

THE CHANNEL ISLANDS AND THE EUROPEAN UNION: TAX COOPERATION

Executive Summary

Guernsey and Jersey are recognised as reliable, active and cooperative partners of the EU and of the wider international community. This includes:

- Corporate tax policies based on two key principles: non-discrimination between resident and non-resident owned companies; and tax neutrality combined with transparency and information exchange. Both principles are underpinned by strong general anti-avoidance rules (GAAR).
- Voluntary commitments to EU Code of Conduct on Business Taxation since 2003. Their corporate tax regimes were assessed by the Code peer review process and accepted as being Code compliant in 2011/2012.
- Constructive engagement in the screening process undertaken by the EU in 2017 of 92 jurisdictions. Unequivocal political commitments to address by the end of 2018 concerns expressed by the EU regarding economic substance requirements. The Islands were assessed by ECOFIN in December 2017 as cooperative jurisdictions, subject to implementation of these commitments.
- Voluntary equivalent bilateral arrangements with all Member States under the EU Savings Directive (EUSD) in 2004. The Islands committed to the early adoption of the global Common Reporting Standard (CRS) on automatic exchange of information (AEOI) and exchanged information under the CRS in the first wave in September 2017.
- Active participation in Base Erosion and Profit Shifting (BEPS) Inclusive Framework: commitment to implement the BEPS minimum standards; introduction of the OECD standard for country by country reporting (CBCR) by large multinational corporations (BEPS Action 13) into domestic law; signature of the Multilateral Instrument in June 2017 (and ratified by Jersey in December 2017), and active participation in BEPS Working Groups and Task Forces.
- Assessment by MONEYVAL, as being among the best jurisdictions in the world when measured against the FATF 2003 international standards for tackling money laundering and terrorist financing (reports published in 2016).
- International recognition for providing accurate, adequate and timely information on the beneficial ownership of companies. Commitment to the new international initiative to develop and implement a new global standard for the automatic exchange of beneficial ownership information.
- International recognition for financial regulation. The Islands' systems have been assessed as being in the top tier by the Financial Stability Board (FSB).
- Data protection regimes which the European Commission has assessed as meeting EU standards.

Introduction

1. The Channel Islands (“the Islands”) consist of the Bailiwicks of Guernsey and Jersey. They are British Crown Dependencies. They are not part of the United Kingdom, but the UK has ultimate responsibility for their external affairs and defence. The Islands enjoy a high degree of autonomy, including their own fiscal and judicial systems, and receive no financial subsidy from the UK or the EU. By virtue of Protocol 3 of the UK’s Accession Treaty, the Islands are part of the Customs Union and within the Single Market for the purposes of trade in goods, but are third countries (i.e. outside the EU) in all other respects.
2. The UK referendum in June 2016 means that when the UK leaves the EU, Protocol 3 will no longer apply. However, the relationship and the cooperation between the Islands and the EU in areas outside Protocol 3, including tax and financial services, are unaffected by Brexit as the Islands’ existing status as third countries is unchanged.
3. The OECD Convention was extended to Guernsey and Jersey in 1990 and they are part of the UK for the purposes of its membership of the OECD. OECD Decisions and Recommendations apply to Guernsey and Jersey to the same extent as they do to the UK unless the contrary is specifically stated in a particular case.

The Channel Islands as international financial centres

4. Guernsey and Jersey are significant net providers of liquidity and investment funds to the European economy, as has been demonstrated by various independent studies. For both Islands combined the level of banking deposits is around £250 billion and of funds is around £500 billion. These deposits and funds are drawn into the UK and the rest of Europe largely from the rest of the world and the Islands’ marketing efforts are directed at increasing this flow from the Far East, Gulf and other wealth creating countries outside of Europe.

Tax policy in the Channel Islands

5. Public finances around Europe remain under pressure and EU Member States are seeking to maximise tax revenues, including by reducing tax evasion and fraud, and to prevent abusive tax avoidance. The Chief Ministers of Guernsey and Jersey have both made clear that the Islands have no desire or need to harbour abusive schemes and will continue to work with international tax authorities to eliminate them.
6. The Islands have the same need as EU Member States to protect their public finances, which are also totally dependent on direct and indirect taxation regimes designed to meet the domestic economic needs of each jurisdiction. For individuals, the standard and maximum rate of income tax is 20%. Since 2008 the standard corporate rate of tax has been 0%, certain financial service activities are taxed at 10% and utilities (e.g. providers of telephone services) and companies deriving income from an interest in local property are taxed at 20% (as are large retailers in Guernsey, from 2016).
7. The tax policies of Guernsey and Jersey are underpinned by strong general anti-avoidance rules (GAAR). In addition, there are no allowances or exemptions of the sort found in many other countries which have the effect of producing effective rates of corporate tax much lower than the headline rate. With their relatively simple tax structures the Islands also have no call for tax rulings of the kind found in many other jurisdictions.
8. It is sometimes argued that the very existence of a standard rate of 0% corporate tax is harmful and contributes to tax avoidance. However it should be recalled that the OECD itself has confirmed that “low or no taxation” is not of itself harmful, while the EU, in assessing third country tax regimes (see below) has clearly stated that low or no corporate tax is not in itself a basis for judging non-

