Private client law in Guernsey: overview

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AXATION

Tax year and payment dates

1. When does the official tax year start and finish in your jurisdiction and what are the tax payment dates/deadlines?

The tax year of charge runs from 1 January to 31 December (year of charge).

Paper returns are no longer issued to taxpayers. A notice will be placed in La Gazette Officielle notifying taxpayers of the need to submit a return. If a return was previously submitted online an email notification will also be sent.

Individuals must deliver an income return to the Director of Income Tax (Director) within the period specified by the Director, normally by 30 November. Priority is given to returns submitted online.

Tax instalments are paid from the salaries of resident employed taxpayers and directors under the Employees Tax Instalment (ETI Scheme) by employers.

There are two payment dates for all tax not subject to the ETI Scheme. Tax for any year of charge is payable in two equal instalments:

- The first instalment on or before 30 June in that year.
- The second instalment on or before 31 December in that year.

The Director, at his discretion, allow a further time for payment.

Domicile and residence

2. What concepts determine tax liability in your jurisdiction (for example, domicile and residence)? In what context(s) are they relevant and how do they impact on a taxpayer?

Domicile

Domicile is relevant in relation to succession and generally follows the principles of English law.

Liability to income tax is determined by residence, not domicile (see below, Residence). Income tax is charged at a single rate of 20%.

An individual is solely resident in Guernsey for tax purposes if he is not tax resident elsewhere and spends either:

- 91 days in the year of charge in Guernsey (each day of residence is determined by where he is at midnight).
- 35 days in the year of charge in Guernsey and, during the four preceding years of charge, has spent 365 days or more in Guernsey.

As there is no inheritance or gift tax in Guernsey, domicile does not impact on a taxpayer, other than in relation to rights of succession (see Question 24).

Residence

An individual is principally resident in Guernsey for tax purposes if he does one of the following:

- Spends 182 days in Guernsey in the year of charge.
- 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.
- Takes up permanent residence in Guernsey in that year of charge.

Income tax is payable by an individual solely or principally resident in Guernsey on his total income, wherever such income arises or accrues.

Certain loan interest reliefs are available to be offset against income tax, including loan interest relief on moneys, to the limit of GBE400,000, borrowed against the principal private residence in Guernsey.

Income tax is payable by an individual resident but not solely or principally resident in Guernsey on total income, wherever such income arises or accrues, unless:

- He elects to pay the standard charge of GBE27,500. If so, he is only liable to income tax on his Guernsey source income (other than bank interest arising in Guernsey) and any income remitted to Guernsey. In that case, he is not entitled to any allowances, although the standard charge may be set off against the tax that would otherwise be chargeable on his income arising or accruing in Guernsey in that year of charge.
- The individual is resident for employment purposes, and his only income arising in Guernsey (other than bank interest arising) is employment income taxed at source under Guernsey's ETI Scheme. Such individuals are taxed on their Guernsey earnings and remittances to Guernsey. They must 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. Funds remitted to Guernsey are presumed to be income unless the Director is satisfied otherwise. This provision was introduced to benefit migrant workers and those posted to Guernsey on temporary secondment.

Income tax is payable by an individual who is not resident in Guernsey on, broadly, income from real property and profits from a business with a permanent establishment in Guernsey. Income tax is not payable on interest arising in Guernsey on money deposited with a Guernsey licensed institution, although withholding tax may apply under Directive 2003/48/EC on taxation of savings income in the form of interest payments (Savings Directive) (see Question 6).

Credit for income tax incurred overseas by an individual may be granted against tax due in Guernsey on the same income under bilateral double tax agreements. Where no bilateral agreement exists, unilateral relief is usually available.

For Guernsey residents, non-Guernsey source income qualifies for an annual cap on tax payable of GBE10,000. This equates to liability on taxable income from such qualifying sources of
GB£550,000. Those with taxable income from qualifying sources of more than GB£550,000 in a year of charge benefit.

The GB£110,000 tax cap applies only to non-Guernsey source income. Where the resident has both non-Guernsey and Guernsey source income, he can elect within two years after the end of the relevant year of charge that his total tax liability for that year of charge, on both qualifying and non-qualifying income, be capped at GB£220,000. This is equivalent to tax at 20% on income of GB£1.1 million. Therefore, Guernsey residents with worldwide income of over GB£1.1 million in a year of charge can benefit from the election.

The cap is time apportioned where the individual is resident in Guernsey for only part of the year.

Social security contributions are payable by Guernsey residents at different rates. Employers must also make social security contributions (6.5%) in respect of their employees. There are upper and lower earnings limits which govern the maximum contributions payable. Social security contributions for employed persons are made at source. It is the employer’s responsibility to pay both employer and employee contributions to the Social Security Department.

**Taxation on exit**

3. **Does your jurisdiction impose any tax when a person leaves (for example, an exit tax)? Are there any other consequences of leaving (particularly with regard to individuals domiciled in your jurisdiction)?**

Guernsey does not impose any exit tax when a person leaves.

