



Jersey

TAXATION (COMPANIES – ECONOMIC SUBSTANCE) (JERSEY) LAW 2019

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TAXATION (COMPANIES – ECONOMIC SUBSTANCE) (JERSEY) LAW 2019

A **LAW** to make provision for imposing an economic substance test on Jersey resident companies and for determining whether the test is met by assessing the extent of certain relevant activities carried out by such companies and taking appropriate enforcement action.

Commencement [\[see endnotes\]](#)

1 Interpretation¹

In this Law –

“1961 Law” means the [Income Tax \(Jersey\) Law 1961](#);

“authorized person” means the Comptroller or any person authorized by the Comptroller to perform functions under Article 16;

“banking business” means, in respect of a resident company, a deposit taking business which the resident company must be registered to carry on under Article 9 of the [Banking Business \(Jersey\) Law 1991](#);

“business document” means any document –

- (a) that relates to the carrying on of a business, trade, profession or vocation by any person; and
- (b) that forms part of any record under any enactment;

“business premises” means premises used in connection with the carrying on of a business, trade, profession or vocation;

“Commission” means a Commission of Appeal constituted under Article 13(3);

“competent authority”, in respect of a country or territory other than Jersey, means the authority designated in or for the purposes of an approved agreement or an approved obligation within the meaning of the [Taxation \(Implementation\) \(Jersey\) Law 2004](#);

“Comptroller” means the Comptroller of Taxes;

“connected person” in relation to a resident company, has the same meaning as in Article 3A of the [Income Tax \(Jersey\) Law 1961](#);

“core income-generating activity” has the meaning given by Article 4;

“deposit-taking business” has the meaning in Article 3 of the [Banking Business \(Jersey\) Law 1991](#);

“distribution and service centre business” means the business of either or both of the following –

- (a) purchasing from foreign connected persons –
 - (i) component parts or materials for goods, or
 - (ii) goods ready for sale; andreselling such component parts, materials or goods;
- (b) providing services to foreign connected persons in connection with the business,

but does not include any activity included in any other relevant activity except holding company business;

“finance and leasing business” has the meaning given by Article 2;

“financial period” has the same meaning as in Article 4A of the 1961 Law;

“foreign connected person” means a person connected with a resident company, such person not being resident or regarded as resident in Jersey;

“fund management business” means –

- (a) the business of being a functionary who –
 - (i) is required to hold a permit under the [Collective Investment Funds \(Jersey\) Law 1988](#) to carry on that business, and
 - (ii) is a manager or an investment manager as referred to in Group 2 in Part 2 of the Schedule to that Law; or
- (b) the business of a person who is required to be registered under the [Financial Services \(Jersey\) Law 1998](#) to carry on fund services business and is any of the following –
 - (i) a manager or investment manager as referred to in Article 2(10)(a) of that Law,
 - (ii) a trustee as referred to in Article 2(10)(c) of that Law, except where a separate manager has been appointed to the unclassified fund or unregulated fund,
 - (iii) a member of a partnership as referred to in Article 2(10)(d) of that Law, except where a separate manager has been appointed to the unclassified fund or unregulated fund;
- (c) a person carrying on a business excluded from fund services business under the [Financial Services \(Jersey\) Law 1998](#) by virtue of Article 3 and paragraph 21 of Schedule 2 to that Law, except where a separate manager has been appointed to the unregulated fund;
- (d) the business of being a person who is the equivalent of a person referred to in paragraph (b) or (c) in respect of a fund which would be a scheme falling within the definition of “collective investment fund” in Article 3 of the [Collective Investment Funds \(Jersey\) Law 1988](#) except that the offer of units in the scheme or arrangement is not an offer to the public within the meaning of that Article;

“headquarters business” means the business of providing any of the following services to one or more foreign connected persons of the resident company –

- (a) the provision of senior management;

