CONTENTS

INTRODUCTION TO ECONOMIC SUBSTANCE ................................................................. 3
HOW CAN OCORIAN HELP? .................................................................................. 4
PENALTIES FOR NON-COMPLIANCE ................................................................. 4
WHICH ENTITIES ARE AFFECTED? ................................................................. 5
MEASURING SUBSTANCE .................................................................................. 6
RELEVANT ACTIVITY DEFINITIONS AND CORE INCOME GENERATING ACTIVITY ................................................................. 6
DIRECTED AND MANAGED ................................................................................. 13
MEETINGS AND MINUTES OF THE BOARD OF DIRECTORS ................................................................. 13
REPORTING SUBSTANCE .................................................................................. 14
FREQUENTLY ASKED QUESTIONS ...................................................................... 14
ECONOMIC SUBSTANCE FLOWCHART .............................................................. 20
INTRODUCTION TO ECONOMIC SUBSTANCE

The Income Tax (Substance Requirements) Order 2018 applies to all corporate entities that are tax resident in the Isle of Man and which have income from a relevant activity in any accounting period commencing on or after 1 January 2019.

The legislation is designed to protect the reputation of offshore jurisdictions and those entities that operate from them by ensuring that income streams from certain activities are based on actual local activity to substantiate the use of low tax jurisdictions.

Substance legislation doesn’t apply to all entities in the Isle of Man – rather, it applies to certain ‘relevant entities’ carrying out certain ‘relevant activities’. The majority of affected entities are required to be managed and directed, to have adequate employees, expenditure and physical presence and to conduct their ‘core income generating activities’ in the Isle of Man.

The importance of compliance with the new substance regulations cannot be understated given the potential liability for extensive penalties. Our experts can help you navigate the complexities of the new legislation and ensure that you are meeting the requirements.

For more information please contact

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HOW CAN OCORIAN HELP?

Ocorian has a significant presence and experience in jurisdictions affected by changes to substance legislation. As a result, we are uniquely placed to help our clients understand and respond to the new legislation.

We address the following questions to deal with substance requirements.

1. **Is the entity in question in scope of the new law?**
   
   Our experts can provide guidance to help identify relevant entities conducting relevant activities.

2. **Does the entity meet the substance requirements?**
   
   We will perform a substance test on entities in scope, which may include a request for additional information from clients. The substance requirements differ depending on the type of relevant activity the entity performs. Our tests include a gap-analysis versus the requirements for adequate control, people, facilities and expenditure. Should the substance test not be met, enhanced substance may be required based on the relevant activity the entity performs.

3. **How can the entity enhance its substance?**
   
   Clients whose entities don’t meet the substance requirements will receive a proposal from us to add substance to the entity. For standard structures, solutions may be straightforward including additional corporate services or director activities. For more complex structures, we can facilitate the development and implementation of tailor-made solutions, including services which could be provided by Ocorian.

4. **Submissions of notifications and reports**

   Isle of Man entities will be required to submit notifications to confirm if they are in or out of scope.

   In scope entities are required to file an economic substance report. We can assist in the preparation and submission of your notification and / or report in the format required by the Isle of Man Tax Division.

   We can also assist out of scope entities, including those tax resident elsewhere, in the preparation and submission of their notifications to the Isle of Man Income Tax Division in the format required and, where necessary, provide documentation to be adopted by the entity to support such submissions.

**PENALTIES FOR NON-COMPLIANCE**

The legislation includes specific powers to request additional information in relation to any substance information provided on or with the income tax return.

The legislation also includes specific sanctions to address circumstances where companies have acted so as to avoid or seek to avoid the application of the economic substance requirements.

Penalties for failure to comply with the new substance range from increasing fines, removal from the register through to imprisonment.

- £5,000 for the first non-compliance
- Any subsequent failure can increase to £100,000 per notice issued
- Removal from the Companies Register
- Further provision has been included for the introduction of a penalty of £5,000 or a custodial sentence of up to seven years for any person who provides false or misleading information to the Tax Authorities
WHICH ENTITIES ARE AFFECTED?