**Temporary residents**

4. **Does your jurisdiction have any particular tax rules affecting temporary residents?**

For income tax issues, see *Question 2*

In relation to occupation of property, due to the size of Guernsey there are strict controls on who can occupy dwellings. There are two main types of housing:

- **Open market.** Open market dwellings make up about 1,700 of the 22,000 dwellings in Guernsey, and are freely available for occupation by anyone with the right of abode in any EU member state.
- **Local market.** Local market dwellings can only be occupied by locally qualified residents or housing licence holders. There are no controls on who can buy local market properties.

The housing control legislation allows the Housing Department of the States of Guernsey (States) (the Parliament of the Island of Guernsey) to grant housing licences to persons brought to Guernsey to fill positions considered essential to the well-being of the community. These licences enable these persons to occupy certain local market dwellings, which are generally less expensive than open market dwellings.

Following public consultation, a new Population Management System has been agreed by the States. The Population Management (Guernsey) Law, 2016 comes into force in April 2017.

Non-EU nationals must apply to the immigration department for permission to reside or work in Guernsey. Generally, a work permit is only granted if no suitably qualified local exists. Preference is given to EU nationals. Long-term residency in Guernsey is carefully controlled. With certain exceptions, consent for residency is only given to a person owning a residence. The purchase of a residence is in turn subject to consent. This is only given in limited cases, usually involving an open market dwelling and an individual who is clearly going to contribute significantly to Guernsey by paying local taxes.

**Taxes on the gains and income of foreign nationals**

5. **How are gains on real estate or other assets owned by a foreign national taxed? What are the relevant tax rates?**

Dwellings profits tax, a tax on capital profit made on an investment in a dwelling in Guernsey or Herm, by sale or lease at a premium, was suspended indefinitely on 25 March 2009.

There is no capital gains tax in Guernsey.

6. **How is income received by a foreign national taxed? Is there a withholding tax? What are the income tax rates?**

Non-residents of Guernsey are not subject to tax on Guernsey-source income except in certain circumstances (see *Question 2*). Generally there is no withholding tax, although there are systems to deduct tax in instalments for tax payable on rental income from Guernsey land and property. Guernsey is not within the fiscal territory of the EU but had adopted measures to reflect the EU. This has now been repealed.

**Inheritance tax and lifetime gifts**

7. **What is the basis of the inheritance tax or gift tax regime (or alternative regime if relevant)?**

There is no inheritance or gift tax in Guernsey.

8. **What are the inheritance tax or gift tax rates (or alternative rates if relevant)?**

There is no inheritance or gift tax in Guernsey.

9. **Does the inheritance tax or gift tax regime apply to foreign owners of real estate and other assets?**

There is no inheritance or gift tax in Guernsey.

10. **Are there any other taxes on death or on lifetime gifts?**

There is no inheritance or gift tax in Guernsey.

**Taxes on buying real estate and other assets**

11. **Are there any other taxes that a foreign national must consider when buying real estate and other assets in your jurisdiction?**

Purchase and gift taxes
Not applicable.

Annual rates
Tax on real property is payable annually, based on the size of the property.
Wealth taxes
Not applicable.

Other
Document duty is charged on:

• The acquisition of land including dwellings. Where the value of the transaction:
  - is GBE250,000 or less, the rate is 2%;
  - exceeds GBE250,000 but does not exceed GBE400,000, the rate is 2.5%;
  - exceeds GBE400,000, the rate is 3%.
• Realty other than dwellings is charged at 3% regardless of value.
• Bonds at the rate of 0.5% of the secured figure.

It is proposed that the rates for the acquisition of dwellings will change from 1 January 2017, the practical effect of which is a saving for properties up to GBE800,000 and an increase thereafter.

An ad valorem fee is payable for a grant of representation, at the rate of (broadly) 0.35% of the gross value of the Guernsey assets (see Question 2).

12. What tax-advantageous real estate holding structures are available in your jurisdiction for non-resident individuals?

Non-resident individuals are liable for income tax on income from real property situated in Guernsey, whether held by the individual or by a company. However, distributions made to a non-resident individual from a Guernsey company or trust are not subject to income tax in Guernsey, unless the company or trust has Guernsey-source income (other than income from bank deposits).

Taxes on overseas real estate and other assets

13. How are residents in your jurisdiction with real estate or other assets overseas taxed?

For income tax issues, see Question 2. There is no capital gains, inheritance, gift or wealth tax in Guernsey.

International tax treaties

14. Is your jurisdiction a party to many double tax treaties with other jurisdictions?

Guernsey operates a double tax treaty with the UK and with Jersey. Income arising in the UK and Jersey is granted double tax relief in Guernsey. This is for most income but specifically excludes UK dividends and debenture interest. If the only UK taxable income of a Guernsey resident is from dividends, and the taxpayer or his accountant advises when submitting his Guernsey income tax return that no claim for repayment of UK tax is to be made, the net dividend is assessed to Guernsey tax, by concession only.