- (b) the assumption or control of material risk for activities carried out by, or assets owned by, any of those connected persons;
- (c) the provision of substantive advice in connection with the assumption or control of risk referred to in paragraph (b),

but does not include anything falling within the definition of financing and leasing business, intellectual property holding business, insurance business, or banking business;

“high risk IP company” is a company which carries on an intellectual property holding business and –

- (a) the company –
 - (i) did not create the intellectual property in an intellectual property asset which it holds for the purposes of its business,
 - (ii) acquired the intellectual property asset –
 - (A) from a connected person, or
 - (B) in consideration for funding research and development by another person situated in a country or territory other than Jersey; and
 - (iii) licences the intellectual property asset to one or more connected persons or otherwise generates income from the asset in consequence of activities (such as facilitating sale agreements) performed by foreign connected persons; or
- (b) the company does not carry out research and development, branding or distribution as part of its core income-generating activities;

“holding body” has the same meaning as in Article 2 of the [Companies \(Jersey\) Law 1991](#);

“holding company” means a resident company which –

- (a) is a holding body;
- (b) has as its primary function the acquisition and holding of shares or equitable interests in other companies; and
- (c) does not carry on any commercial activity;

“holding company business” means the business of being a holding company;

“income” in respect of an intellectual property asset includes –

- (a) royalties;
- (b) income from a franchise agreement; and
- (c) income from licensing the intangible asset;

“insurance business” means, in respect of a resident company, long-term business or general business within the meaning of Article 1 of the [Insurance Business \(Jersey\) Law 1996](#) which the resident company must be authorized to carry on by a category A permit or category B permit under that Law;

“intellectual property holding business” means the business of holding intellectual property assets;

“intellectual property asset” means any intellectual property right in intangible assets, including but not limited to copyright, patents, trade marks, brand, and technical know-how, from which identifiable income accrues to the business (such

income being separately identifiable from any income generated from any tangible asset in which the right subsists);

“Minister” means the Minister for Treasury and Resources;

“registrar of companies” or “registrar” has the same meaning as in Article 1 of the [Companies \(Jersey\) Law 1991](#);

“relevant activities” has the meaning given in Article 3;

“resident company” means a company regarded as resident in Jersey under Article 123 of the 1961 Law;

“ship” has the same meaning as in Article 1 of the [Shipping \(Jersey\) Law 2002](#) but does not include –

- (a) a fishing vessel (as defined by that Article);
- (b) a ship to the extent that it is used as a pleasure vessel (as defined by Article 169(6) of that Law); or
- (c) a small ship (within the meaning of Article 1 of that Law);

“shipping business” means any of the following activities involving the operation of a ship anywhere in the world other than solely between Jersey and Guernsey or within the territorial waters of Jersey –

- (a) the business of transporting, by sea, persons, animals, goods or mail;
- (b) the renting or chartering of ships for the purpose described in paragraph (a);
- (c) the sale of travel tickets or equivalent, and ancillary services connected with the operation of a ship;
- (d) the use, maintenance or rental of containers, including trailers and other vehicles or equipment for the transport of containers, used for the transport of anything by sea;
- (e) the management of the crew of a ship.

2 Meaning of “finance and leasing business”

- (1) In this Law “finance and leasing business” means the business of providing credit facilities of any kind for consideration.
- (2) For the purposes of paragraph (1) but without limiting the generality of that paragraph –
 - (a) consideration may include consideration by way of interest;
 - (b) 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 –
 - (i) the supply of goods by hire purchase,
 - (ii) leasing other than any lease granting an exclusive right to occupy land, or
 - (iii) conditional sale or credit sale.
- (3) Where an advance or credit repayable by a customer to a person is assigned to another person, that other person is deemed to be providing the credit facility for the purposes of paragraph (1).
- (4) Any activity falling within the definition of “banking business”, “fund management business” or “insurance business” is excluded from the definition in paragraph (1).

