

Jersey economic substance requirements - the company perspective

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The substance requirements under the Taxation (Companies - Economic Substance) (Jersey) Law 2019 (the Law) that came into force on 1 January 2019 apply to Jersey tax-resident companies (wherever incorporated) that carry on certain specified geographically mobile activities, known as "relevant activities".

They have been implemented in order to comply with the requirements of the EU Code of Conduct Group for the purpose of demonstrating that the profits generated by such companies are commensurate with their economic activities and presence in Jersey. Jersey was put on the EU whitelist on 12 March 2019.

The Crown Dependencies issued joint Guidance Notes on aspects of the substance requirements on 26 April 2019 and were updated on 22 November 2019.

While there are nine "relevant activities" defined under the Law, the relevant activities of "finance and leasing business", "holding company business" and "distribution and service centre business" will be particularly relevant from a company perspective.

The Law defines the relevant activity of "finance and leasing business" broadly to mean the provision of credit facilities of any kind for consideration, so while interest free lending arrangements are not likely to be caught, consideration should be given to whether any intra-group financing arrangements are within the scope of the Law.

The Law defines the relevant activity of "holding company business" to capture the business of primarily acquiring and holding a controlling interest in shares or equitable interests. The Guidance Notes confirm that if a company undertakes any other relevant activity (whether or not for profit) it would not fall in the definition of a "pure equity" holding company and therefore would be subject to the higher substance requirements of that other relevant activity.

The Law defines the relevant activity of "distribution and service centre business" as reselling certain goods that have been purchased from foreign connected persons, and providing services to foreign connected persons in connection with the business. The Guidance Notes confirm that these services include consulting or administrative services provided to members of a company's group that are not tax resident in Jersey. A company does not carry out this relevant activity where it is not the main activity of the company, and where any goods or services supplied are recharged at cost or less.

Substance Requirements

The Law includes three key tests which must be met to demonstrate compliance. First, relevant companies must be directed and managed in Jersey, which requires:

- meetings of the board of directors (all of whom must have the necessary knowledge and expertise to discharge their duties as a board) in Jersey at adequate frequencies, given the level of decision making required
- a quorum of the board of directors to be physically present in Jersey at these meetings and, where a meeting is called to consider a strategic matter or a "core income generating activity" (please see below), a majority of directors must be physically present in Jersey minutes recording the strategic decisions of the company made at these meetings, and retention of all company records and minutes in Jersey including all supporting documents relating to board meetings (or, if in electronic form, maintained and accessible in the Island)

While it is not necessary for all of the company's meetings to be held in Jersey, it is expected that the majority of board meetings will be held in the Island and that a quorum of directors will be physically present. It is acknowledged that it may be necessary for certain meetings to be held outside Jersey, with the Guidance Notes providing a welcome confirmation that isolated decisions may be taken outside Jersey provided "it can be evidenced that the decisions taken and the Core Income Generating Activities (CIGA) undertaken in the Island are of a quality and quantity to clearly outweigh the question that the CIGA involving the decisions is undertaken outside the Island."

Secondly, relevant companies must also demonstrate adequate activity in Jersey:

- have an adequate number of employees physically present in Jersey;
- demonstrate adequate expenditure in Jersey, and
- have access to adequate "physical assets", or premises, in Jersey

In this context, "employees" is not limited to persons who are employed by the company, but

includes persons deemed to be employees under Jersey law, owner-managers and directors. The resources of any outsourced service provider in Jersey will also be taken into consideration.

Thirdly, they must also conduct CIGAs in Jersey, which in the case of "finance and leasing business" includes:

- agreeing funding terms
- identifying and acquiring assets to be leased (in the case of leasing) setting the terms and duration of any financing or leasing monitoring and revising any agreements
- managing any risks

In relation to "holding company business" the CIGAs are broadly defined as all activities related to that business. Consideration will need to be given to ensuring sufficient CIGAs are carried on in Jersey in order to demonstrate compliance with the requirements of the Law.

In relation to "distribution and service centre business", the CIGAs include:

- purchasing component parts, materials or goods for resale from; or
- providing services in connection with the business to

foreign connected persons of the company, 'Services' should be understood broadly the Guidance Notes confirm that "consulting" and "other administrative services" are both in scope.

Outsourcing

Jersey, like many international finance centres, applies an outsourced model for the administration of companies. The Law does not prohibit outsourcing as long as the board of directors monitors and retains the ability to control the activities of service providers in Jersey. Having regard to the Guidance Notes, clients and advisers should review outsourcing arrangements (which includes contracting or delegating to third parties or group companies) for companies that fall within the scope of the Law and consider whether the service provider agreements in place meet the tests, particularly in relation to provision of office space and appropriate access to sufficiently senior employees.

Tax Returns

While tax returns filed in 2019 only needed to confirm whether or not a company carried out any relevant activity under the Law, more detailed reporting applies to tax returns completed in 2020 (relating to the tax year 2019). The Guidance Notes confirm that "protected cell companies" are treated as a single vehicle with all its cells, therefore requiring a single tax return, while an "incorporate cell company" and its cells are treated as separate entities and

therefore each requires its own tax return.

If you would like to discuss any aspects of the Law, or whether your companies or clients may be affected, please speak to your usual Ogier contact or a member of our Economic Substance team.

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