that he/she has a home and a business or professional activities abroad which keep him/her more or less continuously outside Jersey, is not regarded as ordinarily resident, unless the annual average period spent in Jersey amounts to or exceeds three months.

Where the individual's professional or business activities have ceased due to him/her having retired from work, he/she is not refused the concession to the charge to income tax if he/she can show that, in the ordinary course of his/her life, his permanent home is settled at one specific place abroad.

For the residence of companies, a company incorporated in Jersey is generally regarded as being resident in Jersey, unless both:

- Its business is centrally managed and controlled in a country or territory where the highest rate at which any company can be charged to tax on any part of its income is 20% or higher.
- The company is resident for tax purposes in the country/territory.

A company or foundation incorporated outside Jersey is regarded as not being resident in Jersey unless its business is managed and controlled in Jersey.

Capital gains are not subject to tax in Jersey. However, any attempts to turn income into capital artificially will probably be challenged by the Comptroller of Taxes under blanket anti-avoidance provisions.

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?

The standard rate of income tax for an individual is 20%, a rate which has applied since 1940.

The official tax year in Jersey starts on 1 January and ends on 31 December each calendar year. An individual may file an annual tax return either online or by means of a paper return. The deadline is 31 July in the year following the relevant tax year.

Income tax in Jersey is collected in different ways depending on whether the tax payer is employed, self-employed, not working or a combination of these.

Income tax is collected by a deduction from the taxpayer's salary under the Income Tax Instalment Scheme (ITIS), or by payments made on account.

There are no particular rules affecting temporary residents. Income tax is collected from the salary of any employed resident by a deduction under ITIS, whether or not that person is a temporary or permanent resident.

Strictly, income tax is payable by the taxpayer on the day after receipt of the Comptroller of Taxes assessment, but this is subject to certain exceptions including ITIS. The assessments for a tax year ending on 31 December are usually sent out in September in the year following the year of assessment but this is set to change. With effect from 1 January 2021 all prior year basis taxpayers will be moved to a current year basis. The 2019 tax bill for such taxpayers will be frozen and paid in the future under arrangements which have yet to be announced. Penalties for late payment surcharges apply from close of business on the Friday following the first Monday in December of the following year of assessment.

Capital gains are not subject to tax in Jersey.

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

Salaries paid to a Jersey resident or non-resident are not subject to withholding tax, although as set out in the answer to Question 2 income tax is collected by a deduction from an employed taxpayer's salary under ITIS, or by payments made on account.

Dividends paid to a Jersey resident or non-resident are not subject to withholding tax.

Interest paid by a company to a Jersey resident or non-resident is not subject to withholding tax. In particular, interest paid by a Jersey bank is not subject to withholding tax. However, interest paid by a Jersey resident individual may be subject to a 20% withholding tax in certain cases.

Royalties paid by a company to a Jersey resident or non-resident are not subject to withholding tax but royalties paid by a Jersey resident individual may be subject to a 20% withholding tax in certain circumstances.

By longstanding concession, an assessment to income tax is not made on a person who is not resident in Jersey in relation to Jersey bank interest or a Jersey social security pension. However, if a non-resident relief claim is made in respect of other Jersey income, any Jersey bank interest and social security pension is included in the calculation as income tax subject to Jersey tax. If the calculation results in a liability greater than tax suffered by deduction or charged at the standard rate on other Jersey income, no action is taken to collect the excess.

The concession in respect of Jersey bank interest also applies to:

- A non-resident person entitled to interest from designated accounts.
- Trustees of trusts with no Jersey resident beneficiaries.
- The attorney executor of the estate of the deceased non-resident.
- The executor of the estate of the deceased Jersey resident, to the extent that the income is payable to beneficiaries who are not resident in Jersey.

4. How does the jurisdiction approach the elimination of double taxation for individuals who would otherwise be taxed in the jurisdiction and in another jurisdiction?

Jersey generally seeks to eliminate double taxation by means of express agreements with other states. It currently has full double taxation agreements with fifteen states (including the United Kingdom) and partial double taxation agreements with a further twelve states, a complete list of which together with copies of those agreements can be found on the Comptroller of Taxes' website (www.gov.je).

Jersey has committed itself to support the actions being undertaken under the Base Erosion and Profit Shifting (BEPS) project. It became a signatory to the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Sharing on 7 June 2017.

