

Public Questions on the Economic Substance Requirements and the Proposed Taxation (Companies- Economic Substance) Law 201-.

The Government of Jersey when presenting to public meetings has responded to questions from the audience.

To ensure that wider industry and those outside of the immediate audience are kept informed, this page will reproduce some of those and other questions and the positions communicated.

1) Is there any prospect that the implementation of the economic substance requirements, can be delayed, especially given what feels to industry like a rushed timescale ?

The challenge from the EU Code of Conduct Group to all the jurisdictions was to have legislation which was effective from the 1st January 2019 (a small extension was given to some jurisdictions as a result of natural disasters). This is the timescale to which the Government of Jersey committed.

Officers of the Jersey Government earlier in the process questioned if there might be circumstances in which there may be any leeway in the timescale, and the response was that there was no room for flexibility.

2) Are you aware of how competitor offshore finance centres are responding to this challenge ? Could these rules be a positive thing to differentiate Jersey from competitors ?

The Government of Jersey has worked throughout this process in lockstep with the other Crown Dependencies, and has worked to both meet the Code of Conduct Group concerns but also to ensure there is no particular differences which create arbitrage opportunities for persons between the Crown Dependencies. The 'Key Aspects' document published 5th November also contains links to each of their legislative proposals.

The Government of Jersey maintains normal contacts with other jurisdictions also considering responding to the Code of Conduct Group, but we are not privy to their policy and legislative developments.

Jersey is an early adopter of international standards in governance and tax, as well as other areas, and represents a 'high quality' jurisdiction. These developments will further encourage companies to move to quality jurisdictions and this will be a further positive signal to such companies about Jersey and its industry.

3) What has been the initial informal feedback to Jersey's proposals?

Jersey, together with the other Crown Dependencies, has met on a number of occasions with EU Commission Services and through them sought input on the proposals from the Code of Conduct Group. EU Commission Services has provided feedback on points from the Code of Conduct Group members which has been considered. A consistent element of the feedback was that the Code of Conduct Group was appreciative of the level of engagement by the Crown Dependencies and their constructive approach.

Ultimately until a decision has been reached by ECOFIN early in 2019, we are not in a position to make any assumptions as to the outcome of this process.

4) Is the requirement for substance legislation equally affecting Malta, Gibraltar, Cyprus, Bermuda, Cayman etc.?

Those jurisdictions which have been set the same challenge as Jersey for consideration by the Code of Conduct Group include Bermuda and Cayman, as well as some other British Overseas Territories, some Middle Eastern jurisdictions such as Bahrain, and Pacific jurisdictions such as Vanuatu.

This substance legislation has not been required of EU Member States themselves or Gibraltar, by the Code of Conduct Group.

However the FHTP has recently published that it will be resuming testing the economic substance criteria for no and nominal tax jurisdictions, which closely aligns with the EU Code of Conduct Group requirements and will be the new global standard.

5) Will there be any independent reporting requirements i.e. some sort of substance audit opinion?

The final compliance strategy is not yet agreed. At this time there has been no consideration if an external audit opinion, as to if the economic substance requirements have been met, would be necessary or desirable.

6) You have said economic substance is still a work in progress. What themes can you see being required that haven't been introduced within this legislation ?

This is clearly an area of international tax thinking which is developing. The OECD's Forum on Harmful Tax Practices (FHTP) published on the 15th November that it was resuming the application of substantial activities factor to No or Nominal Tax Jurisdictions.

The proposed legislation requires simple adaptations to meet this new global standard, which the Government can bring in, in due course.

A specific area which might expand (or even contract) over time could be the different relevant activities in scope.

7) The proposed legislation states that to be directed and managed in Jersey "the minutes of all board meetings and the records of the company are kept in Jersey", how should this be interpreted as businesses move to true cloud computing ?

The reference to the records of the company does not mean every record the company creates or which is in its possession, in particular it does not cover the records a company holds in respect, or on behalf of its clients, or other bodies.

The interim view of the Taxes Office is that where a company is incorporated in Jersey, the records to be kept in Jersey are those in line with Articles 44 and 104 of the Companies Law. Where a resident company is incorporated outside of Jersey, the company should also hold in Jersey the records which

comply with the applicable laws of that jurisdiction. Where it is not possible to hold, for example, the share register in Jersey, there must be a copy of all originals available in Jersey.

Where records are held electronically, it is sufficient that such records are maintained and accessible in Jersey and not that the relevant data centre is necessarily located in Jersey.

8) Can you clarify when looking at the proposed Taxation (Companies- Economic Substance) (Jersey) Law 201-, that the reference to ‘employees’ in Article 5(2)(b)(i) includes directors ?

The Taxes Office can confirm that in considering this reference to employees you should include individuals who are company officers & directors, which is in line with the Taxes Office’s general position as to how such individuals should be treated.

9) Would Shari’ah compliant lending structures fall within the definition of a finance and leasing business ?

The Taxes Office believe that Shari’ah compliant lending is within the scope of the finance and leasing business relevant activity, and that Shari’ah compliant lending is the provision of credit facilities, and that there is usually consideration, generally in the form of a premium on the price of an asset.

10) Our Jersey company will sometimes provide its employees to other group companies if their specialist skills are required. The group company will reimburse the Jersey company for their costs. Is this a relevant activity within the distribution and service centre business definition, as we provide services to a foreign connected person ?

The definition is ‘providing services to foreign connected persons in connection with the business’, and where activities are intermittent or not the primary activity of a company this is not always immediately obvious.

The first consideration is that whilst your Jersey company has provided services to foreign connected persons, is it in the business of providing these service, or were the services initiated at the request of the other group companies ? In particular does your company in some way offer, solicit to provide such services, or maintain employees or other assets to allow it to provide such services. One of the indicators against it doing so (although not determinative), is that your company is only receiving a reimbursement of costs.