

International **Comparative** Legal Guides



Private Client **2020**

A practical cross-border insight into private client work

9th Edition

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Isle of Man

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Donna Matthews



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1 Connection Factors

1.1 To what extent is domicile or habitual residence relevant in determining liability to taxation in your jurisdiction?

Neither concept is relevant in determining liability to Isle of Man ("IOM") taxation.

1.2 If domicile or habitual residence is relevant, how is it defined for taxation purposes?

This is not applicable.

1.3 To what extent is residence relevant in determining liability to taxation in your jurisdiction?

IOM resident individuals and companies are liable to IOM income tax at the applicable rates. These are as follows (rates in force from 6 April 2019):

Individuals

- First £14,000 (£28,000 for a married couple/civil partnership, jointly assessed) of income tax-free.
- Next £6,500 (£13,000 for a married couple/civil partnership, jointly assessed) taxable at 10%.
- Balance taxable at 20%.

(Certain other minor allowances are available.)

In addition, it is possible to apply for a tax cap election, under which a fixed sum of £200,000 (£400,000 for a married couple/civil partnership, jointly assessed) is paid for a period of five years, unless the taxpayer dies or leaves the IOM in the meantime.

Companies

- 20% on income from IOM land/real property.
- 10% on income from banking business, and retail operations where profits exceed £500,000.
- 0% otherwise.

1.4 If residence is relevant, how is it defined for taxation purposes?

For individuals, residence is interpreted in accordance with the published practice of the Income Tax Division, which itself is based on (mostly UK) case law principles. In summary,

an individual is treated as resident in the IOM for IOM tax purposes if he:

- arrives in the IOM with a view to taking up permanent residence in the Island;
- spends six months or more in the IOM in a single tax year (ending on 5 April); or
- spends 90 days or more on average over a period of four years or more.

A company which is incorporated in the IOM is presumed resident in the IOM unless it can demonstrate that it is resident and centrally managed and controlled elsewhere, and that it either pays a headline rate of tax of 15% or more in its country of residence, or that it is resident elsewhere via an applicable double tax treaty between the IOM and that other jurisdiction.

A company incorporated elsewhere is treated as IOM resident if it is centrally managed and controlled in the IOM.

Note that a relevant double tax treaty may provide that an individual or company which would otherwise be IOM tax resident may be resident for tax purposes in another jurisdiction.

1.5 To what extent is nationality relevant in determining liability to taxation in your jurisdiction?

Nationality is not relevant.

1.6 If nationality is relevant, how is it defined for taxation purposes?

This is not applicable.

1.7 What other connecting factors (if any) are relevant in determining a person's liability to tax in your jurisdiction?

Non-residents may be liable in respect of certain sources of income derived from within the Island, specifically rental income and remuneration from IOM employment.

2 General Taxation Regime

2.1 What gift, estate or wealth taxes apply that are relevant to persons becoming established in your jurisdiction?

There are no gift, estate or wealth taxes in the IOM.

2.2 How and to what extent are persons who become established in your jurisdiction liable to income and capital gains tax?

IOM resident individuals and companies are generally subject to IOM income tax on their worldwide income.
There is no IOM tax on capital gains.

2.3 What other direct taxes (if any) apply to persons who become established in your jurisdiction?

The only form of direct taxation is National Insurance Contributions (NIC), which apply in respect of employees and the self-employed. In the case of employees, NIC are payable by IOM resident employers (at 12.8%) and employees (maximum rate 12%) in respect of an employee's earnings, at varying rates on varying levels of income. A self-employed earner pays NIC at a maximum rate of 9% on income in excess of a statutory threshold.
A one year NIC "holiday" is currently available for returning students and new residents, who may claim a refund of employee NIC up to a maximum of £4,000 subject to certain conditions.

2.4 What indirect taxes (sales taxes/VAT and customs & excise duties) apply to persons becoming established in your jurisdiction?

