



Jersey tax alert

Guidance on economic substance legislation released

On 26 April 2019, the governments of Jersey, Guernsey and the Isle of Man jointly released **further guidance** on the scope and application of the economic substance legislation that introduced increased substance requirements for accounting periods commencing on or after 1 January 2019 for certain companies resident in the Crown Dependencies undertaking “relevant activities.”

This guidance is to be read in conjunction with the respective legislation and jointly issued “key aspects” guidance published in 2018. (See previous tax alerts from Deloitte **Jersey**, **Guernsey** and the **Isle of Man**.) It also follows the recent confirmation by the EU that the Crown Dependencies no longer are on the “grey list” of noncooperative jurisdictions.

The Jersey authorities also have released **additional guidance** on the information in relation to economic substance to be disclosed in the Jersey corporate tax return for 2019 and subsequent years.

Key features of additional guidance

Many aspects of the joint guidance confirm previously stated practice but new points to note include the following:

- Sector specific guidance, including high level examples, is included for the following relevant activities:
 - Banking;
 - Financing and leasing;
 - Headquartering;
 - Fund management;

- Distribution and service centers; and
- (Pure equity) holding companies.
- For the other three of the nine relevant activities (insurance, shipping and intellectual property (IP) companies (including high-risk IP companies)), the guidance still is being developed between the islands and will follow in due course.
- The guidance confirms that references to “employees” are not restricted to individuals who are legally employed by the company.

The notes provide additional detail on points previously included in the key aspects document, including confirmation that for each of the islands:

- Income for these purposes is gross income (not taxable income/profit or accounting income/profit);
- Companies undertaking a relevant activity will need to provide additional information on their tax return, including the number of qualified employees, gross income and operating expenditure, each split by relevant activity;
- All core income generating activities must be undertaken on the island;
- It is not necessary for all board meetings to take place on the island (or for a quorum of directors to be physically present on the island, unless the meeting is held there); and
- The legislation does not prevent outsourcing, but if core income generating activities are outsourced, those activities must be undertaken on the island and there must be adequate supervision of the outsourced activities.

Amendments to the Taxation (Companies – Economic Substance)(Jersey) Law 2019

Proposed amendments to the relevant Jersey legislation were submitted on 11 April 2019 and are due to be debated on 4 June 2019. Key changes proposed include the following:

- The definition of “fund management business” (article 1, interpretation) is amended to exclude a person carrying on a business that is excluded from fund services business under the Financial Services (Jersey) Law 1998 by virtue of article 3 and paragraph 21 of schedule 2 to that law, if a separate manager has been appointed to the unregulated fund; and
- Article 8 (exchange of information to competent authorities) is amended to extend the exchange of information requirement to any country or territory and not just to a country or territory within the EU. However, the Comptroller is not required to provide information unless this is permitted under a bilateral or multilateral agreement.

Comments

The guidance has been much anticipated and will be welcomed by those industry sectors in the process of evaluating the impact of the economic substance legislation in the Crown Dependencies.

The legislation covers a variety of different industry sectors and, even though sector specific, the guidance is drafted at a relatively high level. This suggests that owing to the wide range of different entities that could fall within the scope of the rules, local tax authorities enforcing the legislation are not in a position to be overly prescriptive and, hence, the guidance sets out principles, sometimes in the form of examples, rather than providing definitive thresholds or quantitative bright line tests.

As would be expected with legislation containing a number of subjective elements, part of the overall analysis typically will require a qualitative evaluation and judgement based on the specific facts and circumstances of a particular entity.

Although the guidance is described as a work in progress, we do not expect substantive changes in the near future (other than where sections are to be added) and companies should consider making a detailed analysis of their own position, identifying any areas of weakness and taking any necessary action to improve compliance with the requisite tests for local economic substance as soon as possible. Most importantly, conclusions and ongoing compliance with the tests should be clearly documented.

Contacts

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