

GSCCA Circular 9 21 December 2018

Corporate Residence

In August 2018, the Policy & Resources Committee consulted on introducing changes to the definition of corporate residence. As a result of the feedback received, changes were approved as part of the 2019 Budget and brought into effect through 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.

The impact of these changes will both limit circumstances when companies are dual resident and also ensure foreign incorporated companies managed and controlled in Guernsey are tax resident and therefore subject to the substance requirements.

With effect from 1 January 2019, a company will be treated as tax resident in Guernsey in a year of charge if:

- It is controlled in Guernsey, or is centrally managed and controlled¹ in Guernsey in that year of charge, or
- It is incorporated in Guernsey and has not been granted an exemption from tax for that year of charge under any Ordinance made under section 40A of this Law.

However, a company shall not be treated as resident in Guernsey in a year of charge, even if it is incorporated or controlled in Guernsey, if it is proved to the satisfaction of the Director that:

- The company is tax resident in Territory A under the domestic law of Territory A, and
- The company's business is centrally managed and controlled in Territory A, and
- Either:
 - The company is tax resident in Territory A in accordance with a Double Taxation Arrangement, in which a tie-breaker clause applies, or
 - The highest rate of tax on a company in Territory A is at least 10%, and
- The company's tax resident status in Territory A is not motivated by the avoidance, reduction or deferral of the liability of any person to tax.

A tax resident company will be required to file a company tax return and will be subject to the substance requirements if it carries on geographically mobile financial and other service activities. For further information on the activities, legislation and guidance please go to www.gov.gg/economicssubstance.

¹ Central management and control generally considers where the directors meet and exert control.

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.

The website and relevant forms will be updated to reflect these changes in early 2019.

N Forshaw
Director of the Revenue Service