

Cayman Islands Economic Substance Requirements – Relevant Activity of Shipping 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 shipping business category.

What is shipping business?

Shipping business in the Economic Substance Law means "*any of the following activities involving the operation of a ship anywhere in the world other than in the territorial waters of the Islands or between the Islands:*

- (a) *the business of transporting, by sea, passengers or animals, goods or mail for a charge;*

- (b) *the renting or chartering of ships for the purpose described in paragraph (a);*
- (c) *the sale of travel tickets and ancillary ticket related 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; or*
- (e) *the functioning as a private seafarer recruitment and placement service,*

but does not include a holding company business or the owning, operating or chartering of a pleasure yacht."

The term 'pleasure yacht' is defined by reference to the Merchant Shipping Law (2016 Revision), with the consequence that the ownership, operation or chartering of yachts, whether used privately or chartered, does not fall within the definition of shipping business and as such, the owners or operators of same are not required to meet the economic substance test.

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

Economic Substance Test

If a relevant entity carries on the relevant activity of shipping 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 shipping 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
- (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 shipping business include:

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

The Guidance on Shipping Business

The Guidance contains sector-specific guidance in relation to shipping business which acknowledges that:

- (a) The employment of seafarers by a company, or other ownership structure owned, directly or indirectly, by a ship-owner solely to crew vessels owned by the ship-owner or by an entity within the ship-owner's group of companies or a related entity does not constitute functioning as a private seafarer recruitment and placement service on the basis that it is facilitating the employment of crew for the related ship owner's group and not for third party ship owner.
- (b) A company which undertakes any of the activities referred to above where the company does not also operate a ship, or ships, in international traffic is not carrying on shipping business for the purposes of the ES Law because the company which charters the ship, i.e. the lessor, is not operating the ship.
- (c) certain activities relating to the CIGA of "determining what goods to order and when to deliver them, organising and overseeing voyages" (including negotiating contracts for delivery of goods, managing shipping schedules and organising and overseeing voyages) can be carried out by an agent, manager or the master of the ship.

What to Do if a Relevant 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 Law (including financial penalties and potential striking-off).

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

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