



ICLG

The International Comparative Legal Guide to:

Private Client 2018

7th Edition

A practical cross-border insight into private client work

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EDITORIAL

Welcome to the seventh edition of *The International Comparative Legal Guide to: Private Client*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of private client work.

It is divided into two main sections:

Nine general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting private client work, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in private client laws and regulations in 28 jurisdictions.

All chapters are written by leading private client lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Jonathan Conder and Robin Vos of Macfarlanes LLP for their invaluable assistance and STEP for their continued and valued participation in the guide.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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1 Connection Factors

1.1 To what extent is domicile or habitual residence relevant in determining liability to taxation in your jurisdiction?

Neither domicile, nor habitual residence is relevant for Guernsey tax purposes.

1.2 If domicile or habitual residence is relevant, how is it defined for taxation purposes?

This is not applicable.

1.3 To what extent is residence relevant in determining liability to taxation in your jurisdiction?

Guernsey income tax is based on two concepts: (1) residence in Guernsey; and (2) Guernsey source income.

1.4 If residence is relevant, how is it defined for taxation purposes?

The legislation is to be found in ss1 and 3 of the Income Tax Law. Guernsey employs the calendar year as the year of charge and for the below purposes, a day is any day on which the individual is in Guernsey at midnight. The concepts of residency are:

1. Resident

This is where in any particular year of charge an individual being resident in another jurisdiction for 91 days and present in Guernsey for less than 182 days:

- (a) spends 91 days or more in Guernsey in that year of charge; or
- (b) spends 35 days or more there in that year of charge, and in the four preceding years of charge has spent a total of 365 days or more in Guernsey.

2. Solely Resident

An individual is solely resident in any particular year of charge if:

- (a) he is resident in Guernsey as defined above; and
- (b) he is not resident in any other place in that year of charge and will only be treated as resident elsewhere if he spends 91 days or more in that place during that year of charge.

3. Principally Resident

An individual is treated as being principally resident in Guernsey in any particular year of charge if:

- (a) he spends 182 days or more in Guernsey in that year of charge; or
- (b) he 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; and/or
- (c) he takes up permanent residence in Guernsey in that year of charge. He is treated as taking up permanent residence in Guernsey if:
 - i. he is resident in Guernsey as defined in Guernsey; and
 - ii. he is solely or principally resident in Guernsey in the following year of charge.

1.5 To what extent is nationality relevant in determining liability to taxation in your jurisdiction?

This is not relevant.

1.6 If nationality is relevant, how is it defined for taxation purposes?

This is not applicable.

1.7 What other connecting factors (if any) are relevant in determining a person's liability to tax in your jurisdiction?

There are none.

2 General Taxation Regime

2.1 What gift or estate taxes apply that are relevant to persons becoming established in your jurisdiction?

There are none.

2.2 How and to what extent are persons who become established in your jurisdiction liable to income and capital gains tax?

In respect of persons who are resident but not solely or principally resident, they will pay tax (see the Income Tax Law ss5A to 5L)

on their worldwide income or, if in Guernsey for employment, on income arising or accruing in Guernsey, together with income that is remitted to Guernsey, or alternatively may elect to pay a fixed amount (currently £30,000) known as the Standard Charge. Where this election is made, the individual is only taxable on Guernsey income and may set off the Standard Charge or part of it against that. If his Guernsey income exceeds £150,000, he pays at the normal rate on the amount that exceeds that figure. He may not claim the personal allowances but does not pay tax on his non-Guernsey income, whether or not it is remitted to Guernsey.

Those who are otherwise resident in Guernsey pay income tax on their worldwide income, but there is a cap (Income Tax Law s39B and Sixth Schedule) in respect of £110,000 of tax on non-Guernsey income, and they may elect to pay £220,000 of tax in respect of all income. There is no taxation on the remittances in these cases.

There is no capital gains tax in the Bailiwick of Guernsey.

2.3 What other direct taxes (if any) apply to persons who become established in your jurisdiction?

The only form of direct taxation in Guernsey is income tax.

2.4 What indirect taxes (sales taxes/VAT and customs & excise duties) apply to persons becoming established in your jurisdiction?

Guernsey does not have a sales tax or VAT. It does, however, have Customs & Import duties that are applicable on the importation of goods.

2.5 Are there any anti-avoidance taxation provisions that apply to the offshore arrangements of persons who have become established in your jurisdiction?

No, but s67 (see question 2.6) could be applicable in certain circumstances.

