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Substance requirements

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On 1 January 2019, the Income Tax (Substance Requirements) (Implementation) Regulations, 2018 and the Income Tax (Substance Requirements) (Implementation) (Amendment) Regulations, 2018 (the "**Regulations**") came into force. The Regulations introduce new economic substance requirements for companies tax resident in Guernsey which undertake specified activities.

Effectively, Guernsey tax resident companies caught by the Regulations will be required to demonstrate the substance of their presence and operation in Guernsey (eg the presence of employees). The reason being that the specified activities have been identified as geographically mobile and historically the focus of tax planning in which profits are shifted into low tax jurisdictions.

The introduction of the Regulations are the result of the screening of non-EU jurisdictions by the EU Code of Conduct Group and their expressed need for a "legal substance requirement for entities doing business in or through" a jurisdiction. Guernsey, Jersey, the Isle of Man, Cayman and the BVI have now all introduced new legislation to address this need.

A Guernsey tax resident company will be caught where it carries out a specified activity, including; Banking; Insurance; Shipping; Fund Management (but not companies that are Collective Investment Vehicles); Financing & Leasing; Headquarters; Distribution and service centres; Holding Company (a pure equity holding company); and Intellectual Property (for which there are specific requirements in high-risk scenarios).

The Regulations do not necessarily apply to trusts per se, but could catch a corporate trustee of a trust structure or a special purpose vehicle used by a trust to hold trust assets in certain circumstances. Fulfilling substance requirements, can be demonstrated by showing that the company is being directed and managed in Guernsey; that it has an adequate level of employees, expenditure and physical presence; and that its Core Income Generating Activities were taking place in Guernsey. Failure to comply with the Regulations could lead to severe sanctions being imposed on the company, including substantial penalties and the potential for strike off.

The Regulations and further guidance on their effect can be found here.

Detailed guidance is awaited on how the new regime will be applied in practice.

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