

GUERNSEY STATUTORY INSTRUMENT

2018 No. 93

**The Income Tax (Substance Requirements)
(Implementation) (Amendment) Regulations, 2018**

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| <i>Made</i> | <i>19th December, 2018</i> |
| <i>Coming into operation</i> | <i>1st January, 2019</i> |
| <i>Laid before the States</i> | <i>, 2019</i> |

THE POLICY & RESOURCES COMMITTEE, in exercise of the powers conferred upon it by sections 75CC(1A), 171A and 203A of the Income Tax (Guernsey) Law, 1975, as amended^a, and all other powers enabling it in that behalf, hereby makes the following regulations:-

Amendment of Substance Requirements Regulations.

1. The Income Tax (Substance Requirements) (Implementation) Regulations, 2018 are amended as follows.

2. After regulation 1(2) insert the following paragraph -

"(3) These Regulations do not apply to -

^a Ordres en Conseil Vol. XXV, p. 124; sections 75CC(1A) and 171A were inserted by the Income Tax (Substance Requirements) (Guernsey) (Amendment) Ordinance, 2018 and section 203A was inserted by the Income Tax (Guernsey) (Amendment) Law, 2005 (No. XVII of 2005); there are other amendments not material to these Regulations.

- (a) a foundation established under the Foundations (Guernsey) Law, 2012, or
- (b) an equivalent or similar body created or established under the law of another jurisdiction (and however named)".

3. In regulation 2(a) after the words carrying on business insert "(whether on its own account or as a partner or member of a partnership)".

4. In regulation 2(b) after the words "with income" insert "(whether arising or accruing to the company directly or in its capacity as a partner or member of a partnership)".

5. In regulation 11(1), for the words following paragraph (b) substitute the following -

"the Director -

- (i) shall by notice impose a penalty not exceeding £10,000,
- (ii) shall, under and in accordance with the provisions of any approved international agreement or international tax measure relating to the spontaneous exchange of information, disclose to a competent authority any information which relates to the company, and

(iii) may, where he decides that there is no realistic possibility of the company complying with the substance requirements applicable in respect of it -

(A) where the company is registered in the Register of Companies within the meaning of section 496 of the Companies (Guernsey) Law, 2008^b, give notice to the Registrar of Companies for the purposes of section 355(1)(f) of that Law (striking defaulting company off Register of Companies), and

(B) where the company is one the memorandum and articles of which are registered in the Register of Companies within the meaning of section 163(1) of the Companies (Alderney) Law, 1994^c, give notice to the Registrar of Companies for the purposes of section 107(1)(e) of that Law (striking a company off the Register).".

^b Order in Council No. VIII of 2008; there are amendments not material to these Regulations.

^c Ordres en Conseil Vol. XXXV(2), p. 777; there are amendments not material to these Regulations.

6. Regulation 11(2) is repealed.

7. In regulation 12(1) for the words following paragraph (b) substitute the following -

"the Director -

(i) shall by notice impose a penalty not exceeding £50,000,

(ii) shall, under and in accordance with the provisions of any approved international agreement or international tax measure relating to the spontaneous exchange of information, disclose to a competent authority any information which relates to the company, and

(iii) may, where he decides that there is no realistic possibility of the company complying with the substance requirements applicable in respect of it -

(A) where the company is registered in the Register of Companies within the meaning of section 496 of the Companies (Guernsey) Law, 2008^d, give

^d Order in Council No. VIII of 2008; there are amendments not material to these Regulations.

notice to the Registrar of Companies for the purposes of section 355(1)(f) of that Law (striking defaulting company off Register of Companies), and

(B) where the company is one the memorandum and articles of which are registered in the Register of Companies within the meaning of section 163(1) of the Companies (Alderney) Law, 1994^e, give notice to the Registrar of Companies for the purposes of section 107(1)(e) of that Law (striking a company off the Register)."

