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June 2010

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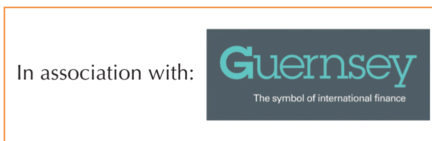

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Guernsey – just right?

MIKE TRUMAN looks at the advantages of Guernsey both for investors and those looking to relocate.

It is understandable that clients looking to leave the UK and settle in a low-tax jurisdiction, or who need wealth management services offshore, will often choose one of the British offshore islands – Jersey, Guernsey, the Isle of Man – or possibly Gibraltar. They all use sterling (although they issue their own bank notes), they are all English speaking, they have a culture and financial institutions which are familiar to those from the UK, and they are only a short flight away in the same time zone. But how do you choose between them?

You could argue, particularly for those who are relocating, that Guernsey is a 'Goldilocks' island: not too big like the Isle of Man, not too small like Gibraltar, and not too far away like both of them. Even within the Channel Islands, the island of Guernsey sits between Jersey and the smaller islands in size and population, giving it a more relaxed lifestyle without being isolated.

Jo Huxtsable, a tax specialist with Deloitte on Guernsey, agrees that the differences in tax regimes are not great, but that other reasons may motivate clients.

> 'The tax regimes across the islands are broadly comparable, but there are two distinctive features of Guernsey's regime. First, there is no Goods and Sales Tax as there is now in Jersey, and second I feel that Guernsey's tax cap offers more certainty for HNW individuals than Jersey's, because it is a fixed amount set out in statute. However, the real reason why I think clients are attracted to Guernsey is their experience of excellent service from the professional providers and a pragmatic approach from government, which combine to make it a very good place to do business.'

Facts and figures

Guernsey covers approximately 24 square miles and is located in the Gulf of St Malo, 60 miles south west of England and about 30 miles west of Northern France. It has a population of just over 60,000 people. There are regular flights through the day back to London and other UK airports, as well as to other financial centres such as Switzerland. There are also ferry services to the UK and France.

Its gross domestic product is just under £2 billion, and the financial sector makes up 70% of the export economy, employing a quarter of the island's workforce. While the sector has of course been impacted by the downturn of the past two years, some areas of it have shown significant growth in Guernsey. One of these is fiduciary services; there are more than 150 licensed fiduciary providers in Guernsey, with more than £300 billion of assets in trust. Another is captive insurance, where Guernsey is seen as a market leader with over 670 international insurance entities. More facts and figures can be seen in ***Statistics*** overleaf.

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Government

The Queen is head of state in Guernsey, but the island is independent in all matters apart from international representation and defence, where the UK is responsible. This independence dates from the Crown's loss of the continental lands of the Duchy of Normandy, leaving only the Channel Islands, which the Crown promised to govern according to the practices and customs of the Duchy.

Whilst the Guernsey government has recently been running a deficit, it has been praised for its strategic approach to infrastructure projects on the island. In March this year KPMG produced a report on island economies and infrastructure, and gave Guernsey a good report.

'As Guernsey faces up to a number of major infrastructure projects, it is in an advantageous position,' said Ashley Paxton, Head of Advisory for KPMG in the Channel Islands. 'It has no external debt and a targeted planning approach with its strategic plan.' This lack of external debt contrasts sharply with ratios of up to 100% in some island jurisdictions.

> ***“Whilst the Guernsey government has recently been running a deficit, it has been praised for its strategic approach to infrastructure.”***

The problem for islands like Guernsey is the expectation gap between the infrastructure which has been sufficient in the past, and the need for significant investment to remain competitive in the future. Paxton said:

> 'There is no simple solution to this challenge to close the "expectation gap". What is required of island governments is a strong consistent focus on employing all possible best practice solutions, coupled with learning from the experiences of other islands.'

Guernsey was particularly praised in the report for being one of the very few islands which had a defined process, the States Strategic Plan, for dealing with the financing of infrastructure investment.

KEY POINTS

- Crown dependencies have similar tax regimes, but there are advantages to Guernsey.
- Particular expertise in captive insurance and fiduciary services.
- Effect of downturn was not as bad as might have been expected.
- Commitment to transparency, but preserving confidentiality.

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The financial crisis

Inevitably there has been a downturn in Guernsey's financial sector following the problems of the past two years, but it does not seem to have severely affected confidence. Jo Huxtable was upbeat about the future:

> 'While inevitably the impact of the financial crisis has been felt in Guernsey, it has not been as important as you might think. Although the appetite for transactions is not there at present, and there have been fewer fund launches, the island's financial institutions have an ability to reinvent themselves and keep going. As a result there has been no great increase in unemployment and people are just watching and waiting to take advantage of the recovery.'

It is a view shared by Peter Niven, the Chief Executive of Guernsey Finance. Writing in May for EUBankers.net, he said that Guernsey had been challenged many times in the past by regulation and change, and had always proved more than capable of adapting in order to survive. Their current initiatives included promoting the industry through Guernsey Finance, and maintaining the strong links that are already in place with lawyers, accountants and other advisers in London and the rest of the UK.