As a result of its international obligations, the States of Jersey adopted the Taxation (Companies – Economic Substance)(Jersey) Law 2018 on 6 December 2018. This Law applies an economic substance test to companies that are tax resident in Jersey and generating gross income from relevant activities in a financial period commencing on or after 1 January 2019.

Partnerships were recently brought into scope of this economic substance regime. Partnerships in existence before 1 July 2021 will first be in the scope of the Taxation (Partnerships – Economic Substance)(Jersey) Law, 2021 for accounting periods commencing on or after 1 January 2022. Partnerships formed on or after 1 July 2021 will be in scope from the date of formation.

5. 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?

There is no wealth tax regime in Jersey.

6. 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?

There is no inheritance or gift tax regime in Jersey.

7. 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 inheritance or gift tax regime in Jersey. There is no tax relief available on gifts save that a Jersey income tax payer may make tax free lump sum donations to charities which are registered with the Jersey Charity Commission.

8. 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?

Yes, the Comptroller of Taxes in Jersey will grant tax relief to a Jersey income tax payer who makes a lump sum donation to any entity which is registered as charity with the Jersey Charities Commission.

9. 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?

There are no taxes imposed on the purchase of any immovable (real) property in Jersey. However, immovable property (both commercial and residential property) situated in Jersey is subject to annual local rates, which are determined by reference to the notional rental value of the property.

There is no stamp duty in Jersey other than in relation to:

- The conveyance of immovable property (generally between 2% to 5% for value, payable by the buyer).
- Share transfer transactions involving immovable property in Jersey (generally between 2% to 5% for value, payable by the buyer)
- An application to the Royal Court for a grant of probate or letters of administration (about 0.5% to 1% of the declared value of the net movable estate, subject to certain *de minimis* provisions and a cap for estates in excess of a fixed amount. That cap is currently fixed at GBP100,000 of stamp duty for estates having a net value in excess of GBP13,360,000).

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

On 1 May 2008 Jersey introduced a Goods and Services Tax (GST), a tax on the sales of good and services in Jersey. GST is currently charged at the *ad valorem* rate of 5% on the majority of good and services supplied in Jersey for local use, including imports.

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

No, there are no particular rules for individuals who have recently arrived in or are only partially connected with Jersey.

Jersey does not impose any exit tax when a person leaves the jurisdiction. Where an individual leaves Jersey to take up permanent residence abroad, assessment on income arising overseas for the year in which residence ceases is based on the actual income arising in the period from 1 January to the date of departure.

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

As Jersey does not have any capital gains tax it is generally advisable for an individual to convert any income generating investments into ones which will generate capital gains exclusively before taking up residence in the Island. However, any attempts to turn income into capital artificially could potentially be investigated and/or challenged by the Comptroller of Taxes under blanket anti-avoidance provisions after the individual has taken up residence in the Island.

An individual seeking to establish residence in Jersey may also wish to consider settling his/her movable property into a trust or other similar private wealth holding structure so as (a) to reduce the net value of his/her movable estate and consequently the amount of stamp duty which would otherwise be payable on his/her death (see the answer to Question 9) and/or (b) to mitigate the application of Jersey's forced heirship regime (see the answer to Question 13).

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

Jersey law makes a very important distinction between movable property and immovable property:

- Succession to movable property situated in Jersey is governed, as a matter of Jersey law, by the law where the relevant person is domiciled (*lex domiciliij*).
- Succession to immovable property is governed by the law where the immovable property is situated (*lex situs*).

Broadly:

- Immovable property consists of land, buildings and their fixtures and fittings, and certain rights in and over land.
- Movable property consists of everything else. Apart from movable tangible property, it includes items such as intangible assets, cash, shares, insurance policies, intellectual property and legal rights.

In relation to movable property, Jersey law follows similar procedures as in England and Wales, by distinguishing between persons who have a right to administer the estate and the ultimate beneficiaries.

If the deceased has left a will, the executor is the person entitled to administer the estate. In the case of an intestate, estate letters of administration are normally granted to the surviving spouse, eldest son or the next closest heir, in an order of priority dictated by Jersey's customary law.

