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Fiduchi clients appreciate our 'trusted' approach. We take care of the detail so that our clients can enjoy what matters to them.

Economic Substance - A Client's Perspective

2019 saw an important development in Jersey with the introduction of the [TAXATION \(COMPANIES – ECONOMIC SUBSTANCE\) \(JERSEY\) LAW 2019](#) ("the Law"). So, what does the introduction of this new law mean for you?

How will the law apply?

The law impacts all companies that are tax resident in Jersey, including Protected Cell Companies, Incorporated Cell Companies and Incorporated Cells. It specifically applies to those companies which undertake at least one of the relevant activities as set out in the Law, and which are referred to below.

It is effective for all accounting periods beginning on or after 1st January 2019.

What are the relevant activities?

The relevant activities are banking, insurance, (pure equity) holding, headquarters, distribution and service centre, fund management, Intellectual Property, Finance and Leasing and Shipping. A company may undertake more than one relevant activity so will need to be able to meet the substance criteria for each relevant activity.

What does it mean if your company undertakes one of the relevant activities?

Each company will need to carry out an annual assessment of whether the company has met all of the three substance tests. Subject to a company being tax resident in Jersey, having gross income in a financial period and undertaking a relevant activity, then the tests are:

- Directed and managed by
- Adequacy
- Core Income Generating Activity

What is directed and managed by?

"Directed and managed by" means that the majority of Board meetings are held in Jersey, with each meeting being quorate with the majority of the directors physically present in Jersey for meetings. Directors are required to have appropriate knowledge, experience and skills. The meetings will need to include consideration of key strategic decisions, with all the relevant books and records held in Jersey. This test is not the same as the "managed and controlled by" test used in determining tax residence.

What does "Adequacy" mean?

This test is more subjective and considers the number of employees, including Directors and owners and their qualifications and skills, premises and whether the expenditure incurred in Jersey is proportionate to the level of activity.

Expenditure will include that expenditure incurred on outsourced service providers. In this case, where Fiduchi has been engaged to provide services to the company.

What is Core Income Generating Activity ("CIGA")?

An overview of CIGA is set out below in table 1 overleaf.

How does this impact Fiduchi and the services provided to you?

Fiduchi should be considered as an outsourced service provider to your company/(ies). As such costs incurred by Fiduchi will count as relevant expenditure. Further, the Fiduchi team who provide services to you will count as the relevant employees for the company and will need to have the requisite knowledge, qualifications and skills.

What will happen if my company does not meet the substance tests?

Failure to meet the substances will see sanctions applied. The sanctions will be both financial and non-financial with a sliding scale for repeat offences. In year one the penalty could range from £3,000 to £10,000 and in year two up to £100,000. The ultimate sanction is the company will be struck off.

What do you need to do?

Where Fiduchi provides full services to your company, then you will not be required to do anything. Fiduchi will ensure that the requirements of the Law and all relevant filings are met.

Where Fiduchi only provides limited services, then there will be a greater requirement on you to ensure ongoing substance compliance, particularly where you are a director personally.

Each company will need to take an ongoing assessment (minimum annually) as to whether it is subject to substance and if so, whether it has met the three tests or not. Substance information will be collected through the annual corporate tax return process and will include the submission of a copy of the financial statements for the company for the relevant financial period and year of assessment. It is very important that financial statements are completed as soon as possible after the financial year end and no later than 10 months after.

How am I impacted if my company is not tax resident in Jersey?

All Jersey incorporated companies will need to submit their Jersey corporate tax return on an annual basis. Whereas previously non-tax resident companies were not required to file such a return, this has now changed. A tax return will be required which confirms that the company is non-resident for tax, where it is resident for tax and that the company is subject to tax in that jurisdiction of at least 10%. Where it is not subject to tax of at least 10%, then a Jersey tax return will need to be completed, including information related to substance.



How can Fiduchi assist you?

Fiduchi can provide guidance as to what steps are required to ensure ongoing substance compliance.

The law does bring with it an increased tax regulatory filing requirement. Fiduchi can assist you in the completion of these returns, as well as in the preparation of financial statements and undertaking the substance assessment.




Where Fiduchi is currently engaged to provide only limited services such as registered office only, we can again assist in the completion and filing of the corporate tax return, by being appointed as tax agent, as well as with the production of financial statements or assisting in terms of providing guidance as to what information will need to be disclosed in the financial statements and reported in the corporate tax return.





Please contact your relationship Director should you wish to discuss any of the above further.

Table 1 – Core Income Generating Activity

Relevant activity	Applies to companies where...	CIGA
Holding Company (pure equity)	Sole function is to acquire and hold equities, where a controlling stake is held.	<ul style="list-style-type: none"> The CIGA is the activity linked to the holding of the equities, i.e. dividends.
Banking	Activity is undertaken which is subject to regulations as banks.	<ul style="list-style-type: none"> Banking activity.
Finance and leasing	Credit or financing is offered of any kind for consideration (e.g. loans, hire purchase agreement etc., including intra-group financing). Also includes where payment of consideration is deferred or written off.	<ul style="list-style-type: none"> Agreeing funding terms; Identifying and acquiring assets to be leased; Setting the terms and duration of any financing or leasing; Managing risk; Monitoring and revising any agreements.
Fund Management	Management services in relation to funds are provided, including companies registered with the JFSC to carry on fund services business as a manager or investment manager.	<ul style="list-style-type: none"> Taking decisions on the holding and selling of investments; Calculating risk and reserves; Taking decisions on currency or interest fluctuations and hedging positions; Preparing reports and returns to investors and the relevant financial services regulator or any other body or entity akin to supervision or regulation of such business.
Insurance	Insurance activity is undertaken, where such activity is regulated in Jersey.	<ul style="list-style-type: none"> Predicting and calculating risk; Insuring or re-insuring against risk; Providing client service.
Distribution and Service Centre	Raw materials and finished products from other non-resident members of same group and re-sell for profit; or Services, consulting or other administrative services to other non- resident members of same group.	<ul style="list-style-type: none"> Transporting and storing, components and materials; Managing stocks; Taking orders; Providing consulting or other administrative services.
Head-quartering	Headquarters services are provided to other non-resident members of the same group. Includes: <ul style="list-style-type: none"> Provision of senior management; Responsibility or control of material risk for activities carried out by or assets owned by any of those persons; Provision of substantive advice in relation to such risks. 	<ul style="list-style-type: none"> Taking relevant management decisions; Incurring expenditures on behalf of group entities; Co-ordinating group activities.
Shipping	One or more ships are operated in international traffic, for the transport of either passengers, cargo or both. Also, provided the first definition is met, other relevant activities include: <ul style="list-style-type: none"> Rental on charter basis of other ships Sale of tickets or similar documents Use, maintenance or rental of containers Management of crew of other ships 	<ul style="list-style-type: none"> Managing crew; Hauling and maintaining ships; Overseeing and tracking deliveries; Determining goods to order and when to deliver them; Organising and overseeing voyages.
IP Company	Intellectual Property is held, i.e. Patents, trademarks, brands etc.	<ul style="list-style-type: none"> Research and development; Marketing, branding and distribution.

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