However in addition new clients are now being attracted from India, and the Middle and Far East. This is particularly the case for fiduciary services, with some establishing offices in places such as Hong Kong. Guernsey itself has a representative office in Shanghai.

In general, Niven considers that the real result of the financial crisis has been a 'flight to quality', and that many clients will therefore be keen to use tried and trusted jurisdictions for their wealth management and business vehicles over the coming years, rather than looking at less well-established latecomers to financial services.

Legal changes

Guernsey now has a single modern statute governing companies, the Companies (Guernsey) Law 2008. This makes company formation much faster and simpler than it was before, and maintains the right for companies not to make their accounts public while at the same time introducing a modern online corporate registry. Guernsey company law also allows the formation of 'cell companies', which can provide greater flexibility for separating assets and liabilities than the more traditional companies and limited partnerships.

A new trust law has also been introduced recently and there is a new Intellectual Property Registry. All of these changes contributed towards Guernsey being named as the International Finance Centre of the Year at the STEP Private Client Awards 2008/9.

Transparency

Offshore financial centres have come under tremendous scrutiny in recent years, although this is nothing new for Guernsey with its fifty year history in this business. It has co-operated with these processes and has always been highly rated as an offshore financial centre – the last Global Financial Centres Index (GFCI 6) put Guernsey 15th in the world. It was also included on the OECD 'white list' published at the conclusion of the G20 summit in April 2009.

When Michael Foot reviewed the crown dependencies and offshore territories on behalf of HM Treasury, he reported on Guernsey favourably.

The lack of a banking secrecy law in Guernsey means that it can meet international standards on tax transparency. Its first Tax Information Exchange Agreement was signed with the USA in 2006 and it now has 15 in total, with plans for more.

In doing so, it still protects against 'fishing expeditions', requiring that in each case there is a good reason for the information to be disclosed and that proper procedures are followed. Rather than being a disincentive to potential investors, practitioners are now finding that the ability of Guernsey to meet the highest international standards is a positive advantage. Guernsey also has comprehensive Data Protection laws to protect client confidentiality.

At the same time, Guernsey ensures that the island cannot be used as a financial haven for criminal activity. These rules guard against the potential abuse of the international finance system to fund the drugs trade or terrorist activities, or to hide the proceeds of crime through money laundering.

Summing up the approach of Guernsey to transparency, when writing in Private Client Practitioner, Peter Niven highlights the difference between confidentiality and secrecy:

> 'Guernsey … does not have a banking secrecy law and has no intention of introducing one. Other jurisdictions may have such legislation (or have had this in place) but not Guernsey. Embracing transparency and eschewing secrecy is, though, at no cost to confidentiality for those who are undertaking legitimate business.
>
> 'There have been many scaremongering stories about "leaky buckets," with information being made available to all and sundry and at the drop of a hat but this could not be further from the truth.'

STATISTICS

Growth rate (2008, provisional)	7.6%
GDP per capita (2008, provisional)	£30,384
Output per worker (2008, provisional)	£57,615
Inflation (RPIX, Dec 2009)	2.9%
Total inflation 5 years to Dec 2009	16.3%
Unemployment (Dec 2009)	1.0%
Population (March 2008)	61,700
Average property price (March 2009)	£289,250
Average open market price (March 2009)	£895,875
Total bank deposits (Dec 2009)	£117 billion
Change on year	(25)%
Total investment assets (Dec 2009)	£184 billion
Change on year	(8)%

"Embracing transparency and eschewing secrecy is at no cost to confidentiality for those undertaking legitimate business."

The future

So it seems that its financial professionals are confident about Guernsey's future in an admittedly uncertain financial world. Niven believes that Guernsey can continue to offer exempt companies to the fund management industry. While he accepts that there are still some matters of detail to decide, particularly in respect of the tax base which should apply for taxing Guernsey-resident companies (worldwide income, or wholly or partly on income arising in the island), Guernsey has no intention of introducing taxes on capital or capital gains.

Guernsey has fifty years of history as an offshore financial centre behind it, which will give potential clients reassurance aboutits stability, but it is facing the challenges of the next decade by staying ahead of the curve, and not by resting on its laurels. ■

It's not just 20%!

MARK WATSON compares and contrasts Guernsey, Jersey, and the Isle of Man.

Current and feared future changes to UK tax have seen an increasing number of High Net Wealth (HNW) individuals look to relocate to the Crown Dependencies of Guernsey, Isle of Man and Jersey ('the Islands'), as well as other more tax-favourable territories around the world. At first glance the maximum personal tax rate for individuals of 20% in all three jurisdictions looks attractive; however the 20% rate can be dramatically reduced if tax caps, or in the case of Jersey the high value residency rules, are satisfied. The lack of capital gains taxes and inheritance taxes enhances the overall attractiveness of the Islands.