The IOM applies Value Added Tax (VAT) at a rate of 20% on certain goods and services supplied within the IOM and UK, and to EU resident individuals. A rate of 0% applies to services supplied to EU businesses outside the UK and IOM. Supplies to persons outside the UK/IOM and EU are outside the scope of VAT. Certain supplies within the IOM/UK are exempt from VAT.
Generally, the IOM VAT rules closely follow those applicable in the UK, and there exists a VAT-sharing agreement under which the IOM and UK represent effectively a single VAT/customs zone and VAT receipts are shared on an agreed basis.
Customs and excise duties also apply to e.g. gaming operations and to certain goods imported into the IOM/UK VAT/customs zone from overseas: see IOM government website www.gov.im/customs for further detail.

2.5 Are there any anti-avoidance taxation provisions that apply to the offshore arrangements of persons who have become established in your jurisdiction?

There are no anti-avoidance provisions which relate specifically to offshore arrangements but see question 2.6 for details of the general anti-avoidance rule which applies in the IOM.

2.6 Is there any general anti-avoidance or anti-abuse rule to counteract tax advantages?

Schedule 1 Income Tax Act 1980 contains a general power for the Assessor of Income Tax (who has overall responsibility for the governance of the IOM tax system) to counteract any arrangements which he considers are put in place purely to avoid or reduce IOM income tax.

2.7 Are there any arrangements in place in your jurisdiction for the disclosure of aggressive tax planning schemes?

No, there are not.

3 Pre-entry Tax Planning

3.1 In your jurisdiction, what pre-entry estate, gift and/or wealth tax planning can be undertaken?

This is not applicable – there are no such taxes in the IOM.

3.2 In your jurisdiction, what pre-entry income and capital gains tax planning can be undertaken?

Planning opportunities are limited but generally income earned outside the IOM by a non-resident is outside the scope of IOM income tax. There is no tax on capital gains.

3.3 In your jurisdiction, can pre-entry planning be undertaken for any other taxes?

This is not applicable.

4 Taxation Issues on Inward Investment

4.1 What liabilities are there to tax on the acquisition, holding or disposal of, or receipt of income from investments in your jurisdiction?

No IOM taxes apply to the acquisition, holding or disposal of assets in the IOM, with the exception of land registry duties, which are payable on the purchase of real property in the IOM. Investment income received by an IOM resident is taxable at the applicable individual or company rates (see question 1.3). Rental income received by a company, whether or not IOM resident, is taxable at 20%. Other investment income received by a non-resident is not taxable.

4.2 What taxes are there on the importation of assets into your jurisdiction, including excise taxes?

See question 2.4.

4.3 Are there any particular tax issues in relation to the purchase of residential properties?

There are no particular tax issues in relation to the purchase of residential property save for the payment of land registry duty (see question 4.1).

5 Taxation of Corporate Vehicles

5.1 What is the test for a corporation to be taxable in your jurisdiction?

A company is liable to IOM income tax (see question 1.3 for rates) if it is resident in the IOM or trading in the Island through a permanent establishment. Non-resident companies also pay IOM income tax on IOM property rents.

5.2 What are the main tax liabilities payable by a corporation which is subject to tax in your jurisdiction?

Income tax and NIC if the company is an employer with IOM employees.

5.3 How are branches of foreign corporations taxed in your jurisdiction?

An IOM branch of a foreign corporation is taxable in the IOM on the profits arising from the IOM branch.

6 Tax Treaties

6.1 Has your jurisdiction entered into income tax and capital gains tax treaties and, if so, what is their impact?

The IOM has concluded 23 double tax treaties with other jurisdictions. Whilst some of these are limited in scope, the majority serve to apportion sole taxing rights to one or the other of the treaty parties in respect of various types of income arising in one or the other jurisdiction. For example, the treaty with the UK provides that an individual in receipt of a pension is taxable solely in the individual's jurisdiction of residence.

6.2 Do the income tax and capital gains tax treaties generally follow the OECD or another model?

Generally speaking, yes. The recently replaced treaty with the UK was concluded in 1955 and did not follow the modern OECD template, but the new treaty does.

6.3 Has your jurisdiction entered into estate and gift tax treaties and, if so, what is their impact?

No, it has not.

6.4 Do the estate or gift tax treaties generally follow the OECD or another model?

This is not applicable.

7 Succession Planning

7.1 What are the relevant private international law (conflict of law) rules on succession and wills, including tests of essential validity and formal validity in your jurisdiction?

