ADVISORY | INDUSTRY INFORMATION

Guernsey Guide: legal, regulatory, transparency and supervisory framework

Introduction

This briefing explains Guernsey's adoption of rigorous international tax and regulatory standards, which, in conjunction with its local tax law, make it an ideal location for investment funds and other investment vehicles. Guernsey is a leading global finance centre with a top-tier finance industry. With over 800 years of independence, Guernsey is a politically stable and secure jurisdiction that facilitates investment in a tax-neutral environment whilst maintaining best-in-class regulatory standards.

Guernsey is a tax-efficient jurisdiction

As a Crown Dependency, Guernsey enjoys significant autonomy from the United Kingdom ("**UK**"). With this comes the ability for the Island to self-administer many of its internal affairs, as well as its international relationships with foreign jurisdictions and economic blocs (with the UK's consent). Consequently, Guernsey's tax regime is entirely independent and distinct from that of the United Kingdom. The States of Guernsey ("**States**"), Guernsey's parliament, sets the tax laws. And just as Guernsey is self-governed, it is also self-funded, raising funds through taxation.

Guernsey is a tax efficient jurisdiction, which has a standard corporate income tax rate of 0% applicable to most income, although certain businesses conducting regulated activities, including certain banking, insurance and fund administration businesses, attract tax of 10% on the income from those activities, and a further select set of businesses operating in certain other sectors, including telecommunications, large retail, those who import and/or supply gas or hydrocarbon oil, and those who cultivate cannabis under licence, incur tax at 20% on the income from those activities. There are no capital gains, value-added or sales taxes.

Guernsey's relatively simple tax structure means that it has not been compelled to offer tax incentives or tax rulings in order to attract businesses to the Bailiwick. Although Guernsey can be described as a low-tax jurisdiction for companies, the States have taken many steps to ensure that the Island's tax laws and policies adhere to numerous international tax and regulatory standards. Guernsey has been "whitelisted" by both the Organisation for Economic Co-operation and Development ("**OECD**") and European Union ("**EU**") as a result. Guernsey also has a broad general anti-avoidance rule, which prevents the avoidance of local tax.

Guernsey has adopted economic substance requirements

At the end of 2017, the EU's Code of Conduct Group ("**Code Group**") assessed Guernsey's standards in respect of tax transparency, fair taxation and anti-base erosion and profit shifting ("**BEPS**"). The Code Group raised no issues in respect of Guernsey's standards in respect of tax transparency and compliance with the anti-BEPS measures. In response to the Code Group's request regarding substance, particularly given Guernsey's prevailing corporate income tax rate of 0%, Guernsey (along with a number of other offshore jurisdictions) adopted local economic substance requirements for companies with effect from 1 January 2019. Guernsey (along with a number of other offshore jurisdictions) extended substance requirements to partnerships with effect from 1 July 2021 to align their position with companies (a six-month transitional period applied to partnerships established before 1 July 2021).

Guernsey's economic substance legislation requires companies which derive income from certain specific activities, such fund management, financing and leasing and intellectual property holding, and which are tax resident in Guernsey to demonstrate they have sufficient substance in Guernsey (certain tax exempt companies are also subject to these requirements). Substance can be shown by demonstrating the entity is directed and managed in Guernsey, that its core income generating activities take place in Guernsey, and through having adequate employees, premises and expenditure in Guernsey (note that holding companies are subject to reduced economic substance requirements).

The extension of the substance requirements to partnerships applies to partnerships that are either established or managed in Guernsey and which derive income from certain activities, being those that trigger the application of substance requirements to companies. The economic substance requirements that apply to partnerships will be the same as the requirements that apply to companies. Further details on the extension of economic substance requirements to partnerships can be found here.

Guernsey has adopted BEPS minimum standards

Guernsey has been an Associate and Member of the OECD's BEPS Inclusive Framework since 2016. Guernsey has adopted the Country-by-Country reporting regime ("**CbCR**"), which applies to multinational groups with consolidated group revenue of EUR 750m or more, and has required full reporting under CbCR in respect of accounting periods commencing on or after 1 January 2016.

Guernsey has also adopted the spontaneous exchange of tax rulings, and was one of the first jurisdictions to sign the OECD's Multilateral Instrument to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting in June 2017 ("**MLI**"), which is a treaty designed to expedite the implementation of the double tax treaty-related BEPS recommendations into double tax agreements ("**DTAs**") between participating states.

The MLI contains provisions to prevent hybrid mismatches and treaty abuse, therefore restricting persons from potentially exploiting differences in tax regimes between different jurisdictions and artificially lower their tax bill.

Guernsey has adopted international tax information reporting and transparency rules

Guernsey was one of the first jurisdictions to adopt the US Foreign Account Tax Compliance Act ("**FATCA**"), implementing it in June 2014. Guernsey was also an early adopter of the OECD's Common Reporting Standard ("**CRS**"), which it implemented in January 2016.

Under FATCA and the CRS, Guernsey financial institutions, including banks, custodians and investment funds, are subject to due diligence and reporting requirements in relation to certain account holders and investors who are, or are entities that are controlled by one or more natural persons who are, residents or citizens of the United States or residents of a jurisdiction that has adopted the CRS, unless a relevant exemption applies.

Guernsey financial institutions annually report the relevant information to the Guernsey Revenue Service who then exchanges that information with the relevant tax authorities in the US and in the CRS jurisdictions.

To strengthen the CRS regime and go beyond the BEPS minimum standards, Guernsey has adopted the OECD's Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures, which compels promoters and implementers of CRS avoidance arrangements and offshore structures designed to mask beneficial ownership, as well as service providers, to disclose information on such arrangements to the Guernsey Revenue Service which will then exchange information with the relevant tax authorities of other jurisdictions.

