

STATES OF JERSEY



DRAFT TAXATION (COMPANIES – ECONOMIC SUBSTANCE) (AMENDMENT) (JERSEY) LAW 201-

**Lodged au Greffe on 11th April 2019
by the Minister for External Relations**

STATES GREFFE



Jersey

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European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for External Relations has made the following statement –

In the view of the Minister for External Relations, the provisions of the Draft Taxation (Companies – Economic Substance) (Amendment) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

Minister for External Relations

Dated: 9th April 2019

REPORT

1. Background

- 1.1 In 1998, the OECD produced a report entitled ‘Harmful Tax Competition: An Emerging Global Issue’, which set out the framework to identify harmful tax practices.
- 1.2 In 2015, Action 5 of the BEPS Action Plan called for a refresh of the 1998 report, and ‘requiring substantial activity for preferential regimes’.
- 1.3 In 2017, the Council of the European Union’s Code of Conduct Group (Business Taxation) (“Code Group”) investigated the tax policies of countries in and out of the European Union.
- 1.4 On 5th December 2017, Jersey was placed in Annex II of the list of jurisdictions in a report produced by the Code Group for ECOFIN, the Council of EU Finance Ministers. Annex II is for jurisdictions that were identified by the Code Group as having issues, but made commitments to address and resolve them. Within Annex II, Jersey is in section 2.2, which states that the Island risked supporting the “Existence of tax regimes that facilitate offshore structures which attract profits without real economic activity”. The report can be found here – <http://data.consilium.europa.eu/doc/document/ST-15429-2017-INIT/en/pdf>. The Code Group required substantial activity legislation to meet these concerns.
- 1.5 In order to meet its commitments and address the economic substance concerns, on 6th December 2018 the States Assembly debated and adopted [P.132/2018](#); and subsequently the [Taxation \(Companies – Economic Substance\) \(Jersey\) Law 2019](#) (“the Law”) was sanctioned by Privy Council on 13th March 2019 and registered in the Royal Court on 22nd March 2019.
- 1.6 At the end of 2018, the OECD’s Forum for Harmful Tax Practice (“FHTP”) (the international body tasked with assessing tax regimes to evaluate whether or not they are harmful), approved a document agreeing that it would resume the application of substantial activities factors that it applies to preferential tax regimes, to ‘no tax’ or only nominal tax jurisdictions. Jersey has been regarded as a ‘no tax’ or only nominal tax jurisdiction.
- 1.7 *Revenue Jersey* hosted a senior member of the FHTP secretariat and sought their views on the law in Jersey with regard to the resumption of the substantial activities factor; and at the meeting of the FHTP in January 2019 there was a clear expectation that the legislation in Jersey (and other jurisdictions) would be reviewed at the June 2019 FHTP meeting.
- 1.8 In a related development the Minister, on behalf of the Government of Jersey, gave a commitment to the Code Group to make a minor amendment to the Law.
- 1.9 At the 12th March meeting of ECOFIN, the decision was taken to remove Jersey from Annex II as it was a co-operative tax jurisdiction.
- 1.10 This amendment to the Law is required to ensure that the legislation meets the slightly different requirements of the OECD’s global standard. It also includes the amendments committed to by the Government of Jersey in the Minister’s letter to the Code Group; and it addresses a minor deficiency identified in the

legislation enacted. The intention would be that the new amending Law is adopted by the States Assembly before the June 2019 meeting of the FHTP.

2. Reasons for decision

- 2.1 A failure to meet the requirements of the OECD's FHTP (or to meet commitments given to the Code Group) would damage Jersey's reputation, and could result in the Island being listed as a harmful tax jurisdiction (or being reinstated to Annex II as an unco-operative tax jurisdiction). The direct and indirect impacts of such a finding on industry, particularly the financial services sector, could be significant.

3. Financial and manpower implications

- 3.1 There are no financial or manpower implications for the States arising from the adoption of this draft Law.

Human Rights

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

APPENDIX TO REPORT

Human Rights Notes on the Draft Taxation (Companies – Economic Substance) (Amendment) (Jersey) Law 201-

These Notes have been prepared in respect of the Draft Taxation (Companies – Economic Substance) (Amendment) (Jersey) Law 201- (the “draft Law”) by the Law Officers’ Department.

These Notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The draft Law makes changes to the detail of the working of the Taxation (Companies – Economic Substance) (Jersey) Law 2019 ([L.3/2019](#)). None of the changes alter anything said regarding human rights compatibility in the Human Rights Notes to the [Report](#) in respect of that recent Law. It would serve no useful purpose to recapitulate what was advised recently in respect of regulation on economic substance, when nothing material is being changed.

