

Family offices and Jersey's economic substance rules

Insights - 04/11/2019

Family office structures which include Jersey tax-resident companies need to consider whether those companies are within the scope of the Taxation (Companies - Economic Substance) (Jersey) Law 2019 (the Economic Substance Law).

The Economic Substance Law came into effect on 1 January 2019 and applies to certain Jersey tax-resident companies conducting one or more "relevant activities". It was introduced in order to comply with the requirements of the EU Code of Conduct Group on Business Taxation for the purpose of demonstrating that the income generated by Jersey companies which carry on relevant activities are commensurate with their economic activities and substantial economic presence in Jersey. Accordingly, companies which generate no gross income from their activities or which are not tax-resident in Jersey, are outside the scope of the legislation.

While nine separate activities are identified in the Economic Substance Law, in our experience, the most relevant of these activities in the context of family offices, are:

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The Economic Substance Law sets out a 3-stage test which must be satisfied by companies which are within the scope of the law: -

- (a) the company must be "directed and managed" in Jersey in relation to the relevant activity;
- (b) having regard to the level of relevant activity carried on in Jersey, the company must have:
 - (i) an adequate number of employees physically present in Jersey;
 - (ii) adequate expenditure in Jersey; and
 - (iii) adequate physical assets in Jersey; and
- (c) all of the company's 'core income generating activities' must be carried out in Jersey.

It is important for family offices to focus their attention on compliance with the 3-stage test because a number of progressively punitive sanctions are available, should the Jersey Comptroller of Taxes determine that a company does not meet the test. These include financial penalties, strike-off from the register of Jersey companies, and the exchange of information with any relevant tax or regulatory authorities. Authorised persons may also request, examine and make copies of any business document for the purpose of investigating compliance with the Economic Substance Law.

We have advised extensively on the application of the economic substance test in the context of family office structures and are able to provide clear and practical advice by mapping and scoping the activities of Jersey companies, analysing current operating practices and advising on appropriate compliance or remedial action, as necessary. We are also able to deliver training to family offices, boards of directors and employees and assist in ensuring that governance processes and company policies and procedures satisfy the 3-stage test set out in the legislation.

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