Relevant entities

Legislation generally applies to all companies under the Companies Act 1931, Companies Act 2006 and Foreign Companies Act 2014. Companies can be non-resident of the Isle of Man and resident elsewhere pursuant to the terms in a Double Tax Agreement.

Entities that are determined by legislation as being excluded for economic substance are:

- Trusts
  - Foundations
  - Collective Investment Vehicles
  - Partnerships
  - Limited Liability Companies

What are Relevant Activities?

Legislation specifies nine categories of relevant activity that an entity is assessed against which are:

a. Banking business
b. Distribution and Service Centre business
c. Finance and Leasing business
d. Fund Management business
e. Headquarters business
f. Holding Company business
g. Insurance business
h. Intellectual property business
i. Shipping business

It is possible for an entity to perform multiple relevant activities. If this is the case, the substance requirements for each relevant activity will need to be assessed individually.

An entity that does not carry on a relevant activity is not subject to the economic substance requirements, however this needs to be evidenced by undertaking the assessment. In addition, consideration should still be given as to whether this is sufficient presence in the Isle of Man and whether the good corporate governance of the entity is adequate.

The extent of the substance requirement for those entities which are conducting one or more relevant activities depends on the nature and the scale of that relevant activity.

In order to assist with classifying if an entity is performing a relevant activity, legislation has defined some typical core income generating activities that the business should be performing in the Isle of Man.
MEASURING SUBSTANCE

Once it has been determined that an entity is a relevant entity, is carrying out a relevant activity and has income, it has to satisfy the applicable substance assessment.

The substance requirements differ depending on the type of relevant activity an entity performs, these are defined in the following section.

Generally speaking an entity that is carrying out a relevant activity will meet the substance requirements if:

1. It is directed and managed in the Isle of Man
2. Has adequate number of (qualified) employees proportionate to the level of activity carried on in the Isle of Man
3. It has adequate expenditure proportionate to the level of activity carried on in the Isle of Man
4. Has adequate physical presence in the Isle of Man
5. Conducts core income generating activity in the Isle of Man

Once substance is established, the entity must file an economic substance report with the Isle of Man income Tax Division as part of the annual income tax return filing.

RELEVANT ACTIVITY DEFINITIONS AND CORE INCOME GENERATING ACTIVITY

Core income generating activities are the key essential and valuable activities that generate the income of the entity. It is not necessary for the entity to perform all of the core income generating activities listed in the legislation for the relevant activity, but it must perform the CIGA that generates the income it has and these must be performed in the island.

Where the CIGA involves making relevant decisions, then the majority of those making the decisions must be present in the island when the decision is made, otherwise the decision will not be considered to be made in the Isle of Man.

Activities undertaken outside the Isle of Man must not be core income generating activities. For example, general support functions such as IT support or HR functions are a necessary activity for the majority of companies, but they do not generate income for the company.

The taking of decisions outside the Island would generally indicate performance of CIGA outside the island. However, isolated decisions may be taken outside the Isle of Man provided that it can be evidenced that the decisions taken and the CIGA undertaken in the Isle of Man are of a quality and quantity to clearly outweigh the question that the CIGA involving the decisions is undertaken outside the Isle of Man.

The following core income generating activities are drawn from the legislation. Whilst not an exhaustive list these activities need to be carried out in the Isle of Man to demonstrate substance.
<table>
<thead>
<tr>
<th>RELEVANT ACTIVITY</th>
<th>ISLE OF MAN CORE INCOME GENERATING ACTIVITY</th>
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<tbody>
<tr>
<td>Banking Business</td>
<td>means the regulated activity of deposit taking by a person holding a licence, issued under section 7 of the Financial Services Act 2008, which permits the undertaking of Class 1(1) or Class 1(2) activity as those classes of activity are described in the Regulated Activities Order 2011, as that order is amended from time to time.</td>
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<tr>
<td></td>
<td>– Raising funds, managing risk including credit, currency and interest risk</td>
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<td></td>
<td>– Taking hedging positions</td>
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<td></td>
<td>– Providing loans, credit or other financial services to customers</td>
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<td></td>
<td>– Managing capital and preparing reports and returns to the Isle of Man Financial Services Commission or anybody or entity with equivalent functions relating to the supervision or regulation of such business.</td>
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<td>Distribution and service centre business</td>
<td>means, as the sole or main activity, —</td>
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<td>the purchase of raw materials and finished products from foreign group entities and the resale of the materials and products for a percentage of the profit; or</td>
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<td></td>
<td>the provision of services to foreign group entities</td>
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<td></td>
<td>– Transporting and storing goods</td>
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<td></td>
<td>– Managing stocks</td>
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<td></td>
<td>– Providing consulting or other administrative services</td>
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Financing and leasing business means providing a credit facility of any kind for consideration to any person (a "customer") and for the purposes of this definition —

