

The impact of the coronavirus (COVID-19) on economic substance in Guernsey

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The Guernsey Revenue Service has confirmed in guidance that where a company that is subject to economic substance requirements in Guernsey has had to make changes to its normal operating practices due to public health measures introduced to compensate for the outbreak of the coronavirus (COVID-19), such as travel restrictions, they will take a pragmatic approach when assessing whether it has complied with the economic substance requirements.

The guidance was released following discussions with the EU Code of Conduct Group and applies to the whole of 2020. Key points set out in the guidance are:

- It is expected that COVID-19 measures will only impact on the ability of a company to comply with the directed and managed requirement, and not on other economic substance requirements.
- Each company subject to economic substance requirements should maintain records evidencing its policy in respect of travel restrictions and any government imposed restrictions.
- Where a company fails to meet economic substance requirements due to COVID-19 measures, a Revenue Service Inspector will undertake a review of that company.
- Where the Revenue Service is required to exchange information with the UK or EU Member States on a company as a result of its failure to comply with economic substance requirements, the exchange will include information that companies provide on the impact of COVID-19 measures.

The guidance is temporary and will remain in place whilst travel restrictions continue. However, it will be withdrawn as soon as circumstances permit.

A crucial point to note is that the guidance is more restrictive than the position set out by GIBA in March 2020, as COVID-19 measures are not expected to impact a company's ability to comply with the requirement relating to core income generating activities.

Companies subject to economic substance requirements should therefore review how their businesses have operated during 2020 and consider what the guidance means for their compliance. As travel restrictions will continue into 2021, companies may wish to consider (if they have not already) the appointment of alternate Guernsey resident directors to ensure that they can comply with the relevant requirements for so long as the directors' ability to travel to and from Guernsey is disrupted by applicable travel restrictions.

Carey Olsen is equipped to advise on the implications of the legislation and its guidance to your structures. To help businesses ensure compliance with economic substance requirements for current and future periods, our team also conducts economic substance audits on existing structures and procedures to help identify and remedy any gaps. 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. Members of our taxation and substance team also advise clients across all sectors on various other local tax matters, including tax residence, income tax, FATCA and the OECD's Common Reporting Standard.

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