- cooperation. It is only harmful if discriminatory and combined with little or no transparency and information exchange, neither of which is the case in Guernsey and Jersey.
9. The standard rate of 0% corporate tax is based on two key principles. One is the EU Code Group principle of non-discrimination between resident and non-resident owned companies. The other is the principle of tax neutrality combined with transparency. As international finance centres, Guernsey and Jersey act as “financial entrepôts” in facilitating the investment of funds drawn from around the world into European financial markets. The return to the investors should be taxed in their home country and the business activity generated by the investment in Europe should be taxed in the jurisdiction where that activity takes place.
 10. Tax neutrality in the jurisdiction where the fund is registered ensures investors are not penalised for the lack of a fully functional double taxation treaty network with the EU Member States. This does not mean investors do not pay taxes – either in their own jurisdiction or the jurisdiction where the fund invests. Information is forwarded by Guernsey and Jersey to the countries concerned, under multilateral and bilateral agreements, to help them make accurate tax assessments.
 11. With this in mind, Guernsey and Jersey have given their full support for the transparency principles central to the current G20, OECD and EU tax initiatives. The Islands have common cause with the EU in tackling tax evasion, fraud and aggressive tax avoidance and believe these objectives are best achieved by working in partnership, as part of the wider international community, in the development and effective implementation of internationally agreed standards, including those set by the FATF and the OECD.

The Channel Islands as partners of the international community

12. The Islands have shown by their actions that they are reliable, active and cooperative partners of the EU and the wider international community. Pierre Moscovici, the EU Commissioner for Economic and Financial Affairs, Taxation and Customs, stated after meeting the Chief Ministers of Guernsey and Jersey on 13 January 2016, that:

"I very much welcome the continued active engagement of Guernsey and Jersey in the key international initiatives for fighting tax evasion, fraud and abusive tax avoidance, in which they are important partners of the EU. Their implementation of the Common Reporting Standard on automatic exchange of information from the 1st January, and their support of the BEPS programme, alongside the EU Member States, are particularly noteworthy and reinforce their standing as cooperative jurisdictions."

EU-Channel Islands Cooperation

13. The Islands voluntarily committed to the EU's Code of Conduct on Business Taxation in 2003. The Guernsey and Jersey corporate tax regimes have both been assessed by the Code peer review process (most recently Jersey in 2011, and Guernsey in 2012). The rollback measures to remove the harmful elements identified by the Group were speedily implemented to ensure continuing compliance with the Code.
14. In 2004 Guernsey and Jersey voluntarily entered into bilateral arrangements with all Member States under the EU Savings Directive (EUSD) and they each have signed and ratified many Tax Information Exchange Agreements (TIEAs) and Double Taxation Agreements (DTAs). All are in force, except for those that are waiting for ratification by the partner jurisdiction or have only recently been signed.
15. Guernsey and Jersey thus have legal frameworks for exchange of information on request (EOIR) with all Member States, either through a TIEA or DTA or through the Council of Europe/OECD

Multilateral Convention on Mutual Administrative Assistance in Tax Matters. In the latest assessment by the OECD Global Forum published in November 2017, Jersey was rated fully compliant in respect of EOIR. Guernsey, which is currently rated largely compliant, is expected to be re-assessed in 2018.