Guernsey has signed other double tax and mutual agreements, providing relief from double taxation on certain types of earned income for individuals. Guernsey continues to extend the circumstances in which relief from double taxation can be claimed. Details are available on the Guernsey Income Tax Office website (www.gov.gg/tax).

In 2013, Guernsey signed a memorandum of understanding with HM Revenue & Customs (HMRC) by which HMRC agreed to make available a disclosure facility. That disclosure facility terminated on 31 December 2015. Subsequently Guernsey entered into an inter-governmental agreement with each of the UK and the US in relation to tax information exchange.

In October 2014, Guernsey signed a Multilateral Competent Authority Agreement (MCAA) comprising the Common Reporting Standard (CRS) with 50 other jurisdictions, including the other Crown Dependencies and the British Overseas Territories which has effect from 1 January 2016, with first reporting taking place in 2017. By mutual agreement reporting to the UK moved from the existing inter-governmental agreement to the CRS as from 1 January 2016. Other jurisdictions have agreed to participate from 1 January 2017, with first reporting taking place in 2018.

Guernsey has signed Competent Authority Agreements (CAA) with the British Virgin Islands, the Isle of Man and Jersey relating to the automatic exchange of financial account information similar to, and on the same basis as, the MCCAs. The CAA provide for the first exchange of information to take place in 2017 in respect of information relating to 2016.

WILLS AND ESTATE ADMINISTRATION

15. Is it essential for an owner of assets in your jurisdiction to make a will in your jurisdiction? Does the will have to be governed by the laws of your jurisdiction?

It is preferable for an individual who owns Guernsey assets to make a Guernsey will. A separate will of Guernsey assets enables an application for probate to proceed in Guernsey without delay. Obtaining a grant of representation in Guernsey is swift. If the estate has assets in a number of jurisdictions, being able to access assets in Guernsey while grants are obtained elsewhere is often advantageous.

If an individual is intestate or has a single will dealing with his worldwide assets, a grant is usually obtained in the jurisdiction of the deceased before applying for a grant in Guernsey for the Guernsey assets.

16. What are the formalities for making a will in your jurisdiction? Do they vary depending on the nationality, residence and/or domicile of the testator?

To be properly executed, a will executed in Guernsey must be both (section 26, Law Reform (Inheritance and Miscellaneous Provisions) (Guernsey) Law, 2004 (Law Reform Law)):

• In writing and signed by the testator or by some other person in his presence and by his direction. The testator must appear to have intended by his signature to give effect to the will.
• Signed or acknowledged by the testator in the presence of two or more witnesses (who must be over 14 years of age and not the spouse or a descendant of the testator or the recipient of a benefit) present at the same time. Each witness must either attest and sign the will or acknowledge his signature in the presence of the testator (but not necessarily in the presence of any other witness).

A single will can dispose of both immovables and personality (movables) or separate wills can be executed.

A holographic will for movables executed in Guernsey is also acceptable.

A revoked will can only be revived by re-execution.

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Redirecting entitlements

17. What rules apply if beneficiaries redirect their entitlements?

As there is no inheritance tax or gift tax, there are no tax consequences of a post-death variation.

Validity of foreign wills and foreign grants of probate

18. To what extent are wills made in another jurisdiction recognised as valid/enforced in your jurisdiction? Does your jurisdiction recognise a foreign grant of probate (or its equivalent) or are further formalities required?

Validity of foreign wills

A foreign will is considered properly executed if its execution conforms to the internal law in force in any one of the following:

- The territory where it was executed.
- The territory where the testator died or was domiciled.
- The state of which the testator was a national.
- The territory where the property is situated, in so far as the will disposes of immovables.

Validity of foreign grants of probate

A foreign grant of probate is not generally recognised. Where a grant of representation has been obtained in the UK or France, although it must be re-admitted to probate in Guernsey, no evidence as to foreign law is required. Where a grant of representation has been obtained in another jurisdiction, the Registrar of the Ecclesiastical Court (Registrar) may require evidence by affidavit to support the application, in relation to the law of the other jurisdiction.

Death of foreign nationals

19. Are there any relevant practical estate administration issues if foreign nationals die in your jurisdiction?

Any will and/or grant of representation which is not in English or French must be translated by a translator acceptable to the Registrar, and may require an apostille. The Registrar may require evidence by affidavit of the law of succession of a Guernsey non-domiciliary, in relation to movables situated in Guernsey.

Administering the estate

20. Who is responsible for administering the estate and in whom does it initially vest?

Responsibility for administering

Ownership of immovables situated in Guernsey passes automatically to the heirs.

In relation to movables, the administration is effected by:

- The executor, where there is a will.
- The administrator, where there is no will or no executor to take the grant.

Vesting

In relation to immovables, the property vests in the heirs but subject to the rights of the executor where appointed.

In relation to movables, the estate vests in:

- The executor, where there is a will.
- The administrator upon the issuing of the grant of letters of administration.