Guernsey is party to a number of tax information exchange agreements ("**TIEAs**"), DTAs and the OECD's Convention on Mutual Administrative Assistance in Tax Matters (the "**MAC**")

Guernsey has to date signed 61 TIEAs, 58 of which are in force. TIEAs allow for the exchange of information on request in connection with tax investigations, and so differ from the CRS where such information exchange is automatic.

DTAs are agreements for the prevention of double taxation between two jurisdictions. Guernsey currently has full DTAs in place with 14 jurisdictions and partial DTAs in place with 12 jurisdictions.

Guernsey has also been subject to the OECD's MAC since 1 August 2014. The MAC is a comprehensive multilateral instrument that facilitates international co-operation on tax matters, ranging from exchange of information (both automatic and on request) to recovery of foreign tax claims. Currently 147 jurisdictions participate in the MAC.

Guernsey is adopting Pillar Two

Guernsey has announced its intention to implement the OECD global initiative to set a minimum effective tax rate for the world's largest multinational enterprises, known as Pillar Two. Guernsey will implement an "income inclusion rule" and a domestic minimum tax to provide for a 15% effective tax rate for large in-scope multinational enterprises ("**MNEs**"), from 2025.

Global anti-base erosion rules ("**GloBE rules**") will impose top-up taxes where the effective rate of tax of a MNE in a jurisdiction is below the global minimum corporate tax rate of 15%. GloBE rules will apply to groups with more than €750 million global annual revenue, and there are exclusions for investment funds, real estate investment vehicles and certain holding entities.

Once the GloBE rules are implemented, where a Guernsey tax resident company that is part of an in-scope MNE has an effective tax rate in Guernsey that is below the 15% minimum, it must pay a top-up tax to bring its effective tax rate up to 15%.

Guernsey has adopted the highest level of international regulatory standards

The Guernsey Financial Services Commission ("**GFSC**") is committed to ensuring that Guernsey's regulatory regime adheres to the highest international standards. There is no banking secrecy in Guernsey and Guernsey is a world leader in the regulation of trust and company service providers.

International Monetary Fund

Between March and May 2010, the International Monetary Fund ("**IMF**") conducted six evaluations of Guernsey's financial supervision and criminal justice frameworks. The IMF reported in January 2011 that Guernsey has a high standard of regulation and supervision of the financial sector. The Bailiwick was assessed as having a high level of compliance with the 25 Basel Core Principles for Effective Banking Supervision, and with the 28 Insurance Core Principles of the International Association of Insurance Supervisors ("**IAIS**").

Combatting financial crime

Guernsey is renowned as a global leader in fighting financial crime, with advanced protections in place to prevent money laundering and to combat the financing of terrorism. In 2016, the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism ("**MONEYVAL**") determined Guernsey to be compliant or largely compliant with 48 out of 49 of the Financial Action Task Force's ("**FATF**") recommendations, a score higher than any other jurisdiction in the world to date. MONEYVAL found that Guernsey has in place a range of measures to facilitate various forms of international cooperation and plays host to competent authorities and financial institutions that are highly efficient, knowledgeable and aware of their obligations.

MONEYVAL will be shortly be assessing Guernsey again and is due to update its determination in 2024.

Beneficial ownership information

In 2017 the States legislated for the creation of a centralised and non-public register of the beneficial ownership of Guernsey legal persons. Guernsey resident agents are required to collect information on the ultimate beneficial owners of Guernsey companies, incorporated limited partnerships, limited liability partnerships and foundations (with a few exceptions for entities listed on a stock exchange or regulated and/or supervised by the GFSC). This beneficial ownership legislation is reported to the Guernsey Registry who maintain a central register of beneficial owners that can be accessed by government agencies, tax authorities, regulators and law enforcement.

Guernsey is compliant with FATF Recommendations on transparency and beneficial ownership of legal persons and legal arrangements, reflected also in the EU 4th AML Directive. Guernsey has committed to the initiative to develop and implement a new global standard for the automatic exchange of beneficial ownership information. In August 2020, the States approved proposals to enhance this regime, which are expected to be forthcoming in amending legislation.

Guernsey is also developing legislation to enable real-time (or near real-time) reciprocal access to beneficial ownership information by EU tax and law enforcement authorities.

Guernsey has adopted data protection legislation that is equivalent to the GDPR

Guernsey is among a small group of jurisdictions that has been recognised by the European Commission as meeting current EU data protection standards and granted equivalence ("**adequacy**"). Guernsey implemented the new GDPR standards on the same timetable as EU Member States (by May 2018).

Membership of international organisations

To support the GFSC's commitment to ensuring Guernsey's regulatory regime meets international best practice, the GFSC is a member (or is in association with) a number of international organisations, to further international cooperation and best practice. In addition to those referred to above, such as MONEYVAL, these international organisations include:

- The International Organisation of Securities Commissions ("**IOSCO**"): the GFSC is a signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information;
- IAIS: the GFSC is a signatory to the IAIS Multilateral Memorandum of Understanding, and in 2019 the IAIS reported Guernsey as having "a high level of observance of current international standards" in respect of the insurance industry;
- The Group of International Insurance Centre Supervisors ("**GIICS**"); and
- The Group of International Finance Centre Supervisors ("**GIFCS**").

Through its membership of GIFCS, the GFSC works with The Basel Committee on Banking Supervision and FATF.

Further information

We practice Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Irish and Jersey law from an international network of ten offices across Europe, the Americas, Asia and the Middle East. For more information, please get in touch with your usual contact at Walkers or any of the contacts in your region listed below.

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