The succession regime in the IOM in respect of immovable assets is governed by the law where the property is situated. Succession of the property would therefore be subject to IOM law. In respect of movable property, the law where the deceased was domiciled will determine succession of the property.

In order for an IOM Will to be valid, a testator must be over the age of 18, *sui juris* and the Will must be in writing, signed by the testator in the presence of two or more witnesses present at the same time. The witnesses must also attest and sign the Will.

Section 21 of the Wills Act 1985 states that where a Will intended to cover an individual's IOM estate is executed outside of the IOM, it will be treated as properly executed if its execution conforms to the internal law in force in:

- the territory where it was executed;
- the territory where, at the time of execution or of the testator's death, he was domiciled or had his habitual residence; or
- a state of which, at either of those times, he was a national.

In order to ensure that the IOM Will is validly executed, it must therefore conform not only to the requirements set out above (i.e. in writing, signed by testator and witnessed by two or more persons present at the same time) but also any additional local formalities with regards to execution depending upon which of the above is applicable at the time of signing.

7.2 Are there particular rules that apply to real estate held in your jurisdiction or elsewhere?

There are no forced heirship laws and the concept of community of property does not exist under Manx law.

As noted above, the succession regime in the IOM in respect of immovable assets is governed by the law where the property is situated.

7.3 What rules exist in your jurisdiction which restrict testamentary freedom?

Freedom of disposition is a key characteristic of IOM law; there is no right to inheritance and no forced heirship laws.

It is still necessary to consider forced heirship laws when preparing an IOM Will or administering an estate. If a person owns foreign assets, and particularly non-movable assets that may be subject to forced heirship, then they should generally make a Will and take specific advice in that jurisdiction even if domiciled and resident in the IOM.

There is also one important caveat to the freedom of testamentary disposition in the IOM. The Inheritance (Provision for Family and Dependants) Act 1982 provides for various classes of person to be able to make a claim against a person's estate if the disposition effected by either the deceased's Will or under the laws of intestacy does not make reasonable provision for the applicant.

The Trusts Act 1995 (the Trusts Act) expressly overrides any other forced heirship regimes in other jurisdictions in relation to a trust governed by IOM law.

8 Trusts and Foundations

8.1 Are trusts recognised/permitted in your jurisdiction?

Trusts are recognised in the IOM, with trust law similar to that in England and Wales, based on common law.

The IOM recognises trusts governed by another jurisdiction's laws, as the Recognition of Trusts Act 1988 extended the provisions of the Hague Convention on the Law Applicable to Trusts and on their Recognition to the IOM.

The Trusts Act 1995 provides that the term of a trust selecting the law of the IOM to govern the trust is valid, effective and conclusive, regardless of any other circumstances. The Trusts Act 1995 also permits express provision in trust instruments for changes in the governing law of the trust in particular circumstances, and provides that particular matters are to be determined by the Courts of the IOM where the trust is governed by the laws of the IOM. It also excludes foreign law to the extent that it may render the trust void, unenforceable, otherwise defective or liable to be set aside due to prohibition of or failure to recognise the trust concept, or as a result of certain other heirship issues.

It is important to note that, unlike similar provisions in other jurisdictions, the Trusts Act 1995 does not apply to any testamentary trust or testamentary disposition unless valid under the law of the domicile of the testator at the time of death, nor does it apply to a trust or disposition of non-movable property, unless

the trust or disposition is valid under the law of the jurisdiction where the non-movable property is situated.

The Trusts (Amendment) Act 2015 made three important amendments to IOM trust law, as follows:

- a) the abolition of the 'two trustees rule' by allowing a single individual trustee to give a good receipt for capital money;
- b) the abolition of the perpetuity period of 150 years; and
- c) the strengthening of those sections of the Trusts Act 1995 that exclude foreign laws and judgments from taking effect on the IOM. The changes mean that foreign judgments will not be recognised or enforced to the extent that they are inconsistent with IOM law.

8.2 How are trusts/settlers/beneficiaries taxed in your jurisdiction?

Trustees resident in the IOM of a trust which has IOM beneficiaries are taxable at 20% on undistributed trust income. They are not subject to IOM tax if there are no IOM resident beneficiaries.

IOM resident beneficiaries are taxable on distributions of income from both IOM and foreign trusts.

