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BRITISH VIRGIN ISLANDS ECONOMIC SUBSTANCE REQUIREMENTS - UPDATE

Further to our April Issue of TechNews on **“British Virgin Islands – Economic Substance Test”**, the British Virgin Islands (“BVI”) International Tax Authority (“ITA”) issued a draft Economic Substance Code on 23 April 2019 (“Draft Code”). Education sessions were conducted by the ITA in the BVI, and for private sectors in Hong Kong and London.

The Draft Code sets out the effects of the Economic Substance (Companies and Limited Partnerships) Act 2018 (as amended) (“ESA”) and provides guidance for legal entities which may be subject to economic substance requirements to assist with compliance under the ESA.

Although the Draft Code has not been finalized, the ITA has indicated in the Draft Code that it will take a pragmatic and commercially realistic approach to the interpretation of the ESA. While we await finalisation of the Draft Code, it is worth highlighting the important points from the Draft Code in this TechNews.

Relevant activities

A legal entity will be treated as carrying on a relevant activity in the BVI during any financial period in which it receives income from that relevant activity.

Different Economic Substance Requirements

If economic substance requirements apply to a legal entity, different economic substance requirements apply depending on whether the legal entity is carrying on all or any of the following relevant activities:

Relevant Activities	Substance Requirements
<ul style="list-style-type: none">• Banking business• Insurance business• Fund management business• Finance and leasing business• Headquarters business• Shipping business• Distribution and service centre business	<ul style="list-style-type: none">• Direction and management in the BVI• Adequate expenditure and employees and appropriate premises in the BVI; and• Core Income Generating Activities carried on in the BVI
Holding business	Less rigorous than the above (please see below further details)
Intellectual property business	More rigorous than the above

Pure equity holding entities

“Holding business” means the business of being a “pure equity holding entities” under the ESA.

A legal entity will only fall within the definition of a “holding business” if it holds nothing but equity participations, yielding dividends or capital gains. Legal entities which own other forms of investment (irrespective of whether or not it hold equity participations) will fall outside of the definition of “holding business” as a relevant activity by virtue of not being pure equity holding entities. The Draft Code specifies that the definition of pure equity holding company is deliberately framed in narrow terms.

Reporting Timeline

Economic substance is assessed by reference to financial periods and the date from which a legal entity is obliged to comply with the economic substance requirements depends upon when the entity was incorporated or formed.

Date of Incorporation	Substance Requirements	Deemed Financial Period
Before 1 January 2019	To be complied as from 30 June 2019	One year commencing on a date no later than 30 June 2019
On or after 1 January 2019	To be complied as from date of incorporation	Not more than one year from date of incorporation

Legal entities may elect the commencement date for its financial period provided that notice is given to ITA beforehand.

Reporting Requirements

All BVI entities will be required to make necessary reporting by submitting information to the BOSS system through its registered agent within 6 months after the end of each financial period. Further details on the mechanism of the reporting requirements will be provided in due course.

Next steps

Relevant legal entities which are potentially within the scope should immediately assess if they are engaged in the relevant activities and implement steps to ensure compliance with the ESA, including:

- ▶ Identifying the economic substance requirements of the relevant activity that needs to be satisfied; and
- ▶ Identify and collect information and evidence to facilitate the reporting requirements.

Legal entities that are not prepared to meet the substance requirements may:

- ▶ Discontinue or modify the activity so it no longer falls within the scope;
- ▶ Demonstrate a tax residence in a jurisdiction outside the BVI;
- ▶ Consider changing the business structure; or
- ▶ Liquidate the entities.

Please contact our Tricor executives who are ready and available to assist your legal entities to determine if a legal entity has to comply with the ESA, how to meet the compliance requirements under the ESA, and/or corporate actions required to be taken to comply with the ESA requirements.

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