Any executor or the duty appointor administrator will be expected to administer the deceased's movable estate "well and faithfully" that is, to:

- Establish legal title to the assets in the estate.
- Settle the debts of the estate.
- Pass legal title and the assets to the beneficiaries ultimately entitled to them.

However, in the case of immovable property (real estate), Jersey law is quite different from English law. Ownership passes by operation of law to the person(s) entitled by will or on intestacy, without the need for a person to establish a separate right to administer the estate. There is no need to apply for a grant of probate of a will of Jersey immovable property. On the testator's death, the will is registered in the Royal Court. Registration automatically evidences ownership of the immovable property by the beneficiary or beneficiaries.

Forced heirship

Immovable property in Jersey is not subject to any forced heirship regime. A testator can leave his/her Jersey immovable property by will almost entirely as he/she wishes.

However, for any estates which open on or after 1 January 2014, in the case of a married person or civil partner, his widow/her widower/surviving civil partner has a right of, or equivalent to, *douaire* (dower) (that is, a life interest in one-third of the deceased spouse's/deceased civil partner's immovable property at the date of the deceased person's death), which ranks in priority to any dispositions made by the will (see the Wills and Successions (Amendment No 2) (Jersey) Law 2013 which came into force on 1 January 2014).

Otherwise, the heirs have no right to challenge or set aside any gifts of immovable property made by the testator by will, and can be totally disinherited in relation to immovable property.

Jersey law has a forced heirship regime relating to the movable property of a person domiciled in Jersey (Wills and Successions (Jersey) Law 1993 (1993 Law)).

The ability of persons domiciled in Jersey to dispose of movable estate is restricted:

- If a person is survived by a spouse and issue, he or she only has a completely free power of disposition by will over one-third of his or her net movable estate (1993 Law). The surviving spouse has an indefeasible claim to the household effects (as defined in the 1993 Law) and one-third of the rest of the net movable estate, and the issue can claim a one-third share divided between them in equal shares *per stirpes*. The respective shares of the surviving spouse and the issue are known as the *portion légitime*.
- If a person leaves issue but no spouse, he or she is only entitled to dispose freely of one-third of his or her movable property. The issue is entitled to claim as *légitime* two-thirds of that movable estate between themselves, in equal shares *per stirpes*.
- If a person leaves a spouse but no issue, the surviving spouse is entitled to claim the household effects and two-thirds of the rest of the net movable estate. The person has free power of disposition over the other third.

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

There is no special regime for matrimonial property.

As regards civil partnerships, Jersey introduced legislation which recognises and gives effect thereto on 2 April 2012. The Civil Partnership (Jersey) Law 2012 affords civil partners, broadly speaking, exactly the same rights (including all civil, fiscal and succession rights) as a married couple.

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

See the answer to Question 13:

- Succession to movable property situated in Jersey is governed, as a matter of Jersey law, by the law where the relevant person is domiciled (*lex domiciliij*).
- Succession to immovable property is governed by the law where the immovable property is situated (*lex situs*).

16. 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?

Any conflict of law issue would be determined by the Jersey courts in accordance with the principles of private international law as applied by Jersey law, which principles are broadly similar to those accepted under the common law of England. English law concepts such as domicile and the doctrine of *renvoi* are recognised and form part of Jersey law. English private international case law would have persuasive but not binding authority in the Jersey courts.

17. 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?

It is not essential for an owner of assets in Jersey to make a will in Jersey, although it is advisable.

In the past the formal validity of a will dealing with any movable property situated in Jersey was assessed by Jersey law exclusively, but this is no longer the case. The Probate (Jersey) Law, 1998 (the Probate Law) amended the old common law rules and now, as a matter of Jersey law, a testamentary document is treated as properly executed (formally valid) if, at the time of its execution or at the time of the testator's death, its execution conforms to either Jersey law or the internal law in force of the:

- Territory where it was executed.
- Territory where the testator was domiciled.
- Territory where the testator was habitually resident.
- State of which the testator was a national.

The formalities for making a will in Jersey are as follows:

- The will must be in writing and signed by the testator, or if incorporated by some other person, in the testator's presence and by his/her direction.
- It must appear that the testator intended by his/her signature to give effect to the will.
- The signature must be made or acknowledged by the testator in the presence of two or more witnesses present at the same time.
- Each witness must either attest and sign the will or acknowledge his/her signature in the presence of the testator and in the presence of at least one other witness.
- The witnesses must be over 18 years of age and must not be beneficiaries under the will.