Automatic exchange of information

16. Guernsey and Jersey committed in May 2013 to join the G5 countries initiative to establish and pilot an international standard for automatic exchange of information (AEOI) between tax authorities. In late 2013, they signed intergovernmental agreements (IGAs) with the US (under FATCA) and with the UK (based on FATCA). In 2014 they acceded to the Multilateral Convention.
16. Building on the G5 initiative, the Islands joined in the joint statement on 19 March 2014 committing to the early adoption of the global Common Reporting Standard (CRS) on AEOI. The first exchange of information in relation to new accounts and pre-existing individual high value accounts took place at the end of September 2017. Guernsey and Jersey have taken an active role at the OECD: Jersey is a vice-chair of the Global Forum on Tax Transparency's AEOI working group. Guernsey is also a member of the working group and the Global Forum Peer Review Group.
17. On 29 October 2014 Guernsey and Jersey were among over 50 jurisdictions to sign the Multilateral Competent Authority Agreement (MCAA) in Berlin as a further step towards implementation of the CRS. Following the repeal of the EUSD by the EU on 10 November 2015, the existing arrangements between the Islands and EU Member States under the EUSD, which are limited to the interest income of individuals, were replaced in 2016 by AEOI under the CRS, which provides information on a much wider range of entities and financial information.
18. Guernsey and Jersey sent letters to all Member States within one week of the repeal of the EUSD to confirm the suspension of the bilateral EUSD arrangements and to give the required notice of their termination, and to confirm the move to AEOI under the CRS from 1 January 2016 (with first exchange by September 2017, except in the case of Austria which will be in 2018). Both Islands enacted domestic legislation implementing the CRS rapidly by the end of 2015. In substance, this delivers the same outcome as the EU's agreements on AEOI with Andorra, Liechtenstein, Monaco, San Marino and Switzerland,
19. Guernsey and Jersey engage actively with the European Parliament on tax issues. The Chief Ministers of Guernsey and Jersey met the Chair of the European Parliament's special Committee on tax rulings (TAXE 1) in May 2015 and both Islands voluntarily provided written submissions to the Committee. In March 2016 officials from the Islands gave evidence at a hearing of the second special Committee (TAXE 2). In May 2017 officials also gave evidence at a hearing of the EP Committee of Inquiry into the Panama Papers (PANA), focusing on tax and beneficial ownership.

National Blacklists

20. Some EU Member States include within their tax legislation a list of third country jurisdictions regarding whom the Member State applies predefined tax measures or tax policies (e.g. a higher rate of withholding tax or enhanced due diligence procedures by financial institutions). These so-called "national blacklists" are based on assorted criteria, such as rates of taxation or non-cooperation (which is itself defined in different ways, most commonly linked to cooperation through a TIEA or similar exchange of information instrument).
21. The Commission, in its Recommendation to Member States of December 2012, defined good governance in tax matters by third countries in relation to international transparency and cooperation standards, and the absence of harmful tax measures as set out in the EU's Code of

Conduct. The Commission recommended that Member States should remove jurisdictions which meet these good governance standards from their national blacklists.

22. Based on their Agreements for EOIR, support for AEOI as a CRS “early adopter”, and support for international tax initiatives and for EU principles of good governance, Guernsey and Jersey believe there are no grounds for their inclusion on any blacklists of so-called “non-cooperative jurisdictions”. They are actively working with those Member States that still include them on their national list to achieve de-listing.
23. The Islands believe that jurisdictions identified by Member States solely on the basis of Controlled Foreign Corporation (CFC) legislation, or the need for enhanced reporting obligations based on tax rates, cannot be regarded as “black listed”. This is because most countries which have CFC legislation do not see the need to have a list; and those that do have a list say they have it simply as information for the private sector.

EU list of non-cooperative jurisdictions

24. On 8 November 2016 EU Finance Ministers (ECOFIN) adopted conclusions on the criteria for establishing by the end of 2017 an agreed EU list of “non-cooperative jurisdictions for tax purposes” (NCJs). The criteria related to transparency and exchange of information; fair tax competition; and G20/OECD BEPS standards.
25. Guernsey and Jersey were among over 90 jurisdictions to be invited by the EU in January 2017 to participate in the “screening” of their tax regimes. Both governments confirmed their willingness to do so and provided all the information requested by the EU in connection with the screening process.
26. Jurisdictions were sent letters in November 2017 by the Code of Conduct Group with the provisional findings. Where jurisdictions were found to have failed one or more of the criteria used for the screening they were invited by the Code Group to make a commitment to address the identified concerns by the end of 2018.
27. In the case of Guernsey and Jersey, the provisional finding was that both Islands were fully compliant with the criteria relating to tax transparency (criterion 1), the absence of preferential tax regimes (criterion 2.1), and commitment to BEPS (criterion 3). However the Code Group’s provisional assessment was that Guernsey and Jersey did not have adequate economic substance requirements and hence were provisionally assessed as not meeting criterion 2.2 (“the jurisdiction should not facilitate offshore structures aimed at attracting profits which do not reflect real economic activity in the jurisdiction”). Replies were sent by the Guernsey and Jersey Chief Ministers making unequivocal commitments to address the concerns identified.
28. The 5 December ECOFIN decided that 17 countries should be placed on the list of non-cooperative jurisdictions. 47 jurisdictions, including Guernsey and Jersey, were placed on a list of jurisdictions classed as “cooperative, subject to implementation of commitments”. On 23 January ECOFIN decided to move 8 of the 17 jurisdictions on the NCJ list to the list of cooperative jurisdictions (making a total of 55), on the basis of commitments received after the 5 December ECOFIN. ECOFIN will review implementation of commitments by the 55 jurisdictions by the end of 2018.
29. As they take forward implementation of these commitments during 2018, Guernsey and Jersey look forward to a close and effective dialogue with the Code Group, and to participating actively in ongoing work in the OECD on economic substance on which there is not yet an agreed international standard.

