

Changes to Guernsey's corporate tax residence rules

Service area / [Corporate, Trusts and Private Wealth](#)

Location / [Guernsey](#)

Date / [January 2019](#)

Guernsey's rules on corporate tax residence changed at the beginning of 2019 following amendments to its existing tax law brought into effect by a combination of the [Income Tax \(Guernsey\) \(Amendment\) \(No 2\) Ordinance 2018](#), the [Income Tax \(Substance Requirements\) \(Implementation\) Regulations, 2018](#) and the [Income Tax \(Substance Requirements\) \(Implementation\) \(Amendment\) Regulations, 2018](#), all passed in December last year.

Prior to these changes, a company was resident for tax purposes in Guernsey if it was either incorporated in Guernsey and had not been granted tax-exempt status, or was 'controlled' in Guernsey. The concept of 'control' looked broadly at whether the company's affairs were conducted in accordance with the wishes of its shareholders or loan creditors who were resident in Guernsey themselves.

Whilst these tests continue to form part of Guernsey's tax law, the new changes add a specific exemption for companies which have a cross-jurisdictional aspect to them, so that even if a company would be regarded as tax resident under the existing rules, it will not be treated as resident in Guernsey in a year of charge if it is proved to the satisfaction of Guernsey's Director of the Revenue Service that the following conditions are met:

- the company is tax resident in another territory (Territory A) under the domestic law of Territory A; and
- its business is centrally managed and controlled in Territory A; and
- either:
 - the highest rate of corporate tax in Territory A is at least 10%; or
 - the company is resident in Territory A by virtue of a double tax agreement or an international tax measure made between Territory A and Guernsey in which a tie-breaker clause treats the company as being resident in Territory A, rather than in Guernsey; and
- the company's tax residence in Territory A is not motivated by the avoidance, reduction or deferral of the liability of any person to tax under Guernsey law.

The context in which these changes have come about include the introduction of substance requirements for accounting periods commencing on or after 1 January 2019 for companies that are tax resident in Guernsey. Further details of Guernsey substance requirements can be found [here](#), and details of their application to the funds industry can be found [here](#).

The changes provide welcome clarification where a company could be resident in both Guernsey and another territory because of differences in domestic rules regarding tax residence. Such companies would potentially be subject to substance and filing requirements in Guernsey and elsewhere. For example, prior to the new changes, where a Guernsey-incorporated company is managed and controlled from the UK it is resident in Guernsey under Guernsey's domestic tax law but also tax resident in the UK under the UK's domestic law.

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If the company were to carry on activities which bring it within the scope of the new substance requirements, the company would be required to comply with those substance requirements in Guernsey. Given that the substance requirements include in many cases, depending upon the company's activities, the requirement that the company is directed and managed in Guernsey, compliance with this requirement could potentially disrupt the company's on-going management and control in the UK. The changes clarify that in these circumstances Guernsey will not treat such a company as being tax resident, and as a result, it will not be subject to substance requirements in Guernsey.

Management and control

The changes also introduce into the existing test for residence an additional basis on which a company will be regarded as resident in Guernsey. In addition to the test of incorporation and shareholder/creditor control, companies that are centrally managed and controlled in Guernsey are also regarded as resident in Guernsey. The Director of Revenue Service has indicated that the test of central management and control generally considers where the directors of the company meet and exert control over the company. Thus, where the directors of a foreign-incorporated company meet in Guernsey from where they exert control over the company, then this in itself would make the company tax resident under Guernsey's domestic law, without the need to look at shareholder or creditor control. Reflecting this further change, the Director of Revenue Service announced at the end of 2018 that new forms are being developed both for notifying the Revenue Service that a company is centrally managed and controlled in Guernsey and therefore tax resident, and also to demonstrate that a company is not resident. It is anticipated that the latter form will require companies to provide a certificate of residence from the other territory.

It is likely that over time the concept of central management and control as interpreted by the Director of Revenue Service in Guernsey will be informed by English case law on this subject, further details of which can be found [here](#).

Conclusion

The impact of these changes will limit circumstances when companies are regarded as dual resident and also ensure foreign-incorporated companies that are managed and controlled in Guernsey are regarded as tax resident in Guernsey and therefore subject to domestic substance requirements where applicable. As such, the changes to Guernsey's corporate residence rules are to be welcomed.

Nevertheless, administrators and corporate service providers will need to consider and take advice on whether particular non-Guernsey companies that they administer in Guernsey will be regarded as tax resident in Guernsey or possibly dual resident in Guernsey and another territory. They will need to consider the consequences of such findings for the purposes of Guernsey corporate income tax liabilities, Guernsey tax filings and Guernsey substance requirements.

Non-Guernsey companies that are now Guernsey tax resident may also wish to consider migrating their corporate domicile to Guernsey, if the corporate law of the jurisdiction of incorporation allows for migration.



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