

## British Virgin Islands Economic Substance Requirements – 'Relevant Activity' of 'Shipping Business'

For general background on The Economic Substance (Companies and Limited Partnerships) Act, 2018 (the "Economic Substance Act"), the related draft International Tax Authority Economic Substance Code that was issued on 22 April 2019 (the "Guidance") and for the meaning of 'legal entity', please click [here](#).

This update assumes that an entity has already been determined to be a 'legal entity' under the Economic Substance Act and that the 'legal entity' is now considering whether it is carrying on one of the nine categories of geographically mobile 'relevant activities' - in particular, under the 'shipping business' category.

### What is 'Shipping Business'?

'Shipping business' is defined under Section 2 of the Economic Substance Act to mean 'any of the following activities involving the operation of a ship anywhere in the world other than solely within British Virgin Islands waters (as defined in section 2(2)(a) of the Merchant Shipping Act, 2001):

- (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; and
- (e) the management of the crew of a ship.

The term "ship" is defined under Section 2(1) of the Merchant Shipping Act, 2001 to mean 'every description of vessel used in navigation' but does not include a fishing vessel, a pleasure vessel or a small ship (less than twenty-four metres in length) (in each case, as defined by Section 2(1) of the Merchant Shipping Act, 2001).

### Economic Substance Test

If a 'legal entity' only carries on a 'relevant activity' that is a 'shipping business', it will be subject to the economic substance test set out in the Economic Substance Act. The economic substance test can be satisfied in relation to that 'shipping business' if the 'legal entity' ensures that:

- (a) the 'shipping business' is directed and managed in the British Virgin Islands; having regard to the nature and scale of the 'shipping business':

- (b) there are an adequate number of suitably qualified employees in relation to that activity who are physically present in the British Virgin Islands (whether or not employed by the relevant legal entity or by another entity and whether on temporary or long term contracts);
  - (i) there is adequate expenditure incurred in the British Virgin Islands;
  - (ii) there are physical offices or premises as may be appropriate for the core income-generating activities (as described below in the context of 'shipping business');
  - (iii) the legal entity conducts core income-generating activity in the British Virgin Islands as described below in the context of 'shipping business':
- (c) in the case of income-generating activity carried out for the relevant legal entity by another entity:
  - (i) no core income generating activity is carried on outside the British Virgin Islands;
  - (ii) only that part of the activities of that other entity which are solely attributable to generating income for the relevant legal entity and not for any other legal entity shall be taken into account when considering if the relevant legal entity meets the economic substance requirements;
  - (iii) the relevant legal entity is able to monitor and control the carrying out of that activity by the other entity.

### **British Virgin Islands Core Income Generating Activities**

The relevant British Virgin Islands core income generating activities in the context of 'shipping business' include:

- (a) managing the crew (including hiring, paying and overseeing crew members);
- (b) hauling and maintaining ships;
- (c) overseeing and tracking deliveries;
- (d) determining what goods to order and when to deliver them; and
- (e) organising and overseeing voyages.

### **The Guidance on 'Shipping Business'**

The Guidance contains some additional sector specific provisions in respect of 'shipping business'. It provides that each of the activities has to "involve the operation of a ship" if it is to constitute a relevant activity. However, the ship does not have to be operated by the same entity as the entity carrying out the activities listed at (a) to (e) (in the section above).

The Guidance further provides that the International Tax Authority will always consider whether activities which may appear to fall within the letter of paragraphs (a) to (e) (in the section above) do in fact constitute a shipping business, or whether they are merely incidental activities to what is properly regarded as a different sort of business. The content of the core income

generating activities for a shipping business (see below) is of particular relevance here.

For example, an entity which carries on the business of a general travel agent will not be treated as carrying on a shipping business merely because, amongst other things, it sells tickets for passenger cruises.

By way of another example, an entity which manufactures goods for export will not be treated as carrying on a shipping business merely because it arranges for those goods to be dispatched by sea, in containers or otherwise.

## **What to do if a Legal Entity is Carrying on the 'Relevant Activity' of 'Shipping Business'**

It is worth noting that there are a range of consequences for breaches of the Economic Substance Act (including financial penalties and potential striking-off).

If you have any specific questions in relation to a 'legal entity' conducting 'shipping business' or this update, please speak to your usual Maples Group contact or:

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