

British Virgin Islands Economic Substance Requirements for Legal Entities – Overview

On 28 December 2018, the British Virgin Islands published The Economic Substance (Companies and Limited Partnerships) Act, 2018 which came into effect on 1 January 2019 and was further amended on 30 January 2019 (the "Economic Substance Act").

The Economic Substance Act was supplemented by the issuance of the draft International Tax Authority Economic Substance Code that was issued on 22 April 2019 (the "Guidance").

The Economic Substance Act is responsive to global OECD Base Erosion and Profit Shifting ("BEPS") standards regarding geographically mobile activities. Requirements of this type are rapidly being implemented on a level playing field basis by all OECD-compliant 'no or only nominal tax' jurisdictions.

Global standards in this field continue to develop. Accordingly, it is to be expected that the Economic Substance Act and the body of the related Guidance will also evolve. The Economic Substance Act envisages that further regulations can be issued from time to time to prescribe and amend certain matters in the Economic Substance Act. Certain important practical aspects of the economic substance requirements are likely to be further clarified by additional guidance in due course.

Those who establish British Virgin Islands structures do not generally do so to engage in BEPS activity; they do so because the British Virgin Islands is an efficient, stable and trusted neutral hub with key expertise in handling complex transactions.

Accordingly, the British Virgin Islands' financial services industry and its clients should be able to

take these requirements in their stride given the nature of the transactions structured in the British Virgin Islands and the global standards that are already applicable in the British Virgin Islands.

Executive Summary

The Economic Substance Act introduces certain reporting and economic substance requirements for 'legal entities' conducting 'relevant activities'.

Legal entities will be required to report certain information on their activities on an annual basis via their British Virgin Islands registered agent, with the timing for submission of such reports to be prescribed under regulations to be issued that will regulate these and certain other matters under the Economic Substance Act ("Regulations").

For a legal entity formed on or after 1 January 2019 that will conduct 'relevant activities', the economic substance requirements will apply from the date that the legal entity commences the relevant activity. For legal entities conducting relevant activities that were in existence before 1 January 2019, the economic substance requirements will apply no later than 30 June 2019.

What is a Legal Entity?

The definition of 'legal entity' is set out in the Economic Substance Act and means a company (as defined under the Economic Substance Act) and a limited partnership (as defined under the Economic Substance Act).

It expressly recognises that the following are **not** within the classification of a 'legal entity':

- (a) an entity that is 'tax resident' outside of the British Virgin Islands;¹
- (b) limited partnerships without legal personality.

Entities without separate legal personality (such as certain forms of partnership or trust) are not within the classification of a legal entity.

An initial step will be to determine whether an entity may fall within the classification of a 'legal entity' (and, if so, to then determine if it is conducting or if it intends to conduct a 'relevant activity'). Your usual Maples Group contact will be able to assist you in making these determinations.

What is a Relevant Activity?

The Economic Substance Act applies economic substance requirements to the following categories of geographically mobile relevant activities previously identified by the OECD (and adopted by the EU):

- [Banking](#);
- [Insurance](#);
- [Shipping](#);
- [Fund management](#);
- [Financing and leasing](#);
- [Headquarters](#);
- [Distribution and service centres](#);
- [Holding company](#); and
- [Intellectual property](#).

Please click on any of the relevant activities listed above to view the particular activity- specific client update.

Where a 'legal entity' conducts a 'relevant activity', the economic substance test will apply.

Where a 'legal entity' conducts more than one 'relevant activity', the economic substance test

¹Other criteria may apply as certain jurisdictions in which entities may be 'tax resident' may not be acceptable for the EU's or OECD's assessment processes.

will need to be satisfied in respect of each relevant activity conducted.

For details on what it means to be subject to the economic substance requirements of the Economic Substance Act, as well as for information on the potential consequences of breaching these requirements, please contact your usual Maples Group team member.

Implementing a Global Standard

The Economic Substance Act has had significant OECD, EU and industry input and reflects both:

- the British Virgin Islands' ongoing adherence to global standards as one of the 129 member countries committed to the OECD's BEPS Inclusive Framework²; and
- commitments made by the British Virgin Islands to the EU as part of the EU's listing process³.

How will Entities be affected?

The extent to which an entity is affected will depend upon a number of factors including the tax residence status, entity type, the type of business the particular entity is engaged in and the way in which it operates.

However, an initial step will be to determine whether an entity may fall within the classification of a 'legal entity' and, if so, to determine if it is conducting or if it intends to conduct a 'relevant activity'.

If you have any specific questions in relation to particular entities, industries and / or structures, please speak to your usual Maples Group contact who will be able to guide you as this area of

² A full list of the 129 countries that are currently members of the BEPS Inclusive Framework can be found at: <https://www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf>

³ The EU listing process has seen, as of 31 May 2018, a total of 142 commitments taken at a high political level by 67 jurisdictions across the relevant EU criteria (1.1, 1.2, 1.3, 2.1, 2.2 and 3.1)

British Virgin Islands law continues to evolve; inevitably much will depend upon the specific entity, industry, specific structure and specific transaction(s) involved.

British Virgin Islands

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