21. What is the procedure on death in your jurisdiction for tax and other purposes in relation to:

- Establishing title and gathering in assets (including any particular considerations for non-resident executors)?
- Paying taxes?
- Distributing?

Establishing title and gathering in assets

There is no inheritance tax in Guernsey.

The executor must establish title to Guernsey situated movables by obtaining a Guernsey grant of representation to gather the assets into the estate. If the deceased died intestate, the person entitled under the law of the deceased’s last domicile must obtain a grant of letters of administration for this purpose, with Guernsey law determining precedence as to entitlement to administer.

Procedure for paying taxes

The death certificate, will and/or grant, details of the Guernsey assets, and a valuation and details of the personal representative (PR) must be supplied to the Registrar. The Registrar may require translations and affidavits of evidence about succession rights. The Registrar draws up the oath leading to the grant and requests payment of the fee.

There are no estate taxes.

Distributing the estate

An attorney administrator is usually appointed to administer the Guernsey estate if the PR is overseas.

Office copies of the grant are supplied on request, which prove evidence of the PR’s right to deal with the estate.

If the PR places an advertisement in a Guernsey newspaper in two successive weeks, requesting claims against the estate and giving details of the intended distribution of the estate, he can distribute the movable estate after three months free of any claims against him as PR, other than those of which he has notice.

If there is no will, the PRs must post a bond as security for twice the value of the estate. This is not required where the PRs appoint an Advocate of the Royal Court as their attorney.

22. Are there any time limits/restrictions/valuation issues that are particularly relevant to an estate with an element in another jurisdiction?

As far as the author is aware, there are no time limits/restrictions/valuation issues that are particularly relevant to an estate with a foreign element.

23. Is it possible for a beneficiary to challenge a will/the executors/the administrators?

A will can be challenged on a number of grounds as follows:

- The deceased lacked capacity to make a will.
- There is evidence that the deceased did not intend to make a will.

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• The will did not meet the necessary formalities.
• There is evidence of fraud or forgery.
• There is evidence that the will was revoked.
• There is a later will.
• The deceased did not know and approve the contents of his will.
• The deceased did not make the will of his own free will.

The Ecclesiastical Court holds powers to issue grants of representation. It was held in X v The Registrar of the Ecclesiastical Court of the Bailiwick of Guernsey (2004) (where there was evidence of fraud) that the Royal Court has an inherent jurisdiction to right any injustice, and the Registrar has a duty to assist in the righting of any wrong. The Royal Court has the power to order disclosure of documents under the Ecclesiastical Court (Jurisdiction) (Bailiwick of Guernsey) Law, 1994.

Forced heirship with respect to both immovable and movable property was abolished by the Inheritance (Guernsey) Law, 2011 (Inheritance Law). The principle of testamentary freedom applies with respect to wills executed after 1 April 2012 (see Question 24, Current regime). If a will fails to make reasonable financial provision for a dependant of a Guernsey domiciliary then that dependant has the right to make a claim within six months of the testator’s death against the estate of the testator for such provision (sections 4 and 7, Inheritance Law).

SUCCESSION REGIMES

24. What is the succession regime in your jurisdiction (for example, is there a forced heirship regime)?

Guernsey’s rules of forced heirship have been abolished with respect to wills written and intestacies occurring after 1 April 2012. Freedom of testamentary disposition now applies.

Previous regime

The following applies to testate succession occurring after 1 April 2012 where the will was executed before 2 April 2012, and to codicils to such wills executed at any time, unless the testator declares after 29 June 2011 in the will or codicil that the Inheritance Law must apply (section 1(6), Inheritance Law).

The succession rules relating to immovables and movables are different. Guernsey succession rules only apply to movables where a person dies domiciled in Guernsey; otherwise the law of the person’s last domicile applies. Guernsey rules for immovables apply to immovables situated in Guernsey, irrespective of where the owner resides or is domiciled.

Immovables. Where a person owns immovables situated in Guernsey in his sole name, and dies leaving a spouse, at least one-half of the immovables pass to the surviving spouse, for enjoyment for life or until an earlier remarrying of the surviving spouse, whether or not he leaves a will.

If the owner of Guernsey immovables is survived by descendants, he could only leave them by will to one or more of the following persons:
• The surviving spouse.
• Children.
• Step-children and adopted children and their respective issue.

If between execution of a will and death a child predeceases the testator, the grandchildren can take in place of the deceased parent, if provided for in the will.

Movables. If a Guernsey domiciliary dies leaving:
• A spouse and children or other descendants, the spouse is entitled to at least one-third of his movables, and the children or other descendants are entitled to at least one-third between them (ilégitime). The remainder is freely disposable.
• A spouse but no children or other descendants (or children or other descendants but no spouse), the spouse/children or other descendants are entitled to half of the movables. The other half is freely disposable.

In relation to a Guernsey trust of movables or a disposition of movables to or on such a trust, foreign rules of forced heirship are not enforced with respect to non-Guernsey domiciliaries.