However, it is also possible in Jersey to make a valid holograph will, that is, a will entirely written, dated and signed by the testator. Such a will is regarded as valid as a matter of Jersey law, even if the other formalities have not all been met. As a consequence of the outbreak of the 2019 novel coronavirus disease (COVID-19), temporary regulations have been introduced to enable wills to be signed by means of video-conference facilities.

Special rules apply to the execution of a will dealing with immovable property situated in Jersey. For example, the will must be read out loud to the testator and, if signed in Jersey, one of the witnesses must be an advocate or solicitor of the Royal Court, or one of a limited number of other categories of witness. If the will is made outside Jersey, one of the witnesses must be a "qualified witness" (judge, justice of the peace, magistrate, mayor, a barrister or solicitor etc.).

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

As discussed in Question 13, ownership of any Jersey immovable property vests immediately by operation of law in the person(s) entitled to that property by will or on intestacy.

While any movable property situated in Jersey would technically vest in the heirs on death, the rights of those heirs is now limited by statute as the Probate Law provides that the production of a grant of probate or letters of administration is necessary to establish right to recover or receive the movable estate in Jersey of a deceased person.

As regards the movable property, it is the responsibility of the person who has received the grant of representation or the letters of administration from the Royal Court to administer the movable property belonging to the deceased person. Therefore, the executor or administrator is responsible for:

- Gathering in the assets belonging to the deceased.
- Paying any taxes or expenses of the deceased and/or the deceased's estate.
- Distributing the net movable estate to the persons entitled to it.

There are no formal procedures in Jersey for the establishment of title, the gathering in of assets, paying of the deceased's taxes and governing the distribution of the estate.

19. 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?

Jersey law permits the creation of a wide variety of entities which may be used to hold, administer and regulate succession to private family wealth, the main ones being companies, trusts, foundations and limited partnerships.

The Companies (Jersey) Law 1991 permits the incorporation of several different forms of company, including:

- Companies with shares.
- Companies with guarantor members.
- Companies of limited duration.
- Protected cell companies.
- Incorporated cell companies

Trusts (both *inter vivos* and will trusts) are routinely used in Jersey for many types of private wealth holding structures. In 2009 Jersey law was changed to permit the incorporation and use of foundations (corporate bodies with some of the characteristics of a trust) (Foundations (Jersey) Law 2009). However, Jersey immovable property cannot be held directly on trust or by a Jersey foundation.

In addition, Jersey recognises a number of different forms of partnership all of which are capable of holding private family wealth, including a:

- Common law partnership.
- Limited partnership.
- Limited liability partnership.
- Separate limited partnership.
- Incorporated partnership.

20. How is any such structure constituted, what are the main rules that govern it, and what requirements are there for registration with or disclosure to any authority or regulator?

The incorporation or establishment of any new body corporate in Jersey (company, limited partnership, foundation etc.) is made by means of an application to the Companies Registry, a division of the Jersey Financial Services Commission (JFSC), the regulator for financial services in Jersey. The Companies Registrar would ordinarily request information regarding the ultimate beneficial owners of any new body corporate as part of the application process.

The creation of a valid Jersey proper law trust generally does not require any form of application and/or disclosure of information to any authority or regulator, the main exception being the creation of any new unit trust for which the JFSC's approval must usually be sought.

Bodies corporate and express trusts are governed by their own constitutions (the memorandum and articles of association, partnership agreement, charter and regulations and trust instrument in the case of a company, partnership, foundation and trust respectively), any applicable statutes and Jersey law principles.

21. What information is required to be made available to the public regarding such structures and the ultimate beneficial ownership or control of such structures or of private assets generally?

Although a limited amount of information in relation to any Jersey body corporate must be available to the public via the Companies Registry's website (www.jerseyfsc.org), in practice it is currently possible to ensure that information which might lead to the identification of the ultimate beneficial owner(s) is kept private.

The main statute is now the Financial Services (Disclosure and Provision of Information)(Jersey) Law 2020, which came into force, on 6 January 2021. This Law established a new, central register of the beneficial owners and "significant persons" of certain types of bodies corporate (companies, foundations, incorporated limited partnerships, separate limited partnerships, limited liability companies and limited liability partnerships) and created a new regime based on the filing of annual confirmation statements.

