

RELOCATION RELOCATION JERSEY

by Joel Taylor

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There is a developing trend in global regulation and policy towards businesses needing to be able to demonstrate a real presence in the jurisdictions in which they operate. In this changing environment, fund and asset managers are reconsidering where they and their funds base themselves.

Jersey has always been an attractive option. It is an innovative jurisdiction with a highly skilled workforce, high quality infrastructure, a commitment to excellence and a well-deserved reputation as a centre of 'substance'. It is this focus on substance in particular which has allowed Jersey to differentiate itself from other fund centres. Now there have been two developments which have highlighted the importance of considering management substance and given Jersey the opportunity to strengthen its appeal when structuring decisions are being made.

In July 2015, the European Securities and Markets Authority (**ESMA**) gave its recommendation that Jersey have access in due course to an EU-wide passport for the marketing of alternative investment funds in the EU under the Alternative Investment Fund Managers Directive (**AIFMD**). The implementation of AIFMD created a legal framework across the EU to monitor and supervise alternative investment fund managers and one of the key criteria under AIFMD is the question of management substance.

Jersey had introduced legislation and regulations to mirror the EU requirements but built-in extra flexibility with an 'opt-in regime'. Managers wishing to comply fully with AIFMD may elect to do so (and benefit from an EU marketing passport when that is made available) but those managers wishing to market their funds outside of the EU may do so without needing to be subject to AIFMD controls.

The early endorsement of Jersey by ESMA (one of the first given) and the flexibility of Jersey's opt-in regime have given managers the confidence to choose Jersey knowing that it will retain long term suitability.

The other recent development is the introduction of the G20-OECD Base Erosion and Profit Shifting (**BEPS**) action plan. BEPS refers to tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to locations where there is little or no economic activity. The BEPS action plan consists of 15 key actions or areas but a common theme is the intention to realign taxation and relevant substance. One action point in particular looks to impose a stricter interpretation of 'permanent establishment', which would encourage businesses to have a real presence in the jurisdictions in which they are structured.

Therefore, although BEPS is not targeted at fund and asset managers, there is growing acceptance that its implementation will affect both managers and their funds.

Jersey, with its emphasis on substance, is well placed to play a significant role. There has already been a steady increase in recent years in the number of managers establishing or increasing their presence in Jersey including a growing number of senior personnel choosing to reside in Jersey.

BEPS is but the latest tax initiative and reflects a continued global push to enhance tax transparency. We have already seen the introduction of other measures including the US Foreign Account Tax Compliance Act (**FATCA**), UK FATCA and the 'global FATCA', the Common Reporting Standard (**CRS**). CRS, which came into force in January 2016, is becoming the global standard for the automatic exchange of financial account information with over 40 countries signed up as early adopters (including Jersey) and over 70 countries pledging to introduce this by 2017.

Recent developments have shown a growing trend of increased scrutiny of businesses. This has placed the question of substance at the forefront and businesses will need to demonstrate that genuine activity takes place in the jurisdictions in which they operate. Jersey has the experience and expertise to fully support that endeavour. Fund and asset managers reconsidering where they and their funds base themselves must add Jersey to their shortlist as a prime location.

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