3 Meaning of relevant activities

- (1) In this Law “relevant activities” mean any of the following activities –
- (a) banking business;
 - (b) insurance business;
 - (c) fund management business;
 - (d) finance and leasing business;
 - (e) headquarters business;
 - (f) shipping business;
 - (g) holding company business;
 - (h) intellectual property holding business;
 - (i) distribution and service centre business.
- (2) For the purposes of paragraph (1)(a), banking business does not include banking business carried on by a company which the Jersey Financial Services Commission is satisfied is registered under the [Banking Business \(Jersey\) Law 1991](#) solely for business continuity and liable to pay a reduced annual fee accordingly under the Commission’s published fees under Article 15 of the [Financial Services Commission \(Jersey\) Law 1998](#).

4 Meaning of “core income-generating activities”²

In this Law “core income-generating activity” includes any of the following activities –

- (a) in respect of banking business –
 - (i) raising funds, managing risk including credit, currency and interest risk,
 - (ii) taking hedging positions,
 - (iii) providing loans, credit or other financial services to customers,
 - (iv) managing capital and preparing reports and returns to the Jersey Financial Services Commission or any body or entity with equivalent functions relating to the supervision or regulation of such business;
- (b) in respect of insurance business –
 - (i) predicting and calculating risk,
 - (ii) insuring or re-insuring against risk and providing insurance business services to clients;
- (c) in respect of fund management business –
 - (i) taking decisions on the holding and selling of investments,
 - (ii) calculating risk and reserves,
 - (iii) taking decisions on currency or interest fluctuations and hedging positions,
 - (iv) preparing reports and returns to investors and the Jersey Financial Services Commission or any body or entity with equivalent functions relating to the supervision or regulation of such business;
- (d) in respect of finance and leasing business –
 - (i) agreeing funding terms,
 - (ii) identifying and acquiring assets to be leased (in the case of leasing),
 - (iii) setting the terms and duration of any financing or leasing,

- (iv) monitoring and revising any agreements,
 - (v) managing any risks;
- (e) in respect of headquarters business –
 - (i) taking relevant management decisions,
 - (ii) incurring expenditures on behalf of group entities,
 - (iii) co-ordinating group activities;
- (f) in respect of shipping business –
 - (i) managing crew (including hiring, paying and overseeing crew members),
 - (ii) overhauling and maintaining ships,
 - (iii) overseeing and tracking deliveries,
 - (iv) determining what goods to order and when to deliver them, organising and overseeing voyages;
- (g) in respect of holding company business, all activities related to that business;
- (h) in respect of intellectual property holding business –
 - (i) taking strategic decisions and managing (as well as bearing) the principal risks related to development and subsequent exploitation of the intangible asset generating income,
 - (ii) taking the strategic decisions and managing (as well as bearing) the principal risks relating to acquisition by third parties and subsequent exploitation and protection of the intangible asset,
 - (iii) carrying on the underlying trading activities through which the intangible assets are exploited leading to the generation of revenue from third parties,
 - (iv) research and development, branding or distribution;
- (i) in respect of distribution and service centre business –
 - (i) transporting and storing goods, components and materials,
 - (ii) managing stocks,
 - (iii) taking orders,
 - (iv) providing consulting or other administrative services.

5 Requirement to meet economic substance test

- (1) Subject to paragraph (8), a resident company must satisfy the economic substance test in relation to any relevant activity carried on by it.
- (2) A resident company meets the economic substance test in relation to a relevant activity if –
 - (a) the company is directed and managed in Jersey in relation to that activity;
 - (b) having regard to the level of relevant activity carried on in Jersey –
 - (i) there are an adequate number of employees in relation to that activity who are physically present in Jersey (whether or not employed by the resident company or by another entity and whether on temporary or long-term contracts),
 - (ii) there is adequate expenditure incurred in Jersey, and
 - (iii) there are adequate physical assets in Jersey;