Base erosion and profit shifting (BEPS)

30. The Governments of Guernsey and Jersey have expressed clear and full support for the actions being taken under the BEPS initiative to reach a globally fair and modern international tax system. In 2016 Guernsey and Jersey accepted the OECD's invitation to become BEPS Associates and Members of the newly-established OECD BEPS Inclusive Framework. The purpose of the Inclusive Framework is to ensure the effective implementation of BEPS on a global basis, similar to the role of the Global Forum on international tax transparency.
31. As BEPS Associates, the Islands contribute to the overall development of the BEPS programme through policy dialogue and exchange of information, by participating on an equal footing with OECD, G20 and many other countries and jurisdictions, including a significant number of developing countries.
32. BEPS refers to tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity. The BEPS package provides 15 Actions that will equip governments with the domestic and international instruments needed to tackle BEPS. Tools ensure that profits are taxed where economic activities generating the profits are performed and where value is created. They are intended to give businesses greater certainty by reducing disputes over the application of international tax rules and standardising compliance requirements.
33. The basic proposal that profits should be taxed where the economic activity that generates the profits is carried out, and where value is created, fits well with Jersey and Guernsey's long-standing policy of requiring regulated financial institutions such as the banks to have a real physical presence on the Islands and to be of substance.
34. The Islands are watching closely the action being taken by members of the G20, the OECD and the EU to implement BEPS, particularly in respect to aspects which are of greatest relevance to them. The Islands have therefore noted the EU's adoption in July 2016 of the Anti-Tax Avoidance Directive (ATAD) and the subsequent adoption in June 2017 of a further Directive specifically on hybrid mismatches (ATAD 2).
35. All BEPS Associates are committed to consistent implementation of the BEPS package, including its four minimum standards which includes the exchange of Tax Rulings (which both islands implemented in 2017), and country by country reporting (CBCR) under Action 13. Following industry and public consultations, Guernsey and Jersey have implemented the OECD standard to extend the scope of AEOI to exchange CBCR between tax authorities. In the EU this has been implemented through the Administrative Cooperation Directive (DAC4) adopted in May 2016.
36. In addition to domestic legislation, Guernsey and Jersey signed, on 21 October 2016, the OECD multilateral CBCR instrument that opened for signature on 27 January 2016. Commenting on this, the OECD Secretary General, Angel Gurría, said: *"I congratulate Guernsey and Jersey on their efforts toward implementing the BEPS package, and on their important role in advancing greater international tax cooperation and transparency."* Jersey is vice chair and Guernsey is a member of the ad hoc working group established by the OECD to monitor international implementation of CBCR. Jersey is also a member of the Steering Group.
37. Guernsey and Jersey are also members of the OECD ad hoc working group that has developed the multilateral treaty to implement BEPS treaty related measures and amend bilateral treaties. They were amongst the first wave of jurisdictions to sign this Multilateral Instrument at the OECD on 7 June 2017. In December 2017 Jersey adopted domestic implementing legislation and thus became the third jurisdiction worldwide to complete ratification.

38. Jersey and Guernsey participate actively in BEPS Working Groups,. In July 2017 Jersey was elected to the Ad Hoc Advisory Task Force established to provide advice on the future work of BEPS Working Party 1 (on tax conventions) and Working Party 6 (on taxation of multinational enterprises). Jersey is the only non-sovereign jurisdiction on this Task Force.

