

Exempt bodies: Substance Regulations may still apply

Insights - 29/08/2019

The Income Tax (Substance Requirements) (Implementation) Regulations, 2018 as amended (the **Substance Regulations**) came into force on 1 January 2019 and have recently been further updated by The Income Tax (Substance Requirements) (Implementation) (Amendment) Regulations, 2019 (the **Amendment Regulations**), with effect from 1 August 2019. The Amendment Regulations have extended the scope of the Substance Regulations to include all tax exempt bodies that have been granted an exemption under paragraphs (3) and (5) of Schedule 1 of the Income Tax (Exempt Bodies) (Guernsey) Ordinance, 1989 (as amended) (the **Exempt Bodies Ordinance**). In addition, the Amendment Regulations clarify the scope of the Substance Regulations in relation to IP Assets and High Risk IP Companies – the balance of this note focuses on the change in status of tax exempt bodies.

Prior to the Amendment Regulations coming into force, all Guernsey companies that were tax exempt bodies were out of scope of the Substance Regulations since they were not treated as tax resident in Guernsey for the purposes of the Income Tax (Guernsey) Law, 1975 (as amended) (the **Income Tax Law**).

Under the Amendment Regulations the scope of the Substance Regulations has been extended to Guernsey companies which have been granted a tax exemption by the Director of the Revenue Service other than those which qualify for the tax exemption by virtue of being a collective investment scheme, notwithstanding that they continue to be tax exempt bodies. The Amendment Regulations expressly do not bring collective investment schemes falling to be exempt under paragraphs (1), (2) and (4) of the Exempt Bodies Ordinance into scope of the Substance Regulations. This means that companies that have obtained tax exempt status by virtue of satisfying one or more of the following criteria are now no longer automatically out of scope of the Substance Regulations:

- the management of a specific collective investment vehicle;
- enabling investment into a specific collective investment vehicle;

- the acquisition or the management of the assets of a specific collective investment vehicle;
- facilitating the funding of, or borrowing by, a specific collective investment vehicle for the acquisition of its assets; or
- being a company which is in the beneficial ownership of or wholly owned (i) by a collective investment scheme exempted under paragraphs (1), (2) or (4) of the Exempt Bodies Ordinance or (ii) by a body described in the previous 4 bullet points.

It should be noted by way of examples, that:

(i) Guernsey companies that are managing a collective investment vehicle or its assets and, as a result of this, had obtained tax exempt status will now be in scope of the Substance Regulations and be required to comply with the provisions relating to the relevant activity of fund management; similarly,

(ii) Guernsey companies that make loans to collective investment vehicles for the purpose of enabling the collective investment vehicle to acquire assets, or are subsidiaries of a collective investment vehicle or other body established for the purposes of undertaking collective investment and make loans to entities invested in by that scheme and have obtained tax exempt status as a result would fall into scope of the Substance Regulations and be required to comply with the provisions relating to the relevant activity of finance and leasing, in each case notwithstanding they continue to be tax exempt bodies for the purposes of the Income Tax Law; and

(iii) Guernsey companies that are not exempt under paragraphs (1), (2) or (4) of the Exempt Bodies Ordinance that hold controlling interests in subsidiary companies would be required to comply with the Substance Regulations as they relate to pure equity holding companies.

Given this extension to the scope of the Substance Regulations, all companies that are tax exempt bodies that have already received economic substance advice should re-examine their business model to evaluate whether their activities require them to demonstrate economic substance in Guernsey to the Director of Revenue Services in accordance with the requirements of the Substance Regulations, noting that collective investment schemes expressly remain out of scope of the Substance Regulations, whether or not they have obtained a tax exemption from the Director of Revenue Services under the Exempt Bodies Ordinance.

Action Points

- Guernsey companies that are tax exempt bodies, other than those that are collective investment schemes, should consider whether their activities bring them into scope of the Substance Regulations and, if so, whether their operations satisfy the relevant obligations under the Substance Regulations.

- Companies that are collective investment schemes have not been brought into scope of the Substance Regulations by virtue of the Amendment Regulations and so continue to be out of scope of the Substance Regulations.
- Given the applicable regulatory regime in Guernsey, it is anticipated that many structures will be compliant with the new requirements already – consideration, however, should still be given to whether amendments and updates are required to contracts, policies and procedures, outsourcing arrangements, offering memoranda and board resolutions and procedures as a result of the Substance Regulations.

We are already assisting many clients to scope their activities and report on their compliance with the Substance Regulations. You should get in touch with your usual Ogier contact as soon as possible should you require further information or advice on the Substance Regulations and the implications for your business.

Bulletin on the 2020 Guernsey Substance Amendment Regulations and the treatment of funds under the substance regime can be [found here](#).

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