- (c) all of the company's core income-generating activities are carried out in Jersey; and
 - (d) if any core income-generating activities are carried out in Jersey for the company by another entity, the company is able to monitor and control the carrying out of that activity by the other entity.³
- (3) The test in paragraph (2)(a) is satisfied if –
 - (a) the company's board of directors meets in Jersey at an adequate frequency having regard to the amount of decision-making required at that level;
 - (b) at such board meetings described in sub-paragraph (a), there is a quorum of directors physically present in Jersey;
 - (c) the minutes of such board meetings described in sub-paragraph (a) record the making of strategic decisions of the company at the meeting;
 - (d) the directors of the company have the necessary knowledge and expertise to discharge the duties of the board; and
 - (e) the minutes of all board meetings and the records of the company are kept in Jersey.
- (4) The Comptroller may issue guidance on how the economic substance test may be met, including without prejudice to the generality of the foregoing, any expression used in this Article for the purpose of that test, including the meaning of "adequate".
- (5) Regard must be had to any guidance under paragraph (4) concerning the interpretation of any expression.
- (6) The Comptroller may revise guidance issued under paragraph (4) from time to time and a reference to guidance includes a reference to revised guidance.
- (7) Guidance issued under paragraph (4) must be published by the Comptroller in a manner which the Comptroller considers will bring it to the attention of those most likely to be affected by it.
- (8) A resident company is not required to meet the economic substance test if it has no gross income in relation to a relevant activity carried on by it.

6 Assessment of whether economic substance test is met

- (1) The Comptroller may determine that a resident company has not met the economic substance test during any financial period of the company starting on or after 1st January 2019, provided that such determination is made no later than 6 years after the end of the financial period to which the determination relates.
- (2) Paragraph (1) does not apply if the Comptroller is not able to make a determination within the 6 year period by reason of any deliberate misrepresentation or negligent or fraudulent action by the resident company or by any other person.
- (3) In relation to a high risk IP company, for the purposes of paragraph (1) the Comptroller must determine that the economic substance test is not met during a financial period unless the company provides sufficient information to satisfy the Comptroller that the test is met.

7 Requirement to provide information

- (1) A resident company must provide any information reasonably required by the Comptroller in order to assist the Comptroller in making a determination under Article 6.
- (2) The Comptroller may serve notice on any person requiring the person to provide, within the period specified in the notice and at such place as is specified in the notice, such documents and information as the Comptroller may reasonably require for the purpose of facilitating the Comptroller's exercise of functions under this Law.

8 Exchange of information to competent authorities

- (1) Subject to paragraph (2), if the Comptroller determines under Article 6 that a resident company has not met the economic substance test for a financial period, the Comptroller must provide the information provided under Article 7 relating to that company for that period to –
 - (a) the competent authority of the country or territory in which resides –
 - (i) a holding body,
 - (ii) the ultimate holding body of the resident company, and
 - (iii) an ultimate beneficial owner; and
 - (b) if the resident company is incorporated outside Jersey, the competent authority of the country or territory in which the resident company is incorporated.⁴
- (2) In respect of a high risk IP company, regardless of whether or not the Comptroller has made a determination under Article 6 in respect of it, the Comptroller must provide the information provided to the Comptroller under Article 7 in respect of that company for each financial period of the company starting on or after 1st January 2019 to –
 - (a) the competent authority of the country or territory in which resides –
 - (i) a holding body,
 - (ii) the ultimate holding body of the resident company, and
 - (iii) an ultimate beneficial owner; and
 - (b) if the high risk IP company is incorporated outside Jersey, the competent authority of the country or territory in which the company is incorporated.⁵
- (3) Nothing in this Article requires the Comptroller 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 Jersey and that country or territory; or
 - (b) the OECD and Council of Europe (2011), Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol.⁶

