

GUERNSEY AND TAX INFORMATION AGREEMENTS (“TIEAS”)

In recent months there has been considerable publicity given to the execution by our rival, the Isle of Man, to various tax information exchange agreements they have executed with the US, Netherlands, the Nordic countries and Ireland.

The IOM website also lists a number of other countries it is in discussion with such as Canada, France and the UK.

Jersey has executed TIEAS with the US, Netherlands and Germany, whereas Guernsey has executed agreements only with the US and the Netherlands, although in both cases we are advised that discussions are taking place with other jurisdictions such as the U.K. and the Nordic countries.

In the past the tactic followed by most countries has been to go as slow as the slowest. Guernsey has played its role in this process. However, times are changing and this short article will argue that Guernsey has to catch up with both Jersey and the IOM if it wants to avoid the disapprobation of the EU and the OECD.

A typical TIEA provides for the assistance upon request whether in respect of a civil or criminal investigation.

The agreement will also provide for tax examinations in the requested parties' jurisdiction. What is not often specified in the agreements is the procedural manner in which such interviews will be conducted.

Is it by the laws of the party requesting the assistance or the party who has been requested to provide the facilities for the interviews?

In such cases this writer has always insisted on having a list of questions beforehand and then advising the client to go into a separate room to answer them. This avoids the natural response of clients to be helpful but say things which, on mature reflection they disagree with.

Private bankers and others are naturally quite wary of such agreements and often fear the worst as a result of them.

The reality is that these information agreements are here to stay and if Guernsey is not seen to actively co-operate as Jersey and the IOM have, we can expect disapprobation from the EU and OECD in the form of being labelled an uncooperative jurisdiction. This is worst possible outcome for the Island.

The other major point is that the information requested can almost certainly be obtained by other routes (and to date has been), such as via the Criminal Justice (International Co-operation) Law 2001. In my view it is a costless policy to execute such agreements.

Others have said we should sign such agreements only if we are given a double tax treaty. While this suggestion is not without merit, it must also take into account that the best we are likely to achieve is the model OECD treaty.

This might be an 'own goal' if it contains Article 27 - Assistance in the Collection of Taxes - which effectively abrogates the famous rule that one country will not enforce the tax laws of another.

Those of us involved in international tax planning usually use countries with old treaties which exempt from tax certain categories of income and gain. As a result a double tax treaty may be of very little benefit.

This short paper has argued that from a cost-benefit point of view Guernsey has little to lose by being an enthusiastic supporter of such agreements and much to lose by "dragging its feet".

The urgency of this should not be ignored as Jersey is currently thought of by the international institutions as being more co-operative than Guernsey.