The vast majority of information which will be collected under this new regime was already being collected by the JFSC under other, existing regimes. For example, in the case of a Jersey company, its name, any previous names, registration number, date of incorporation, current registered office and shareholders have always been in the public domain. However as nominee shareholders are routinely used, the name(s) of the ultimate beneficial owner(s) of a Jersey company are rarely, if ever, ascertainable from the publicly available documents and information.

The main change brought about by this Law is that details of all "significant persons" of entities, a term which includes directors, managers etc, will be made public (subject to limited exceptions) with effect from, it is anticipated, 1 January 2022.

Importantly, the position regarding the beneficial owners will remain unchanged. Although certain information on the beneficial owners now needs to be submitted via the annual confirmation statement that information will **not** be made publicly available under the new regime. A decision on whether and, if so, when and the extent to which such information may be made public will be deferred until a consensus on approach has been reached in the European Union under the EU's Fifth Money Laundering Directive, anticipated to be some time in 2022.

22. What is the jurisdiction's approach to information sharing with other jurisdictions?

Jersey's authorities are fully committed to transparency and the exchange of information for tax purposes. Jersey has entered into a number of double and partial taxation agreements with several states, a list of which together with copies of those agreements can be found on the Comptroller of Taxes' website (www.gov.je). In addition, Jersey has concluded a number of tax information exchange agreements with several countries, including the UK and the US. The full list of double tax treaties and tax information exchange agreements can be found on Jersey Finance's website (www.jerseyfinance.je).

As regards the automatic exchange of information, Jersey became a party to the OECD/Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters on 1 June 2014. Jersey signed a Multilateral Competent Authority Agreement concerning the Common Reporting Standard (CRS) with 50 other jurisdictions, including the other Crown Dependencies and the British Overseas Territories in October 2014. The CRS has now been implemented as part of Jersey's domestic law (see the Taxation (Implementation) (International Tax Compliance) (Common Reporting Standard) (Jersey) Regulations 2015, which came into force on 1 January 2016).

Jersey is also fully aligned with the standards required by the EU Anti-Money Laundering Directive and was one of the first international finance centres to become a full signatory to the IOSCO Multilateral Treaty, an international benchmark for cross border co-operation between regulators.

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

A Jersey resident corporate body is now subject to income tax under Jersey's "zero/ten" regime, that is, the rate of income tax is either 0% or 10%, depending on the business activities of the corporate body.

A trustee resident in Jersey is *prima facie* assessable to Jersey income tax regardless of the proper law of the trust. However, the Comptroller of Taxes is generally willing to look through the trust, to assess any Jersey resident beneficiaries directly on their share of the income arising within the trust fund. Where the trustee is resident in Jersey but none of the beneficiaries are resident in Jersey (which is very common), the Comptroller does not generally seek to subject the trustee or any of the beneficiaries to Jersey income tax.

If the trustee is not resident in Jersey but one or more of the beneficiaries are resident in Jersey, any Jersey resident beneficiary is liable to pay Jersey income tax on income he/she receives from the trust fund.

A foundation incorporated under Jersey law is taxed under Jersey's "zero/ten" regime. However, the proposed constitution of any foundation which includes Jersey resident individuals as beneficiaries of its objects must be submitted to the Comptroller of Taxes for pre-clearance.

24. Are foreign trusts, private foundations etc recognised?

Where such a structure is not recognised in your jurisdiction, please explain how it is treated. For example, are trustees of a foreign trust treated as owning the trust property themselves, or are beneficiaries of a foreign discretionary trust each treated as owning a share of the trust property?

Yes, Jersey does recognise trusts governed by another jurisdiction's law and created for foreign persons. A non-Jersey proper law trust is regarded as being governed by, and is interpreted in accordance with, its proper law (Article 49, Trusts (Jersey) Law 1984). However, a non-Jersey proper law trust is unenforceable in Jersey if it either:

- Purports to do anything contrary to Jersey law.
- Applies directly to Jersey immovable property.
- Is immoral or contrary to public policy.

