



NEWHAVEN TRUST COMPANY (CHANNEL ISLANDS) LIMITED

GUERNSEY UPDATES TRUST LAW

Following comprehensive review and consultation, Guernsey has enacted the first tranche of amendments to its 1989 trust law which affect a number of major areas. These changes potentially offer a number of important benefits to clients and their advisors. In essence the key areas where change has taken, or will take place are as follows;

- Trust deeds can now expressly exclude the right of a beneficiary to be able to demand information concerning the trust.
- The maximum perpetuity period for a trust has been removed. Settlers can now select either a specific period or an unlimited time for the trust to remain in existence.
- To align with other jurisdictions, directors of trust companies can no

longer be held personally liable (in most cases) for corporate negligence or breach of trust. Whilst this change is doubtless a relief to those concerned it is likely not material to clients as since the introduction of compulsory licensing and regulation all trust companies in Guernsey have had to demonstrate that they meet or exceed stated criteria for insurance to cover such eventualities.

- Purpose trusts will be able to be formed (anticipated w.e.f. Q2 2007). Previously trusts could only exist for the benefit of beneficiaries be they individuals, companies or charities. Trusts of a non charitable nature will be able to be established for a specific purpose, such as education. Purpose trusts are a useful planning tool both in more complex estate planning solutions and in managing balance sheet exposures for

corporations.

- A decision in principle has been taken to admit Foundations under Guernsey law. A more detailed report is being compiled but it seems clear that there is demand from civil code jurisdictions, where familiarity with trusts is low, for the ability to establish Foundations in a high calibre financial centre such as Guernsey and where there is ready availability of professional advisors and trained fiduciaries.

Guernsey already has a diverse fiduciary services sector providing comprehensive solutions for individuals and corporate clients and spanning around 140 licensed service providers. The updating of the law is likely to make the island more appealing and to a wider spectrum of clients and professional advisors.

Keith Betts

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INTELLECTUAL PROPERTY REGISTRATION OFFICE

On 1st June 2006, and in support of its recently introduced Intellectual Property ("IP") legislation, the States of Guernsey established an Intellectual Property Office.

Guernsey's new IP regime has been developed after an extensive review of other jurisdictions. In some cases the rights now available in the Island offer broader scope for protection and exploitation than is possible in the UK or Europe.

It has been estimated that between 70 and 80 percent of the value in major listed corporates resides in their IP. Domiciling those assets and rights

within offshore vehicles may bring tax benefits as Guernsey has no capital gains or inheritance taxes and in many cases a zero rate of corporation tax may apply (see our article on Guernsey's changing tax regime). Establishing IP rights in such a structure from inception can bring distinct fiscal advantages.

Guernsey's tax-benign regime and supportive legislation, coupled with the availability of flexible structuring vehicles makes Guernsey an ideal location for the registration of IP rights and processing of the resulting asset values and/or cash flows. The recent enactment by the States of Guernsey of Incorporated Cell Company law in

INHERITANCE TAX TREATMENT OF TRUSTS

Without prior consultation the inheritance tax (IHT) regime for trusts was changed by the UK's Chancellor of the Exchequer on 22nd March 2006.

UK Resident Domiciliaries

Prior to 22 March 2006, there was a favourable tax treatment for assets settled into Accumulation & Maintenance Settlements (A&M) and Interest in Possession Settlements (IIP) by individuals resident and domiciled in the UK whereby such transfers were treated as Potentially Exempt Transfers and would escape the UK IHT net should the settlor survive for 7 years after having settled the assets in trust. Now IHT will generally be chargeable on all gifts into trusts settled by UK resident and domiciled settlors to the effect that A&M and IIP will now be charged in the same way as applicable to Discretionary Trusts. The creation of all trusts will now constitute a chargeable transfer at 20%, 10 year anniversary charges at 6% and Exit charges at 6% will apply to A&M and IIP whereas previously they were not taxable.

