

THE CHANNEL ISLANDS AND THE EUROPEAN UNION

TAX COOPERATION

Introduction

1. The Channel Islands (“the Islands”) comprise the Bailiwicks of Guernsey and Jersey. The Islands are autonomous British Crown Dependencies with a direct allegiance to the British Crown which goes back over 800 years. They are not part of the UK, are not represented in the UK (Westminster) Parliament and receive no financial subsidy from the UK government. They have their own parliaments and their own legal systems and have full fiscal autonomy.
2. From 1973 to 2020 the formal relationship between the Islands and the EU was governed by Protocol 3 of the UK’s Accession Treaty. Under Protocol 3, the Islands were part of the EU Customs Union and were essentially within the Single Market for the purposes of trade in goods but were “third countries” (i.e. outside the EU) in all other respects. Pursuing a “good neighbour” policy, the Islands built up a close relationship with the EU as third countries in many different fields outside the formal relationship under Protocol 3, including taxation.”

Tax policy in the Channel Islands

3. A standard rate of 0% corporate tax has been in place in Jersey and Guernsey since 2009. It is underpinned by (i) strong general anti-avoidance rules (ii) a comprehensive economic substance regime approved by the EU and the OECD to ensure alignment between taxing rights and where value is created (iii) the principle of non-discrimination between resident and non-resident owned companies; and (iv) the principle of tax neutrality combined with transparency.
4. As international finance centres, Guernsey and Jersey act as “financial entrepôts” in facilitating the international flow of capital 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. That is why the Islands have given their full support for the transparency and anti-base erosion and profit shifting principles central to the current G20, OECD and EU tax initiatives.

Tax cooperation with the EU

5. The Islands voluntarily committed to the principles of the EU’s Code of Conduct on Business Taxation in 2003. In 2004 Guernsey and Jersey voluntarily entered into bilateral arrangements with all MS under the EU Savings Directive. These bilateral arrangements, which were limited to the interest income of individuals, were replaced in 2016 by automatic exchange of information (AEOI) under the Common Reporting Standard (CRS), which provides information on a much wider range of entities and financial information. The Islands were early adopters of the CRS, with the first AEOI in September 2017.
6. In November 2016 EU Finance Ministers (ECOFIN) approved criteria for establishing an EU list of “non-cooperative jurisdictions for tax purposes” (NCJs) from over 90 jurisdictions whose tax regimes were to be assessed by the EU’s Code of Conduct Group (CoCG). In response to concerns identified by the CoCG, Guernsey and Jersey each introduced a comprehensive Economic Substance Regime, enshrined in domestic law, with effect from 1 January 2019. All companies that are tax resident in Guernsey and Jersey must comply with this new regime for accounting periods commencing on or after 1 January 2019 and for all subsequent accounting periods. Failure will result in the application of sequential sanctions; escalating financial penalties; the spontaneous exchange of information; and ultimately company strike off.
7. On 12 March 2019, ECOFIN formally confirmed Guernsey’s and Jersey’s positions as cooperative jurisdictions and reaffirmed this in February and October 2020.

8. Guernsey and Jersey attach importance to maintaining this position as cooperative jurisdictions, and to continuing to be good neighbours to the EU on tax matters. They recognise the importance of monitoring the effectiveness of their economic substance regimes, in particular the enforcement efforts. The Islands will maintain the active engagement, built up over the years, with the European Commission, European Parliament and EU Member States on tax issues, including through regular Ministerial level and senior official level dialogue.
9. Throughout the NCJ process, Guernsey and Jersey worked closely with the Isle of Man. The three CDs valued the good working relationship established with the Commission Services and the constructive feedback received. This view was reciprocated. The published assessment by the Commission described the dialogue with the CDs as “*constant and constructive*”.
10. The CDs are also taking forward two further political commitments made in December 2018. The first if these was to work with the EU to ensure on a reciprocal basis that company beneficial ownership information can be appropriately shared with EU tax and law enforcement authorities. The second was to introduce legislation implementing mandatory disclosure rules for CRS avoidance arrangements and opaque offshore structures aligned to international best practices developed by the OECD. Guernsey and Jersey have legislation in place which will enable them to enter into an OECD MDR instrument as soon as the OECD invites jurisdictions to do so.

International tax cooperation

11. The OECD Convention was extended to Guernsey and Jersey in 1990 and they are part of the UK for the purposes of their 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. Guernsey and Jersey play an active role in the OECD Global Forum and the OECD’s Base Erosion and Profit Shifting (BEPS) initiative
12. Jersey has been a vice-chair of the Global Forum’s AEOI working group and Guernsey a member of the working group. Guernsey is also a member of the Global Forum Peer Review Group. Jersey is the only non-sovereign member of the Ad Hoc Advisory Task Force established to provide advice on the future work of BEPS Working Party 1 (WP1) on tax conventions and WP6 on taxation of multinational enterprises. 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.
13. Guernsey and Jersey fully support 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 BEPS Inclusive Framework. All BEPS Associates are committed to consistent implementation of the BEPS package, including its four minimum standards.
14. In July 2019, the OECD’s Forum for Harmful Tax Practices (FHTP) confirmed that, following its own review, it concurred with the EU’s assessment that the Guernsey and Jersey tax regimes, including the new economic substance regime, were not harmful.
15. In 2017, the Islands implemented BEPS minimum standards relating to exchange of tax rulings (Action 5) and country by country reporting (Action 13) between tax authorities. The Islands were amongst the first wave of jurisdictions to sign and ratify the multilateral treaty to implement BEPS treaty related measures.
16. The Islands are playing an active part in the major current BEPS workstream in the OECD to address the taxation challenges of the digitalised global economy. This work is divided into two pillars – Pillar 1 focuses on the allocation of taxing rights for highly digital business models. Pillar 2 aims to develop a Global Anti Base Erosion (GloBE) regime to address outstanding BEPS issues and hence

to ensure that multinational enterprises can no longer engage in base erosion and profit shifting activity.

Further information

17. Further information about tax cooperation can be found on the websites of the [Guernsey](#) and [Jersey](#) governments. Further information about other aspects of Channel Islands cooperation with the EU, including on financial services and tackling financial crime, can be found on the [Channel Islands Brussels Office](#) website.

Channel Islands Brussels Office
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