Guernsey to update economic substance legislation

Service area / Taxation and Economic Substance

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The Guernsey Revenue Service has today announced some amendments to Guernsey's economic substance legislation.

Guernsey's economic substance legislation is contained in The Income Tax (Substance Requirements) (Implementation) Regulations, 2018, as amended (the Regulations), which took effect in Guernsey on 1 January 2019. Broadly, the Regulations apply to companies that are tax resident in Guernsey and generate income from certain activities in any accounting period commencing on or after that date.

The amendments that have been announced to the Regulations are:

- Certain Guernsey incorporated companies that are not tax resident in Guernsey (having obtained exempt status) will be brought within the scope of the Regulations, but funds regulated by the Guernsey Financial Services Commission will continue to be out of scope of the Regulations. This means that the Regulations will potentially apply to subsidiaries of regulated funds that derive their exempt status from their parent funds. Those subsidiaries will now be required to comply with the Regulations if their activities cause them to be in scope;
- The core income generating activities (CIGA) for companies deriving income from intellectual property assets (IP companies) will be amended to clarify that the CIGA depend on the nature of the relevant intellectual property and the activities of the company holding that intellectual property;
- The definition of a "high risk IP company", being a company which is presumed to fail the economic substance requirements in Guernsey unless it can rebut certain presumptions, will be revised to remove an IP company that holds intellectual property and which does not carry on either the CIGA of research and development or the CIGA of marketing, branding and distribution in relation to its intellectual property. This means that a "high risk IP company" is limited to a company that holds intellectual property which it did not create, licenses that intellectual property intra-group and to which certain other conditions apply. The information required from a high risk IP company to rebut its presumed failure to comply with economic substance requirements will also be included in the Regulations;
- Pure equity holding companies will be obliged to comply with their own applicable company law, and not Guernsey or Alderney company law – this change recognises that non-Guernsey or non-Alderney companies can now be tax resident in Guernsey;
- The definition of intra-group, which is set out in the guidance notes issued on 26 April 2019, will be incorporated into the Regulations; and
- The jurisdictions with which the Guernsey Revenue Service exchanges information in relation to a company that is non-compliant with the Regulations will be expanded beyond EU Member States to all jurisdictions with which Guernsey has tax information sharing arrangements in place. This recognises that substance requirements are becoming a global, and not just an EU, standard.

The States of Guernsey will publish details of the amending legislation in due course, at which point further details on the above amendments will be known. Companies will need to consider the impact of these amendments.

In particular, companies that may have previously considered themselves outside the scope of the Regulations must consider the impact of being brought within scope of the Regulations. For those companies which find themselves captured by the Regulations at this late stage, they are likely to be nearly halfway through the first accounting period of compliance; as such, they may need to take extra care to ensure that they are compliant.

IP companies must also consider the impact of these amendments. Whilst IP companies that created their own intellectual property are no longer high risk IP companies, the above changes to the CIGA for IP companies mean that they must comply with more defined CIGA requirements.

Carey Olsen is able to advise you on the implications of the legislation to your structures. Members of our taxation and substance team advise clients across all sectors on various local tax matters, including tax residence, economic substance requirements, income tax, FATCA, the OECD's Common Reporting Standard and tax disputes.

To help businesses ensure compliance with economic substance requirements, our team conducts substance audits on existing structures, procedures and documents to help identify any issues both in terms of an initial audit of compliance and on an ongoing basis.

For advice on the application of economic substance requirements to any specific circumstances and how the guidance could apply, please contact a member of our taxation and substance team.

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