



The introduction of substance
requirements for companies tax resident
in Jersey

Summary of responses to the consultation
exercise

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1. Executive Summary

- 1.1 The Taxes Office consulted between the 6th and 31st August 2018 on the Government of Jersey's outline proposals as to how it could address commitments made to the EU Code of Conduct Group regarding their economic substance concerns.
- 1.2 The consultation responses were broadly supportive of the outline proposal but raised important issues which need to be addressed, and since the consultation closed the responses have fed into the work of the Government on this important and developing area.
- 1.3 In the period between the end of the consultation and this report there has been continued dialogue with the EU Code of Conduct Group, through the EU Commission, as well as with the Governments of Guernsey and the Isle of Man, industry and regulators in Jersey and other interested parties.
- 1.4 A legislative proposal, the Taxation (Companies- Economic substance)(Jersey) Law 201-¹, has been lodged, and a Key Aspects² document jointly has been released with the other Crown Dependencies.
- 1.5 In all these developments, the responses from the consultation have formed part of the approach by the Government of Jersey, and will continue to do so.

¹ https://statesassembly.gov.je/assemblypropositions/2018/p.132-2018%20with%20corrig.pdf?_ga=2.165718461.242907820.1542014435-643092050.1536739153

² <https://www.gov.je/SiteCollectionDocuments/Tax%20and%20your%20money/ID%20Economic%20Substance%20Key%20Aspects%2020181102.pdf>

2. Introduction

- 2.1 The Taxes Office carried out a consultation exercise between the 6th and 31st August 2018 on the Government of Jersey's outline proposals as to how best to address commitments made to the EU Code of Conduct Group regarding their economic substance concerns.

The consultation document can be accessed here :

[IntroductionSubstanceRequirementsCompanies](#)

- 2.2 The consultation included full details of the background to the engagement with the EU Code of Conduct Group and the listing of non cooperative tax jurisdictions.
- 2.3 In the period between the end of the consultation and this report there has been continued dialogue with the EU Code of Conduct Group, through the EU Commission, as well as with the Governments of Guernsey and the Isle of Man, industry and regulators in Jersey and other interested parties.
- 2.4 The commitments made to the EU Code of Conduct Group included that the introduction of legislation, effective for accounting periods beginning on or after the 1st January 2019. Proposed legislation was lodged on the 25th October 2018, for debate in the last sitting of the States Assembly in 2018 beginning on the 4th December 2018.
- 2.5 The legislative proposal is the Taxation (Companies- Economic substance) (Jersey) Law 201-, and this has been followed by a Key Aspects document jointly release with the other Crown Dependencies.
- 2.6 Whilst publication of this report on the consultation follows these substantive developments, this is due to resources being committed to the development of the legislative proposal rather than finalising this report. The Taxes Office had collated and reviewed all the responses as they arrived, and those who participated should be aware that the responses from the consultation helped shape the approach adopted by the Government of Jersey. The responses will continue to do so when the Government consider upcoming developments, such as the preparation of comprehensive guidance notes.

3. Responses Received

- 3.1 The Taxes Office received 35 responses;
- 6** from Associations / Industry Bodies;
 - 25** from interested Corporate Groups; and
 - 4** from individuals in their personal capacity
- 3.2 Responses ranged from detailed engagement with the specific questions posed in the consultation document to narratives on the outline proposal as a whole, with a range in between
- 3.3 The responses include input from those engaged in the Trust & Company Service Providers sector, the Funds Management sector, the Banking sector, the Tax and Professional Services firm sector, and the Legal Services sector, as well as others.
- 3.4 Where the responders, and very often their clients, were not engaged in a particular activity then they may not have engaged with specific questions. The report will indicate the levels of responses for each question, particularly for those with a numeric scoring.

4. Responses

Question 1 - What steps can the Taxes Office take to improve the electronic filing of corporate income tax returns?

- 4.1 There was a variety of responses indicating potential areas of improvement many of these were general requests rather than specific to the economic substance requirements and included :
- 4.2 Requests for the Taxes Office to create a mailing list of interested parties to whom email updates on changes and other information (possibly reminders) could be made.
- 4.3 Suggestions as to how companies might be automatically allocated to trust businesses' portals.
- 4.4 Improvements to the actual return – better use of drop down boxes, a responsive form which could eliminate questions which couldn't apply based on answers to earlier questions, pre population of some return sections, extraction of information from accounts rather than asking for the same information in the tax return, and providing comparative data.