Current regime

The below applies in the following circumstances (section 1(6), Inheritance Law):
• To intestacies occurring and wills executed after 1 April 2012.
• To a will executed before 2 April 2012 where, in a codicil to that will, executed after 29 June 2011, the testator declares that the Inheritance Law must apply and the testator’s death occurs after 1 April 2012.
• To a will executed after 29 June 2011 but before 2 April 2012, which is stated to take effect under the Inheritance Law and where the testator’s death occurs after 1 April 2012.

Immovables. On an intestacy, if there are no descendants but the deceased was married at the time of death or was party to a registered civil partnership under the UK Civil Partnership Act 2004 (Civil Partnership Act) or would have been treated under that Act as a civil partner, the surviving spouse or civil partner receives the entirety of the immovables.

If the deceased died leaving descendants, a surviving spouse or civil partner is entitled to an undivided one-half share in the real property of the deceased absolutely and the usufruct (enjoyment) in the remaining undivided half-share of the matrimonial home until the formation of another marriage or civil partnership or death, whichever first occurs. Subject to the right of inheritance and enjoyment, the real estate passes to the descendants in equal shares, with rights of representation through all degrees.

Where there is no spouse or civil partner and no descendants, potential heirs are divided into classes which are called on successively to inherit (that is, the second class is not called on to inherit if any of the first class remains, and so on). The classes, in order of priority, are:
• Privileged collaterals (brothers and sisters of the whole or half-blood with representation through all degrees).
• Ascendants.
• Other collateral relatives up to, but excluding, the seventh degree.
• The Crown.

Movables. If a Guernsey domiciliary dies leaving:
• A spouse or civil partner and children or other descendants, the spouse or civil partner is entitled to one-half of his movables, and the children or other descendants are entitled to the remaining one-half.
• A spouse or civil partner but no children or other descendants (or children or other descendants but no spouse or civil partner), the spouse or civil partner/children or other descendants are entitled to all the movables.

If a Guernsey domiciliary has no spouse or civil partner, children or other descendants, his movables pass to his nearest relatives in the following order of priority:
• Privileged collaterals.

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• Ascendants.
• Other collateral relatives up to, but excluding, the seventh degree.
• The Crown.

The principle of commorientes (simultaneous deaths) applies so that where two or more individuals die together and it cannot be determined who died first, it is presumed that they died in order of seniority so that the youngest is deemed to have died last unless, in the case of a will, there is contrary intention or the presumption can be rebutted by order of the court (section 26, Inheritance Law). In intestate succession, where a spouse or civil partner fails to survive the deceased by a period of at least 28 days, the surviving spouse or civil partner is deemed to have predeceased the deceased (paragraph 7, Schedule, Inheritance Law).

**Forced heirship regimes**

25. What are the main characteristics of the forced heirship regime, if any, in your jurisdiction?

**Avoiding the regime**

The regime of forced heirship only applies with regard to wills executed before 2 April 2012 and to codicils to such wills unless the testator declares in the will or codicil that the Inheritance Law must apply (see Question 24, Previous regime).

**Assets received by beneficiaries in other jurisdictions**

Assets that are jointly held pass to the survivor (unless the right of survivorship is disallowed), without forming part of the estate.

Under the regime relating to légitime, a forced heir cannot be compelled to enforce their rights in the estate (see Question 24, Previous regime).

A spouse can agree to waive their rights of life enjoyment by registering a contract to that effect in court.

**Mandatory or variable**

Not applicable (see Question 24).

**Real estate or other assets owned by foreign nationals**

26. Are real estate or other assets owned by a foreign national subject to your succession laws or the laws of the foreign national’s original country?

Immovables situated in Guernsey are subject to Guernsey succession law, regardless of the domicile of the individual. Movables owned by a non-domiciled individual are subject to the succession law of the last domicile of the deceased (see Question 24, Previous regime).

27. Do your courts apply the doctrine of renvoi in relation to succession to immovable property?

The Royal Court recognises the doctrine of renvoi in these circumstances.

**INTESTACY**

28. What different succession rules, if any, apply to the intestate?

See Question 24.

29. Is it possible for beneficiaries to challenge the adequacy of their provision under the intestacy rules?

Certain persons who believe that the disposition of the deceased’s estate, either by will or on intestacy, does not make reasonable financial provision for them may claim against the estate.

The persons who may make such an application are:
• A spouse or civil partner.
• A former spouse or civil partner who has not entered into a subsequent marriage or civil partnership.
• Any other person who for the two years before the death was living in the same household as the deceased as their spouse or civil partner.
• A child.
• Any person who was treated as a child.
• Any person who immediately before the death was being maintained, wholly or partly, by the deceased.

The deceased must be domiciled in Guernsey. A claim cannot be made without the leave of the court after six months from the death of the deceased. Certain property may be brought back into the estate for the purpose of calculating the value of the estate at death including nominated property, gifts made in contemplation of death, joint property passing by survivorship and dispositions made to defeat a claim (section 11, Inheritance Law).