Non-IOM resident trustees and beneficiaries are only taxable in the IOM on certain IOM sources of IOM, specifically rents from IOM land and real property.

There are no taxing provisions which relate specifically to settlors.

8.3 How are trusts affected by succession and forced heirship rules in your jurisdiction?

Complete freedom of disposition is a key characteristic of IOM law; there is no right to inheritance and no forced heirship laws.

The Trusts Act 1995 expressly overrides any other forced heirship regimes in other jurisdictions in relation to a trust governed by IOM law.

8.4 Are private foundations recognised/permitted in your jurisdiction?

Foundations were introduced into IOM law by the Foundations Act 2011.

A foundation is an independent self-governing legal entity but has the characteristics of both a trust and a company. The existence of a foundation is a public matter, but the foundation rules are not made public. The persons to benefit from a foundation are the beneficiaries or objects set out in the foundation instrument and rules. The foundation owns its own assets beneficially, whilst the beneficiaries have no interest in the assets. The foundation is managed by the council, who are subject to obligations similar to those imposed on directors, including the duty to keep the books and records and to prepare the financial statements that are required in limited circumstances.

8.5 How are foundations/founders/beneficiaries taxed in your jurisdiction?

IOM foundations are treated as corporate taxpayers and thus subject to the same tax rules as IOM companies (see question 1.3 for applicable rates). IOM resident beneficiaries in receipt of distributions from an IOM Foundation are taxable on the income at normal rates (see question 1.3). No IOM tax liability attaches to a distribution from an IOM foundation to a non-IOM resident beneficiary.

There are no specific rules covering the IOM tax position of non-IOM foundations.

8.6 How are foundations affected by succession and forced heirship rules in your jurisdiction?

Complete freedom of disposition is a key characteristic of IOM law; there is no right to inheritance and no forced heirship laws.

9 Matrimonial Issues

9.1 Are civil partnerships/same-sex marriages permitted/recognised in your jurisdiction?

Same-sex marriage in the IOM became legal on 22 July 2016 by virtue of the Marriage and Civil Partnership (Amended) Act 2016.

In England and Wales, the Civil Partnership Act 2004 only recognises same sex civil unions whereas the Civil Partnership Act 2011 in the IOM recognises both same sex and opposite sex civil unions. The IOM is the only place in the British Isles where same sex and opposite sex couples can both enter into Civil Partnerships. Couples who register a Civil Partnership will acquire legal status of "Civil Partners" and gain similar rights and responsibilities to those of married couples.

9.2 What matrimonial property regimes are permitted/recognised in your jurisdiction?

Similar to the laws of England and Wales, the IOM does not permit matrimonial property regimes. The property rights of spouses and civil partners are governed by the same property rule that applies to individuals. However, there may be circumstances where the Court is requested to intervene, for example, in divorce proceedings, cases involving children and inheritance provision matters.

The IOM matrimonial courts will often follow the courts of England and Wales and other common law jurisdictions in relation to the distribution of assets upon divorce. Section 26 of the Matrimonial Proceedings Act 2003 lists the various orders the Court has jurisdiction to make when dealing with applications for financial relief. Section 32 of the Matrimonial Proceedings Act 2003 lists the factors upon which the Court is to have regard when exercising its powers under this Act. These factors are similar to the discretion afforded in the Matrimonial Causes Act 1973 in England and Wales.

9.3 Are pre-/post-marital agreements/marriage contracts permitted/recognised in your jurisdiction?

Both Pre-Nuptial and Post-Nuptial Agreements are not automatically enforceable or recognised by the courts in the IOM. Whilst the Court may take into consideration any clauses contained in a Pre or Post Nuptial Agreement it will consider the factors contained in the Matrimonial Proceedings Act 2003 as overriding any circumstances contained in the Agreement. It very much depends upon the specific facts of the matter as to what weight would be attributed to the terms contained in the Agreement and particularly whether the parties had legal advice and were of equal standing when the Agreement was entered into. The Court will not enforce an Agreement of this nature if it puts either party at a severe disadvantage in relation to the finances of the marriage.

