

Are You Facing Company and Fund Challenges? Why Redomiciling to Guernsey Could be the Solution

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What has been Happening?

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The degree of success, the quality of legislation and the standard of on-going monitoring in an IFC affects how each jurisdiction is assessed by administrative authorities around the world.

The implementation of Economic Substance Requirements by IFCs and grey listings of jurisdictions has added further motivation to a growing trend for companies to consider relocating from their incorporated jurisdiction to jurisdictions which are higher ranked, as being fully compliant with international standards.

Why are Companies Migrating?

Economic Substance and Grey/Black Lists

Economic Substance Requirements (ESR) have now been adopted by most IFCs, in response to concerns raised by, amongst others, the European Union. These concerns relate to the possibility that IFCs might be used in structures designed to shift, then roll-up profits in a low or no-tax jurisdiction, where there is little true substance in relation to the operations supporting the core income generating activity.

Where an IFC has not satisfactorily implemented FATF and ESR, these jurisdictions are then at risk of being placed on one of the 450+ administrative lists around the world of 'Grey' or 'Black' ranked jurisdictions. The issue for structures in these jurisdictions is the impact on their ability to conduct financing and transaction activity, particularly banking, and their credibility in the global financial world.

Key practical difficulties in such jurisdictions include:

- not being able to obtain banking and lending services;
- missed investor opportunities or lack of investor interest and engagement; and
- greater compliance scrutiny

each of which affect the ability of the structure to operate effectively, efficiently, and possibly even viably.

Considerations when choosing the IFC to Migrate to

There are three leading factors driving the choice of jurisdiction:

- the tax harmonisation compliance track record of that IFC;
- the practicality of operating from that IFC; and
- the simplicity of the migration process itself.

Track record is often the first criteria assessed. It is important that the jurisdictions considered are white listed. Clients will also want certainty that the jurisdiction will remain white-listed, as the international standards mentioned previously, and global tax harmonisation rules continue to evolve.

Forums such as the Organisation for Economic Cooperation and Development (OECD) and assessment bodies such as MONEYVAL conduct periodic assessments to ensure that a jurisdiction has adhered to the highest level of standards, implementation and monitoring. These assessments provide key information when assessing corporate re-domiciliation.

Practical operation of the company from the chosen jurisdiction is the second consideration. Can the company and its activities be conducted in line with ESR, where appropriate and applicable, in an efficient and effective manner? Geographical location, time zone, access to markets, access to professionals, advisers and financial services, appropriately qualified directors and other personnel, as well as transport links are all important considerations.

Simplicity of corporate migration. The laws of the inbound jurisdiction need to permit corporate migration and the process should be simple and cost effective, to ensure that the process is commercially viable.

Guernsey offers these features.

Companies are migrating to jurisdictions where they can most readily comply with requirements such as substance. Corporate groups are consolidating multiple jurisdictional structures into single, or at least fewer, jurisdictions to create cost, compliance and substance efficiencies.

These considerations are not limited to the migration of existing structures, new structures are being established, which take into account the above trends and concerns.

Guernsey's Tax and Regulatory Standards Track Record

Guernsey's tax policy is underpinned by strong general anti-avoidance rules and the adoption of a number of international tax standards. Some of the more relevant developments are detailed below;

- December 2017 – EU Code of Conduct Group on Business Taxation for the EU Economic and Financial Affairs Council (COCG), confirmed Guernsey to be a co-operative jurisdiction which complied with the general principles of “fair taxation” and raised no concerns regarding Guernsey’s standards of transparency or implementation of measures to counter base erosion and profit shifting (BEPS).

- During 2018, Guernsey worked closely with the COCG, EU Member States and the other Crown Dependencies to develop economic substance legislation, which was adopted in December 2018.

- In 2019, the EU Council confirmed that Guernsey had met its commitment to introduce economic substance requirements and therefore removed Guernsey from the list of jurisdictions who had committed to make certain changes.

- Guernsey has given its full support to the transparency principles central to the current G20, OECD and EU tax initiatives, and is working as part of the wider international community in the development and effective implementation of internationally agreed standards.

- In 2004 Guernsey voluntarily entered into automatic information exchange and bilateral withholding arrangements respectively, with all EU Member States, under the European Union Savings Directive (2003/48/EC).

- Guernsey committed in May 2013, to join the initiative of the G5 countries on establishing and piloting an international standard for automatic exchange of information between tax authorities.

- In December 2013 Guernsey entered into an intergovernmental agreement with the United States of America in relation to the implementation of FATCA, which it implemented in June 2014.

- In October 2013 Guernsey entered into an intergovernmental agreement with the United Kingdom in relation the United Kingdom’s own version of FATCA, which it also implemented in June 2014.

- Guernsey joined in the joint statement on 19 March 2014 committing to the early adoption of the global CRS. On 29 October 2014 Guernsey was among over 50 jurisdictions to sign the OECD's Multilateral Competent Authority Agreement in Berlin, as a further step towards implementation of the CRS.
- Guernsey, along with over 50 jurisdictions, implemented the CRS into its domestic legislation with effect from 1 January 2016.

As a key member of the global community committed to transparency, Guernsey continues to implement developments in transparency and best practice, building upon its early adoption of FATCA and the CRS, and also being compliant with the BEPS minimum standards.

Data Protection

Guernsey is among a small group of third country jurisdictions that have been officially assessed as meeting current EU data protection standards and granted equivalence ("adequacy"), through individual Commission Decisions.

Next Steps

If any of the areas covered in this note are relevant to your or your clients, please get in contact to discuss the practical aspects, costs and timings of redomiciling structures to Guernsey. Please contact Steven de Jersey or John Nelson at advice.guernsey@dixcart.com