9 Penalties where the economic substance test is not met

- (1) If the Comptroller determines under Article 6 that a resident company has failed to meet the economic substance test for a financial period, the Comptroller must issue a notice to the company notifying it –
 - (a) that the Comptroller has determined that the resident company does not meet the economic substance test for that period;
 - (b) of the reasons for that determination;
 - (c) of the amount of penalty imposed on the company under paragraph (2);
 - (d) of the date from which the penalty under paragraph (2) is due, being not less than 28 days after the issue of the notice;
 - (e) of what action the Comptroller considers should be taken by the company to meet the economic substance test; and
 - (f) of the company's right of appeal under Article 12.
- (2) The amount of penalty referred to in paragraph (1)(c) is such amount as is determined by the Comptroller subject to a maximum penalty of £10,000.
- (3) If, for the financial period following a financial period in which a notice was issued under paragraph (1) ("further financial period"), the Comptroller determines the resident company has failed to meet the economic substance test, the Comptroller must issue a further notice to the resident company notifying it –
 - (a) that the Comptroller has determined that the resident company does not meet the economic substance test for the further financial period;
 - (b) of the reasons for the determination;
 - (c) of the amount of penalty imposed on the company under paragraph (4) (in addition to the penalty previously imposed under paragraph (1));
 - (d) of the date from which the penalty under paragraph (4) is due, being not less than 30 days after the issue of the notice;
 - (e) that the Comptroller may make a report to the Minister under paragraph (5);
 - (f) of what action the Comptroller considers should be taken by the company to meet the economic substance test; and
 - (g) of the company's right of appeal under Article 12.
- (4) The amount of penalty referred to in paragraph (3)(c) is such amount as is determined by the Comptroller subject to a maximum penalty of £100,000.
- (5) Following the issue of a notice under paragraph (3), the Comptroller may provide the Minister with a report of the matters referred to in that notice together with any additional information (whether or not provided to the Comptroller under Article 7).

10 Penalties for failure to provide information or for inaccurate information

- (1) A person is liable to a penalty not exceeding £3,000 if the person fails to provide information that the person is required to provide under Article 7.
- (2) A person is liable to a penalty not exceeding £3,000 if –
 - (a) in complying with a requirement under Article 7 the person provides inaccurate information; and
 - (b) condition A or B is met.

- (3) Condition A is that the person knows of the inaccuracy at the time the information is provided but does not inform the Comptroller at that time.
- (4) Condition B is that the person –
 - (a) discovers the inaccuracy after the information is provided to the Comptroller; and
 - (b) fails to take reasonable steps to inform the Comptroller.
- (5) Liability to a penalty under this Article does not arise if the person satisfies the Comptroller or, (on an appeal under Article 12), the Commission, that there is a reasonable excuse for the failure.
- (6) If a person had a reasonable excuse for a failure but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse has ceased.

11 Imposition of penalties for failure to provide information or for inaccurate information

- (1) If a person becomes liable to a penalty under Article 10 the Comptroller may determine the amount of penalty and impose it on the person.
- (2) If the Comptroller imposes a penalty, the Comptroller must notify the person –
 - (a) of the reasons for imposing the penalty;
 - (b) of the amount of penalty imposed on the person;
 - (c) the date from which the penalty is due, being not less than 28 days after the issue of the notice; and
 - (d) of the person's right of appeal under Article 12.
- (3) A penalty under this Article may only be imposed within the period of 6 years beginning with the date on which the person became liable to the penalty and, in the case of a person liable to a penalty under Article 10(2), within the period of 12 months beginning with the date on which the inaccuracy first came to the attention of the Comptroller.

12 Right of appeal against penalty

A person upon whom a penalty is imposed by the Comptroller may –

- (a) appeal against it on the ground that liability to that penalty does not arise; and
- (b) appeal against its amount.

13 Commission of Appeal and procedure on appeal against penalty

- (1) Notice of an appeal under Article 12 must be given to the Comptroller –
 - (a) in writing; and
 - (b) before the end of the period of 30 days beginning with the date on which notification to the person under Article 9 or 11 was given.
- (2) The notice under paragraph (1) must state the ground of appeal.
- (3) The Comptroller shall notify the Commission of an appeal under Article 12.

