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Impact on economic substance and tax residency

MARCH 2020

As Coronavirus has now been declared a pandemic by the World Health Organisation, many companies and other entities globally will be concerned on whether any restrictions or changes to normal working practice (for example, the need for self-isolation and working from home to avoid social interaction) could have an impact on their ability to (i) pass the economic substance test or (ii) (for a foreign company which is tax resident offshore on the basis of management and control in that offshore jurisdiction) maintain tax residency in that offshore jurisdiction, especially where board meetings are not able to occur physically in the relevant jurisdiction.

The tax authorities in Jersey have now put out an advisory note to allay some of those concerns, to make it clear that where a company has had to put in place changes to operating practices as a result of Coronavirus (for example, making board meetings which would otherwise be held physically in Jersey take place virtually) then this will not in itself be sufficient for a company to fail the economic substance test or lose, for the purposes of Jersey taxation, its Jersey tax residency.

At present, we have not yet seen similar announcements from our other offshore jurisdictions but we are liaising with the relevant authorities. We will provide further updates on this topic for our other jurisdictions once we receive confirmation.

Companies still need to ensure that all meetings continue to otherwise be held in accordance with the company's constitutional documents. Companies may wish to consider taking advice on whether any changes to governance arrangements in those documents would need to be made as a result of restrictions imposed as a result of Coronavirus, to provide additional flexibility.

We are always ready and happy to assist you in navigating the rapidly changing landscape as a result of this outbreak. Please contact any of your usual Collas Crill contacts if we can help you in any way.

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