

Jersey: Certainty and Substance



Jersey Finance

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When it comes to substance, Jersey offers certainty. In March 2019, Jersey was assessed as a cooperative jurisdiction by EU Finance Ministers regarding the business taxation initiative from the EU Code of Conduct Group (COCG).



The EU's positive assessment came as a result of the Island's collaborative dialogue with the COCG, which was tasked by the EU Council with assessing jurisdictions in the following three areas: tax transparency, fair taxation and compliance with anti-base erosion and profit shifting (BEPS) measures. While Jersey's standards of tax transparency and anti-BEPS compliance were positively assessed, the lack of a legal substance requirement for entities doing business using the Island was highlighted as a concern.

In response the Government of Jersey introduced the Taxation (Companies – Economic Substance) (Jersey) Law 2019 (Law), which came into effect on 1 January, 2019. The law makes provision for imposing an economic substance test on companies which are tax resident in Jersey. Tax resident companies must be able to demonstrate that they meet the relevant criteria, in order to pass the test.

The law has been assessed by the EU finance ministers as meeting the requirements for demonstrating economic substance.

Vital requirements

The Law applies to 'resident companies', defined as companies which are tax resident in Jersey. Where Jersey tax resident companies generate gross income during the relevant financial period in relation to a 'relevant activity', such companies must meet all criteria of the 'economic substance test' by:

- being directed and managed in the Island;
- conducting Core Income Generating Activities (CIGA) in the Island; and
- having adequate people, premises and expenditure in the Island.

'Relevant activities' that would need to meet the criteria include: banking; finance and leasing; fund management; headquarters; holding company business; insurance; intellectual property holding; shipping; and distribution and service centres.

Directed and managed

The Law and accompanying guidance notes contain requirements of how a company can be 'directed and managed' in Jersey, including:

- board meetings being held in Jersey at an adequate frequency, determined by the activity but no less than one a year;
- meetings to include a quorum of directors being physically present in Jersey;
- board minutes to record strategic decisions of the company being taken at meetings;
- that directors have the necessary knowledge and expertise; and
- the minutes of all board meetings and records of the company be kept in Jersey.

CIGA

CIGA are the key essential and valuable activities that generate the income of the company.

The income subject to tax in Jersey must be commensurate to the CIGA undertaken in the Island.

Which activities constitute CIGA varies slightly depending on the type of business. For each sector, the law provides a list of the core activities which a company operating in such a sector could carry on.

The legislation permits companies to outsource some or all of its CIGA, however, where CIGA are outsourced, the company must be able to demonstrate that it has adequate supervision of the outsourced activities and that those activities are undertaken in Jersey.

Adequate employees, expenditure and physical assets

A company will also have to ensure it maintains and retains appropriate records to demonstrate the adequacy of the resources utilised and expenditure incurred.

Guidance on what specifically constitutes 'adequate' may be issued in due course but currently it depends on the individual circumstances and level of business activity undertaken.

Funds and substance

Fund management business

Although funds are not subject to the substance requirements, where there is a Jersey resident company in the structure, such a company would be required to meet the criteria.

In a funds context, 'fund management business' is defined in detail and includes managers that are licensed under the Financial Services (Jersey) Law 1998 for certain categories of fund services business as a manager, investment manager, trustee (unless there is a separate manager), and general partner (unless there is a separate manager).

Also included within the scope of the Law is a general partner/trustee of an unregulated fund; and a general partner/manager/trustee of a private fund.

Therefore, even general partners/managers who are exempt from regulation under the Financial Services (Jersey) Law 1998 must have regard to the Law and where necessary ensure the economic substance test is met.

The CIGA for a fund management business could include:

- taking decisions on the holding and selling of investments;
- calculating risk and reserves;
- taking hedging decisions; and
- preparing reports and returns to investors and the JFSC or other regulators.

Meeting the criteria

Companies which are required to meet the economic substance test will need to:

- conduct a self-assessment, on an annual basis, to determine whether they have satisfied the economic substance test; and
- make a declaration to this effect on the company's tax returns.

Not meeting the criteria

If the economic substance test has not been met by a tax resident company:

- Penalties of up to £10,000 can be levied, increasing to £100,000 if the test is not met for consecutive periods
- Revenue Jersey may have the authority to commence proceedings to wind up the company
- Revenue Jersey is obliged to exchange information with competent authorities of appropriate European Union member states or states in which the companies are incorporated

Leading funds jurisdiction

With over 13,500 skilled finance workers, from fund administrators to depositaries, lawyers and non-executive directors, Jersey can provide significant depth of experience locally across all asset classes.

Jersey already hosts almost 130 asset managers with full substantive office presence on the Island, as well as offering risk and portfolio management expertise, and comprehensive administrative services to those managers requiring operational support on the ground.

Working with its globally recognised regulator, Jersey has the forward-thinking approach needed to provide the innovative products that can be game changers for industry. This, combined with the flexibility of the Island's regime, will carry Jersey firmly into the future.

Disclaimer: This factsheet is only intended to provide a general overview of the subject matter. It does not constitute, and should not be treated as, legal advice.

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