Explanatory Note

This Law amends the Taxation (Companies – Economic Substance) (Jersey) Law 2019 (the “Economic Substance Law”), which makes provision for imposing an economic substance test on certain companies regarded as resident in Jersey under Article 123 of the Income Tax (Jersey) Law 1961 and for determining whether the test is met by assessing the extent of certain activities carried out in Jersey by such companies.

Article 2(b) amends the definition “fund management business” to exclude a person carrying on a business that is excluded from fund services business under the Financial Services (Jersey) Law 1998 by virtue of Article 3 and paragraph 21 of Schedule 2 to that Law if a separate manager has been appointed to the unregulated fund.

Article 3 amends the definition “Jersey core income-generating activities” to instead define “core income-generating activities”. *Article 2(a), (c) and (d)* make consequential amendments.

Article 4 makes it clear that a resident company may meet the economic substance test in relation to a relevant activity only if the company conducts all of its core income-generating activities in Jersey and, if any of those activities are carried out in Jersey for the company by another entity, the company monitors and controls the carrying out of those activities.

Currently, Article 8 of the Economic Substance Law requires the Comptroller to provide information provided under Article 7 of that Law to the competent authority of a country or territory in the European Union in which resides a holding body, ultimate holding body or ultimate beneficial owner of any resident company in relation to which the Comptroller has determined that the economic substance test has not been met. *Article 5* extends that requirement to the competent authority of any country or territory, whether the country or territory is in the European Union or outside of the European Union. However, *Article 5* also makes it clear that the Comptroller is not required to provide that information unless the provision of the information is permitted under a bilateral or multilateral agreement.

Article 6 provides for the title by which this Law may be cited and for its coming into force on the commencement of the Economic Substance Law, which will come into force on 1st January 2019.



Jersey

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Arrangement

Article

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Jersey

DRAFT TAXATION (COMPANIES – ECONOMIC SUBSTANCE) (AMENDMENT) (JERSEY) LAW 201-

A LAW to amend further the Taxation (Companies – Economic Substance) (Jersey) Law 2019.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Amendment of the Taxation (Companies – Economic Substance) (Jersey) Law 2019

- (1) The Taxation (Companies – Economic Substance) (Jersey) Law 2019¹ is amended in accordance with this Law.
- (2) In this Law, a reference to an Article by number only is a reference to the Article of the same number in the Taxation (Companies – Economic Substance) (Jersey) Law 2019².

2 Article 1 (interpretation) amended

In Article 1 –

- (a) after the definition “connected person” there is inserted –
““core income-generating activity” has the meaning given by Article 4;”;
- (b) for paragraph (c) of the definition “fund management business” there is substituted –
“(c) a person carrying on a business excluded from fund services business under the Financial Services (Jersey) Law 1998³ by virtue of Article 3 and paragraph 21 of Schedule 2 to that Law, except where a separate manager has been appointed to the unregulated fund;”;

- (c) in paragraph (b) of the definition “high risk IP company”, for “Jersey core-income generating activities” there is substituted “core income-generating activities”;
- (d) the definition “Jersey core income-generating activity” is deleted.

3 Article 4 (meaning of “Jersey core income-generating activities”) amended

In Article 4 –

- (a) in the heading, “Jersey” is deleted;
- (b) for “The expression “Jersey core income-generating activities” means relevant activities being carried on from within Jersey and includes” there is substituted “In this Law “core income-generating activity” includes any of the following activities”.

4 Article 5 (requirement to meet economic substance test) amended

In Article 5, for paragraph (2)(c) and (d) there is substituted –

- “(c) all of the company’s core income-generating activities are carried out in Jersey; and
- (d) if any core income-generating activities are carried out in Jersey for the company by another entity, the company is able to monitor and control the carrying out of that activity by the other entity.”.

5 Article 8 (exchange of information to competent authorities) amended

In Article 8 –

- (a) in paragraphs (1)(a) and (2)(a), “in the European Union” is deleted;
- (b) after paragraph (2) there is inserted –
 - “(3) Nothing in this Article requires the Comptroller to provide information to the competent authority of a country or territory unless the provision of the information is permitted under –
 - (a) a bilateral agreement made between Jersey and that country or territory; or
 - (b) the OECD and Council of Europe (2011), Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol.”.

6 Citation and commencement

This Law may be cited as the Taxation (Companies – Economic Substance) (Amendment) (Jersey) Law 201- and comes into force on 1st January 2019.

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- ¹ *L.3/2019*
² *L.3/2019*
³ *chapter 13.225*