

Guernsey to update corporate tax residence law

Service area / [Corporate](#)

Location / [Guernsey](#)

Date / [December 2018](#)

Proposal

Following an announcement in Guernsey's 2019 Annual Budget, revised draft legislation updating the Island's corporate tax residence law has now been published.

Under the legislation, which is expected to come into force on 1 January 2019, a Guernsey incorporated company will not be treated as tax resident in Guernsey where it is proved to the satisfaction of the Director of the Revenue Service that:

- it is tax resident in another territory (**Territory A**) under Territory A's laws;
- its business is centrally managed and controlled in Territory A;
- either:
 - the highest rate of corporate income tax or corporation tax in Territory A is at least 10%; or
 - Territory A and Guernsey are both parties to an international tax measure, such as a double tax agreement (**DTA**), that treats the company as being resident in Territory A over Guernsey; and
- its tax residence in Territory A is not motivated by the avoidance of Guernsey tax.

Commentary

Guernsey companies offer more flexibility from a corporate law perspective than UK companies, such as the freedom to make distributions from any source to shareholders, subject only to satisfying a solvency test. Guernsey companies are therefore commonly used in both listed and unlisted holding company and fund structures and Guernsey is the second

most popular jurisdiction of incorporation, after the UK, for companies listed on the London Stock Exchange. For more details on the advantage of Guernsey companies, please click [here](#).

This proposal is most relevant to structures with a Guernsey incorporated holding company that is UK tax resident due to its "central management and control" being located in the UK (for more details on UK tax residence considerations for Guernsey companies, please click [here](#)). Whilst such companies should be solely UK tax resident under current law and both the current and new DTA between Guernsey and the UK, achieving this result involved making a claim under this DTA which, in the case of the new DTA, involves a mutual agreement process with HM Revenue & Customs. This update therefore cements the position that Guernsey companies that are UK tax resident will not be treated as Guernsey tax resident and removes the need for what can be a lengthy claim process under the new DTA.

This law change is also welcome as it reduces instances of "dual-residence", where a company is tax resident in two different jurisdictions, which could be problematic where both jurisdictions of residence have adopted substance legislation (for more details on Guernsey's substance legislation, please click [here](#)).

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