9.4 What are the main principles which will apply in your jurisdiction in relation to financial provision on divorce?

The principles to be applied by the court are contained in the Matrimonial Proceedings Act 2003. There is no set formula to determine how the financial assets of a marriage are to be divided and the court will take into account the specific facts and circumstances of the parties involved. The courts primary concern is for the children of the family and to ensure their welfare is cared for and that they are adequately maintained in the final division of the assets.

Further considerations include the income and earning capacity of both parties (both presently and in the foreseeable future), financial needs obligations and responsibilities, the standard of living enjoyed before the breakdown of the marriage, the ages and duration of the marriage, whether either party suffers with mental or physical disability, contribution to the marriage and conduct of the parties.

The court will then consider the assets to be divided. There may be arguments that certain resources are to not be considered “assets of the marriage” and therefore should not be included in the pot for division. Examples include, assets acquired before marriage, inheritance or if one party has created income through a special contribution.

Once the assets have been located and considered, the courts will consider the needs of the parties. The needs of the parties have a wide meaning and the court will take into account all the circumstances before it. The court can consider awarding assets where one party has been placed at an economic disadvantage due to giving up a career to raise a family. The court will also attempt to limit any disparity of income, if possible, between households when there are children involved.

The court will endeavour to ensure that the parties have a “clean break” and can move on financially independently from the other. If there are insufficient assets to be able to do this, the court can award that one party pay maintenance for the benefit of the other party for a set period of time.

10 Immigration Issues

10.1 What restrictions or qualifications does your jurisdiction impose for entry into the country?

EEA Nationals and British Citizens are not subject to any entrance restrictions however they will require a work permit in order to take up employment on the Island.

Non-EEA nationals may require a visa; however, the various requirements are dependent on the individual’s country of residence. As a general rule if an individual requires a visa to enter the UK they will need a visa to enter the IOM.

The Island’s rules on the admission of non-EEA nationals is regulated by the Immigration Rules which are based on the UK rules.

10.2 Does your jurisdiction have any investor and/or other special categories for entry?

The IOM has a points-based system whereby special categories are catered for under Tier 1 visas. The system is largely based on the similar system in the UK.

The IOM offers a visa known as a Tier 1 (Entrepreneur).

In order to qualify, the individual must meet the general immigration requirements and also have access to significant funding amounting to at least £200,000 which they intend to use for the

purpose of investing in the IOM by setting up, taking over or being actively involved in a business on the island.

An individual can also make an application for a Tier 1 (Entrepreneur) visa if they have access to £50,000 which has been granted by a regulated entity or from an IOM Government Department for the purpose of promoting or the expansion of an existing IOM company.

In addition to the above, the island also offers a Tier 1 (Investor) visa for those individuals who have no less than £2,000,000 in their control and which is available for them to invest. The individual must also hold an IOM bank account for this purpose.

10.3 What are the requirements in your jurisdiction in order to qualify for nationality?

Individuals are regarded as British citizens and hold British Passports. It is not possible to qualify for a Manx nationality.

In order to obtain a British nationality, the individual will need to complete naturalisation which will then allow them access to the rights and privileges of British citizens. To qualify for a British nationality, the individual will need to prove that they have lived on the IOM or UK for five or more years, or that they are married or in a civil partnership with a British national and have lived on the IOM or in the UK for three or more years.

10.4 Are there any taxation implications in obtaining nationality in your jurisdiction?

Individuals resident on the IOM are taxed on their worldwide income at the tax rate of the IOM. Individuals who are non-resident are taxed on their IOM income only.

The IOM is subject to a number of international agreements some of which may grant double taxation relief to those who are resident in multiple jurisdictions for tax purposes.

10.5 Are there any special tax/immigration/citizenship programmes designed to attract foreigners to become resident in your jurisdiction?

Not specifically, although the income tax “cap” under which the maximum annual income tax liability is fixed at (what is now) £200,000 per annum (lower amounts have applied in previous years), provided it is paid for a minimum of five years (subject to death or departure from the IOM in the meantime), may encourage high-net-worth individuals to relocate to the IOM.

11 Reporting Requirements/Privacy

11.1 What automatic exchange of information agreements has your jurisdiction entered into with other countries?

The IOM has been at the forefront of global tax co-operation and transparency.