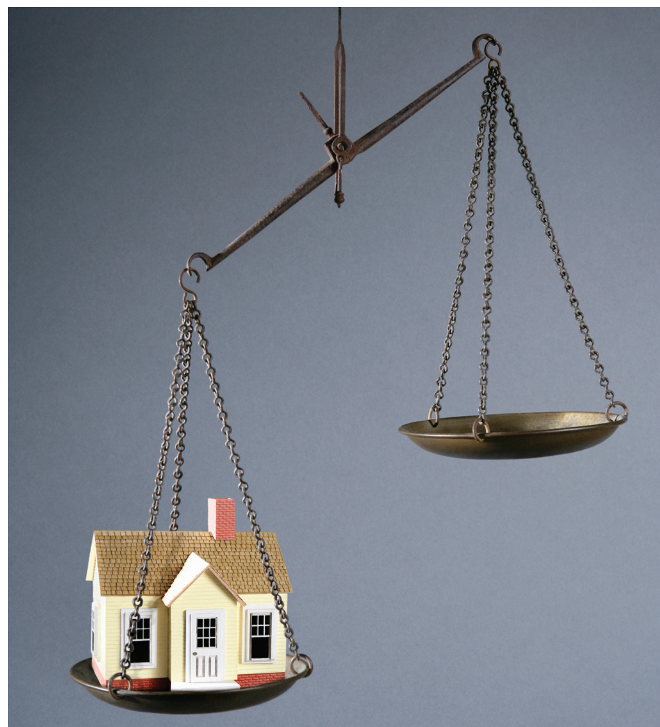
Tax is of course, not the only factor to be taken into account by HNW individuals looking to leave the UK. Considerations such as schooling, housing and the way of life also have a major role to play before a decision can be made. It is unusual to complete such an analysis and not conclude that at least one of the Islands stacks up as a very attractive proposition. In this article, though, I will provide you with the facts on the more technical key considerations around tax, housing and work permits.

Housing and work permits

A review of the tax regime needs to be complemented by looking at the housing and work permit rules. All of the Islands have implemented legislation to control population growth. The laws impact through housing licences or work permits. A summary of the rules for each Island is provided below.

KEY POINTS

- Housing and work permit rules must be considered along with tax.
- Tax caps can make a significant difference to ultimate liability.
- Advance tax planning can considerably improve the position.
- Tax may be the trigger, but is unlikely to determine the ultimate destination.



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Guernsey

Guernsey has two housing markets, the Local Market and the Open Market.

Local Market housing is available to residents born on the island and to employees of companies where a skill shortage has been identified in the island. A company bringing an employee to Guernsey will obtain a licence for the employee for a specified number of years. These licences are issued by the Department of Housing and require completion of an application process.

Open Market housing is available to everyone. On the purchase of an Open Market house, an individual is able to obtain a licence to reside on the Island for as long as they own the house.

Jersey

Jersey has a special regime applying to HNW individuals who wish to move to the island. This is called the 'high value residency regime' and an individual's circumstances are measured against the following criteria:

- contribution to tax revenues, with a minimum expected tax contribution of £100,000;
- business/social background of the applicant; and
- the ability of the applicant to purchase or rent a property worth in excess of £1m.

WORKED EXAMPLE

	Guernsey	Jersey	Isle of Man
Employment Income	400,000	400,000	400,000
Investment Income	175,000	175,000	175,000
Investment Income (UK)	2,000,000	2,000,000	2,000,000
	2,575,000	2,575,000	2,575,000
Domestic Income	575,000	575,000	575,000
Personal Allowance	(18,100)	(2,080)	(18,600)
	556,900	572,920	556,400
UK Income	2,000,000	2,000,000	2,000,000
Tax on Dom. Inc.	-	114,584	-
Tax on UK Inc.	-	146,145	-
Tax cap	200,000	-	115,000
Total tax	200,000	260,729	115,000
Effective rate	7.8%*	10.1%*	4.5%*

*Through the implementation of effective tax planning, the tax burden suffered in all territories may be reduced further, and in Jersey can be restricted to £100,000.

There are also some circumstances under which anyone can purchase a house without needing to undergo the application process.

Isle of Man

The Isle of Man requires newcomers to the island, who come for work purposes, to have a work permit before commencing work, but does not have separate housing markets.

Who is resident?

For the purposes of this article, the assumption is that an individual will become 'principally resident' in Guernsey, 'resident and ordinarily resident' in Jersey, or 'resident' in the Isle of Man. Residency is determined by set criteria which differ between islands. The residence rules for each island are summarised below:

Guernsey

Guernsey operates a system of day counting in order to determine whether someone is tax resident. There are three categories of residence: resident only, solely resident and principally resident.

TAX SUMMARY

	Guernsey	Jersey	Isle of Man
Tax Year	1 Jan - 31 Dec	1 Jan - 31 Dec	6 April - 5 April
Income Tax Rate	20%	20%	10% to £10,500; 20% thereafter
Taxable Base	Worldwide	Worldwide	Worldwide

A person becomes *principally resident* if they spend over 182 days in Guernsey; OR 91 days in Guernsey in a tax year when over the preceding four years they have spent a cumulative total of 730 days in Guernsey.

