



BVI economic substance: new clarification on tax residency status for BVI entities administered in Channel Islands and Isle of Man

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Recent amendments to the BVI's guidance notes issued in connection with economic substance, as contained within the Rules in Economic Substance in the British Virgin Islands (version 3 dated 24 February 2023) (the **BVI Guidance Notes**) have introduced specific guidance relevant to BVI entities administered in Jersey, Guernsey or the Isle of Man and claiming tax residency there as a means for being out-of-scope for the Economic Substance (Companies and Limited Partnerships) Act, 2018, as amended (the **BVI Economic Substance Regime**).

Under Rule 2 of the BVI Guidance Notes, any entity claiming to be either a non-resident company or non-resident limited partnership for the purposes of the BVI Economic Substance Regime on account of being administered in Jersey, Guernsey or the Isle of Man (and therefore out-of-scope of the BVI Economic Substance Regime) is required to make a claim to that effect with the BVI's International Tax Authority (the ITA). The ongoing BVI economic substance obligations of a BVI entity tax resident outside the BVI are then limited to filing a claim under Rule 2 each year for such continued non-residency (such an entity will of course still remain in-scope for the equivalent economic substance regimes in Jersey, Guernsey or the Isle of Man through virtue of being tax resident there).

As it relates to claims made under Rule 2, the recent amendments to the BVI Guidance Notes provide that where an entity's tax residency is Jersey, Guernsey or the Isle of Man, to claim tax residency there under Rule 2, that entity is required to follow the procedure for this outlined in the new Rule 5A.

Under Rule 5A, entities claiming to be tax resident in Jersey, Guernsey or the Isle of Man can only make a claim if they are resident there for corporate income tax purposes and subject to the relevant corporate income tax law. To evidence such a claim to the ITA, an entity must provide to the ITA:

1. tax assessments, demands, or evidence of payment issued by the tax authority of that jurisdiction
2. tax returns submitted to the competent tax authority of that jurisdiction
3. confirmation that the entity is required to submit a corporate income tax return to the competent tax authority of that jurisdiction

As it relates to the BVI companies administered in the Channel Islands, what this means in practice is that where such companies are centrally managed and controlled in Jersey or Guernsey they will be regarded as tax resident in the relevant island. Accordingly, they should be registered for online filing, have been provided with a Tax Identification Number (TIN) and filed a Jersey or Guernsey corporate tax return for each year they have been resident in that island, which can be provided as evidence to the ITA for the purposes of Rule 5A. There is a section in the corporate tax return requesting confirmation of the status of the relevant company for Jersey or Guernsey economic substance purposes.

Where an entity is unable to provide the ITA with the evidence required by new Rule 5A, the ability under the BVI Guidance Notes for it to apply under Rule 6 to be treated as provisionally resident outside the BVI is unchanged by these amendments.

Helpfully, as it relates to BVI entities claiming Jersey, Guernsey or Isle of Man tax residency, none of these jurisdictions are included in the list of countries where the BVI will not accept a claim under Rule 2 (on account of that jurisdiction not having a corporate income tax system) - included on this list are Anguilla, Bahamas, Bahrain, Barbados, Bermuda, the Cayman Islands, Turks and Caicos Islands; and the United Arab Emirates.

Separately, but coming as no particular surprise, the recent amendments to the BVI Guidance Notes also confirm that an entity cannot claim to be tax resident in a jurisdiction such as Jersey, Guernsey or Isle of Man where they are a transparent entity (ie such as a limited partnership without legal personality, a limited liability company etc).

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