Listing Jersey Holding Companies

Insights - 30/06/2019

This briefing looks at why Jersey companies continue to be popular as listing vehicles and why it is likely we will see more international businesses choosing a Jersey holding company to lead them to market.

Who and where?

Jersey companies are listed around the world, from New York (NYSE and NASDAQ), to London (Main Market, AIM and PLUS), Paris, Amsterdam (Euronext), Hong Kong, Toronto (TSX and TSXV), Stockholm (Stockholmborsen) and Russia (depositing interests).

Jersey listed companies come from a wide variety of sectors, including commodities, energy, mining, pharmaceuticals, media, real estate, support services, construction and materials, finance and investment. Their businesses are typically international, and their names are often widely known.

Why choose a Jersey company?

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Jersey has a reputation as a leading and reputable international finance centre of substance committed to developing and maintaining the highest international standards of regulatory compliance. In part, it is a jurisdiction of choice for many listed companies around the world such as Glencore and WPP. Jersey has **never** formed part of the EU blacklist for 'non-compliant' jurisdictions. Both the Organisation for Economic Co-operation and Development (the **OECD**) and the Economic and Financial Affairs Council of the European Union (**ECOFIN**) have continued to confirm in various reporting that Jersey is compliant with the OECD's international regulatory standards for tax governance.

The OECD has confirmed Jersey as one of the jurisdictions who are compliant with the OECD's international regulatory standards for tax governance based on, in and amongst other things (i) evidence of Jersey's demonstration of transparent tax governance through its compliance with the automatic exchange of information (**AEOI**) and exchange of information on request (**EIOR**) which includes its adoption of the CRS and FATCA framework; (ii) Jersey's recent legislative amendments which address concerns of economic substance and promote fair tax practices and (iii) Jersey's ratification of various BEPs policies over the last years.

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Jersey has continued to demonstrate its compliance with the international standards on AEIO and EOIR having become one of only six countries in the world to be found as entirely tax compliant against the OECD and Global Forum on Transparency and Exchange of Information for Tax Purposes (the **Global Forum)** criteria after two rounds of peer review, which evaluates the cross-border cooperation between diverse tax administrations through the implementation of the internationally agreed standards on transparency and exchange of information for tax purpose.

In addition to its recognition for compliance with the AEIO and EOIR practices, the Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures and Financing of Terrorism, confirmed in their 2016 report that Jersey was largely compliant with 48 of the 49 Financial Action Task Force recommendations, placing Jersey in the top tier of jurisdictions globally which meet the standards of beneficial ownership transparency.

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Pursuant to the directive from the Code of Conduct Group (Business Taxation) (**COCG**) to address concerns surrounding substance requirements, Jersey has since promulgated the Taxation (Companies-Economic Substance)(Jersey) Law 2019 (the **Economic Substance Law**) which officially took effect on 1 January 2019. The Economic Substance Law, which has been largely accepted, provides reassurances to the COCG and EU member states on the issue of lack of substance requirements for Jersey-resident companies, by demonstrating how Jersey's existing regulatory framework will standardise and monitor that Jersey-resident companies have sufficient economic substance to substantiate the tax advantages contemplated therein.

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Jersey's efforts to prevent harmful tax practices has also been evident in its implementation and participation in the BEPs inclusive framework by ratifying the OECD's Multilateral Instrument (**MLI**) for the prevention of base erosion and profit-shifting (**BEPS**) which is the process by which countries implement the OECD's anti-avoidance measures. Jersey is amongst one of only three jurisdictions to have completed the domestic ratification of the MLI which is set to come into effect once it has been ratified by two additional jurisdictions.

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The Government of Jersey has restated its commitment to the highest standards of tax transparency and information exchange (which has been proven on many occasions) having signed the FATCA agreement with the United States of America in 2013 and implemented the OECD's Common

Reporting Standard (**CRS**). In doing so, Jersey became one of only a few jurisdictions internationally to adopt both the FATCA standards and full CRS rules which further affirms Jersey's commitment to its international cooperation obligations.

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Many businesses with an international reach can derive a real advantage from their holding company being incorporated (and sometimes managed and controlled) in a tax neutral jurisdiction such as Jersey. As a consequence, investors in Jersey companies will gain a similar advantage. In Jersey:

In addition, no UK stamp duty should arise on the transfer of shares in a Jersey company listed on a London Stock Exchange provided that the company’s register of members is maintained in Jersey. In this regard Computershare and Link both have offices and registrar businesses in Jersey.