- 4.5 Process issues such as the issue of estimated assessments, and could these be staggered.
- 4.6 Legal changes – such as accepting Trust Company Business managers signing returns.
- 4.7 *The Taxes Offices will work through these suggestions, to ensure that where appropriate the potential for them to be implemented is properly considered. For some of the responses the new Revenue Management System and the transformation of processes and procedures based on this will produce the improvements sought.*

Question 2 - What challenges do you anticipate in relation to the filing of this information through future corporate income tax returns? What can the Taxes Office do to help address these challenges?

- 4.8 There was a general theme running throughout the responses to this question, and which were often mirrored in comments to question 1, in that there was an expectation that quality guidance would be required, and that this guidance should be published as early as possible. That it would be a benefit for the Taxes Office to consider workshops and training events.
- 4.9 Specifically the Taxes Office were exhorted within the guidance to ensure the terms ‘adequate’ and ‘qualified’ were fully addressed.
- 4.10 Some respondents requested that whilst this is a timescale driven by an EU process, the Taxes Office should acknowledge that this comes at a time of additional pressure, with the removal of the Global Return option, and the associated increase in tax filing work.
- 4.11 A couple of respondents suggested the systems should be subject to live testing to ensure a smooth transition, and volunteered to participate in any such testing.
- 4.12 *The Taxes Office will be producing guidance in support of the proposed legislation. It is envisioned this will be published as soon as possible, ideally before the debate in the States Assembly. The guidance will be a living document to be built upon as the legislation beds in, the principles and initial drafts are being developed now in concert with the Crown Dependencies and with input from a group representing different industry sectors. This work includes defining ‘adequate’. At this time an initial Key Aspects document has been published.*

Question 3 - What challenges do you anticipate in relation to the identification of companies carrying on “relevant activities”? What can the Government of Jersey do to help address these challenges?

- 4.13 Generally the respondents were unconcerned with the identification of companies carrying on relevant activities provided that there was quality guidance, to which many asked for examples. It was recognised by most respondents that in the regulated sectors identification would be much easier than relevant activities which do not require regulation.
- 4.14 There was a request for Advanced Clearances as to if a company was within scope of the economic substance test, and also a request for clarity on the treatment of cell companies.
- 4.15 These requests were repeated by another respondent at a different point in the consultation.
- 4.16 *The Taxes Office recognise that the guidance will be of fundamental importance in helping with the identification of relevant activities, and that the use of examples will aid industry.*
- 4.17 *The draft legislation and associated guidance will be such that it is not envisioned that there will be a need for Advanced Clearances. It is expected that the Taxes Office’s policy on tax rulings will apply by analogy to the economic substance requirements.*
- 4.18 *The application of this legislation to cell companies will be covered in later guidance.*

Question 4: This related to the directed and managed requirements of the test for non IP companies.

How challenging will it be for companies carrying on “relevant activities” to demonstrate compliance with these requirements? (0= easy to demonstrate; 5= unable to demonstrate)

- 4.19 Of the 35 respondents 14 scored this question. The averaged score was 1.1 out of 5.

A number of respondents despite scoring the question left no comments.

- 4.20 There was a split in that although all respondents felt demonstrating the position should be relatively easy, it was less clear if this represented current practice for all companies. Many respondents viewed the requirements as essentially the good governance they currently carried out, others felt this introduced obstacles

around travel to Jersey, and others that clients from specific areas of the globe may encounter legal issues around keeping some records in Jersey.

- 4.21 *The responses are in line with that the expectations of the Taxes Office from its previous engagements with industry sectors. The Taxes Office acknowledges the specific concerns raised, but notes that for most companies this represents codification of current good governance practices.*

Question 5: This related to the ability to demonstrate ‘Core Income Generating Activities’ How challenging will it be for companies carrying on “relevant activities” to demonstrate compliance with these requirements? (0= easy to demonstrate; 5= unable to demonstrate)

- 4.22 Of the 35 respondents 15 scored this question. The averaged score was 1.0 out of 5
- 4.23 Overall the respondents were confident that demonstrating these activities could be easily done. Specific comments focused on the level of evidence the Taxes Office might require, that the existence and importance of outsourcing had to be acknowledged, and there were comments that for some relevant activities it may be more difficult than others, ‘headquarters’ was one example.
- 4.24 *The Taxes Office notes that there is confidence that these activities can be demonstrated. It confirms that it will ensure that in designing the requirements it will strive not to create unnecessary administrative burdens.*

