

Cayman Islands Economic Substance Requirements – 'Relevant Activity' of 'Banking Business'

For general background on The International Tax Co-operation (Economic Substance) Law, 2018 (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 click [here](#).

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 'banking business' category.

What is 'banking business'?

'Banking business' in the Economic Substance Law has the meaning given in the Banks and Trust Companies Law (2018 Revision) (the "Banking Law"), namely 'the business of receiving (other than from a bank or trust company) and holding on current, savings, deposit or other similar account money which is repayable by cheque or order and may be invested by way of advances to customers or otherwise.'

Economic Substance Test

If a 'relevant entity' carries on the 'relevant activity' of 'banking 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 'banking 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; and
- (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 'banking business' are broader than simple deposit taking and include:

- (a) raising funds, managing risk including credit, currency and interest risk;
- (b) taking hedging positions;
- (c) providing loans, credit or other financial services to customers; and
- (d) managing capital and preparing reports or returns, or both, to investors or the Cayman Islands Monetary Authority, or both.

Guidance on 'Banking Business'

At present, there is no specific section on 'banking business' in the Guidance. The Guidance provides that:

'Given the stringent regulatory requirements in the Cayman Islands, which result in significant overlap with

the substance requirements, it is expected that relevant entities licensed to carry on banking business...will already generally be operating in the Islands with adequate resources and expenditure. However, those relevant entities will still be subject to the [Economic Substance] Law (i.e. filing requirements, Cayman Islands CIGA performed in the Islands, and monitoring by the Authority).'

Since the last sentence qualifies the first, there is some doubt as to the practical application of this provision.

What to do if a 'Relevant Entity' is Carrying on the 'Relevant Activity' of 'Banking 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). Although we expect that Cayman Islands deposit taking institutions or foreign deposit taking institutions registered in the Cayman Islands are likely to be regulated under Cayman Islands banking laws, it is possible that an entity may be carrying on deposit taking

activities exclusively outside of the Cayman Islands and therefore not have a Cayman Islands banking licence. In that case any 'relevant entity' carrying out 'banking business', albeit not in the Cayman Islands, should nonetheless consider the application to it of the Economic Substance Law.

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

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