- consideration may include consideration by way of interest;
- the provision of credit may be by way of instalments for which a separate charge is made and disclosed to the customer in connection with —
  - the supply of goods by hire purchase;
  - financial leasing (excluding land and interests in land); or
  - conditional sale or credit sale; and
- where an advance or credit repayable by a customer is assigned to another person, that other person is deemed to be providing a credit facility;

but any activity falling within the definition of banking, insurance or fund management is excluded from this definition of financing and leasing.

- Agreeing funding terms
- Identifying and acquiring assets to be leased (in the case of leasing)
- Setting the terms and duration of any financing or leasing
- Monitoring and revising any agreements
- Managing any risk
<table>
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<tr>
<th><strong>Fund management business</strong></th>
<th>means one of the following classes of regulated activity, undertaken by a person in accordance with a licence issued under section 7 of the Financial Services Act 2008 -</th>
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<tbody>
<tr>
<td>a. Class 3(1) (acting as a manager of a collective investment scheme other than an exempt scheme or an exempt-type scheme);</td>
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<tr>
<td>b. Class 3(9), where the activity is providing management services to a person acting as a manager of a collective investment scheme other than an exempt scheme or exempt-type scheme; or</td>
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<tr>
<td>c. Class 3(11), where the activity is acting as a manager to a collective investment scheme which is an exempt scheme or an exempt-type scheme,</td>
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<tr>
<td>and reference to a class of activity in paragraphs (a) to (c) is to be construed by reference to the class as described in the Regulated Activities Order 2011, as that order is amended from time to time.</td>
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<tr>
<td>- Taking decisions on the holding and selling of investments</td>
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<tr>
<td>- Calculating risk and reserves</td>
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<tr>
<td>- Taking decisions on currency or interest fluctuations and hedging positions</td>
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<tr>
<td>- Preparing reports and returns to investors and the Isle of Man Financial Services Commission or any body or entity with equivalent functions relating to the supervision or regulation of such business</td>
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<tr>
<th><strong>Headquarters business</strong></th>
<th>means provision of services for foreign group entities which are material for decision making in the group, excluding shipping, insurance, banking, fund management, financing and leasing, distribution and service centre business or activities related to holding intangible property.</th>
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<tr>
<td>- Taking relevant management decisions</td>
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<td>- Incurring expenditures on behalf of group entities</td>
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<tr>
<td>- Coordinating group activities</td>
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<tr>
<th><strong>Holding company business</strong></th>
<th>means a company that is a pure equity holding company.</th>
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<tr>
<td>“pure equity holding company” is a company which as its primary function acquires and holds shares or an equitable interest in other companies, performs no commercial activity and which:</td>
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<td>a. holds the majority of the voting rights in another;</td>
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<tr>
<td>is a member of another company and has the right to appoint or remove a majority of the board of directors of that other company; or</td>
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<tr>
<td>is a member of another company and controls alone, under an agreement with other members, a majority of the voting rights in that other company.</td>
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<tr>
<td><strong>Insurance business</strong></td>
<td>means the undertaking of insurance business in or from the Island which is authorised or permitted under the Insurance Act 2008.</td>
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<td>------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------</td>
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<td></td>
<td>– Predicting and calculating risk</td>
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<td></td>
<td>– Insuring or re-insuring against risk</td>
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<td></td>
<td>– providing insurance business services to clients</td>
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</tbody>
</table>

The definition encompasses companies which undertake insurance business in or from the Island as an insurer, in both the life and non-life sectors, and this includes reinsurance. These companies will be regulated in relation to these activities.

