Economic Substance in Guernsey

On 1 January 2019, the Income Tax (Substance Requirements) (Implementation) Regulations, 2018 ("SRR") came into force to address the lack of economic substance requirement for doing business in Guernsey.

The key features of the SRR are:

Stage 1: Identify the companies carrying on relevant activities

All Guernsey resident companies will have to identify whether they carry on "relevant activities" in Guernsey. The term has been derived from categories of geographically mobile income identified by the OECD forum on harmful tax practices and include:

— Banking

— Insurance

— Fund management

— Headquarters

— Shipping

— Holding company

— Distribution and service centre

— Finance and leasing

— Intellectual property

Stage 2: Impose substance requirements on companies undertaking relevant activities

Once a Guernsey resident company has been identified as undertaking relevant activities ("Relevant company"), the SRR requires the company to satisfy the 'economic substance test'. The test is split into three parts:

i. It is directed and managed in Guernsey

This part of the test is similar, but not identical to the familiar "central management and control" test, but is more prescriptive in its application.

ii. It conducts Guernsey Core Income Generating Activities ("CIGA")

Relevant companies are required to conduct CIGA in Guernsey. The SRR provides a list of what constitutes CIGA separately for each relevant activity. Where Guernsey CIGA is carried out by another entity, the relevant company is required to monitor and control the carrying out of that activity.

iii. It meets the adequate requirements with regard to the level of relevant activity carried out in Guernsey

Relevant companies must demonstrate adequate levels of (qualified) employees (whether or not employed by the relevant company or by another company), annual expenditure and physical presence in Guernsey.

Stage 3: Reporting and enforcement of the substance requirements

Relevant companies are required to self-assess and include their assessment of meeting the SRR in their income tax returns beginning with 2019 tax returns.

The SRR provides a hierarchy of sanctions for relevant companies that fail to meet the substance test including a maximum fine of up to £100,000, possibility of the company being struck-off the Guernsey Registry as well as exchange of information with the tax authorities where the ultimate parent/beneficiary owner of the relevant company resides. The exchange of information is currently with EU member states but there is potential to extend this to OECD countries.