Jersey

An individual is resident in Jersey for tax purposes if they:

- have available accommodation in the island and stay there at any point during the tax year:
- are physically present in the Island for at least six months in a tax year; or
- are physically present in Jersey on average three months or more per year over any four year period.

In calculating residence for tax purposes, days of arrival are included but days of departure are ignored. An individual is ordinarily resident in Jersey if they are habitually resident in the Island.

Isle of Man

The Isle of Man treats a person as resident when they have 'a view or intent of establishing residence' from the date of their arrival. However residence will be deemed should a person spend six months in the Isle of Man in one tax year. The Isle of Man will also operate the practice of treating a person as resident if they spend an average of 90 days per year in the Isle of Man over a four year period.

Tax and the tax cap

The summary of tax rates and the tax base shown in ***Tax summary*** above applies to principally resident individuals in Guernsey; to ordinarily resident individuals in Jersey, and resident individuals in the Isle of Man.

However, the effective rate of tax payable by HNW individuals may be significantly reduced through the tax cap, or in the case of Jersey a sliding scale applicable to some individuals. This is a significant aspect of the tax system of the Islands as they seek to compete with each other for High Net Worth Individuals looking to emigrate offshore.

Guernsey

The tax cap limits the tax payable by a Guernsey resident individual is £100,000 in respect of income from the following sources:

- non-Guernsey businesses;
- non-Guernsey offices and employments;
- ownership of non Guernsey land and buildings;
- other non Guernsey source income;
- Guernsey bank deposit interest Income; and
- Guernsey Collective Investment Schemes which have been granted exempt tax status.

Individuals who derive the majority of their income in Guernsey may elect for a tax cap of £200,000 on all income, whether arising in Guernsey or not. The two caps are mutually exclusive – individuals cannot avail themselves of both.

Jersey

Jersey does not operate a tax cap. For individuals who have been granted high value residency status, there are special rates of tax on non-Jersey source income as follows:

- the first £1m is taxed at 20%;
- income between £1m and £1.5m is taxed at 10%; and
- income over £1.5m is taxed at 1%.

In looking at the £1m limit, Jersey income is included. Most individuals in this category are able to undertake pre-residence planning, which could restrict their Jersey tax liability to £100,000.

Isle of Man

The Isle of Man operates a tax cap which limits the tax payable for Isle of Man resident individuals to £115,000 per tax year. The tax cap applies to income from all sources.

Comparison

The calculation in ***Worked example*** on page 5 assumes the following facts for a married individual who is principally resident in Guernsey, or ordinarily resident in Jersey, or resident in the Isle of Man, with the following income:

- domestic employment income of £400,000;
- domestic investment income of £175,000;
- UK investment income of £2,000,000

For the purposes of the example, double tax relief has been ignored.

Clearly, the higher an individual's income, the lower the effective rate of tax they would suffer. The Isle of Man cap applies to all income and results in a significantly lower effective tax rate for high earners. In the case of Jersey, the benefit of the lower rates of tax would only be enjoyed where an individual has over £1,000,000 of income.

The tax cap in Guernsey and the sliding scale in Jersey can provide an opportunity to engage in tax planning, particularly around optimising the balance of income received from domestic and non-domestic sources. In the Isle of Man there is the opportunity for some tax cap planning around the assessment of married couples, especially where there is a significant disparity between the respective incomes of the spouses.

Other factors

The examples above only consider direct taxes and ignore the costs of other taxes such as social security, Value Added Tax in the Isle of Man, and Goods and Services Tax in Jersey.

> ***"It is essential to take advice before relocating to the islands to optimise the tax position ."***

Guernsey does not have a Goods and Services tax regime. Clearly if tax was the only consideration then the total tax contribution borne by an individual would need to be taken into consideration. These other taxes will have an important impact on the effective rates of tax indicated above.

Conclusion

In my experience, while tax might have been a key driver in making the initial decision to leave the UK it is also critical to understand how each jurisdiction's regime will affect a client who relocates. As demonstrated in the example above, it is essential to take advice prior to relocating to the Islands, in order to ensure that the tax position is optimised.

Other decisions such as schooling, housing and the way of life in each island form the overriding basis of the decision on where to ultimately settle. These decisions are very important as the tax benefits of relocating will only be effective if residence in the UK is broken.

In this respect, there have been a number of tax cases recently that have sought to test whether residence has actually been moved to another territory. An unhappy relocation, resulting in too many return visits and an insufficiently clear 'break' with the UK, could be fatal to effective tax planning.

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Your diligence dues

MARK COFFELL explains how due diligence can be made fairly painless for you and for your clients.