Other companies which undertake activities connected with insurance (for example insurance brokers or other intermediaries) or provide services to insurers (for example insurance managers), but which are not themselves insurers, do not fall within this definition.
an “IP company” is a company which holds, exploits or receives income from an IP asset or assets.

Accountants may aggregate various intangible assets together under the heading ‘Goodwill’, where on analysis this includes IP assets, as above, the company will be an IP company.

an “IP asset” includes:

a. a patent;
b. technical know-how;
c. a trademark;
d. a brand; and
e. copyright.

“income from an IP asset” includes:

a. royalties;
b. income from a franchise agreement; and
c. income from licensing the IP asset.

- Research and development (rather than acquiring or outsourcing)
- Marketing, branding and distribution
- Taking the strategic decisions and managing (as well as bearing) the principal risks relating to the development and subsequent exploitation of the intangible asset
- Taking the strategic decisions and managing (as well as bearing) the principal risks relating to the third party acquisition and subsequent exploitation of the intangible asset.
- Carrying on the underlying trading activities through which the intangible asset is exploited and which lead to the generation of revenue from third parties.

A high risk IP company” is an IP company which falls within paragraph (a) or (b) -

a. an IP company that owns an IP asset that —
   i) has been acquired from related parties or obtained through the funding of overseas research and development activities; and
   ii) is licensed to related parties or monetised through activities performed by foreign related parties; or

b. an IP company that owns an IP asset and does not carry on the core income-generating activity specified in section 80E(5)(g)(i) or (ii) in the Isle of Man.
### Shipping business

The definition of ship for this relevant sector excludes:

- fishing vessels and harbour craft,
- vessels used for sport or recreation (e.g. pleasure yachts), and
- any vessel under 24m in length overall

To be within the shipping relevant sector a company must operate one or more ships in international traffic, for the transport of either passengers, cargo or both.

Other activities where they are also conducted will be included within this sector, but only if they are undertaken by a company in connection with its trade of operating ships in international traffic, as above.

These other activities briefly include:

- the rental on a charter basis of other ships
- the sale of tickets or similar documents
- the use, maintenance or rental of containers
- the management of crew of other ships

A company which undertakes any of these other activities where the company does not also operate a ship, or ships, in international traffic is not within the shipping relevant sector.

The chartering of ships on a bareboat basis does not fall within this sector because the company which charters the ship is not operating the ship, however the bareboat charter may fall within the financing and leasing [relevant] sector.

Means the operation of ships in international traffic for income for the transport of passengers or cargo and includes any of the following activities where the relevant activity is directly connected with, or ancillary to, such operation —

- the rental on a charter basis of a ship;
- the sale of tickets or similar documents and the provision of services connected with the sale of tickets or similar documents, either for the enterprise itself or any other enterprise;
- the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise; and
- the management of the crew of a ship.

**Managing crew (including hiring, paying and overseeing crew members)**

- Overhauling and maintaining ships
- Overseeing and tracking deliveries
- Determining what goods to order and when to deliver them
- Organising and overseeing voyages
DIRECTED AND MANAGED

Generally tax resident entities undertaking relevant activities are required to be directed and managed in the Isle of Man in addition to undertaking core income generating activities in the Isle of Man.

This consists of the following requirements, all of which must be complied with for each accounting period:

- The Board of Directors must meet in the Isle of Man at an adequate frequency given the level of decision making required.
- During the meeting in the Isle of Man, there must be a quorum of the Board of Directors physically present in the Isle of Man.
- Strategic decisions of the entity must be set at meetings of the Board of Directors and the minutes must reflect those decisions. If an entity has one director, then they should evidence that written resolutions were passed by that director when he is physically present in the Isle of Man.
- The Board of Directors, as a whole, must have the necessary knowledge and expertise to discharge their duties as a board.
- All minutes and entity records must be kept in the Isle of Man.