The Jersey Court has jurisdiction where one of the following applies:

- The trust is a Jersey proper law trust.
- The trustee of a non-Jersey proper law trust is resident in Jersey.
- Any trust property of a non-Jersey proper trust is situated in Jersey.
- The administration of any trust property of a non-Jersey proper law trust is carried on in Jersey.

The Jersey Courts would generally recognise and give effect to any valid non-Jersey body corporate (eg a foreign foundation) pursuant to Jersey's private international law principles.

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

A company or foundation incorporated outside Jersey is regarded as not being resident in Jersey unless its business is managed and controlled in Jersey (see the answer to Question 1).

For a trustee which is not resident in Jersey see the answer to Question 23.

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

Jersey has chosen not to adopt specific asset protection or divorce protection legislation.

As a result, the effectiveness of a trust in Jersey to protect assets depends primarily on its validity. In the past, trusts have been set aside on the grounds of invalidity or sham. Any future attempts to attack a Jersey proper law trust in this way are now likely to be very difficult, due to a change to the law in 2006.

Modern Jersey law has its origins in customary law (13th century *Grand Coutumier de Normandie*), which has since been modified by commentators, legislation and practice. Customary law recognised the power of the Jersey court to set aside transactions which were fraudulent against creditors (but not future creditors). The Jersey court has claimed the power to set aside transactions (including trusts) intended to defeat or prejudice creditors.

It is now settled law that existing (but not unknown future) creditors can bring a claim (the Pauline Action), to set aside a transfer undertaken to prejudice them. This claim is restitutionary. It is sufficient for the debtor to show a substantial purpose. The Pauline Action therefore covers cases where creditors wish to set aside a trust over which the Jersey Court has jurisdiction.

In 2006, the Trusts (Jersey) Law 1984 was amended to include "firewall" provisions dealing with the enforcement of foreign judgments against Jersey proper law trusts. Jersey law is now only applied to determine certain legal issues in relation to such trusts (for example, the validity of a trust, validity of any transfer of property to a trust, and settlor's capacity) (see in particular Article 9, Trusts (Jersey) Law 1984).

The main purpose of these provisions is to ensure that local trusts are not easily challenged or set aside by foreign claimants, in the local courts or when the local court is asked to recognise or give effect to an overseas court order affecting a local trust.

Much comfort can be taken from a judgment of the Jersey Royal Court (*Mubarak v Mubarik* [2008] JRC 136). This case involved a claim against trust assets by the spouse of a beneficiary on the dissolution of their marriage. It held that:

- Due to Article 9 of the Trusts (Jersey) Law 1984, a Jersey court cannot enforce a judgment of a foreign court applying foreign (non-Jersey) law ordering the variation or alteration of a Jersey trust.
- A Jersey court cannot give directions which would have the effect of achieving the objectives of the foreign court.

This judgment has significantly strengthened the view that Jersey courts can be expected to apply Article 9 of the Trusts (Jersey) Law 1984 more robustly, thereby retaining its effective jurisdiction over Jersey proper law trusts.

When foundations were first introduced into Jersey law in 2009, similar "firewall" provisions were included in the statute (see Foundations (Jersey) Law, 2009) so that Jersey law is now only applied to determine certain legal issues in relation to any Jersey foundation.

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

The age of majority is 18 years under Jersey law.

Jersey has a *tutelle* procedure, derived from Norman customary law and now governed by the Children's Property and Tuteurs (Jersey) Law 2016, which protects the interests of children considered too young to manage their own affairs. Generally, a *tutelle* must be appointed in relation to property owned by or due to a minor if the property is or includes immovable property or movable property that has a value, in the aggregate, which exceeds GBP25,000. The Royal Court appoints a *tuteur/tutrice* (who is normally a Jersey resident) to take responsibility for the minor's property. The *tuteur/tutrice* must keep proper and accurate accounts of the minor's property, and seek the Royal Court's prior consent to certain transactions concerning the minor's immovable property. The *tutelle* normally ends when the minor reaches the age of 18 years.

It is also possible for property to be held by a trustee under the terms of a valid trust (*inter vivos* or will trust) for the benefit of one or more minor children or grandchildren. The tax treatment of any such trust is set out in the answer to Question 23.

28. 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?

