JANUARY 2020

mourant

UPDATE

Guernsey legal and regulatory update

An overview of Guernsey legislative and regulatory developments
1 October 2019 to 10 January 2020

1 Substance – updates to joint guidance notes

The States of Guernsey Revenue Service (**Revenue Service**) has released (jointly with the Jersey tax office) updates to the guidance notes on the application of economic substance legislation, which were previously issued on 26 April 2019.

Economic substance legislation has effect in Guernsey and applies to certain companies that are tax resident or tax exempt in Guernsey and generating gross income from a relevant activity in a financial period commencing on or after 1 January 2019.

The revised guidance provides a welcome update, particularly in respect of certain clarifications for funds and the location of decision making.

The revisions to the guidance notes provide additional guidance covering insurance, intellectual property, high-risk intellectual property and also shipping. Further detail is also included on pure equity holding companies, the directed and managed test, fund management and distribution and services activity.

Particular areas to note include clarifications that regulated funds are out of scope (although there is an intention that corporate self-managed funds in the future will be brought into scope for their fund management activities, subject to future changes to legislation). There is also further clarification on the basis on which certain isolated decisions can be taken outside the island, provided this does not outweigh decisions taken in the jurisdiction. There is also more specific guidance on the treatment of cell companies.

The updated guidance notes are available here.

We have also updated our guide on Guernsey's economic substance requirements to reflect these latest revisions.

2 Substance – corporate tax return (demo)

The Revenue Service has announced that the new corporate tax return will be made available for completion during January 2020. In the meantime, a preview of the return is available online here to familiarise users with the new layout and additional information required.

3 EU Mandatory Disclosure Rules

The States of Guernsey has approved the EU's Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures (**MDR**) as an international tax measure for the purposes of Guernsey's income tax law and has instructed the States' Policy & Resources Committee to make regulations to implement the provisions of MDR in Guernsey. This follows on from Guernsey's commitment to introduce legislation for MDR by 31 December 2019, the timetable set for EU countries. A similar commitment has been made by the other Crown Dependencies.

MDR is not endorsed as an international standard but is considered by the OECD as 'best practice' based on the Base Erosion and Profit Sharing Initiative (**BEPS**). MDR is intended to be a further preventative control to address the concern that, notwithstanding implementation of the Common Reporting Standard (**CRS**) which has created greater transparency and cooperation between global tax administrations, arrangements and schemes still exist which seek to circumvent CRS reporting.

MDR introduces measures to discourage advisors and intermediaries promoting certain avoidance schemes by imposing an obligation to disclose information on such schemes and their users to the Revenue Service. That information may be exchanged by the Revenue Service with the tax authorities of the jurisdiction in which the users are resident (provided that there is a relevant information exchange agreement in place).

The OECD has issued Model Rules which the Crown Dependencies are likely to implement, however those Model Rules will need to be supplemented by Guidance Notes, most likely aligned across all of the Crown Dependencies.

The Revenue Service has published a Briefing Note (1 October 2019) which provides a synopsis and status update on Guernsey's implementation of MDR. It also summaries a number of key elements including the definitions of 'Promoter', 'Service Provider', 'CRS Avoidance Arrangement' and 'Passive Offshore Vehicle'. The Briefing Note is available here.

4 Revised Handbook

The Guernsey Financial Services Commission (the **Commission**) has published the revised Handbook on Countering Financial Crime and Terrorist Financing in final form (effective 1 November 2019, available here). Firms have until 31 May 2020 to make any necessary changes and obtain board approval of their business risk assessments (**BRA**) and their policies, procedures and controls. This one overarching deadline of 31 May 2020 is a departure from the Commission's original consultation proposal (29 February 2020 for revising BRA and 31 May 2020 for policies, procedures and controls) to give firms the flexibility to determine the optimal timeframes for review, revision and obtaining board approval before the 31 May 2020 deadline.

5 Q3 investment statistics

The third quarter investment statistics released by the Commission show that the net asset value of total funds under management and administration in Guernsey has decreased in sterling terms over the last quarter.

Total net asset values have however increased by 2.2 per cent, ie £6.1 billion, over the past year to £286.1 billion. The statistics are available here.

6 Specific discretionary exemptions

The Commission is amending its approach to specific discretionary exemptions under section 3(1)(y) of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 in two ways.

Firstly, to clarify the extent of an exemption, ie that the exemption will only apply to the specific regulated activity in relation to the target asset, as disclosed in the exemption application. Any 'material changes' to the structure, ie any change in activity or certain parties within the structure, will be required to submit a new application and pay a fee.

Secondly, by applying a three year limit so that an exemption will expire three years from the date it is granted (unless renewed no later than one month before the expiry date and provided that there has not been any change to the structure and parties).

This new approach is effective from 1 October 2019 but the three year limit does not apply to exemptions granted before 1 October 2019.

7 Change to TISEA Listing Rules

The Listing Rules of the International Stock Exchange Authority (**TISEA**) have been amended and are effective from 1 January 2020. The changes are not anticipated to materially impact issuers, but two notable amendments are:

- for an issuer which is an investment vehicle, information relating to any changes to its substantial shareholder(s) (10 per cent or more) must be announced on the Exchange's website; and

- for an issuer of debt securities, any a material change in the beneficial ownership of the issuer must be notified to the TISEA.

The Membership Rules have also been revised to include, amongst other things, a new chapter on compliance allowing TISEA to make non-disciplinary compliance visits on Members.

The Listing Rules and the Membership Rules are available on TISEA website here.

8 Data Protection

The Office of the Data Protection Authority (ODPA) has confirmed that anyone who is currently exempt from the legal requirement to register with the ODPA will continue to be exempt until 31 December 2020. The exemptions currently apply to three groups of entities:

- those that only process data for accounts and record keeping for core business purposes, for staff administration and to market their own goods or services;
- processors, ie those that only process data under instructions given by another entity; and
- those that have charity or not-for-profit status.

Figures published by the ODPA reveal that 44 personal data breaches were reported in the two months leading up to 27 October 2019. Overall, 40 breaches were the result of human action, with just four resulting from system error. 24 notified breaches were due to personal data being sent, via email or post, to the wrong person. The other 20 breaches were through hacking, personal data being accessed inappropriately, the disclosure of personal data when not authorised to do so or loss of personal data.

Contacts

Darren Bacon
Partner, Mourant Ozannes
Guernsey
+44 1481 731 503
darren.bacon@mourant.com

Frances Watson
Partner, Mourant Ozannes
Guernsey
+44 1481 739 331
frances.watson@mourant.com

Helen Wyatt
Partner, Mourant Ozannes
Guernsey
+44 1481 731 408
helen.wyatt@mourant.com

John Lewis
Partner, Mourant Ozannes
Guernsey
+44 1481 731 505
john.lewis@mourant.com

John Rochester
Partner, Mourant LP
Guernsey
+44 1481 739 359
john.rochester@mourant.com