



Coping with tax information exchange agreements (TIEAs) in Guernsey

Service area / [Trusts and Private Wealth](#)

Location / [Guernsey](#)

Date / [June 2013](#)

The Royal Court of Jersey has recently determined an appeal from a decision of the Jersey Comptroller of Taxes to serve a notice under the Taxation (Exchange of Information with Third Countries) (Jersey) Regulations 2008 (the "Regulations"), in response to a request for information issued under an agreement between Jersey and Norway for the exchange of information relating to tax matters.

In the case of *Volaw Trust & Corporate Services Ltd and Mr Larsen v the Office of the Comptroller of Taxes* the Royal Court of Jersey heard an appeal brought under the Regulations. The decision provides useful guidance in Jersey on the practical effect of the Regulations and tax information exchange agreements ("TIEAs").

Guernsey has also entered into TIEAs with third countries. It is likely that the Royal Court of Guernsey would follow a similar approach to that of the Royal Court of Jersey if it were asked to decide similar issues in an appeal against the decision of the Director of Income Tax in Guernsey (the "Director") to issue a notice to produce information and documentation under the Income Tax (Guernsey) Law 1975, as amended ("ITL"). Section 75B ITL confers powers on the Director to issue such a notice pursuant to a request received under a relevant TIEA with Guernsey. This briefing note considers the subtle, but significant, differences in the powers of the Director to issue a notice under the ITL and the grounds upon which the Director's decision to issue a notice could be challenged, compared with the position in Jersey.

Guernsey entered into a TIEA with Norway, which came into force on 8 October 2009. Apart from including an additional Article 9 to the effect that requests for assistance and

responses shall be drawn up in the English language, the terms of the TIEA follow those of the TIEA in place between Jersey and Norway.

On this basis, the findings of the Royal Court of Jersey that information that predates the entry into force of the TIEA could be obtained if it relates to a criminal tax matter, and could be used for the purposes of a civil tax assessment, are likely to be followed if the same questions were to arise before the Royal Court of Guernsey.

However, there are subtle but significant differences in the powers of the Director in Guernsey and the grounds of appeal against the decision of the Director, to issue a notice under Section 75B of the ITL when compared to the position in Jersey.

Under section 75B ITL, the Director can ask third parties to provide documents and information that are in their possession or power and which in the Director's opinion are or may be relevant to:

- any liability to tax which the taxpayer is or may be, or may have been subject;
- the amount of such liability; and/or
- the enforcement of any such liability and the collection and recovery of any amount due.

The Director may exercise his power to issue a notice under Section 75B ITL pursuant to a request under a TIEA only if he is satisfied that the request for information is made in accordance with the provisions and for the purposes of that TIEA. The ITL does not oblige the Director to give reasons for

OFFSHORE LAW SPECIALISTS

his decision.

Under Section 75K ITL the right of appeal to the Royal Court of Guernsey against the decision by the Director to issue a notice is available on leave from the Bailiff. An application for leave must be made within 30 days following the date of the notice. The grounds for appeal are set out in Section 75K(6) ITL and are as follows:

- a. that the decision was ultra vires or unreasonable in law or that some other error of law has been made; or
- b. that a material error as to the facts has been made.

However, where a TIEA request is made in accordance with the provisions of the relevant TIEA, the Director's decision to issue the notice cannot be challenged under the ground mentioned in paragraph (b) above unless the Bailiff, when giving leave to appeal, is satisfied –

- that the material error as to the facts relates to the notice itself (such as facts relating to the identity of the taxpayer or other person to whom the notice is addressed) and not to the circumstances of or giving rise to the liability or alleged liability to tax under the law of the requesting state; and
- that it would be just and convenient for the decision to be challenged on that ground in the courts of Guernsey.

A difficulty with applying for leave to launch an appeal within the required period of 30 days from the date of the notice may be that the recipient is not in full possession of the facts or circumstances on which the Director has relied in order to conclude that the request has been made in accordance with the provisions of the TIEA. The Director may be reluctant to share those facts and circumstances, particularly where the requesting authority has requested the Director to keep them confidential.

Comment

The basis on which the Director in Guernsey may issue a notice pursuant to a TIEA request and the circumstances in which an appeal against that decision may be made, are different from those applicable in Jersey. In common with some participants of the TIEA regime, Guernsey has completed a two-phased, independent and comprehensive technical peer review in 2010 and 2012. The Report adopted by the Global Forum in April 2013 found Guernsey's legislative and administrative regime to have in place all of the essential elements necessary for meeting international standards on transparency and information exchange. In doing so, the findings of the Report endorse Guernsey's continuing commitment and achievements in this field to date.

Please note that this briefing is only intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such.



FIND US

PO Box 98
Carey House
Les Banques
St Peter Port
Guernsey GY1 4BZ
Channel Islands

T +44 (0)1481 727272

F +44 (0)1481 711052

E guernsey@careyolsen.com



FOLLOW US

View our Trusts and Private Wealth services at careyolsen.com

Please note that this briefing is only intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such. © Carey Olsen 2017