Yes, it would generally be advisable for a Jersey resident to put in place arrangements for the future of their finances and welfare should they not have the capacity to make certain decisions for themselves in the future. With effect from 1 October 2018 Jersey residents have the ability to make a lasting power of attorney, that is to say a form of attorney which will not be affected by the donor's subsequent lack of capacity.

The Royal Court has several statutory powers including the power to appoint a delegate in respect of a person (a patient) who lacks capacity (Capacity and Self-Determination (Jersey) Law 2016 which came into force on 1 October 2018). The extent of authority of the delegate can be stipulated by the Royal Court at the time of appointment, allowing for extra flexibility where desirable or providing tailor-made limitations if necessary, given the particular circumstances of the patient and how best to serve their interests. The application to the Royal Court may be brought by any one of a long list of applicants including HM's Attorney General and the patient's spouse/civil partner, child(ren), parents or siblings. Once appointed by the Royal Court, the delegate will be obliged to act within the scope of his/her appointment, but with the powers and duties imposed by the Royal Court. The appointment of the delegate ends on the death of the delegate or patient, or upon the delegate's resignation.

The Jersey Courts recognise and give effect to powers of attorney (or their equivalent) made under the law of another jurisdiction, provided the power has first been approved/ratified by a foreign court with the requisite jurisdiction.

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

It is possible to establish a trust, company or foundation which has charitable and/or philanthropic purposes/objects under Jersey law.

Jersey law permits the establishment of trusts which have charitable and/or non-charitable purposes provided that, in the case of the latter, there is an enforcer in place, a person who is under a statutory duty to enforce the trust in relation to its non-charitable purposes. There is no rule against perpetuities under Jersey law and so both types of trust may have a fixed or indefinite duration. An individual would usually establish a Jersey proper law trust which has charitable or non-charitable purposes by means of a written instrument accompanied by the transfer of the initial trust property to the trustee.

A company's memorandum and articles of association may contain one or more charitable/philanthropic objects. Any type of company may be used but in practice a company which is limited by guarantee is most commonly used in this field as, not having any shareholders, it mitigates some of the succession, asset protection and conflict of interest issues which could otherwise arise.

A Jersey foundation may have one or more charitable/philanthropic objects in its charter (a document which must be placed in the public domain) or its regulations (a document which generally may be kept private).

The answer to Question 20 covers the application process for companies and foundations.

30. Have any specific tax policies or approaches been implemented, on a temporary or permanent basis, to take account of the COVID 19 pandemic?

Yes, the Comptroller has introduced a range of temporary, common-sense measures as a result of the COVID 19 pandemic. These include:

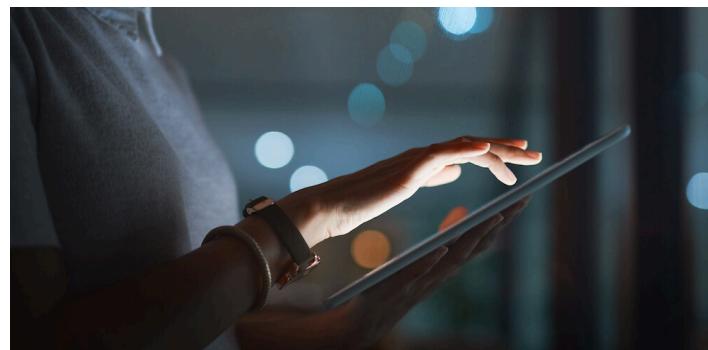
- Where a company's operating practices have had to be adjusted to compensate for the pandemic, the Comptroller will not regard the company as having failed any economic substance test as a result thereof.
- Where there have been exceptional circumstances, the Revenue will ignore for tax residency tests, any additional days spent by a natural person in Jersey as a result of those circumstances.
- The Revenue will now accept digital or scanned signatures in lieu of a written signature on returns, documents and applications.

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

The Limited Liability Companies (Jersey) Law 2018 is expected to come into force at some point in 2022. Limited liability companies (LLCs) incorporated under this law will have legal personality (can sue and be sued and own assets in their own name) but will not be a body corporate, and benefit from limited liability. The operation of a LLC will be governed by a LLC agreement which will ordinarily not be matter of public record. There will be the ability to create separate series consisting of separate members, managers, interests or assets each of which will have separate legal personality.

Carey Olsen Jersey LLP is registered as a limited liability partnership in Jersey with registered number 80.

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