8. In regulation 14(3)(a) for "regulation 11(2)(b)" substitute "regulation 11(1)(ii)".

9. In regulation 14(3)(g) for "regulation 13(4) applies" substitute "regulations 13(4) and 13(5) apply".

10. After regulation 26 insert the following regulation -

"Amendment of provisions as to company residence.

^e Ordres en Conseil Vol. XXXV(2), p. 777; there are amendments not material to these Regulations.

26A. For section 4(1)(a) of the Law^f (definition of "resident" in the case of a company) substitute the following paragraph -

"(a) it is controlled in Guernsey, or is centrally managed and controlled in Guernsey, in that year of charge, or".

11. In regulation 30 -

(a) in paragraph (1), in the new paragraph (f) which is inserted thereby after section 355(1)(e) of the Companies (Guernsey) Law, 2008, for "regulation 13" substitute "regulation 11, 12 or 13" and for "fourth" substitute "first, third or fourth",

(b) in paragraph (2), in the new subsection (8A) which is inserted thereby after section 355(8) of the Companies (Guernsey) Law, 2008, after the words "the Income Tax (Substance Requirements) (Implementation) Regulations, 2018" insert ", but this is without prejudice to the application of section 366 (companies party to proceedings)",

(c) in paragraph (3), in the new paragraph (aa) which is inserted thereby after section 370(5)(a) of the Companies (Guernsey) Law, 2008, for "regulation 13" substitute "regulation 11, 12 or 13" and for "fourth" substitute "second, third or fourth",

^f Section 4(1)(a) was inserted by the Income Tax (Guernsey) (Amendment) (No. 2) Ordinance, 2018.

- (d) in paragraph (4), in the new paragraph (aa) which is inserted thereby after section 371(1)(a) of the Companies (Guernsey) Law, 2008, for "regulation 13" substitute "regulation 11, 12 or 13" and for "fourth" substitute "second, third or fourth",
- (e) in paragraph (5), in the new paragraph (aa) which is inserted thereby after section 371(2)(a) of the Companies (Guernsey) Law, 2008, for "regulation 13" substitute "regulation 11, 12 or 13" and for "fourth" substitute "second, third or fourth",
- (f) in paragraph (6), in the text which is inserted thereby in section 371(10)(a) of the Companies (Guernsey) Law, 2008, for "regulation 13" substitute "regulation 11, 12 or 13" and for "fourth" substitute "second, third or fourth",
- (g) in paragraph (7), in the new paragraph (e) which is inserted thereby after section 107(1)(d) of the Companies (Alderney) Law, 1994, for "regulation 13" substitute "regulation 11, 12 or 13" and for "fourth" substitute "second, third or fourth",
- (h) in paragraph (9), in the new paragraph (aa) which is inserted thereby after section 108(1)(a) of the Companies (Alderney) Law, 1994, for "regulation 13" substitute "regulation 11, 12 or 13" and for "fourth" substitute "second, third or fourth".

12. In regulation 31(1) -

- (a) in paragraph (a) of the definition of "distribution and service centre", repeal the word "small", and

- (b) after the definition of "non-resident" insert the following definition -

"partnership" includes a limited partnership and an LLP,".

Citation.

13. These Regulations may be cited as the Income Tax (Substance Requirements) (Implementation) (Amendment) Regulations, 2018.

Commencement.

14. These Regulations shall come into force on the 1st day of January, 2019.

Dated this 19th day of December, 2018

DEPUTY L. S. TROTT

Vice-President of the Policy & Resources Committee

For and on behalf of the Committee

EXPLANATORY NOTE

(This note is not part of the regulations)

These Regulations amend the Income Tax (Substance Requirements) (Implementation) Regulations, 2018, which implement and enable the administration and enforcement in domestic law of substance requirements in respect of companies which are tax resident, by disapplying the Regulations from foundations; clarifying the position of business carried on in partnership; empowering the optional striking off of companies in the first and third accounting periods of default where the Director decides that there is no realistic possibility of the company complying with the substance requirements applicable in respect of it; amending section 4 of the Law in respect of company residence; and by making all necessary consequential changes.