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The great Benjamin Franklin opined in 1789 that 'in this world nothing can be said to be certain, except death and taxes'. The subsequent passage of more than 200 years has done little to erode the truth of this statement. However, if we were to update it for the private client financial services industry in the 21st century we might say that the only certainties were 'death, taxes and customer due diligence (CDD)'.

In this article we will look at how financial services businesses (FSBs) in Guernsey go about the CDD process when setting up an offshore structure for your clients, with the aim of making this inevitable part of our professional lives a little more bearable for all of us. We will also give you some of our top CDD tips.

Why Guernsey?

The new UK budget may prompt more advisers to consider recommending moves abroad and restructuring the ownership of assets. Guernsey has positioned itself as one of the jurisdictions of choice. The benefits of running your affairs from an international jurisdiction that is in the top division of such centres, on the Organisation for Economic Co-operation and Development 'white list' and boasting enviable long-term political stability (no party politics here) must not be underestimated. These features bring peace of mind to a client that their affairs will be managed properly. In addition, any people transacting business with your client's newly established structure will be reassured that they are dealing with a counterparty of substance.

Of course, one of the reasons that Guernsey is rated so highly internationally is its commitment to robust regulation, and CDD procedures necessarily reflect this. But with a good understanding of the underlying principles, a good working relationship with your chosen FSB, and a bit of preparation, the whole process can be made less painful for both you and your clients.

KEY POINTS

- Guernsey operates a risk-based approach.
- Identity and source of funds/wealth need to be established.
- CDD has to be carried out on those likely to benefit from trusts.
- More work will have to be done for high risk cases.

CDD principles

Understanding the principles of the CDD process enables us to make intelligent decisions regarding information to gather for each client's circumstances. As Guernsey has developed a sophisticated regulatory framework the business of due diligence is increasingly driven by a risk-based approach. The Guernsey Financial Services Commission (GFSC) states in its own *Handbook for FSBs*, in section 3.2:

> 'No system of checks will detect and prevent all money laundering or terrorist financing. A risk-based approach will, however, serve to balance the cost burden placed on individual businesses and on their customers with a realistic assessment of the threat of the business being used in connection with money laundering or terrorist financing. It focuses the effort where it is needed and has most impact.'

Guernsey FSBs are therefore encouraged to take a bespoke approach to CDD rather than the type of 'one size fits all' check the box exercise which we will all have come across and been frustrated by in the past.

While this sensible approach means low risk customers should not be inundated with unreasonable CDD documentation requests, it does mean that the chosen FSB must, in conjunction with the client adviser, think about what information it is appropriate to gather for a particular client.

SUITABLE CERTIFIERS

The following is a list of examples of acceptable persons to certify evidence of identity – this list is not intended to be exhaustive:

- a member of the judiciary, a senior civil servant, or a serving police or customs officer;
- an officer of an embassy, consulate or high commission of the country or territory of issue of documentary evidence of identity;
- a lawyer or notary public who is a member of a recognised professional body;
- an actuary who is a member of a recognised professional body;
- an accountant who is a member of a recognised professional body;
- a member of the Institute of Chartered Secretaries and Administrators; or
- a director or officer of a regulated financial services business from one of the following countries:

Austria	Japan
Australia	Jersey
Belgium	Luxembourg
Canada	Netherlands
Denmark	New Zealand
Finland	Norway
France	Portugal
Germany	Singapore
Gibraltar	South Africa
Greece	Spain
Hong Kong	Sweden
Iceland	Switzerland
Ireland	United Kingdom
Isle of Man	United States of America
Italy	

Suggested CDD document certification wording

'I have met _______________ (insert customer name) and hereby certify that this document is a true copy of the original document, which I have seen, and that the photograph contained therein is a true likeness of _______________ (insert customer name).'
Signed/Dated/Capacity/Contact Details etc.

Within our own business we view this step as an essential one in understanding your client's unique set of personal circumstances and use a comprehensive questionnaire to assist in gathering information. This in turn will enable us to tailor our approach to the client's needs going forward.

The starting point is the principle given by Regulation 3 in the handbook that prior to the establishment of a business relationship a FSB must both:

- identify and verify the identity of a client; and
- undertake a risk assessment of that proposed business relationship, including the source of wealth and funding and the rationale driving the proposed business to be transacted, such as estate planning etc.

If a structure is being established for a husband and wife with joint beneficial ownership do not fall into the trap of gathering CDD only on the party that is your primary contact. Both individuals must be subject to the same level of CDD. Where dealing with corporate entities different CDD requirements apply which are beyond the scope of this article.

Identity of individuals

Clearly this is the cornerstone of the CDD process and one that most clients understand the need for. The client's identity (their legal name, former names, date and place of birth and nationality etc.) must be confirmed and this can usually be done with one primary photographic identification document if chosen correctly.

For providing evidence of identity the following ID documents are preferred in the order listed (see handbook section 4.4.2/75&76):

(i) a current passport, or
(ii) a current national identity card.

These documents are considered the best possible means of verifying identity. Other items such as a driving licence (provided that it incorporates photographic ID) may be used but only if there is a good reason for the preferred documents being unavailable.

