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Substantially strengthened corporate services

By George Bryan-Orr

The last 12 months in Jersey have seen a number of changes, further strengthening the Island's position as being First for Finance.

As change in the international regulatory environment continues at pace, Jersey is responding well to international initiatives, whilst providing an intelligent environment in which to do business and remaining true to its core principles of cooperation, transparency and commitment to preventing financial crime and tax abuse.

These initiatives include new substance requirements and a political commitment to share beneficial ownership information on companies. Jersey has further demonstrated its commitment to adopting and complying with the leading OECD standards, by entering into a new Double Taxation Agreement (DTA) with the UK.

SUBSTANTIAL OPPORTUNITY

The Taxation (Companies – Economic Substance) (Jersey) Law 2019 (The Law) refers specifically to a number of 'relevant activities' including banking, finance and leasing, fund management, headquarters, holding companies, insurance, intellectual property, shipping and distribution and service centres. The Law brings more explicit requirements into play as to how companies tax resident in Jersey must demonstrate that direction and management are in Jersey, that they conduct Core Income Generating Activities (CIGA) in Jersey and that they have adequate people, premises and expenditure in Jersey. >>

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Professionally run corporations will be well used to the types of requirements to determine the tax residence of a company. Service providers in Jersey are similarly aware of what constitutes good corporate governance, with many members of the Institute of Directors (including its current Chair) and members of other professional bodies, resident in Jersey. Consequently, having quorate board meetings, populated by individuals (or individuals representing corporate directors) with the necessary knowledge and experience, in Jersey, whilst having the associated records and minutes kept in the Island, it will be business as usual.

Jersey's deep pool of experienced corporate services professionals is well placed to meet the needs of companies facing substance requirements.

What CIGA is applicable for a company will depend on the nature and extent of its activities. Each of the relevant aforementioned activities is catered for in the Law. Income subject to tax in Jersey will need to be supported by commensurate CIGA in Jersey. This requirement does not preclude outsourcing some activity off Island, as long as the outsourced function is not part of the company's CIGA. CIGA can also be outsourced to related or third parties. However, oversight of the service provider must be undertaken by the board of the company and to meet substance requirements, the outsourced activities must take place in Jersey. Higher value companies may also consider renting office space and hiring employees in Jersey. The highest value companies may also look to make investments and establish deeper operations in Jersey. >>

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Evidence of compliance with the substance requirements will be required as part of new forms of tax returns that will be supplied to the Comptroller of Taxes as part of the annual tax returns for Jersey tax resident companies. Companies found to fail to meet the substance requirements, will face sanctions in the form of fines.

Companies able to demonstrate substance under this new regime, have the opportunity to do so in a quantifiable manner and parent companies will be able to take comfort from this and point to the substance their subsidiaries have, in Jersey's tax neutral environment. Parent companies will be able to state their subsidiaries have substance in Jersey that meets the requirements of the EU Code of Conduct Group, which the Law was designed to meet.

BENEFICIAL OWNERSHIP REGISTER

Jersey has made a political commitment to opening its beneficial ownership register to the public in line with the EU's Fifth Money Laundering Directive. In fact, Jersey has maintained a beneficial ownership register since 1989. The new commitment to open the beneficial ownership register to the public will take three stages. The stages are:

- the interconnection of the Island's registers of beneficial ownership of companies with those within the EU for access by law enforcement authorities and Financial Intelligence Units; then
- access for financial service businesses and certain other prescribed businesses for corporate due diligence purposes; then
- public access aligned to the approach taken in the EU Directive.

In practice this means Jersey will implement a public beneficial ownership registry in a similar fashion to that adopted by EU member states, which will take time to occur and quantify.

Interestingly, the current commitment of Jersey to share beneficial ownership information with the UK, where Jersey undertook to provide law enforcement agencies with beneficial ownership information in 2016, has recently been reviewed and a report submitted to the UK Parliament. The UK Law Enforcement Agencies report noted that the arrangement has been 'extremely useful in accessing the information needed to support ongoing investigations'. The report also noted that Jersey's procedure of not allowing any new company to be incorporated unless the beneficial ownership information is correctly supplied and registered, is an example of best practice. Jersey's commitment to sharing beneficial ownership information has thus been tested and passed with flying colours. Companies and professional advisers can rest assured that in choosing Jersey, they are choosing a jurisdiction which has a strong and ongoing commitment to cooperation and transparency.

NEW DUAL TAX AGREEMENT (DTA)

Jersey has had a dual tax treaty in place with the UK since 1952. While this agreement worked well in practice, the new agreement now complies with the OECD Model DTA Convention standard. As Jersey and the UK share close links at both an individual and corporate level, this DTA is critical to both jurisdictions. The DTA ensures no income is taxed twice, while also ensuring no income is avoided completely and allows for information sharing between the tax authorities of both countries. Cross border transactions between Jersey and the UK remain safe and operate within a tax neutral regime, supported by a robust yet flexible legislative framework.

CONCLUSION

With Jersey having effectively embraced recent developments to strengthen its corporate services offering, it continues to be the jurisdiction of choice for multinationals and institutional investors seeking advice and administration services for their financing, capital restructuring, transactions, private equity funding and M&A activities.

George Bryan-Orr

George Bryan-Orr, Managing Director, Trident Trust Company Limited.

George is a Member of the Institute of Chartered Accountants of British Columbia, Canada, a Member of the Chartered Alternative Investment Analyst Association and a Fellow of the International Compliance Association and a member of the Institute of Directors. He joined Trident in 2001 from a global audit firm. Before his current role in Jersey he held management positions in Trident's Guernsey and Luxembourg offices. His professional experience includes holding positions of various regulated fiduciary and investment companies domiciled in Jersey, Luxembourg, Guernsey, BVI and the Cayman Islands.