**TRUSTS**

30. Are trusts (or an alternative structure) recognised in your jurisdiction?

**Type of trust and taxation**

Subject to the Trusts (Guernsey) Law, 2007 (Trusts Law), a trust is valid and enforceable in Guernsey. A trust exists if a person (trustee) holds or has vested in him, or is deemed to hold or have vested in him, property which does not form or which has ceased to form part of his own estate, for:
• The benefit of another person, whether or not yet ascertained or in existence.
• Any purpose, other than a purpose for the benefit only of the trustee.

The UK ratification of the Hague Convention on the Law Applicable to Trusts and on their Recognition 1985 is extended to Guernsey and is incorporated into Guernsey law.

Trusts do not have separate legal personality. The terms of the trust are usually evidenced in writing.

Trusts are not subject to any capital taxes in Guernsey. The trustee of a trust that is locally resident is only subject to income tax to the extent the beneficiaries are locally resident.

**Residence of trusts**

A trust is resident in Guernsey if the trustee is resident in Guernsey. Residence of an individual is determined by reference to the Income Tax (Guernsey) Law, 1975 (as amended) (Income Tax Law) (see Question 2). However, residence of a corporation (company) is determined by reference to the Trusts Law. For the purposes of the Trusts Law, a corporation is resident in the place in which it has its registered office. Therefore, a trust with a trustee that is a corporation with its registered office in Guernsey is resident in Guernsey.

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31. Does your jurisdiction recognise trusts that are governed by another jurisdiction’s laws and are created for foreign persons?

Guernsey recognises trusts, whether or not governed by another jurisdiction’s law, and whether created for its own residents or for foreign persons. In addition, a foreign trust is governed by, and interpreted in accordance with, its proper law (section 65(1), Trusts Law, subject to section 65(2), Trusts Law). A foreign trust is unenforceable in Guernsey to the extent that (section 65(2), Trusts Law):

- It purports to do anything contrary to Guernsey law.
- It confers or imposes any right or function, the exercise or discharge of which would be contrary to Guernsey law.
- The Royal Court declares that it is immoral or contrary to public policy.

32. What are the tax consequences of trustees (for example, of an English trust) becoming resident/in/leaving your jurisdiction?

As there is no capital gains tax, there are no tax consequences in Guernsey of importing/exporting a trust to/from Guernsey, unless there are locally resident beneficiaries. There may be tax consequences elsewhere, depending on the residence of the settlor and/or the beneficiaries.

33. If your jurisdiction has its own trust law:

- Does the law provide specifically for the creation of non-charitable purpose trusts?
- Does the law restrict the perpetuity period within which gifts in trusts must vest, or the period during which income may be accumulated?
- Can the trust document restrict the beneficiaries’ rights to information about the trust?

Purpose trusts

A trust for or including non-charitable purposes, created by a written instrument, is valid and enforceable in relation to its non-charitable purposes if it provides for the appointment of both (section 12(1), Trusts Law):

- An enforcer in relation to the trust’s non-charitable purposes.
- A new enforcer, at any time when there is no enforcer.

Perpetuities and accumulations

There is no rule against perpetuities under Guernsey law.

Income can be accumulated throughout the lifetime of a trust. A trust for charitable purposes may not be considered charitable if the income is never distributed.

Beneficiaries’ rights to information

The trust instrument can restrict the rights to information for beneficiaries and trust officials, for example a protector (section 26(1), Trusts Law). Where the terms of the trust prohibit or restrict the provision of information in accordance with section 26(1), a trustee, beneficiary, trust official or settlor can apply to the Royal Court for an order authorising or requiring provision of the information. The burden of proving that the information should be supplied rests on the person seeking disclosure.

However, the settlor of a non-charitable purpose trust cannot limit the rights to information to be given to the enforcer.

34. Does the law in your jurisdiction recognise claims against trust assets by the spouse/civ/ partner of a settlor or beneficiary on the dissolution of the marriage/partnership?

A Guernsey trust is not void (see below) because:

- The laws of another jurisdiction prohibit or do not recognise the concept of a trust.
- The trust or disposition:
  - avoids or defeats (or potentially avoids or defeats) rights, claims, interests, obligations or liabilities conferred or imposed by the law of another jurisdiction on any person, due to a personal relationship to a settlor or any beneficiary (including community of property); or
  - contravene/s (or potentially contravene/s) a rule of law, judgment, order or action of another jurisdiction intended to recognise, protect, enforce or give effect to such rights, claims, interests, obligations or liabilities.

In particular:

- The Guernsey trust, and any disposition of property to or on such a trust, is not void, voidable, liable to be set aside, invalid or subject to any implied condition.
- The capacity of any settlor, trustee, enforcer, trust official or beneficiary is not questioned.
- A settlor, trustee, enforcer, trust official, beneficiary or third party is not subjected to any obligation or liability or deprived of any right, claim or interest.

No judgment or order of a court of a jurisdiction outside Guernsey is recognised or enforced, or gives rise to any right, obligation or liability or raises any estoppels, if and to the extent it is inconsistent with the Trusts Law.

