

Economic Substance, Corporate Tax residence and the implications of Corona Virus (COVID –19).

Further clarification for MNE Groups and companies with non-domestic activities.

The Comptroller of Revenue released a concession on the approach to Economic Substance in March 2020. It is now apparent that the pandemic and its impacts will continue to affect us all - at least for the near future. Therefore, the Comptroller wishes to clarify his approach going forward.

If a company is either a part of a multinational group¹ or conducts activities outside of Jersey (i.e. non-domestic activities), then the following clarifications to the original concession are to be applied.

The concession is limited in scope, and is intended to recognise that flexibility for certain employees with exceptional circumstances is reasonable and even necessary, at this time. However, it is not credible that all, or even most, of the employees of a company would fall into this exceptional category, such that the essential number of employees required to substantiate the income generated by the relevant activities cannot be reached.

The Comptroller's concession will only be relevant to the directed and managed part of the economic substance test, it will not apply to other elements of the test. It is still expected that the company will continue to have the adequate employees, expenditure and physical assets in Jersey as required by Article 5(2)(b) Taxation (Companies- Economic Substance) (Jersey) Law 2019.

Furthermore any company seeking to rely on this concession should ensure that it is keeping sufficient records which evidence the changes that have been made to its normal operating practices and evidence the underlying reasons for these changes. Officers of Revenue Jersey will require these records be made available when ascertaining that the concession was correctly applied.

Companies can only rely on this concession if the facts and circumstances match the criteria set out above. Those who do rely on the concession are required to disclose this fact in their 2020 tax return.

Where information is required to be exchanged, this exchange will include any relevant information in relation to this concession.

This is a temporary concession which the Comptroller intends to withdraw as soon as circumstances permit. The Comptroller is keeping this approach under review.

¹ This is any group, based on generally acceptable accountancy principles, which includes companies outside of Jersey, or companies with Permanent Establishments outside of Jersey.