It goes without saying that you should have seen the original of the copy you are certifying, so make sure, for instance, that your clients bring their passports with them rather than a copy! If you use your office facilities to produce the copy you can then ensure it is legible (particularly the photograph – it is meant to be a verification of identity after all). Also, take care that you check the document is in date and that you have copied all the relevant parts of the document.

A recently dated (within the last three months is the accepted norm) bank or credit card statement, or a utility bill in the name of the client is the usual means of address verification (handbook section 4.4.3/78). Mobile telephone or store card statements are not acceptable. A driving licence may also be used to satisfy the address verification requirements but the same document cannot be used to fulfil both the ID and residential address requirements. The driving licence as confirmation of address can be particularly useful if your client has remembered to bring their passport to the meeting but has forgotten a utility bill (or it is more than three months old).

For a FSB to be able to rely on the identity documents you provide, regulations state they must be certified as true copies of the original by a suitable certifier. Suitable certifiers include a qualified accountant or lawyer and a comprehensive list appears above – see ***Suitable Certifiers***.

In order for the verification process to be effective the certifier must have met the individual concerned and seen the original of the document(s) that they are certifying. Therefore the certification wording should ideally reflect this and also contain the certifier's professional capacity and contact information so that they may be contacted in the event of a query. Make sure that you sign and date in your own name – signing off as 'XYZ Accountants/Solicitors' but not identifying the individual certifier can invalidate the document.

Source of wealth or funds

Understanding the customer's source of funds and source of wealth are key aspects of CDD. The source of funds refers to the activity which generates the funds for a business relationship or occasional transaction.

Source of wealth is distinct from source of funds, and describes the activities which have generated the total net worth of a person both within and outside a business relationship, i.e. those activities which have generated a customer's net assets and property.

The wide breadth of possible scenarios makes any 'one size fits all' approach impossible. The use of third party sources is often overlooked but can be an invaluable method of independent verification. Internet searches may assist in providing verification through third party research and publications that are readily available in the public domain.

If your clients are not so high profile as to have an internet footprint, then consider their individual circumstances. For instance, if their wealth has been realised through the recent disposal of a business could you obtain and provide a copy of the sale and purchase agreement to verify source of wealth? As always, if in doubt talk to your chosen FSB partner ahead of time to agree an appropriate approach.

Rationale

It is important to set out the rationale for any planning so your FSB can understand all proposed arrangements in advance and tailor their services accordingly.

Tax advice should be provided from a suitably qualified professional and FSBs are required by anti-money laundering regulations to evidence that structures under their administration are formed for legitimate reasons.

One common issue is where there is a UK adviser who has provided advice on the UK taxation element for a non-domiciliary. The tax position of their home jurisdiction should be considered also. This may be addressed simply by correspondence from an adviser in that jurisdiction to confirm that there are no issues, but the situation may be considerably more complex in some instances.

Trust relationships

When establishing a trust relationship, a FSB which is acting as a trustee must, in order to identify and verify the identity of its customer and any beneficial owner and underlying principal, identify:

- the settlor(s);
- any protector(s) or co-trustee(s); and
- any beneficiary with a vested interest or any person who is, to the best of the trustee's knowledge, likely to benefit from the trust (handbook section 4.6.3/115)

TOP TIPS

1. If you have not got a suitable address verification document but you have visited the client's home address in the last three months then your signed statement to this effect can substitute for a utility bill.
2. Where you are advising a client on a move to the UK check that the tax planning has been considered from the perspective of their home jurisdiction also.
3. Birth certificates may be the only practical means of CDD for younger beneficiaries. Remember to give your clients advance notice of this requirement where possible as the documents may be well hidden away!
4. If you consider that a case may fall into the high risk category then it is best to discuss your approach to CDD with your chosen FSB in advance. 'Enhanced CDD' may include gathering additional professional references on potential clients or requiring more in-depth documentation on the source of wealth/funds.

“This encompasses all of those who are likely to receive benefit from the trust fund during the life of the trust.”

The key phrase here is 'likely to benefit' and this encompasses all of those who are likely to receive benefit from the trust fund during the life of the trust. Therefore, wherever possible, one should attempt to obtain CDD documentation on all potential beneficiaries even where such persons are minors.

It is recognised that, in some circumstances, obtaining CDD on all beneficiaries may be impractical, for instance where a term of the trust or letter of wishes states that potential beneficiaries are not to be made aware of the existence of the trust. In addition, trusts are often settled with a primary class of beneficiaries who will be benefitted and a secondary class who are only likely to benefit in the event that the primary class predeceases the end of the trust period.

Members of the secondary class are usually referred to as the 'longstop' or 'default' beneficiaries and as they are not

'likely to benefit, CDD would not initially need to be gathered on longstop beneficiaries. However, it should be remembered that CDD must be gathered on a beneficiary prior to any distribution of trust assets to (or on behalf of) that beneficiary in the future.