It was part of the original OECD drafting group that created the model Tax Information Exchange Agreement (“TIEA”) which is used throughout the world today and it signed its first TIEA with the United States in 2003. The IOM has now entered into more than 35 TIEAs with countries throughout the world and there are further agreements currently awaiting ratification.

In addition, the IOM has a network of Double Taxation Agreements (“DTAs”) based on the OECD Model Tax

Convention on Income and Capital. It currently has signed around 25 DTAs which include provisions for the prevention of double taxation as well as for all forms of exchange of information.

The OECD Convention in Mutual Administrative Assistance in Tax Matters was also extended to the IOM following the declaration of territorial application by the UK. This is a free-standing multilateral agreement designed to facilitate international tax co-operation.

The IOM is also an Associate of the OECD Base Erosion and Profit Shifting framework which aims to fight harmful tax practices, prevent tax treaty abuse, improve transparency with country-by-country reporting and enhance the effectiveness of dispute resolution.

The IOM made an early commitment to the OECD's Common Reporting Standard ("CRS") and, as an early adopter, completed its first exchanges of financial account information in September 2017.

It was also the first offshore jurisdiction to sign up willingly to US and UK FATCA pursuant to which IOM financial institutions are required to provide the Assessor of Income Tax with financial account information on an annual basis which the Assessor forwards to the competent foreign authority.

The IOM was ranked as "Compliant" by the Global Forum and G20 for its effective standards of transparency and tax co-operation.

11.2 What reporting requirements are imposed by domestic law in your jurisdiction in respect of structures outside your jurisdiction with which a person in your jurisdiction is involved?

See question 11.1.

11.3 Are there any public registers of owners/beneficial owners/trustees/board members of, or of other persons with significant control or influence over companies, foundations or trusts established or resident in your jurisdiction?

Companies

Membership of the board of directors of an IOM company will be shown on the company's file held at the IOM Companies Registry (the "Companies Registry") which can be accessed by the public online and at the Companies Registry building.

If a company is incorporated under the Companies Act 1931, the company's file at the Companies Registry will also show the company's current and previous legal owners (i.e. shareholders). If it is a company incorporated under the Companies Act 2006, there is no requirement to file at the Companies Registry the names of the legal owners (i.e. shareholders) of the company.

Trusts

There is no public register of trusts or trustees on the Island.

Foundations

There is a register of foundations that is available for public inspection which includes details of the members of the council of the foundation.

Beneficial Ownership Act

Following the coming into force on 21 June 2017 of the Beneficial Ownership Act 2017, the IOM has established (from 1 July 2017) a central database of the natural persons who are beneficial owners of legal entities. It is held by the Companies Registry and overseen by the IOM Financial Services Authority. This applies to all companies (with a few exceptions), limited partnerships and foundations.

Whilst all beneficial owners must be made known to the entity's nominated officer (responsible for submitting the beneficial ownership information to the Companies Registry), only persons who own or control more than 25% of the beneficial ownership must have their details submitted for appearance on the database.

In determining who the beneficial owners are, it will often be necessary to trace ownership through a number of persons and/or arrangements. For example, if a corporate trustee owns the entity, the individual shareholders of the corporate trustee will be the beneficial owners.

The database is not open for public inspection. Only certain authorities are permitted access including the Financial Intelligence Unit, the Attorney General, the Assessor of Income Tax, the Financial Services Authority, the Chief Constable and the Collector of Customs and Excise.



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DQ Advocates is a leading Isle of Man based law firm with an international reach and one of the few firms on the island to have a specialist trust and private client team.

We offer a full range of legal, regulatory and compliance services to our local and global clients and regularly work with and act for a number of leading banks, law firms and accounting practices in relation to trust work. DQ are accessible, responsive and commercial with client-oriented strategies and goals. Our specialist lawyers are recommended as leading lawyers in *Chambers & Partners* and *The Legal 500*.

The trust and private client team provide a complete, integrated service to local and international clients, advising on all aspects of contentious and non-contentious work. DQ's private wealth work includes dealing with international tax investigations and Tax Information Exchange Agreement (TIEA) requests, advice in relation to contentious and non-contentious trust-related matters within the Isle of Man, advice to trustees in respect of Isle of Man law-governed trusts and foundations, advice in relation to setting up charitable institutions in the Isle of Man, wills and estate planning for individuals, and family law.

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