

Substantial Activity Requirements: The EU Council, OECD and Low Tax Jurisdictions

25th November 2019

Background

The EU Council's 'base erosion and profit shifting' (BEPS) action plan defines the requirements to be met, by jurisdictions wishing to maintain low tax regimes for businesses undertaking 'specified' activities, in order to demonstrate that they have sufficient substance in that particular jurisdiction.

Requirements include; 'core income generating activities' must take place in the jurisdiction in question, with adequate expenditure and staff in that jurisdiction proportionate to the level of activity carried out there. In addition, measures must be in place for the jurisdiction to enforce any non-compliance to the rules.

Reporting

On 31 October 2019, the OECD released guidance regarding the spontaneous exchange of information by zero or nominal tax jurisdictions. As part of BEPS Action 5, as from 2020, low-tax jurisdictions will have to 'spontaneously exchange' information. Guidelines have been published to clarify key definitions, specify timelines relating to the information exchanges and detail the context of the international legal framework.

Relevant Activities

Companies undertaking the following relevant activities are subject to economic substance requirements:

- Banking
- Distribution and service centres
- Finance and leasing
- Fund management
- Headquarters
- Holding Companies
- Insurance
- Intellectual property holding
- Shipping

Guernsey and the Isle of Man

Guernsey and the Isle of Man were on the original OECD list of low tax jurisdictions and both are now compliant with the standards for substantial activity legislation, having

introduced new laws in 2018.

Guidance Notes: Guernsey and the Isle of Man

The States of Guernsey and the Isle of Man Government issued additional Guidance Notes on 26 April 2019.

Key points to note include:

- Each resident company, undertaking a relevant activity, is expected to hold at least one board meeting per annum in the jurisdiction of residence of the company. In addition the board must meet in the jurisdiction at an adequate frequency, given the level of decision making required. When more than one meeting is held, the majority of such meetings should be held in that jurisdiction. During such meetings, there must be a quorum of the Board physically present in the jurisdiction. This is to help ensure that the relevant activity is 'directed and managed' in, for example, Guernsey or the Isle of Man.
- The 'core income generating activity' must be performed in the jurisdiction of residence for the company.
- If there is a failure to meet the economic substance requirements, sanctions will include exchange of information with competent authorities in other jurisdictions. Current wording of the existing legislation in Guernsey and the Isle of Man is that the information will only be exchanged where the parent of the particular company or the beneficial owners are resident in the EU. It is anticipated that the current laws will be amended and extended beyond the existing EU obligation.

Additional Information

Each of the Dixcart offices are familiar with the economic substance requirements in their particular jurisdiction.

Dixcart Business Centres act as Start-up hubs for companies as they offer high quality serviced offices and a range of professional services to assist clients to establish a business: <https://dixcartbc.com/>

Our Guernsey and Isle of Man offices are fully conversant with the 'substance' legislation and the implications within their respective jurisdiction.

For further information please speak to your usual Dixcart contact or to our Guernsey or Isle of Man office: advice.guernsey@dixcart.com or advice.iom@dixcart.com

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