2.6 Is there any general anti-avoidance or anti-abuse rule to counteract tax advantages?

Under s67 of the Income Tax Law, Guernsey has a widely drafted anti-abuse provision.

2.7 Are there any arrangements in place in your jurisdiction for the disclosure of aggressive tax planning schemes?

No, there are none in Guernsey.

3 Pre-entry Tax Planning

3.1 In your jurisdiction, what pre-entry estate and gift tax planning can be undertaken?

The Bailiwick of Guernsey consists of three separate jurisdictions, namely: the Island of Guernsey; the Island of Sark; and the Island of Alderney. Guernsey and Alderney are in union for income tax and social security purposes. Sark is independent for these purposes. With regard to probate, the Ecclesiastical Court of Guernsey has jurisdiction throughout the Bailiwick of Guernsey and a small duty

of approximately 0.3% is payable. This is only on assets owned on death and, accordingly, planning in that regard can take place at any time whether pre-entry or not. There are no gift taxes in the Bailiwick of Guernsey.

3.2 In your jurisdiction, what pre-entry income and capital gains tax planning can be undertaken?

Subject to certain caps and lower limits, income tax in Guernsey is levied at 20%. Under the revocable settlement regime (the Income Tax (Guernsey) Law, 1975 “The Income Tax Law” s65), which applies where a Guernsey resident settlor or his spouse can in any circumstances benefit under a settlement, the settlor will be taxed on the income arising to the settlement regardless of where the trustees or beneficiaries are resident. Accordingly, before becoming resident, settlors may wish to be excluded from benefit from such settlements or may create settlor-excluded settlements with their capital. There is no capital gains tax in the Bailiwick of Guernsey.

3.3 In your jurisdiction, can pre-entry planning be undertaken for any other taxes?

Other than the taxes mentioned above, there are currently no relevant ones.

4 Taxation Issues on Inward Investment

4.1 What liabilities are there to tax on the acquisition, holding or disposal of, or receipt of income from investments in your jurisdiction?

There is no tax on the acquisition, holding or disposal of investments in Guernsey by non-residents. Furthermore, non-residents are generally not subject to tax on Guernsey source income. However, tax is payable on income derived from Guernsey land and property and this will be deducted in Guernsey.

4.2 What taxes are there on the importation of assets into your jurisdiction, including excise taxes?

By virtue of Article 1 of Protocol No. 3 (22 January 1972) of the United Kingdom’s Treaty of Accession to the European Community, Guernsey and the other Channel Islands are within the Common Customs Area and Common External Tariff of the European Community, thus the Community Rules on customs matters apply. From that, it follows that goods imported from outside a European Community country are subject to the European Community rates. Equally, those in free circulation within the EU are imported without customs charges.

There are relatively high charges on the importation of fuel and oil, and high rates on alcohol and tobacco.

Guernsey does not, however, levy VAT or an equivalent.

4.3 Are there any particular tax issues in relation to the purchase of residential properties?

A new document duty regime came into force on 1 January 2017 as follows:

- 2% on up to £250,000 of the transaction value.
- 3.25% on up to the next £150,000 (i.e. the portion from £250,001 to £400,000).

- 3.5% on up to the next £350,000 (i.e. the portion from £400,001 to £750,000).
- 3.75% on up to the next £250,000 (i.e. the portion from £750,001 to £1,000,000).
- 4% on the remaining amount (i.e. the portion above £1,000,000).

Legislation is being introduced to deal with the transfer of property by way of share transfer of property holding companies which currently lies outside document duty and is expected to come into force shortly.

5 Taxation of Corporate Vehicles

5.1 What is the test for a corporation to be taxable in your jurisdiction?

A company is treated as resident in Guernsey under s4 of the Income Tax Law if either it is controlled in Guernsey or is incorporated in Guernsey. In respect of companies incorporated in Guernsey, certain investment vehicles can elect to have exempt status.

5.2 What are the main tax liabilities payable by a corporation which is subject to tax in your jurisdiction?

If a company does not have exempt status, it will pay tax at 0%, save for income from land in Guernsey which is taxed at 20%, as are profits from regulated utilities there. Profits from specified financial services businesses (banking, insurance, fiduciary and investment – the Income Tax Law s2(2), the Fourth and Fifth Schedule) are taxed at 10%.

5.3 How are branches of foreign corporations taxed in your jurisdiction?

Under s47(g) of the Income Tax Law, income which would be liable to tax if received by a Guernsey resident company is equally liable to tax if received by a non-resident company carrying on the appropriate business in Guernsey.