Where there are corporate directors, these will be looked through, to the individuals (officers of the corporate director) actually performing the duties of the director.

Where company law permits the company to have a sole director, that sole director will conduct the board business by written resolution instead of holding a board meeting. In such cases, the director must be physically present in the Isle of Man when they consider the points and sign each resolution. In these specific circumstances, this will be taken to be equivalent to a quorate board meeting for the purposes of the test.

MEETINGS AND MINUTES OF THE BOARD OF DIRECTORS

The directed and managed assessment is designed to ensure that there are an adequate number of board meetings held and attended in the Isle of Man, although it is not necessary for all board meetings to be held in the Isle of Man, or that a quorum of directors is always present in the Isle of Man.

Quorum in this context will be determined in accordance with Companies Law and the entity’s Articles.

What constitutes an adequate number of meetings in the Isle of Man will be dependent on the relevant activities of the entity. Although it is also expected that even for companies with a minimal level of activity there will be at least one meeting of its board of directors held in the Isle of Man in each year.

The requirement also looks to ensure that the board is a decision making body, in that it has the necessary knowledge and experience, and is not simply giving effect to decisions taken outside of the Isle of Man whether taken by the directors or others.

It is unlikely to be accepted that the Board of Directors is making the strategic decisions if there is evidence that substantive decision making is taking place in any forums, or by any persons, without reference to or the oversight to the Board of Directors.

The minutes of the board meetings should refer to all the relevant decisions taken, even where the board considers courses of action and rejects them.
Entity records expected to be maintained and physically reside, or be electronically available, in the Isle of Man consist of: certificates of incorporation, articles of association/incorporation, financial statements, relevant certifications to operate and major funding documentation and minutes reflecting decisions made.

REPORTING SUBSTANCE

As part of its income tax filing process, entities will be required to provide some or all of the following information:

- Rationale if out of scope for economic substance assessment.
- Business/income types in order to identify the type of relevant activity.
- Amount and type of gross income by relevant activity - this will generally be the turnover figure from the financial statements.
- Amount of operating expenditure by relevant activity - this will generally be the entity’s operating expenditure from the financial statements, excluding capital.
- Details of premises - business address.
- Number of (qualified) employees, specifying the number of full time equivalents.
- Confirmation of the core income generating activities conducted for each relevant activity.
- The physical financial statements.
- Confirmation of whether any core income generating activities have been outsourced and if so relevant details.

It is expected that the carrying out of relevant activities will result in the generation of income.

FREQUENTLY ASKED QUESTIONS

1. What information will be required to complete the substance assessment?

In order to complete the full economic substance assessment the relevant entity will require:

- Entity’s registration number.
- Entity’s tax identification number.
- Accounting period start and end dates for the entity.
- Currency used in financial statements.
- Jurisdiction of incorporation.
- Jurisdiction of management and control.
- Financial statements with accounting that demonstrates:
  - Accounting period dates;
  - The entity’s gross or accrued income and expenditure;
• Income, income type and expenditure associated per relevant activity;
• Details of outsource providers and associated expenditure.

Where an assessment is performed mid-accounting period, it is recommended that projected financial information is used as indicative information. Note once the financials for the reporting period are available this assessment will be performed again and the true financials input for reporting purposes.

– Details of board meetings including the location and details of directors present.
– Details of where the minutes and records are held.
– The names, qualifications and relevant experience of directors and employees to evidence the Direction and Managed requirements. Ocorian will provide information where it relates to its employees, however information will be required for non-Ocorian directors.
– Full Time Equivalent (FTE) qualified employee calculations in the Isle of Man. Ocorian will provide information where it relates to its employees, however information will be required for alternate outsource providers not contracted by Ocorian as well as external directors.

2. The entity is tax resident outside of Isle of Man, does it still need to perform the assessment?

Entities that can evidence that they are tax resident outside of the Isle of Man will need to provide:

– A tax assessment or certificate of tax residency.
– That the Company is resident for tax purposes under the other country’s law under a double taxation agreement between the Isle of Man and the other country in which a tie-breaker clause applies.