Enhanced CDD

When all CDD has been gathered the FSB will risk rate the case. Due to the more complex and high value nature of typical private client business such cases are normally

> *"Some FSBs may as a policy avoid business from certain jurisdictions or featuring other high risk factors."*

categorised as high or standard, rather than low, risk. High risk factors include clients or the source of their wealth originating from sensitive jurisdictions or clients who are high profile or politically exposed persons (PEPs). FSBs will often use on-line database resources such as World-Check or C-6 Intelligence to check PEP exposure etc. In these instances additional CDD may be required.

Some FSBs may as a policy avoid business from certain jurisdictions or featuring other high risk factors. Others may undertake such work provided that there are suitably qualified advisers involved in the arrangements.

Conclusion

Remember the key requirements are to verify the identity of your client, the source of their wealth/funds and the rationale behind the proposed structure. Take some time prior to any client meeting to plan what documentation might be required and give your clients notice as to what they should bring. The best solution is to liaise with your chosen FSB ahead of time. Most will be delighted to provide guidance on what CDD should be gathered based on a brief outline of your case scenario.

In summary, CDD is now as much a fact of life as the ubiquitous 'death and taxes' but with a little advance planning and the assistance of your chosen FSB it can be made as pain free as possible for you and your clients.

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Have pension … … will travel

ALISON VINE explains the advantages of establishing or transferring your pension abroad if you are not staying in the UK.

The top rate of income tax in the UK is 50%, contributions into UK pension schemes are qualifying for less and less relief, and the fiscal position of the UK is worrying. Now is the perfect time for someone who has:

- accumulated a pension pot in the UK but is about to leave;
- no longer lives there, or
- is in the UK for some temporary purpose only,

to consider whether placing the pension outside the UK would make more sense.

QROPS

As a result of amendments made to UK legislation following the Finance Act 2004 (and presumably bowing under the pressures arising from the EU free movement of capital principle), it is now possible for a UK pension to be migrated to another jurisdiction, without punitive exit charges, and with certain exemptions from UK tax continuing to apply.

For a transfer to be exempted the receiving scheme must be a qualifying recognised overseas pension scheme (QROPS). To be a QROPS an overseas scheme must satisfy certain criteria. It must provide for benefits to be paid to a member such that it qualifies as a pension scheme and it must be established outside the UK. It must be regulated as a pension scheme in the jurisdiction in which it is established and be recognised for tax purposes as such in that territory. The type of scheme must be open to residents of the jurisdiction (i.e. the regime cannot be exclusively for non-residents). At least 70% of the fund must be designated to provide an income for life, and any benefit (including any lump sum) must be payable no earlier than 'normal minimum pension age' (55 since 6 April 2010).

KEY POINTS

- Why it is a good time to consider a transfer of your pension overseas.
- The advantages and disadvantages of QROPS.
- Other pension plans for the internationally mobile.
- The advantages of Guernsey as a jurisdiction.

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> **“It is now possible for a UK pension to be migrated to another jurisdiction.”**

To be a qualifying scheme the scheme must be established in an EU jurisdiction, Norway, Liechtenstein or Iceland. Failing one of these, it must be in a country with which the UK has a double taxation agreement that contains exchange of information and non-discrimination provisions.

Importantly, it is not necessary for the receiving scheme to be in the jurisdiction in which the individual resides or with which he has closest ties; indeed, there may be very good reasons not to transfer a scheme to this jurisdiction.

Other pension plans

For mobile executives, who move from country to country with some frequency or who struggle to be regarded as resident in any jurisdiction, an international pension plan is the ideal

pension savings scheme. This vehicle is particularly suited to employers who have employees scattered all over the world such that it is difficult to know where to locate the pension scheme. In these scenarios, having a pension scheme in an independent jurisdiction which is well regulated, such as Guernsey, with recognised pension expertise and legislation which has been in existence (and been relied on) for over 30 years is reassuring. If the jurisdiction also exempts those schemes, and any payments made out of them, from local tax there is an even greater incentive.

Guernsey's Income Tax (Guernsey) Law 1975, s 40(o) provides a legislative framework which has been used by multinational companies for many years to provide flexible pension arrangements. Often these may have no restriction on the level of contributions, with the ability to tailor the scheme as a defined contribution or defined benefit scheme. The scheme can also offer flexibility on draw-down, both in respect of the minimum age it can start and the amount which can be taken. There are few restrictions placed on these schemes; the two most important being that they must be created by employers whose companies carry on business wholly or mainly outside Guernsey, and they must be for the benefit of those working entirely outside Guernsey.

> ***"The scheme can offer flexibility on draw-down, both in respect of the minimum age it can start and the amount which can be taken."***

Temporary UK residents

What about individuals who, perhaps being only temporarily in the UK, have set up pensions overseas? Provided that:

- the scheme member is a relevant migrant member (see below);
- the pension scheme is a qualifying overseas pension scheme (not necessarily a qualifying *recognised* overseas pension); and
- the member has relevant UK earnings;

then UK tax relief will be granted on the contribution of those earnings (subject to limits). Moreover, relief may also be granted on contributions made by an employer to that scheme.