6 Tax Treaties

6.1 Has your jurisdiction entered into income tax and capital gains tax treaties and, if so, what is their impact?

Guernsey is not a sovereign state and its tax treaties are known as Double Taxation Arrangements. The longest standing of these is that with the United Kingdom on 1 January 1951, followed by one with Jersey on 1 January 1956 (which has been superseded by a new agreement with effect from 9 July 2013). Full Double Taxation Agreements are also in force with Cyprus, Hong Kong, the Isle of Man, Liechtenstein, Luxembourg, Malta, Mauritius, Monaco, Qatar, Seychelles and Singapore. In addition, there are partial Double Taxation Agreements in force with Australia, Denmark, the Faroe Islands, Finland, Greenland, Iceland, Ireland, Japan, New Zealand, Norway, Poland and Sweden.

6.2 Do the income tax and capital gains tax treaties generally follow the OECD or another model?

The earlier tax arrangements with the United Kingdom and Jersey

did not follow the OECD model and were more limited, although the Jersey one has recently been revised. Tax Information Exchange Agreements follow the OECD model.

6.3 Has your jurisdiction entered into estate and gift tax treaties and, if so, what is their impact?

This is not applicable.

6.4 Do the estate or gift tax treaties generally follow the OECD or another model?

This is not applicable.

7 Succession Planning

7.1 What are the relevant private international law (conflict of law) rules on succession and wills, including tests of essential validity and formal validity in your jurisdiction?

With regard to movable property, essential validity is determined by the law of the deceased's domicile. With regard to formal validity under the Execution of Wills (Bailiwick of Guernsey) Law, 1994, a will that is formally valid under:

1. the law of the territory where it was executed;
2. the law of the territory where the testator was domiciled;
3. the law of the territory where the testator had his habitual residence; or
4. the law of the territory where he was a national,

would be recognised under Guernsey law.

As regards to those domiciled in Guernsey, a will may be made in Guernsey by the testator, witnessed by two independent witnesses.

With regard to immovable property, essential validity is determined by the law of the territory in which it is situated.

With regard to formal validity, any will of immovable property is valid if valid under any of the tests that apply to wills of movable property, as well as a will that is formally valid according to the territory where the immovable property is situated.

With regard to those domiciled in Guernsey under the Inheritance (Guernsey) Law, 2012, there is freedom of testation although there is also the possibility of dependents bringing claims against estates. This is applicable from 2 April 2012 but does not apply to estates governed by valid wills made before then. The Law also contains wide anti-avoidance principles to deal with those seeking to defeat dependency claims. If an estate is governed by the "old" principles, there is freedom of testation but it is subject to vested rights in favour of surviving spouses and issue.

7.2 Are there particular rules that apply to real estate held in your jurisdiction or elsewhere?

With regard to essential validity, Guernsey law applies. The rules for formal validity have been set out in question 5.1. Following Norman law, property vests in the heirs or beneficiaries under a will immediately on the death of the deceased, although in the case of the deceased dying intestate in respect of Guernsey immovable property, it is often necessary to have a grant of administration due to possible claims brought by illegitimate children.

8 Trusts and Foundations

8.1 Are trusts recognised in your jurisdiction?

Guernsey has recognised trusts since the beginning of the 19th century and there is currently statutory recognition by s1 of the Trusts (Guernsey) Law, 2007 (the “Trusts Law”).

8.2 How are trusts taxed in your jurisdiction?

The revocable settlement regime has already been referred to (see question 3.2). Where this is applicable, as the trust income is deemed to be that of the Guernsey-resident tax payer, that tax payer will be liable to Guernsey income tax on the income arising to the trustees, whilst neither the trustees, nor the beneficiaries who receive any of the income will be separately liable.

If the settlor is a Guernsey resident but the revocable settlement regime does not apply, the trustees if Guernsey-resident will be liable. If the trust is non-resident as regards Guernsey, no tax will be payable. Wherever a Guernsey-resident beneficiary of any trust, whether or not resident in Guernsey, receives income, that beneficiary will be liable to Guernsey income tax, unless covered by the revocable settlement regime. If the trustees are Guernsey-resident, they would have a co-existing liability to account for it.

Where there are Guernsey-resident trustees but no Guernsey-resident settlor/beneficiaries then income is exempt, other than income arising from certain Guernsey sources excluding bank accounts.