Or

That the highest rate at which the entity may be charged tax on any part of its profits in that other country is 20% or higher.

– That there is a bona fide commercial reason for the entity’s residence status in the other country, which is not motivated by a desire to reduce its Isle of Man tax.
– That the entity is not tax resident in a jurisdiction which is on the EU’s list of non-cooperative jurisdictions. https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/

3. Treatment of Cell Companies with income from a relevant activity

Cell companies can be either Protected Cell Companies (PCC) or Incorporated Cell Companies (ICC). Whilst both PCCs and ICCs are subject to the economic substance requirements when they have income from a relevant activity, how the requirements are applied varies.

A PCC is a single legal entity.

A PCC will be required to satisfy the economic substance requirements at a whole entity level including the activities and resources of all its protected cells (i.e. each cell will need to demonstrate that it conducts CIGA in the island).

The individual protected cell is not itself a corporate body and so its activities and resources form part of the overall substance information to be reported by the PCC, and it is not required to report any economic substance requirements on its own account.

An ICC is a legal entity; its incorporated cells are also legally separate entities.
The ICC will only have to satisfy the economic substance test in relation to any activities it conducts itself, and not for any relevant activities conducted by its incorporated cells (IC), and not taking into consideration any resources of its ICs.

Each IC will have to satisfy the economic substance test in relation to its own activities and referring to its own resources, without taking into consideration any resources of any other ICs or the ICC.

4. Can the entity be incorporated and managed & controlled in different jurisdictions?

It is possible for an entity to be incorporated in one jurisdiction and managed and controlled in another. The crown dependencies have legislated for this and are in a position to offer certificates of residency where entities are managed in controlled in the Isle of Man, Jersey or Guernsey.

5. What does ‘Adequacy’ mean?

Legislation refers to the term “adequate”. However, this term is not defined and therefore has its ordinary meaning. The dictionary definition of adequate is “Enough or satisfactory for a particular purpose”.

What is adequate for each entity will be dependent on the particular circumstances of the entity and its business activity. An entity will have to ensure it maintains and retains appropriate records to demonstrate the adequacy of the resources utilised and expenditure incurred.

6. What constitutes outsourcing?

Outsourcing some or all of an entity’s activity is not prohibited. Outsourcing, in this context, includes outsourcing, contracting or delegating to third parties or group companies.

Outsourcing activities must be performed in the Isle of Man.

If core income generating activities are outsourced, the entity must be able to demonstrate that it has adequate supervision of the outsourced activities.

Where a core income generating activity is outsourced the resources of the service provider in the Isle of Man will be taken into consideration when determining whether the people and premises test is met. However, there must be no double counting if the services are provided to more than one entity.

The entity remains responsible for ensuring accurate information is reported on its return and this will include precise details of the resources employed by its service providers, for example based on the use of timesheets.

7. What is the definition of financial statements?

Gross income and operating expenditure should be the figures from the financial statements, provided they have been prepared in accordance with recognised accounting principles.

Financial statements are required to demonstrate the entity’s gross income and expenditure and also expenditure that was incurred in the Isle of Man during the accounting period.

8. What is a group or connected person?

The legislation in the Isle of Man uses the term group which is 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.
9. **What is a (pure equity) holding company?**

An entity will be regarded as a (pure equity) holding company if its primary function is to acquire and hold equities, and the equities in question are controlling stakes in other companies.

It will be subject to the substance requirements if:

- It receives passive income on its own behalf from those holdings (i.e. if it is the beneficial owner of the shares).
- If an entity meets the criteria to be regarded as a (pure equity) holding company, the placing of dividend monies received on deposit or using them to acquire and passively hold other securities such as gilts, will not constitute a “commercial activity” and therefore the entity will still be regarded as a (pure equity) holding company and subject to substance requirements.

If an entity also undertakes other commercial activities, then it is outside of this narrow definition and may instead need to meet the substance requirements of another relevant activity.