Transitional provisions have been established for existing A&M and IIP and an opportunity exists to make changes prior to 5 April 2008. It is recommended that any such trusts are reviewed well before that date. The provisions for A&M are

such that transitional relief is available if beneficiaries become absolutely entitled at 25 and the discretionary trust regime will only apply for a maximum of 7 years from the age of 18 to the vesting date. If beneficiaries will only ever be entitled to receive income from the age of 18 or a later date, then the trust will fall into the discretionary trust regime from 5 April 2008. Favourable tax treatment for existing IIP will continue until the death of the life tenant and will continue after death should the life interest pass to the surviving spouse.

FA 2006 has introduced new concepts, Immediate Post Death Interest (IPDI), Trusts for Bereaved Minors, (TBM) 18 – 25 Trusts and Trusts for Vulnerable Beneficiaries (TVB). IPDI are set up on death only and the initial interest in possession is treated as previously. TBM are created by will or on the intestacy of a parent, income funds must be segregated for each beneficiary and they must take absolutely at 18. 18 – 25 Trusts are TBMs where an absolute interest is taken between 18 and 25. There is a proportionate IHT charge between 18 and 25. TVB are treated as old IIP.

Non-Domiciliaries

For non UK Domiciliaries or deemed Domiciliaries, non UK assets which they own remain non UK assets and are excluded property and

are not affected by FA 2006. The good news is that non UK assets settled by non UK domiciliaries will generally remain excluded property and will not generally be subject to IHT. There are changes as far as trusts giving an initial life interest to the settlor or a spouse are concerned as the domicile of the life tenant at the time of death is crucial. Such trusts should be reviewed as should life interest settlements holding UK property to the value of the IHT threshold as exemption will not occur for successive life interests.

Significant Tax planning opportunities continue to exist for non UK domiciliaries settling non UK assets in trust where capital and capital gains can be transferred into the UK in a tax efficient way.

Post Finance Act 2006

Sweeping changes to the taxation of trusts have been introduced in the Act, but it should be remembered that tax planning only constitutes one reason for establishing trusts. Trusts remain a significant tax planning tool for non UK domiciliaries. For UK domiciliaries, trusts will continue to play an important role in estate planning and passing wealth from one generation to the next, for passing assets to individuals who are not yet competent to manage them themselves or for preservation of wealth. *Michelle Brouard*

“... Significant tax planning opportunities continue to exist ...”

GUERNSEY CONFIRMS FUTURE TAX REGIME

Guernsey's parliament has adopted a set of economic and taxation changes that includes a zero rate of corporate tax and the capping of personal tax for local residents at GBP250,000. The States of Guernsey approved the set of measures at its June 2006 sitting, and the main strands will come into effect from 1 January 2008.

The package of approved measures includes:

- A zero rate of income tax on company profits, except for specific banking activities which will be taxed at 10%;
- Guernsey residents continue to pay tax at 20% on assessable income;

- Personal tax for local residents capped at GBP250,000 on non-Guernsey income and investment income;
- Taxation of Guernsey-resident shareholders on distributed company profits only; and
- Wealth taxes such as inheritance tax and capital gains tax will not be introduced.

The effect of those measures is to cement the status of Guernsey as an attractive, stable and tax benign jurisdiction. In practical terms exempt company tax on Guernsey incorporated companies will disappear in 2008 and non-residents of Guernsey (except those engaged in banking activities) will be outside of the local tax net.

John Bracegirdle.

“Wealth taxes such as inheritance tax and capital gains tax will not be introduced.”

REAL ESTATE INVESTMENT TRUSTS (“REITS”)

From 1st January 2007 a new taxation regime has been introduced in the UK to encourage diversified property investment. This regime will enable listed companies to elect that certain parts of their property portfolio can be taxed as a REIT. A REIT will be exempt from UK corporation tax on its rental income and gains. However, there will be a requirement to pay out 90% of its profits each year as dividends. Individuals and trustees receiving such dividend income will have tax deducted at source at the basic rate and it will be taxed as rental income.

There are various other requirements for qualification as a REIT, including the fact that no one investor must control/ be entitled to 10% or more of the distributions.

The requirement that REIT must be listed will mean that its establishment is likely to be of interest only for large investment projects. However, they could create appealing investment opportunities for many clients – particularly for those disaffected by the performance of equity markets.

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