35. To what extent does the law of your jurisdiction allow trusts to be used to shelter assets from the creditors of a settlor or beneficiary?

Guernsey has not adopted specific asset protection trust legislation. The effectiveness of a trust in Guernsey to protect assets depends primarily on its validity. Any valid trust other than a bare trust devests the settlor of the settled assets, so that they do not form part of his personal estate for paying creditors, irrespective of whether the settlor is solvent or insolvent.

The question arises as to when another valid trust can be challenged. The most apparent risk to a trust is that a creditor, with a valid claim against the settlor, could claim prejudice and seek to set aside the trust, to the extent that its purpose may be to prefer the beneficiaries of the trust above the settlor’s creditors. Two main issues arise in this context:

- Whether the intent to defeat creditors must be the sole or a dominant purpose for settlement of the trust, or whether being merely one of a number of purposes will suffice.
- Whether creditors here means current and future creditors.

A trust established under Guernsey law, with the substantial purpose of defeating creditors, may be subject to a successful claim for restitution, but the term creditors for these purposes does not include unknown future creditors.
The customary law position has been confirmed by two Jersey cases (which, although not binding in Guernsey, are persuasive) (Colder v Societe des Magasins Concorde Limited [1973] JJ 72) and Re Esteem Settlement (2002) JLR 53, and one Guernsey case (Flightlease Holdings (Guernsey) Limited et al v International Lease Finance Corporation [2005] Judgment 55).

It may also be possible to persuade the Guernsey court to apply foreign insolvency law to set aside dispositions of property to trusts. For example, under section 426 of the UK Insolvency Act 1986 (see, for example, Al Sabah and another v Grupo Torras SA [2005] 2 AC 333), there is a legislative framework for inter-jurisdictional assistance, on request by the English court, and the reciprocal enforcement of UK insolvency orders of all kinds in foreign territories. Section 426 was extended to Guernsey by the UK Insolvency Act 1986 (Guernsey) Order (SI 1989/2409), and adopted in Guernsey under the Insolvency Act 1986 (Guernsey) Order 1989.

In relation to beneficiaries, see Question 34.

**CHARITIES**

36. Are charities recognised in your jurisdiction?

Charities are recognised in, and may be governed by, the law of Guernsey. A charity is any organisation that is established for purposes which are exclusively charitable (the advancement of religion or education, the relief of poverty, and other purposes regarded as being for the benefit of the community) and which provide public benefit. The UK Charities Act 2011 contains 13 descriptions of charitable purposes that help to define the term charity.

37. If charities are recognised in your jurisdiction, how can an individual donor set up a charity?

A charity may be set up as a trust, foundation, company or unincorporated association. The structure is not as important as the purpose. The Charities and Non-Profit Organisation (Registration) (Guernsey) Law, 2008 requires a non-profit organisation (NPO) based in Guernsey (other than manumitted organisations) to register as an NPO at the Guernsey Registry. Failure to do so is an offence. Exemptions apply if gross assets are less than £10,000, or gross annual income is less than £85,000.

38. What are the benefits for individuals when setting up charitable organisations?

A charity is entitled to apply to the Director for exemption from income tax by submitting a written application with a copy of the governing document, and details of bank accounts.

Overseas charities that can demonstrate a like tax exemption elsewhere are exempt from Guernsey tax in respect of income derived from investments or deposits there (section 40R, Income Tax Law). In practice, the “exemption” is broader, because any trust established or operating in Guernsey for activities or purposes abroad will have, in effect, non-resident “beneficiaries” and so be not liable to Guernsey income tax, which is one of the reasons why Guernsey is regarded as a convenient location to establish NPOS that are not intended for local benefit.

**OWNERSHIP AND FAMILIAL RELATIONSHIPS**

**Co-ownership**

39. What are the laws regarding co-ownership and how do they impact on taxes, succession and estate administration?

Under the laws of Guernsey, there are two forms of co-ownership of property:
- Joint ownership.
- Ownership in common.

Property owned jointly and for the survivor automatically passes on death to the survivor. It does not pass to the deceased's heirs and is not available to satisfy the deceased's creditors.

Property owned in common does not pass to the survivor and is disposed of under the will or intestacy of the co-owner. It is available to satisfy the deceased's creditors. Jointly owned property may also be brought into account for the purposes of satisfying an award under the Inheritance Law.

Joint ownership can be severed, giving rise to ownership in common.

As there is no inheritance tax in Guernsey, there are no particular tax consequences arising from co-ownership.

**Familial relationships**

40. What matrimonial regimes in trust or succession law exist in your jurisdiction? Are the rights of cohabitees/civil partners in real estate or other assets protected by law?

Spouses do not enjoy rights to community of property inter vivos. In relation to a Guernsey trust settled by a Guernsey domiciliary, the rules of forced heirship may apply for trusts established before 2 April 2012 (section 3, Inheritance Law).

No property or succession rights are granted to cohabitants but cohabitants are among the persons who can make a claim for financial provision under the Inheritance Law (section 4(2)(e), Inheritance Law) (see Question 29).