10. **What are the rules around Intellectual Property?**

Where an entity receives income from IP, it will also have to consider if it is a “high risk IP entity”. There is a rebuttable presumption that a high risk IP entity has failed the substance requirement as the risks of artificial profit shifting are considered to be greater. As a result the competent authority will exchange all of the information, provided by the entity, with the relevant competent authority where the immediate parent company, ultimate parent company and/or ultimate beneficial owner is resident. Such exchange of information will be in accordance with the existing international tax exchange agreements. To rebut the presumption and not incur further penalties, a high risk IP entity will have to produce materials which will explain how the DEMPE (development, enhancement, maintenance, protection and exploitation) functions have been under its control, and that this has involved people who are highly skilled and perform their core activities in the Isle of Man.

The high evidential threshold requires:

- Detailed business plans which clearly lay out the commercial rationale for holding the Intellectual Property asset(s) in the Isle of Man.
- Concrete evidence that the decision making is taking place in the Isle of Man, and not elsewhere.
- Information on employees in the Isle of Man, their experience, the contractual terms, their qualifications, and their length of service. Periodic decisions by non-resident directors or board members, or local staff passively holding intangible assets, cannot rebut the presumption.

11. **The entity is in liquidation – do I still need to undertake the assessment and reporting?**

If an entity in liquidation is still carrying on a relevant activity and continues to generate income then it is subject to the substance requirements.

If a liquidator is appointed all powers of the directors cease, it will be the liquidators of the entity that are required to demonstrate that the entity is directed and managed in the Isle of Man, the directed and managed requirements are aligned to be the liquidator.

12. **Who do I classify as an employee?**

Employees for this purpose includes:

a. Employees (in the normal course of business)
b. Persons working for the enterprise being subordinated to it and deemed to be employees under Isle of Man law

c. Owner-managers and directors

The employee count will be based on the number of full time equivalents (FTEs), i.e. the number of persons who worked full time within the entity in question, or on its behalf during the entire accounting period.

The work of persons who have not worked the full year, the work of those who have worked part-time, regardless of duration, and the work of seasonal workers are counted as fractions of an FTE. For this purpose, a standard working week will be considered as 35 hours.

Directors, including Non-Executive Directors, should be counted as a fraction of an FTE commensurate with the time commitment of the role performed in the Isle of Man.

If the entity outsources, contracts or delegates some or all of its Core Income Generating Activity such as services provided by Ocorian for instances, then the resources of the service provider in the Isle of Man will be taken into consideration.

When considering what an adequate number of qualified employees is, this must relate to the employees needed to be able to conduct the relevant activity as a whole (not just the core income generating activities).

13. What does ‘qualified’ employees mean?

Qualified is not directly mentioned in the legislation however it is referenced in the EU scoping paper, and prescribes Level 5NQF, EQF or equivalent.

The qualifications that are considered to be adequate will depend on the relevant sector that the entity has activity in, the core income generating activities undertaken in the Isle of Man and the duties performed by those employees.

Isle of Man guidance provides that qualifications taken into account could include academic qualifications, vocational qualifications, relevant industry technical qualifications and also qualification by relevant experience.

14. Who is my information shared with?

If the Assessor of Income Tax (Assessor) determines that a resident entity has not met the economic substance test for a financial period, the Assessor must disclose the information provided relating to that entity for that period to –

The competent authority of the country or territory in which resides –

   i) A holding body

   ii) The ultimate holding body of the resident entity, and

   iii) An ultimate beneficial owner, and

If the resident entity is incorporated outside the Isle of Man, the competent authority of the country or territory in which the resident entity is incorporated.

In respect of a high risk IP entity, regardless of whether or not the Assessor has made a determination, the Assessor must provide the information that has been provided to them in respect of that entity for each financial period of the entity starting on or after 1st January 2019 to –

   d. The competent authority of the country or territory in which resides –

      i) A holding body
ii) The ultimate holding body of the resident entity, and

iii) An ultimate beneficial owner, and

e. If the high risk IP entity is incorporated outside of the Isle of Man, the competent authority of the country or territory in which the entity is incorporated.

Nothing requires the Assessor to provide information to the competent authority of a country or territory unless the provision of the information is permitted under –

a. A bilateral agreement made between the Isle of Man and that country or territory