In Guernsey a s 40(ee) pension scheme would provide an excellent framework for this type of pension. It need not necessarily be an employer-funded scheme.

A relevant migrant member is an employee who was not resident in the UK when he became a member of the scheme. The relevant contributions are those made to the scheme in respect of periods when he was resident in the UK, and tax relief is only granted on contributions to the scheme which would have been subject to relief in the jurisdiction in which the member was resident before he came to the UK. Relief will also only be granted if the scheme manager agrees to notify HMRC if there is any payment or circumstance which crystallises an event which needs to be reported to HMRC. Once a member leaves the UK he can continue to contribute to the scheme, but the contributions would no longer qualify for UK tax relief.

Guernsey residents

For someone moving to or working in Guernsey a retirement annuity trust scheme (RATS), established under Income Tax (Guernsey) Law 1975, s 157A, might be a suitable vehicle to receive transfers from a scheme elsewhere. This is a personal pension scheme and may also be used for topping up an employer scheme. Contributions (other than approved inward transfers) are restricted according to the levels of earned income and the age of the member. Provided contributions do not exceed the set limits (£13,600 or 15% of earned income for those aged under 40 and 25% or £20,000 maximum for those aged 40 or more years, for 2010) these contributions will be tax exempt. These contribution limits are not compelling incentives to transfer. However, the fact that an existing scheme can be transferred in and benefits taken which mirror those which would have been permissible in the UK, but with the smaller tax burden of Guernsey's flat 20% income tax rate, could be persuasive.

It is from Income Tax (Guernsey) Law 1975, s 157A that the framework of a QROPS is formed. For the QROPS to receive approved status from HMRC it must be 'recognised' as a pension scheme in the jurisdiction into which the transfer will be made. The inward transfers into a Guernsey QROPS are therefore transfers into a scheme which was originally devised for, and has functioned for many years like, a Guernsey form of the UK SIPP.

Not suitable for …

A QROPS is not the right vehicle for every person who is 'mobile' and is definitely not suitable for someone who, while being 'mobile', has not broken, and does not intend to break, residence in the UK. For someone who is a member of a UK defined benefit scheme, very serious financial, commercial and actuarial consideration should be given as to whether it is sensible to transfer out of that scheme. If an individual does not intend to be abroad indefinitely but is leaving for some temporary purpose only, then a QROPS is not a suitable pension plan.

But a Guernsey QROPS may also not be the best vehicle for everyone who *is* leaving the UK. If the individual is moving to a jurisdiction which does not understand the concept of a trust this can cause tax problems: the Guernsey QROPS is governed by the legislation for retirement annuity *trusts* and therefore while behaving like a pension it is legislatively a trust. The headaches and tax implications of having the scheme, and receiving payments from it into the jurisdiction of residence, should be explored thoroughly before the transfer is made.

Similarly, certain jurisdictions do not favour the Channel Islands (and incidentally Jersey is less experienced in the QROPS arena as the HMRC list of approved QROPS attests) and in these cases a QROPS sited in a tax treaty country or within the EU might be more appropriate. A suitable domestic vehicle must be available in that jurisdiction; a pension scheme which is regulated and recognised in its country for tax relief purposes as a pension, not exclusively for non-residents, where at least 70% of the fund will provide the pension and any benefit cannot be drawn earlier than age 55.

The advantages of QROPS

Despite the limitations outlined above there are still plenty of reasons why, for certain mobile individuals, a QROPS is a perfect planning tool for retirement. It allows for (not unfettered) freedoms in investment strategy, a greater ability to save and plan for future generations (as an annuity does not have to be bought from a life company), and it allows for future transfers to a 'receiving' QROPS. This means that the pension pot can follow its member around the world, if that is desirable. This might be useful from a currency, time zone, or simply an administrative perspective. On that note, having a QROPS located in Guernsey where for an English person there are familiar banks and investment houses, the currency is sterling, and the time zone suits Europe, can be very appealing.

It is important to note that while there will be no local tax implications for a Guernsey QROPs with non-Guernsey resident members, there could be UK tax implications and there will be reporting obligations on the administrators for at least five years after the UK scheme has been exported. Provided benefits are not paid inappropriately, and certain investments are not made (including residential property) any exposure to HMRC can be kept to a minimum. It is, nevertheless, a prerequisite of gaining approval for the outward transfer that the receiving administrators agree to comply with reporting obligations imposed by HMRC.

Guernsey has been proud of its pension offerings to non-residents for some years now, and the creation of QROPS by HMRC allowed Guernsey to expand this even further. With individuals and finance houses in Guernsey from all over the world our global appeal and reach is now even greater. ■

“A suitable domestic vehicle must be available in that jurisdiction.”

Alison Vine is a tax director at Ernst & Young in Guernsey, Channel Islands. She can be contacted by telephone: 01481 717400, or by e-mail: avine@uk.ey.com.

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