

Cayman Islands Economic Substance Requirements – Relevant Activity of Headquarters Business

For general background on The International Tax Co-operation (Economic Substance) Law (2020 Revision) (as amended by relevant regulations, the "Economic Substance Law"), the related Guidance on Economic Substance for Geographically Mobile Activities (the "Guidance") and for the meaning of 'relevant entity', please refer to our main update.¹

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

What is headquarters business?

Headquarters business in the Economic Substance Law is defined to mean "*the business of providing any of the following services to an entity in the same Group*²: –

- (a) *the provision of senior management;*
- (b) *the assumption or control of material risk for activities carried out by any of those entities in the same Group; or*

- (c) *the provision of substantive advice in connection with the assumption or control of risk referred to in paragraph (b),*

but does not include banking business, financing and leasing business, fund management business, intellectual property business, holding company business or insurance business."

Economic Substance Test

If a relevant entity carries on the relevant activity of headquarters business, it will be subject to the economic substance test set out in the Economic Substance Law (unless it has no relevant income in respect of that relevant activity, in which case only notification and reporting obligations will apply). The economic substance test can be satisfied in relation to that headquarters business if the relevant entity:

- (a) conducts Cayman Islands core income generating activities
- (b) is directed and managed in an appropriate manner in the Cayman Islands

¹ <https://maples.com/Knowledge-Centre/Industry-Updates/2020/09/Cayman-Islands-Update-Economic-Substance-Guidance-Notes-v3-Issued>

² "Group" is defined as "a collection of enterprises related through ownership or control such that it is either required to

prepare Consolidated Financial Statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange."

- (c) has adequate operating expenditure, physical presence and personnel in the Cayman Islands

Cayman Islands Core Income Generating Activities

The relevant Cayman Islands core income generating activities in the context of headquarters business include:

- (a) taking relevant management decisions
- (b) incurring expenditures on behalf of Group entities
- (c) co-ordinating Group activities

The Guidance on Headquarters Business

The Guidance on headquarters business makes it clear that whether an entity carries on headquarters business is not determined by its position in the group structure but rather by reference to the services that it provides to other companies in the group.

The Guidance also makes it clear that activities which may fall within the definition of headquarters business will only result in an relevant entity actually conducting headquarters business if they are conducted as distinct and separate business activity – that is, relevant entities may provide services that fall within the definition of headquarters business in the course of certain another relevant activities³. To prevent duplicate reporting, relevant entities conducting those relevant activities will not also be regarded as conducting headquarters business.

What to Do if a Relevant Entity is Carrying On the Relevant Activity of Headquarters Business

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

If you have any specific questions in relation to a relevant entity conducting headquarters business or this update, please reach out to your usual Maples Group contact or:

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³ Specifically, banking, financing and leasing, fund management, intellectual property, holding company and insurance businesses