8.3 How are trusts affected by succession and forced heirship rules in your jurisdiction?

As Guernsey forced heirship rules do not apply from 2 April 2012, save in respect of estates governed by valid wills made before that date, this is no longer of interest to those considering migrating to Guernsey. Further, as there has been an express statutory right recognising the making of trusts in Guernsey since 1989, the mere creation of an *inter vivos* trust by a person domiciled in Guernsey has never been considered as something susceptible to the forced heirship regime. There are, however, provisions under the Inheritance (Guernsey) Law, 2011 to set aside dispositions to trusts which were aimed at defeating dependency claims under that Law. Forced heirship claims of other jurisdictions are expressly declared as non-applicable to Guernsey law trusts (see the Trusts Law s14).

8.4 Are foundations recognised in your jurisdiction?

It has been possible to create a Guernsey foundation under the Foundations (Guernsey) Law, 2012 (the “Foundations Law”) since 1 January 2013.

8.5 How are foundations taxed in your jurisdiction?

The transfer of assets to a foundation may be caught by the revocable settlement regime set out above in question 8.2. Subject to that, legislation is awaited to deal with taxation of foundations following the coming into force of the Foundations Law. It is anticipated that they will be taxed in the same manner as a Guernsey company.

8.6 How are foundations affected by succession and forced heirship rules in your jurisdiction?

Foundations are treated in the same way as trusts (see in particular override provision in respect of forced heirship (the Foundations Law s37)).

9 Matrimonial Issues

9.1 Are civil partnerships/same-sex marriages permitted/recognised in your jurisdiction?

A same-sex marriage bill was approved in the States of Guernsey in September 2016 and the law came into force on 2 May 2017 making same-sex marriage legal from that date.

9.2 What matrimonial property regimes are permitted/recognised in your jurisdiction?

None but see question 7.1 above for relevant law governing treatment of movable and immovable property.

9.3 Are pre-/post-marital agreements/marriage contracts permitted/recognised in your jurisdiction?

English case law is persuasive and generally followed by the Matrimonial Causes Division of the Royal Court in Guernsey (the “Court”), so a pre-nuptial agreement or a post-nuptial agreement would be a relevant factor that the Court will take into consideration but it would not necessarily be determinative, particularly if the circumstances of the family have changed since the agreement was entered into. The Court would also want to see that there had been a full disclosure of assets and that both parties had had legal advice prior to any agreement being entered into. If children are involved and the agreement makes no provision for children, this will be a significant factor that would be taken into consideration.

9.4 What are the main principles which will apply in your jurisdiction in relation to financial provision on divorce?

As in England and Wales, the overall aim of the Court in ancillary relief proceedings is to achieve a fair outcome. The starting point is an equal division of the assets. In reaching a decision, the Court will have regard to all of the circumstances of the case, including the factors set out in s25 of the English Matrimonial Causes Act, 1973.

10 Immigration Issues

10.1 What restrictions or qualifications does your jurisdiction impose for entry into the country?

Along with the United Kingdom, the Republic of Ireland, the Isle of Man and Jersey, Guernsey is part of the Common Travel Area, meaning that once a person has been lawfully admitted to one of those territories, he can freely travel between any of them. With regard to immigration, the UK Immigration Act, 1971 extends to Guernsey through the Immigration (Guernsey) Order, 1993.

Citizens of EU countries, including the United Kingdom, together with Switzerland and Norway, enjoy migration rights to Guernsey, whilst citizens from other jurisdictions require permits for work and settlement.

Migration to Guernsey cannot, however, be fully understood without taking into account the working of the Population Management (Guernsey) Law, 2016 (the “Population Law”) which came into force on 3 April 2017.

It should be noted that neither having a right to migrate to Guernsey, nor a permit to do so does in itself confer any rights under the Population Law.

The Population Law deals with who can reside in Guernsey and for how long. It also requires most people who work in Guernsey to either hold a Certificate or a Permit. A Certificate is issued to someone who can live and work in Guernsey without condition. However, a Permit is issued to someone whose right to live and work in Guernsey is subject to conditions. These conditions will typically be carrying out a specific job or living with a specific person.

The housing market in Guernsey, with regard to residential property, is divided between the open market (somewhat less than 10% of all residential properties) and the local market. There are special rules for hotels, nursing homes and lodging houses.

10.2 Does your jurisdiction have any investor and/or other special categories for entry?

The Immigration Rules make provision for consents based on making investment and also certain other categories.

10.3 What are the requirements in your jurisdiction in order to qualify for nationality?

As Guernsey is not a sovereign state, it does not have its own “nationals”. Accordingly, the indigenous Guernsey population are British Nationals. The British nationality exam is conducted locally, with some local questions. Citizenship ceremonies take place in the Guernsey Royal Court.