Question 6: This related to the ability to demonstrate adequate resources (People, premises and expenditure) in Jersey How challenging will it be for companies carrying on “relevant activities” to demonstrate compliance with these requirements? (0= easy to demonstrate; 5= unable to demonstrate)

- 4.25 Of the 35 respondents 16 scored this question. The averaged score was 2.1 out of 5.
- 4.26 Respondents were more cautious about this part of the outline proposal. The common concerns were that the term ‘adequate’ needed to be defined, and that the practical impacts of outsourcing needed to be considered. In particular where there was outsourcing of people and premises how the guidance covered this issue would be key to industry.
- 4.27 *The Taxes Office is aware of these concerns, and is seeking to address them. The Taxes Office draw attention that in the proposed legislation there are references to outsourcing and the requirement to define ‘adequate’ in guidance, the Taxes Office is now working with the other Crown Dependencies to ensure these concerns are addressed.*

Question 7: This relates to all the requirements of the test, as above, but specifically for IP companies.

How challenging will it be for IP income generating companies to demonstrate compliance with these requirements? (0= easy to demonstrate; 5= unable to demonstrate)

- 4.28 Of the 35 respondents 11 scored this question. The averaged score was 3.3 out of
- 4.29 There was an assumption from some respondents that their IP clients would decrease in numbers. Respondents expressed concern that suitably qualified Jersey employees may be difficult to locate. Specifically the area of concern was the ability to demonstrate Core Income Generating Activities taking place in Jersey.
- 4.30 *The Taxes Office has been aware that the economic substance requirements would prove difficult for some IP holding companies currently tax resident in Jersey. The EU Code of Conduct Group, and other bodies such as the OECD, are specifically concerned about Intellectual Property, particularly where the ownership is separate from the activities which are commonly seen as generating the profits, such as research and development, and that substance can be demonstrated. The Taxes Office expected that the scores for this question might be higher than those relating to other activities.*
- 4.31 *The Taxes Office hopes that IP companies will react to the proposed economic substance legislation by building the presence required to demonstrate Core Income Generating Activities in Jersey.*

Question 8: This further delves into question 7, for IP companies who acquire IP from, and licence IP to, related companies. These are seen as high risk IP companies.

How challenging will it be for IP income generating companies where IP was acquired from, and licenced to, related parties, to demonstrate compliance with these requirements? (0= easy to demonstrate; 5= unable to demonstrate)

- 4.32 Of the 35 respondents 10 scored this question. The averaged score was 3.4 out of 5.
- 4.33 The concerns expressed match those in question 7.
- 4.34 *The Taxes Office's understanding is that the vast majority of IP companies in Jersey, are likely to be high risk IP companies. Again these type of companies are of particular concern to the international community, and so there are high standards required to demonstrate substance. The Taxes Office expected that this question would be scored more highly than those relating to other activities.*

Question 9: This related to CIVs (Collective investment Vehicles) and the potential for reduced substance requirements.

Do you consider there are any other activities carried out by CIVs that would further enhance the ability for CIVs to demonstrate substance in Jersey?

- 4.35 Of the 35 respondents 2 scored this question. The averaged score was 0.0 out of 5.
- 4.36 Whilst only 2 respondents scored this question, a number made comments. These broadly welcomed the proposal for reduced substance requirements. Specific comments were made on the benefits of Non-Executive Directors, and the differences between CIVs and other companies with geographically mobile income.
- 4.37 *In the proposed legislation there are no substance requirements for CIVs. The Government of Jersey are still in discussion with the EU Code of Conduct Group, and will communicate with industry if there is an agreed final position different to that in the proposed legislation.*

Question 10: This relates to proposals for sanctions for failure to submit a tax return or incomplete

How reasonable and proportionate do you consider this sanction to be? (0= reasonable and proportionate; 5 = highly unreasonable and/or disproportionate)

- 4.38 Of the 35 respondents 20 scored this question. The averaged score was 0.9 out of 5.

Question 11: This relates to proposals for sanctions for failure to meet the substance requirements

How reasonable and proportionate do you consider this sanction to be? (0= reasonable and proportionate; 5 = highly unreasonable and/or disproportionate)

- 4.39 Of the 35 respondents 21 scored this question. The averaged score was 1.6 out of 5.