Tackling financial crime

39. Guernsey and Jersey have both been assessed as being amongst the best quality financial centres in the world when measured against the historic 2003 international standards for tackling money laundering and terrorist financing set by the Financial Action Task Force (FATF). Both have had tax crimes as a predicate offence for anti-money laundering purposes for more than a decade.
40. Both Guernsey and Jersey were last reviewed by MONEYVAL in 2016. These assessments were carried out against the 2003 FATF standards. The cycle of assessments against the new 2012 FATF standards has begun. The Islands expect to be next assessed in 2020.
41. The Islands are internationally recognised for providing accurate, adequate and timely information on the beneficial ownership of companies. This position is also reflected in the roles the Islands play in the work of the European Business Registry.
42. The Islands are committed to compliance with FATF Recommendations 24 and 25 on transparency and beneficial ownership of legal persons and legal arrangements, reflected also in the EU 4th AML Directive. With the EU Member States, Guernsey and Jersey have committed to develop and implement a new global standard for the automatic exchange of beneficial ownership information. This initiative was launched by the G5 countries in April 2016 following the Panama Papers scandal. It is being taken forward by the OECD and FATF at the request of the G20.
43. With respect to trusts and companies, Guernsey and Jersey have regulated Trust and Company Service Providers (TCSPs) since 2000. TCSPs are required to hold and keep up to date beneficial ownership information for all structures administered by them. This information is available to the Islands' financial regulators and law enforcement authorities. It can be provided to competent authorities in other jurisdictions using gateways provided for in the legislation, as well as under the Islands' tax and mutual legal assistance (MLA) agreements.
44. In its March 2016 report on Jersey, MONEYVAL stated that Jersey's combination of a central register of ultimate beneficial ownership with a high level of vetting and evaluation not found elsewhere and regulation of TCSPs of a standard found in few other jurisdictions "has been widely recognised by international organisations as placing Jersey in a leading position in meeting standards of beneficial ownership transparency." Guernsey's central registry of company beneficial ownership information became operational in August 2017.

Financial regulation

45. Guernsey and Jersey have robust and internationally respected systems of financial regulation. There is no banking secrecy in Guernsey or Jersey and, as noted above, both Islands are world leaders in the regulation of TCSPs.
46. In November 2011, the Financial Stability Board (FSB) published its assessment of jurisdictions' international cooperation and information exchange. Guernsey and Jersey were listed as one of the jurisdictions "demonstrating sufficiently strong adherence to the relevant international standards" (so-called group 1 status). This assessment was re-confirmed in the 2014 update report published by the FSB.

47. The Islands' financial regulators have developed excellent regulatory cooperation with their EU counterparts, including with the European Supervisory Authorities. Guernsey and Jersey were among the first jurisdictions to conclude Memoranda of Understanding with most EU/EEA states with respect to market access for national private placement regimes under the Alternative Investment Fund Managers Directive (AIFMD). These memoranda were negotiated by the European Securities and Markets Authority (ESMA). In July 2015 and July 2016 ESMA recommended to the Commission that passporting under AIFMD should be extended to Guernsey and Jersey.

Data protection

48. The protection of personal data is vital for public bodies, including tax and regulatory authorities. Guernsey and Jersey's domestic data protection legislation is based on EU law. Guernsey and Jersey are among a small group of third country jurisdictions that have been officially assessed as meeting current EU data protection standards and granted equivalence ('adequacy') through individual Commission Decisions. Following the adoption of the new EU General Data Protection Regulation (GDPR) in May 2016, the Islands have adopted changes to domestic legislation which should come into application at the same time as EU Member States (by May 2018).

Tax and development

49. The Islands recognise the importance of tax issues for the international development agenda. They are actively exploring ways of helping developing countries to enhance their revenue raising capacity, working in collaboration with other international partners. Both Islands have put in place legislation designed to stop creditors, including so-called "Vulture Funds", from pursuing inequitable payments from "heavily indebted poor countries" (as defined by the IMF/World Bank) through the Guernsey and Jersey courts.
50. They are actively engaged in international efforts to help developing countries recover assets illicitly moved out of their countries. Channel Islands authorities have assisted in prosecutions affecting jurisdictions as diverse as Brazil, Kenya, Indonesia, Nigeria, Norway, Denmark, South Africa and the United States, resulting in significant restraint, confiscation and repatriation of assets.
51. Notable examples are Jersey's identification and return of over US\$160 million to the Nigerian Government, following investigation into corruption involving General Abacha, and the case of Garnet in Guernsey, which is preventing the transfer of EUR 36m related to Tommy Suharto of Indonesia, and which the Guernsey authorities successfully defended under judicial review. Civil and criminal asset recovery actions also come before the Royal Courts in Jersey and Guernsey.
52. An independent report in 2014 ("Jersey's value to Africa" by Capital Economics) highlighted the important role that the Islands can and are playing by providing a safe and well-regulated business environment which can facilitate access to the investment funds which Africa needs to fulfil its economic potential.

Channel Islands Brussels Office, 30 January 2018