

# Substance Requirements

## Isle of Man



### Background

On 11 December 2018 Tynwald approved the Income Tax (Substance Requirements) Order 2018. This legislation introduces substance requirements for certain IOM companies and comes as a response to concerns raised by the EU about the lack of legal substance requirements for companies in the Isle of Man.

The IOM legislation provides details as to which companies are affected, how the substance requirements will be applied and the penalties for failure to comply. All Isle of Man companies will need to determine whether they are caught by the rules; where a company is caught by the rules, further analysis will need to be undertaken to determine whether it has sufficient substance in the Isle of Man.

The regime can be summarised in terms of a three stage process.

### Stage 1: Identify Isle of Man resident companies with income from “relevant sectors”

An Isle of Man company with income from one or more of the following sectors will be required to consider whether it has “adequate substance” in the Isle of Man. The “relevant sectors” are:



The legislation provides further detail in relation to each of the above sectors.

### Stage 2: Consider whether company in relevant sector has “adequate substance”

A relevant sector company will need to consider whether it has “adequate substance” in the Isle of Man. A relevant sector company (except for a pure equity holding company) will be considered to have adequate substance in the Isle of Man if the company:

- is directed and managed in the Island;
- has an adequate number of qualified employees, physical presence and expenditure proportionate to the level of activity carried on in the Island; and
- conducts core income-generating activity in the Island.

Further definitions are provided in the legislation in relation to each of these requirements. However, in particular, it is highlighted that companies with income from intellectual property are considered to be high risk for the purpose of this legislation; as such, the starting point is that there is a rebuttable presumption that the company does not have sufficient core income-generating activity in the Isle of Man to meet the adequate substance requirements.

### Stage 3: Enforcement of the substance requirements

In order to demonstrate meaningful enforcement of any substance requirements, there is a formal hierarchy of sanctions for non-compliant companies with increasing severity of sanctions imposed for persistent non-compliance. The legislation states that:

- penalties for non-compliance could be as high as £100,000 for a particular year and, ultimately, the company could be struck off; and
- certain information may be exchanged by the Assessor with other competent authorities in the EU.

### Other comments:

It is important to note that other jurisdictions including Bermuda, Cayman Islands, BVI and the Channel Islands are introducing similar rules in respect of substance requirements; the rules will need to be considered for each jurisdiction separately.



# How can KPMG Isle of Man assist you?



Members of the tax leadership team across the Crown Dependencies have been working closely with the relevant authorities in the development of the law and guidance. As such, KPMG are in an ideal position to assist with your requirements.



### Impact analysis

Identify the extent to which the law may impact your business.



### Diagnostic reviews

Gap analysis and advice on the requirements for your business to ensure compliance with the law.



### Training sessions

Tailored training sessions for your staff.



### Implementation review

Assistance with the implementation of the law and review/assistance in completing tax returns.

## Our services can be customised



### Scalable services

We take a pragmatic and tailored approach to providing a comprehensive range of services that meet your requirements.



### Meeting your evolving needs

KPMG has developed a set of methodologies to assist with delivering and testing all requirements of the substance legislation.



### Multi-jurisdictional

We use our KPMG network to source the correct team who are experts with the required experience to service your specific needs.

## KPMG Contacts



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