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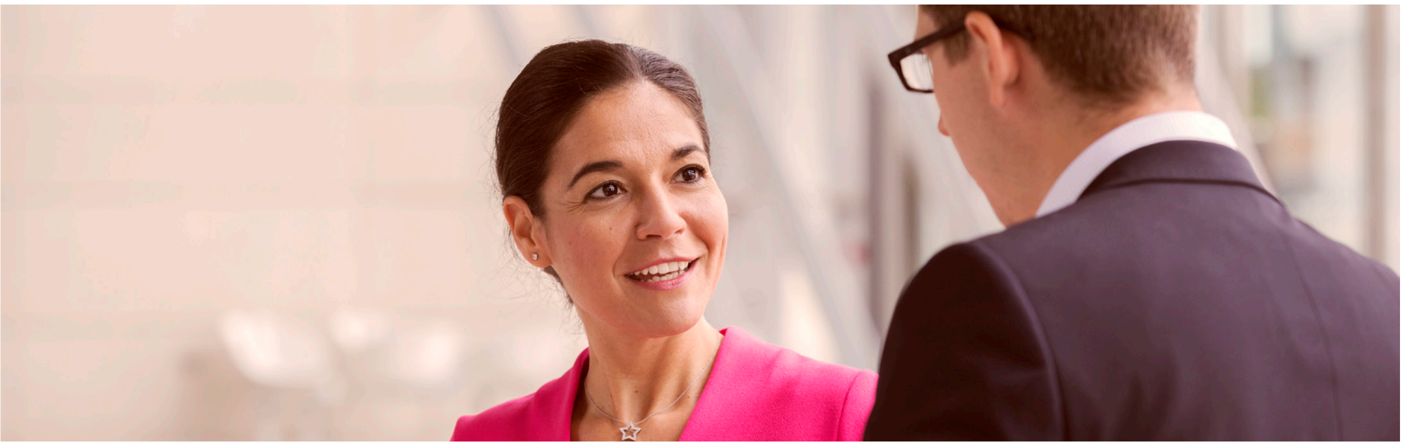
Tax

EU Substance for Guernsey

Tax Alert

As you will know from earlier news, Guernsey has been negotiating this year to formalise just what the EU's requirements for 'substance' need to include. In addition to the overarching draft law issued last month which the States will debate and we expect to approve on 28th November, draft Regulations setting out much of the detail have also now just been published.



All of this will take effect from 1st January 2019, across each of the three Crown Dependencies in a similar manner, following their commitment made last November to address the EU's concerns by this agreed deadline.

Guernsey Tax Office has added a specific web page including these documents and an explanatory note plus a flowchart, see https://www.gov.gg/economicsubstance. The Guernsey Tax Office will also be publishing guidance, again in conjunction with the other CD's, but probably not until nearer the end of this year.

What does this mean for Guernsey companies?

The EU was concerned with Guernsey being used to artificially attract profits when our tax rate is of course nil, hence 'economic activities and substantial economic presences' must exist to dispel that fear of 'avoidance'. So there will become a requirement to justify that they do indeed have substance here to remain considered Guernsey tax resident and thus be endorsed. Failure to do so will result in an automatic exchange of information to any connected tax authority, say for either a parent company or UBO, which of course one would expect to trigger enquiries. There are also potentially large financial penalties for continued non-compliance and finally the company will be struck off.

Concentration is given to Intellectual Property structures who will have the highest burden of proof. Secondly for those to be referred to as carrying on 'Core Income Generating Activities': these are banking, insurance fund management, financing & leasing, headquartering, shipping and distribution service centres. Several of these are of course regulated and those local requirements will help provide comfort that substance exists here.

Whilst some details remain outstanding, such as for fund management involved in delegating investment management off island, we believe the vast majority of companies will already pass these new conditions and many will simply see the effect in having to attest to this and include additional information on future Tax Returns, starting in 2020.

There are, however, several steps we recommend are taken now to ensure substance here is indeed the case and can of course be proved, including those below. We would be happy to discuss with you any queries to help ensure you are comfortable that your company will be OK.

- The board of directors meets on an adequate number of occasions relevant to its activities
- Physical attendance in Guernsey by a quorum of directors, who
- Have appropriate qualifications relevant to the company's activities
- Ensuring strategic decisions are taken at such board meetings
- Adequate supervision when outsourcing is involved.

Overall, one will need to have adequate measures in place to corroborate the company has substance here. All of this will then become subject to review and monitoring by our Tax Office.

It has also been suggested within the Budget just debated by the States that Guernsey will review its corporate tax residence rules in 2019 and we expect these are likely to then change next year. This will then include the more usual management and control test. That will then allow the many foreign incorporated companies managed here, such as BVI companies operated within the Fiduciary sector, to register as Guernsey tax resident and thus be able to achieve substance here too that clients will want.

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