Civil partnerships cannot be entered into under Guernsey law, but are recognised in relation to a beneficial interest in a trust if the trust so provides and to a claim for financial provision and to intestacy under the Inheritance Law (sections 4(2)(a) and (b) and paragraphs 12, 13, 19 and 21 of the Schedule, Inheritance Law).

41. Is there a form of recognised relationship for same-sex couples and how are they treated for tax and succession purposes?

Same-sex couples cannot enter into a formal relationship. Therefore, for tax purposes, in Guernsey they are not treated as related to each other in any degree. Where an individual had entered into a registered civil partnership under the UK Civil Partnership Act or would have been treated under that Act as a civil partner, the civil partnership is treated as a marriage for succession purposes (see Question 24, Current regimes: Immovables).

In all cases a same sex marriage in any other jurisdiction is not recognised as a marriage under Guernsey law.
42. How are the following terms defined in law:

- Married?
- Divorced?
- Adopted?
- Legitimate?
- Civil partnership?

Married
Marriage is the union between a man and a woman. Foreign marriages are invariably recognised in Guernsey. The formalities of the marriage abroad must have been carried out according to the law of the country where it took place. Each party must have the capacity to marry according to the law of their home country before they got married. Departments of States often ask to see the original marriage certificate or a copy certified by a lawyer, together with a certified translation if appropriate.

Divorced
A divorced person is one whose marriage has been dissolved. In Guernsey, this is after proceedings where the Court of Matrimonial Causes has ordered a final order of decree of divorce. A petitioner for divorce must satisfy the Court as to the breakdown of the marriage.

Divorces pronounced in the UK are automatically recognised. Divorces pronounced across the EU are recognised save for the most exceptional circumstances. Recognition of divorces outside the EU depends on whether they are granted by proceedings. If by proceedings, and the procedure was followed correctly according to the local law, the foreign divorce will probably be recognised. Guernsey does not recognise divorces granted without judicial proceedings, since they do not always require giving advance notice to the wife. Specialist advice should be taken.

Adopted
An adopted person is a person recognised as adopted under the Adoption (Guernsey) Law, 1960. An adopted person is treated for all succession purposes as the child of the adoptive parent(s), and is no longer treated as the child of the birth parents.

Legitimate
A legitimate person is one whose father and mother were married to each other at the time of his birth. The presumption of legitimacy is rebuttable. The time of birth includes any time in the period beginning with the insemination resulting in his birth or his conception, and ending with his birth.

An illegitimate child can be legitimated by the subsequent marriage of the birth parents to each other.

There is no distinction between a legitimate, legitimated or an illegitimate child in relation to succession to property, except that an illegitimate person is presumed not to have been survived by his father, or by any person related to him only through his father, unless the contrary is shown.

Civil partnership
See Question 40.

43. What rules apply during the period when an heir is a minor? Can a minor own assets and who can deal with those assets on the minor’s behalf?

A minor (that is, an individual under the age of 18):
- Is not bound by any contract.
- Cannot make a will.
- Cannot give a valid receipt unless the instrument so allows.
- Requires the consent of parents to marry.
- Cannot be a director of a company.
- Cannot own real property.

A person with parental responsibility can deal with assets on behalf of a minor. Mothers, and fathers who are married to the child’s mother at the time of birth, acquire parental responsibility at birth. Since 4 January 2010, a father who is not married to the mother at the time of birth acquires parental responsibility:
- If he is named as the father on the birth certificate.
- If he subsequently marries the child’s mother.
- By written agreement with the child’s mother.
- By order of the court.

Other persons may acquire parental responsibility, including an individual appointed as tuteur (guardian) of the minor by will or by order of the Royal Court.

CAPACITY AND POWER OF ATTORNEY

44. What procedures apply when a person loses capacity? Does your jurisdiction recognise powers of attorney (or their equivalent) made under the law of other jurisdictions?

A power of attorney executed under Guernsey law lapses on supervening mental incapacity.

Enduring or lasting powers of attorney made by non-resident donors that are effective under the law of the competent foreign jurisdiction may be recognised by the Royal Court.

Where an individual suffers from infirmity of mind or body (the patient), application is made to the Royal Court by the person wishing to be appointed as the curateur (guardian) of the patient. Evidence of infirmity can be given orally or by affidavit. Up to five members of the patient’s family are joined to form a family council who act as advisers. The guardian must look after the patient’s property. No security is required.

PROPOSALS FOR REFORM

45. Are there any proposals to reform private client law in your jurisdiction?

The introduction of lasting powers of attorney and the form such powers should take is being considered. It is also proposed that changes be made to the Trusts Law.
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• Advising on complex assignments and novations relating to the transfer of a trustship.
• Co-ordinating the restructuring of a structure involving foundations, trusts and companies across a number of jurisdictions including advising on the Guernsey aspects.
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Publications
• Annual Directory - Jurisdiction Summary, Guernsey STEP 2006 to date.

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