10.4 Are there any taxation implications in obtaining nationality in your jurisdiction?

Guernsey’s system of taxation does not have regard to nationality.

10.5 Are there any special tax/immigration/citizenship programmes designed to attract foreigners to become resident in your jurisdiction?

There are none other than the favourable tax regime and tax capping referred to in section 2 above.

11 Reporting Requirements/Privacy

11.1 What automatic exchange of information agreements has your jurisdiction entered into with other countries?

Guernsey has signed some 60 Tax Information Exchange Agreements, the following of which are in effect: Argentina; Australia; Austria; Bahamas; Bermuda; British Virgin Islands; Canada; Cayman Islands; Chile; China; Czech Republic; Denmark; Faroe Islands; Finland; France; Germany; Gibraltar; Greece; Greenland; Hungary; Iceland; India; Indonesia; Ireland; Italy; Japan; Korea; Latvia; Lesotho; Lithuania; Macao; Mauritius; Mexico; Montserrat; the Netherlands; New Zealand; Norway; Poland; Romania; San Marino; Seychelles; Slovakia; Slovenia; South Africa; St Kitts & Nevis; Sweden; Swaziland; Switzerland; Turks & Caicos; the United Kingdom; and the USA. In addition, the following have been signed but were not in effect as at August 2016: Belgium; Botswana; Brazil; Bulgaria; Costa Rica; Portugal; Spain; Turkey; and Uruguay.

11.2 What reporting requirements are imposed by domestic law in your jurisdiction in respect of structures outside your jurisdiction with which a person in your jurisdiction is involved?

There are measures in place to enforce the USA FATCA and Guernsey has adopted the Common Reporting Standard (CRS) (with first reporting taking place in 2017) and this has now replaced UK FATCA.

11.3 Are there any public registers of owners/beneficial owners/trustees/board members of, or of other persons with significant control or influence over companies, foundations or trusts established or resident in your jurisdiction?

Companies are required to file an annual validation which includes details of directors as at 31 December each year and to notify the registry of changes of directors. This information is publicly available. Details of the Councillors and Guardian (if applicable) of a Foundation are also publicly available.

There are no public registers of owners, beneficial owners or trusts.

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Matthew heads our Trusts and Private Client practice in Guernsey. He provides Guernsey law advice on wealth structuring and asset protection through trusts and other vehicles to trust companies, international families and high-net-worth individuals. Matthew also advises on all Guernsey law aspects of international pension schemes, employee benefit trusts and share option schemes for multinational corporations.

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MOURANT OZANNES

Mourant Ozannes is a leading international law firm advising many of the world's foremost financial institutions, public companies, global corporations and fund promoters, as well as high-net-worth private clients on the laws of the British Virgin Islands, the Cayman Islands, Guernsey and Jersey. The firm has offices in these key offshore jurisdictions, as well as in London and Hong Kong. Through its affiliated business, Mourant Ozannes Corporate Services, it also provides a comprehensive range of corporate administration services through a dedicated team of experienced professionals. The firm delivers partner-led advice on complex, multi-jurisdictional and often high-profile transactions and disputes for clients looking for depth of expertise and a range of resources across Asia, Europe, Latin America, the Middle East and North America.

Mourant Ozannes has 59 partners and over 200 lawyers worldwide and boasts the largest litigation practice offshore. It has an enviable client base, advising 80% of the world's top 50 banks and more *FTSE 100* and *FTSE 250* companies than any other offshore law firm. In its core practice areas, the firm also holds more top-tier rankings across its locations than any other firm.

Recent awards won by Mourant Ozannes include:

- Offshore Firm of the Year 2017, *Chambers Europe*.
- Best Offshore Law Firm – Client Service: *HFMWeek* US Hedge Fund Services Awards 2016.
- Best Offshore Law Firm – Client Service: *HFMWeek* European Hedge Fund Services Awards 2015 & 2016.
- Firm of the Year, Jersey: *Who's Who Legal*.
- Best Offshore Law Firm: *Hedgeweek* Global Awards 2015.

Current titles in the ICLG series include:

- Alternative Investment Funds
- Anti-Money Laundering
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Investigations
- Corporate Recovery & Insolvency
- Corporate Tax
- Cybersecurity
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Family Law
- Fintech
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Outsourcing
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Investment Funds
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks
- Vertical Agreements and Dominant Firms



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