- (4) A Commission of Appeal shall be constituted for the purpose of hearing an appeal under Article 12 as it would be constituted from the Commissioners of Appeal appointed under Article 10(1) of the 1961 Law for the purpose of hearing appeals under the 1961 Law.
- (5) On an appeal under Article 12(a), the Commission may confirm or cancel the penalty.
- (6) On an appeal under Article 12(b), the Commission may –
 - (a) confirm the penalty; or
 - (b) substitute another amount for the penalty which the Comptroller would have power to impose.
- (7) Subject to this Article and Article 14, the provisions of Part 6 of the 1961 Law shall have effect in relation to appeals under Article 12 as they have effect in relation to an appeal against an assessment to income tax.

14 Enforcement of penalties

- (1) A penalty under this Law must be paid before the end of the period of 30 days beginning with the date mentioned in paragraph (2).
- (2) That date is the later of –
 - (a) the date from which the penalty is due under Article 9(1)(d), (3)(d) or 11(2)(c); or
 - (b) if notice of appeal under Article 12 is given, the date on which the appeal is finally determined or withdrawn.
- (3) A penalty under this Law may be enforced as if it were income tax charged in an assessment and due and payable.

15 Confidentiality

- (1) The Comptroller's power to disclose information under Article 8 has effect despite any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.
- (2) Disclosure of information under this Law does not breach –
 - (a) any obligation of confidentiality in relation to the information so disclosed; or
 - (b) any other restriction on the access to or disclosure of the information so accessed.

16 Power to enter business premises and examine business documents

- (1) An authorized person may examine and take copies of any business document that is located on business premises.
- (2) The power under paragraph (1) may be exercised only for the purpose of investigating any issue relating to compliance with any provision of this Law.
- (3) An authorized person may at any reasonable hour enter business premises for the purpose of exercising the power under paragraph (1).
- (4) An authorized person may by notice require any person to produce any specified business document at the business premises where the business document is

located for the purpose of enabling the authorized person to exercise the power under paragraph (1) in relation to that document.

17 Obstructing an authorized person

- (1) A person is guilty of an offence if, without reasonable excuse, the person –
 - (a) obstructs an authorized person in the exercise of the authorized person's powers under Article 16; or
 - (b) fails to provide such reasonable assistance as an authorized person may require when the authorized person is exercising his or her powers under Article 16.
- (2) A person who intentionally alters, suppresses or destroys any business document that has been specified in a notice under Article 7(2) is guilty of an offence.
- (3) A person who is guilty of an offence under paragraph (1) is liable to imprisonment for a term of 6 months and to a fine.
- (4) A person who is guilty of an offence under paragraph (2) is liable to imprisonment for a term of 2 years and to a fine.

18 Regulations and consequential amendments

- (1) The States may by Regulations amend –
 - (a) any of the definitions in Articles 1 to 4;
 - (b) Articles 9 to 14 (penalties).
- (2) Regulations under this Article may include such consequential, incidental, supplementary and savings provisions as the States think necessary or expedient, including provisions which amend any other enactment.

19 Citation

This Law may be cited as the Taxation (Companies – Economic Substance) (Jersey) Law 2019.

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement	◦Projet No (where applicable)
Taxation (Companies – Economic Substance) (Jersey) Law 2019	L.3/2019	1 January 2019	P.132/2018
Taxation (Companies – Economic Substance) (Amendment) (Jersey) Law 2019	L.15/2019	1 January 2019	P.44/2019

◦Projets available at www.statesassembly.gov.je

Table of Renumbered Provisions

Original	Current
19	spent, omitted
20	19

Table of Endnote References

¹ Article 1	<i>editorial change made to definition of “authorized person”, “17” deleted, “16” inserted instead, amended by L.15/2019</i>
² Article 4	<i>heading amended by L.15/2019, amended by L.15/2019</i>
³ Article 5(2)	<i>amended by L.15/2019</i>
⁴ Article 8(1)	<i>amended by L.15/2019</i>
⁵ Article 8(2)	<i>amended by L.15/2019</i>
⁶ Article 8(3)	<i>inserted by L.15/2019</i>