

A Comprehensive Tool Kit to Meet the Requirements of a Substance based Regime

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2nd September 2019

History – The 'Substance Regime'

On 1st January 2019 the "substance-based regime" was introduced into the Crown Dependencies (Guernsey, Jersey and the Isle of Man).

This has meant that since January 2019, companies engaging in "relevant activities" have had to demonstrate that they meet specific substance requirements, to avoid sanctions.

This 'Order' is in response to a comprehensive review, carried out by the EU Code of Conduct Group on Business Taxation (COGC), to assess over 90 jurisdictions, including the Crown Dependencies, against standards of:

- Tax transparency;
- Fair taxation;
- Compliance with anti-BEPS (base-erosion profit shifting).

The review process took place in 2017 and although the COGC were satisfied that generally the Crown Dependencies met the standards for tax transparency and compliance with anti-BEPS measures, the COGC raised concerns that the jurisdictions did not have:

"A legal substance requirement for entities doing business in or through the jurisdiction."

Crown Dependencies – Response

Stage 1 - *To identify "relevant activities"*.

The type of structures that were reviewed, included: banks, insurance, shipping, and fund management. It would generally be expected that substance obligations would need to be met for these "relevant activities".

Where it is greyer and more challenging is in relation to corporate and private client relevant activities, where substance is not straightforward. Specific areas that need to be considered, by professional advisors, include:

- Financing and leasing operations;
- Headquarter Companies and activities;
- Holding Company activities;
- The holding of Intellectual Property;
- Distribution and service centres.

These latter five areas have the potential to be forgotten, by many private client and group organisations.

Not only are offshore jurisdictions being challenged but also onshore jurisdictions, such as: Ireland, Netherlands and Luxembourg, are starting to bring in their own version of the substance requirements.

Stage 2 – *To impose substance requirements on companies undertaking relevant activities.*

This will be achieved through the completion of local tax returns in the jurisdiction where the entity is established. Additional detail is required in several areas, including; levels of employment (in and out of the jurisdiction), outsourcing services, permanent establishment (rent, infrastructure), true control and management, and the use of local skills.

Failure to meet substance requirements will result in penalties, and ultimately ‘striking off’ of the company, and the assets de-faulting to the state.

Why are Jurisdictions Enforcing Such Regimes?

Each jurisdiction has agreed to undertake assessment by the Organisation for Economic Cooperation and Development (OECD), to monitor the implementation of the substance based regime. The failure of a jurisdiction to implement a suitable economic regime will result in it becoming a “grey” or “black” list regime, which will ultimately lead to economic sanctions against the jurisdiction. No jurisdiction, at a political or economic level, can afford for this to happen.

Tax transparency and substance must be met by organisations. They need to comprehensively address these requirements through action and investment to help find long term solutions.

The “True” Tool Kit to Meet the Requirements of a Substance Based Regime

Dixcart have invested extensively, over the past ten years, to help establish economic substance with clients. This has been achieved through investment in several different aspects of the business:

1. The provision of serviced offices across five locations within the Dixcart Group – many Dixcart clients have taken up the opportunity to use serviced offices within the Dixcart Group.

2. The provision of suitably qualified and experienced Dixcart professionals to appropriate company boards, often where specific industry knowledge is required.
3. The provision of cross border arrangements where the client and Dixcart directors provide a joint working environment to deliver a long-term solution for the client position. Dixcart provide the statutory legal support and the client the in-depth specific knowledge in relation to the industry and business.
4. 'Local' advice regarding the recruitment of staff and Non-Executive Directors to the Board.
5. Introductions locally to other services providers with relevant skills: banks, compliance, regulators, IT, etc.

Please visit the Dixcart Business Centre website for further information regarding the Dixcart serviced office facilities: www.dixcartbc.com

Additional Information

If you would like additional information regarding the Dixcart Business Centres in: Guernsey, Isle of Man, Malta, Portugal and the UK, please speak to your usual Dixcart contact or to the Dixcart offices in Guernsey or the Isle of Man: advice.guernsey@dixcart.com and advice.iom@dixcart.com.

An additional Dixcart Business Centre is opening in Cyprus, later this year (2019).

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