

Are there threats to offshore trusts? A Guernsey perspective

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A quick flick through the pages of the States of Guernsey Revenue website shows the full extent of the international tax, regulatory and automatic exchange of information (AEOI) measures which Guernsey has introduced to ensure it remains one of the leading international finance centres. These range from base erosion and profit shifting, common reporting standards (CRS), foreign account tax compliance act (FATCA), and mandatory disclosure rules to tax information exchange agreements and economic substance. The Group of Seven's (G7) consideration of a global corporate minimum tax being yet the latest of these initiatives designed to ensure that multinational businesses are paying tax in the jurisdictions where the economic activity is carried out.

Guernsey has successfully navigated the international currents driving such initiatives, positioning itself as an early adopter of CRS and FATCA, while also insisting on a level playing field, before it will introduce public registers of beneficial ownership of companies. Its willingness to proactively adopt the necessary changes, when coupled with its class leading financial services industry, means that the provision of fiduciary services from the Bailiwick is flourishing. Private wealth advisers and fiduciaries on the Island have never been busier.

Working day in and day out with clients to establish trust and other structures, the key drivers are now governance and succession, not tax planning. Clients come to Guernsey and establish structures with the fiduciary service providers based here because of the jurisdiction's pedigree and reputation for transparency, international compliance, and the rule of law. Having worked in the United Kingdom and Guernsey, it is very easy to overlook the very real fear which residents of some jurisdictions feel. The risk of governments expropriating assets, corruption and fraud mean that being able to structure through a tax neutral jurisdiction with a long established legal system is very appealing to clients from all over the world.

Rather than being put out of business by the increasing regulation to which international financial centres are subject, Guernsey has thrived and leveraged this to cement its position as a leading jurisdiction through which international families can structure their affairs. Perhaps counter intuitively, the increase in regulation to which Guernsey (like other international financial centres) has been subject, has attracted more clients to structure through Guernsey, because they have greater confidence that their affairs will be professionally managed, and that they will not face criticism for structuring through the Island. An example of this is the ever growing trend for family offices to proactively seek out regulation as a means of demonstrating to tax authorities, regulators, and the public, that they have nothing to hide and are good corporate citizens. One of the metrics which family offices increasingly use when considering investments, or where to base their structures, are the environmental, social, and governance aspects. Guernsey is well ahead of the curve on this. For example, the jurisdiction has recently updated its Code of Corporate Governance, now requiring boards to take into account climate change on their strategy and risk profile, and where they judge it appropriate, make climate change related disclosures.

The global COVID-19 pandemic has also demonstrated the resilience of the financial services sector in Guernsey, with fiduciary services providers, the regulator and the Courts all adopting remote working practices. This has enabled business to very much continue as usual with little to no disruption for the end clients. Ironically, the shift away from travel and international mobility has made it easier for those in Guernsey to do business internationally, as video calls have replaced the necessity to meet clients face to face, at least, for the time being.

The principal threat to trust structures based in Guernsey comes from jurisdictions which do not make use of trusts, nor properly understand their purpose or operation. On the one hand, we have legislation, such as General Data Protection Regulation (which has been transposed into Guernsey domestic law) and on the other hand, we also have elements of the European Fifth Anti-Money Laundering Directive, which mandate the creation of public registers of the beneficial owners of trusts. The tension between global transparency initiatives and the rights of data subjects to privacy has not abated and it remains to be seen how this will play out before the Courts. Guernsey has deftly managed this process, adopting data protection legislation (as it should) while insisting upon a level playing field for the introduction of public registers.

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