

GREFFE  
ROYAL COURT

- 1 AUG 2019

GUERNSEY *BYG.*

GUERNSEY STATUTORY INSTRUMENT

2019 No. *84*

## **The Income Tax (Substance Requirements) (Implementation) (Amendment) Regulations, 2019**

<i>Made</i>	29 <sup>th</sup> July, 2019
<i>Coming into operation</i>	1 <sup>st</sup> August, 2019
<i>Laid before the States</i>	, 2019

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<sup>a</sup>, 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. In regulation 1(1), immediately after the words "company resident in Guernsey" insert "or a Guernsey incorporated company which is eligible for exemption from tax under paragraph 3 or 5 of Schedule 1 to, and which has been granted an exemption by the Director under section 3 of, the Income Tax (Exempt

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<sup>a</sup> 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.

Bodies) (Guernsey) Ordinance, 1989<sup>b</sup>".

3. In regulation 1(2), immediately after the words "section 4 of the Law" insert "or a Guernsey incorporated company which is eligible for, and has been granted an exemption as set out in paragraph (1)".

4. For regulation 3(2)(e) and 4(2)(e), substitute the following subparagraph -

"(e) all minutes of board meetings and all other company records relevant for the purposes of this Regulation are kept in Guernsey."

5. In regulation 5(a), for the words "Companies (Guernsey) Law, 2008 or (as the case may be) the Companies (Alderney) Law, 1994" substitute "applicable company legislation of the jurisdiction of its incorporation".

6. In regulation 7, for paragraph (h) substitute the following -

"(h) in relation to intellectual property assets, include -

(i) in respect of a business exploiting intellectual property assets which are patents and assets that share the same feature of a patent, any research and development,

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<sup>b</sup> Recueil d'Ordonnances Tome XXV, p. 106; as amended by Order in Council No. V of 2011; Recueil d'Ordonnances Tome XXVI, p. 41; Ordinance No. VI of 1996, No. XXXIX of 1997, No. XXXIII of 2003, No. VII of 2009, No. XXXIV of 2009, No. XVII of 2012, No. III of 2015 and No. XXVII of 2018.

- (ii) in respect of a business exploiting intellectual property assets which are marketing intangibles such as trademarks, any marketing, branding and distribution, and
  
- (iii) in exceptional cases, and other than in the case of a high risk IP company other core income generating activities relevant to the business and the intellectual property assets, which may include -
  - (A) taking the strategic decisions and managing (as well as bearing) the principal risks relating to the development and subsequent exploitation of the intellectual property asset,
  
  - (B) taking the strategic decisions and managing (as well as bearing) the principal risks relating to the third party acquisition and subsequent exploitation of the intellectual property asset, and
  
  - (C) carrying on the underlying trading activities through which the intellectual property asset is exploited and which lead to the generation of revenue from third parties."

7. For regulation 14(1), substitute the following paragraph -

"(1) In the case of a high risk IP company, the substance requirements are presumed not to be met, even if there are core income-generating activities being carried on in Guernsey relevant to the business and the intellectual property assets, unless the company provides evidence to satisfy the Director that this presumption is rebutted."

8. In regulation 14, immediately after paragraph (1), insert the following paragraph -

"(1A) For the purpose of subsection (1), the evidence referred to includes -

- (a) information which demonstrates that there is and historically was a high degree of control over the development, exploitation, maintenance, enhancement and protection of the intellectual property assets, exercised by an adequate number of full-time employees with the necessary qualifications who permanently reside and perform their activities in Guernsey,
- (b) detailed business plans which demonstrate the commercial rationale for the company holding the intellectual property assets in Guernsey,
- (c) information regarding the company's employees, their level of experience, type of contract, qualifications and the duration of their

employment,

- (d) evidence that the company's decision making takes place within Guernsey, and
- (e) any other information required by the Director."

9. In regulation 25(3), for the words "the United Kingdom or a Member States of the European Union" substitute "another jurisdiction".

10. In regulation 31, in paragraph (a) of the definition of "competent authority", for the words "United Kingdom or any Member State of the European Union in which country" substitute "country in which".

11. In regulation 31, in the definition of "high risk IP company" -

- (a) delete "either" and "or (b)",
- (b) in paragraph (a)(iv), delete the final "or", and
- (c) delete paragraph (b).

12. In regulation 31, for the definition of "intellectual property assets" substitute the following -

**"intellectual property assets"** means any intellectual property right including copyright, design right, trademark, patent, brand or similar asset,".

13. In regulation 31, immediately after the definition of "international tax

measure" insert the following definition -

""**intra group**" means a collection of enterprises related through ownership or control such that it is either required to prepare consolidated financial statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange,".

**Amendment of the Law.**

14. In section 4(2)(b) of the Income Tax (Guernsey) Law, 1975, for "company's business" substitute "company".

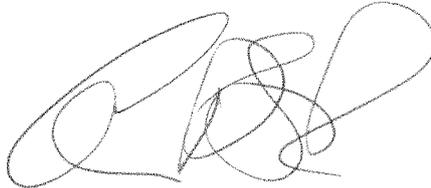
**Citation.**

15. These Regulations may be cited as the Income Tax (Substance Requirements) (Implementation) (Amendment) Regulations, 2019.

**Commencement.**

16. These Regulations shall come into force on the 1st day of August, 2019.

Dated this 29th day of July, 2019



DEPUTY GAVIN ST PIER

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 clarifying the core income generating activities required for an IP company; amending the definitions in respect of a high risk IP company, and an IP asset; specifying the types of information required to satisfy the Director that the presumption that a high risk IP company fails the substance requirements is rebutted; extending the substance requirements to companies granted exemption from tax that are not collective investment vehicles; and by making all necessary consequential changes.

