

The Approach to Taxation in 'Offshore' Centres is Changing - for the better

6th September 2019

The EU Code of Conduct Group (Business Taxation) ("the COCG") have been working with the Crown Dependencies (Guernsey, Isle of Man and Jersey) to review 'economic substance'. The EU Code Group concluded that the Isle of Man and Guernsey were compliant with most of the EU principles of good tax governance, including the general principles of "fair taxation". However, one area that raised concern was the area of substance.

The Isle of Man and Guernsey, have made a commitment to address these concerns by the end of 2018 and the islands have subsequently worked together with the COCG to develop proposals to meet their commitments.

Implications

Increasingly substance must be demonstrated, and clients are advised to use professionals such as Dixcart, who are experienced in providing the level of substance needed to ensure that the appropriate measures are in place.

The main elements of the COCG proposals include:

Identification of Organisations Conducting "Relevant Activities"

The classification of "relevant activities" has been derived from 'categories of geographically mobile income', as identified by the OECD Forum on Harmful Tax Practices. These include organisations undertaking the following activities:

- banking

- insurance
- intellectual property ("IP")
- finance and leasing
- fund management
- headquarter type activities
- holding company activities; and
- shipping

Impose Substance Requirements on Organisations Undertaking Relevant Activities

This is a two part process.

Part 1: "Directed and Managed"

Resident companies undertaking relevant activities will be required to demonstrate that the company is "directed and managed" in the jurisdiction, as follows:

- Meetings of the Board of Directors in the jurisdiction at adequate frequency, given the level of decision-making required.
- During these meetings, there must be a quorum of the Board of Directors physically present in the jurisdiction.
- Strategic company decisions must be made at the meetings of the Board of Directors and the minutes must reflect those decisions.
- All company records and minutes must be kept in the jurisdiction.

- The Board of Directors, as a whole, must have the necessary knowledge and expertise to discharge their duties as a board.

Part 2: Core Income Generating Activities (“CIGA”)

Tax resident companies, in any of the Crown Dependencies must demonstrate that the core income generation activities are undertaken in that location (either by the company or a third party – with suitable resources and receiving appropriate payment).

Companies conducting a relevant activity must demonstrate:

- That an adequate level of (qualified) employees are employed in the appropriate Crown Dependency location, or that there is an adequate level of expenditure on outsourcing to a suitably qualified service company in that location, proportionate to the activities of the company.
- That there is an adequate level of annual expenditure incurred in the appropriate Crown Dependency, or an adequate level of expenditure on outsourcing to a service company in that location, proportionate to the activities of the company.
- That there are adequate physical offices and/or premises in the appropriate Crown Dependency location, or an adequate level of expenditure on outsourcing to a service company in that location, commensurate with the activities of the company.

Enforcement of the Substance Requirements

In order to demonstrate the effective enforcement of these measures, companies that refuse to comply with the provisions will suffer penalties and sanctions, and could ultimately be struck off.

Impact on Other Jurisdictions

These measures, and the relevant processes, apply to jurisdictions other than Guernsey, Isle of Man and Jersey, and include Bermuda, BVI, Cayman Islands, UAE, and an

additional 90 other jurisdictions.

Summary

Whilst the measures are significant, much of what is required is already in place in a number of the relevant jurisdictions.

Clients, however, need to appreciate that if a business is based 'offshore' it must have a 'Permanent Establishment' with real substance and value in that specific jurisdiction.

How Dixcart can Help Provide Substance, Management and Control in Guernsey and the Isle of Man

Dixcart has Business Centres in Guernsey and the Isle of Man which offer serviced office space and can also assist with the recruitment of staff and the provision of professional services, if required.

The Dixcart Group also has a long history of providing professional management to the shareholders of companies, with services including:

- Full management and control of companies through the appointment of Dixcart directors. These directors not only manage and control the company in the Isle of Man and Guernsey, but also provide an auditable record of that management and control.
- Full administration support, including day to day bookkeeping, accounts preparation and tax compliance services.
- In certain circumstances Dixcart can provide non-executive directors to sit on the Boards of companies. These non-executive directors will monitor developments in the company and help protect the clients' interests.

Additional Information

If you would like additional information, please speak to the Dixcart office in Guernsey: advice.guernsey@dixcart.com or to the Dixcart office in the Isle of Man:

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