Question 12: This relates to proposals for sanctions for persistent failure to remedy failure to meet the substance requirements, in particular strike off.

How reasonable and proportionate do you consider this sanction to be? (0= reasonable and proportionate; 5 = highly unreasonable and/or disproportionate)

- 4.40 Of the 35 respondents 21 scored this question. The averaged score was 1.8 out of 5.

- 4.41 Summary of responses to Questions 10 – 12 on sanctions
- 4.42 Some respondents made the same comments and observations across the sanctions.
- 4.43 The majority of respondents agreed these were reasonable sanctions, and that provided there was discretion by the Taxes Office in the application of the sanctions to take into account different circumstances, and an appeals process there was little criticism.
- 4.44 As to be expected the scores rose as the sanctions become more onerous, reflecting the potential consequences.
- 4.45 Specific comments included:
- that a financial penalty for a first failure was disproportionate;
 - queries as to what happens after strike off to the assets of the company, and protection of the rights of creditors;
 - questions if it would be easier to revert to a default tax rate rather than apply penalties;
 - that there should be a distinction in the application of sanctions between new and existing companies.
- 4.46 *The Taxes Office has considered the responses but is clear that the sanctions are required to be dissuasive, and whilst there may be some unease from industry this is within expected levels. The specific comment around assets and the protection of creditors has been reflected in the proposed legislation, with a role for the courts in these circumstances, to ensure an orderly wind up.*

Question 13: This relates to commitments to working with the EU on information sharing around beneficial ownership.

Please provide any feedback you have in respect of this aspect of the outline proposal.

- 4.47 Most respondents welcomed this aspect but stressed the need for;
- reciprocity;
 - access controls, to stop speculative enquiries and release to the public in general
 - Government to ensure that Jersey is committing to adopting an international standard not an enhanced standard.
- 4.48 Many of these respondents whilst agreeing the general direction, wanted further information to be able to make meaningful comment.

- 4.49 Some respondents were concerned to understand why this additional aspect was needed on top of initiatives such as FATCA and CRS, others felt that the current position should be satisfactory and should remain unchanged, others were concerned that this might lead to public registers of beneficial ownership.
- 4.50 *This is a future commitment sought by the EU Code of Conduct Group, and is not reflected in the proposed legislation. If a commitment is made then the Taxes Office will be seeking the views of industry to help with in developing such a commitment.*

Question 14: Relates to the introduction of mandatory disclosure rules by the 31 December 2019.

Please provide any feedback you have in respect of this aspect of the outline proposal.

- 4.51 The majority of respondents were happy that the introduction of mandatory disclosure rules would enhance the reputation of Jersey and were good in principle.
- 4.52 Specific comments raised concerns as to
- what the proposed extent of the rules might be, including which bodies could be affected;
 - whether avoidance ‘hallmarks’ will be used, and if so would they be carefully defined;
 - if this will lead to duplication of reporting, especially with the EU;
 - confirmation as to if the proposed rules will mirror the OECD’s CRS regulations or EU’s DAC 6 regulations or will be a combination of both.
- 4.53 *This is a future commitment sought by the EU Code of Conduct Group, and is not reflected in the proposed legislation. If a commitment is made the Taxes Office will take these comments into consideration, and as the commitment develops will consider further consultation on the options for implementation.*

5. Conclusion :

- 5.1 Given the highly technical nature of the consultation proposals, the Taxes Office is of the opinion that there was a good level of engagement, and it encompassed all of the affected sectors.
- 5.2 The responses were generally supportive of the outline proposal, albeit with some caveats and requests.

- 5.3 The Government has taken these responses into consideration in its subsequent dialogues with the EU Code of Conduct Group, EU Commission Services, and the other Crown Dependencies. The proposed legislation has now been lodged with the States Assembly for debate in the sitting beginning on the 4th December 2018.
- 5.4 The Taxes Office is committed to providing comprehensive guidance jointly with the other Crown Dependencies, and in these discussions the concerns of Jersey's industry as expressed in this consultation will be addressed, to help ensure the guidance covers these issues. The first output, 'Key aspects in relation to proposed economic substance requirements' was published on the 5th November 2018.
- 5.5 The proposed legislation together with the 'Key Aspects in relation to proposed economic substance requirements' document can be found on the States of Jersey website - [EconomicSubstanceForCompanies](#)