In terms of income tax, the general rate of Jersey corporate income tax payable by companies that are tax resident in the Island is zero per cent. Moreover, a Jersey company may elect not to be resident for tax purposes in Jersey - and so exclusively tax resident elsewhere - if:

Consequently, companies formed as listing vehicles can expect to pay no income tax in Jersey, irrespective of whether or not they are tax resident in the Island.

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As well as offering a potentially extremely favourable tax environment, Jersey's corporate laws also appeal to businesses and investors alike. This is principally because:

Some examples of this familiarity and flexibility are considered below.

Constitution: a Jersey company's constitution is very similar to that of an English company and the overall form and content of its memorandum and articles of association will therefore be familiar to investors and will typically provide equivalent rights and protections. Nevertheless, the flexibility of the Companies Law allows any necessary changes to be made to the constitutional documents of a Jersey company to accommodate investor expectations and/or to satisfy the listing rules of a particular stock exchange.

For example:

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Jersey companies (including public companies) can make a distribution out of any source other the nominal capital account or capital redemption reserve, provided that the company is able to carry on its business and discharge its liabilities as they fall due for 12 months after the distribution. The ability for Jersey companies to distribute from a wide range of sources in this way may be an advantage over other companies seeking to maintain a consistent dividend policy, including English public companies incorporated elsewhere which need to have qualifying profits and satisfy additional capital maintenance requirements in order to make a distribution.

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Shares in a Jersey company listed in London can trade directly through the CREST system without the need for depositing interests. Further shares listed in New York (including NYSE and NASDAQ) can trade in dematerialised form via US direct registration system (DRS).

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Similarly, a Jersey public company's shares may be repurchased from any source provided that a cash-flow solvency test is met. Again, this gives Jersey listed companies an edge over their counterparts elsewhere in circumstances where the procedure allowing a company to purchase its own shares out of capital may only be available to private companies.

How is the Jersey Holding Company introduced?

A Jersey holding company can be introduced into a group structure in a number of different ways. These include the following.

New businesses: we are often approached by entrepreneurs who are setting up a business that they intend to float in the months or years to come. In these cases, we are able to incorporate a Jersey company from the word go and, working with the client's tax advisers, put in place the most effective structure from the outset to meet the client's needs.

Existing businesses: we are just as frequently asked to work with existing businesses that wish to introduce a Jersey holding company into their current group structure. In these cases, we incorporate the new Jersey company and then reorganise the existing group companies so that the Jersey company is placed at the top of the structure. This can be done in a number of ways, although a simple share for share exchange or a court approved scheme of arrangement are probably the most common, depending on the circumstances.

Migration or merger: if the laws of its country of incorporation permit, an existing foreign holding company may migrate to Jersey. In doing so, it ceases to be incorporated in its original country of incorporation and instead continues in existence as a registered Jersey company. Similarly, provisions in Jersey company law allow a foreign holding company to merge with, and continue as, a Jersey company. The migration and merger routes are alternative ways of restructuring by using a Jersey company to achieve results which may not be possible, or may be less attractive, using the existing non Jersey holding company or the introduction of a new holding company into the group structure.

Establishing and marketing the Jersey company

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Incorporating a new Jersey holding company is straightforward and can be done on a same day basis. Once incorporated, the company must maintain its registered office and register of members in Jersey but is not required to have Jersey-resident directors.   Ogier frequently handles the incorporation process for its clients and also provides registered office and company secretarial services on an ongoing basis.

In addition, electronic registrar services can be provided by local subsidiaries of UK-based registrars in Jersey to support the volume of trading in shares of a listed company. Jersey law specifically permits securities to be uncertificated and a Jersey company's shares are capable of being held and traded in dematerialised form in certain markets.

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In terms of marketing, the shares in a Jersey holding company will generally be capable of being marketed freely from a Jersey law perspective. One point to note is that the offer/admission document that is sent to prospective investors may amount to a prospectus for Jersey law purposes, and certain basic steps need to be taken as a result. However, these are not considered onerous particularly when other formal approvals may also be required in certain markets where the shares may be sold, and they essentially involve:

There are other marketing considerations which may have an impact on how one structures a listed holding company. For example, some investors, particularly those in Europe and North America, require shares or securities to be issued by an issuer which is appropriately recognised or regulated (e.g. an OECD territory issuer). Some require any investment to be held as shares rather than depositary receipts - Jersey companies can do both. Thus, with its high standards and wide recognition, Jersey as a jurisdiction can normally provide that crucial advantage to a successful offering.

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