

Alert

British Virgin Islands - Economic Substance - Update

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We refer to our [alert from June 2019](#) for guidance on the requirements of the Economic Substance (Companies and Limited Partnerships) Act, 2018 (the ES Act) and the definitions of Legal Entity, Relevant Activity and Financial Period.

On 10 October 2019 the British Virgin Islands International Tax Authority (the ITA) published the Rules on Economic Substance in the British Virgin Islands (the Rules). The Rules provided much welcomed clarification on the economic substance requirements, and are very similar to the draft guidelines published in August 2019.

We have prepared a compendium containing the updated ES Act, the Beneficial Ownership Secure Search System Act, and the Rules. It is available to you at the following link:

<https://www.conyers.com/news-insights/consolidated-acts/bvi-economic-substance-boss-acts/>

Commencing in 2020, all companies and limited partnerships with legal personality will need to make a filing to evidence satisfaction with economic substance requirements or to state that the entity is out of scope. The purpose of this alert is to provide preliminary details about the filings which will need to be made in 2020.

As well, it must be emphasised that all British Virgin Islands business companies and limited partnerships with legal personality which are Legal Entities carrying on a Relevant Activity are required to have established economic substance in the British Virgin Islands as of 30 June 2019.

Timing for Filings

For entities incorporated or formed prior to 1 January 2019, the first filing period starts on 30 June 2020 with the deadline for filing being 30 December 2020. We anticipate sending a further notice to these entities in July 2020 to begin the filing process. For entities incorporated or formed on or after 1 January 2019, the filing period starts on the anniversary of the date of incorporation with the deadline for filing being six months later. As a result, we anticipate sending notices to such entities commencing in January 2020. These notices will set out the exact filing process, but this alert provides an indication of the filing requirements.

Anticipated Filing Requirements

Out of Scope: For those business companies and limited partnerships with legal personalities which did not carry on any Relevant Activity at any time during their Financial Period, then we anticipate the filing requirement being a simple “tick the box” indicating that the entity is out of scope.

However and importantly, the ITA has indicated that they will carry out spot audits and that entities which determine that they are out of scope should evidence their careful consideration of the issue during the filing period. For business companies, this would be a resolution of the directors setting out the business of the company and setting out the directors’ analysis as to why the company is out of scope. The general partner should similarly consider and evidence the analysis for a limited partnership with legal personality. To the extent the analysis is not self-evident, the ITA has also recommended that the entity obtain a legal opinion. The ITA has indicated that they will have more tolerance for an entity which has considered the issue and genuinely got it wrong, than for an entity which did not consider the issue. As such, it is highly recommended that this evidence of analysis be prepared and kept on file. We are happy to assist with legal advice or a legal opinion, if helpful, as well as documenting the determination made by the directors or general partner.

Tax Resident Elsewhere: Companies and limited partnerships with legal personality which are carrying on a Relevant Activity but which are tax resident in another jurisdiction (which is not on the EU blacklist) can claim in their annual filing that they are not a Legal Entity (as defined). The entity will then need to support this claim by filing:

- (a) a letter or certificate from, or issued by, the competent authority for the jurisdiction in question stating that the entity is considered to be resident for tax purposes in that jurisdiction, or

- (b) an assessment to tax on the entity, a confirmation of self-assessment to tax, a tax demand, evidence of payment of tax, or any other document, issued by the competent authority for the jurisdiction in question.

It will also be necessary to provide certain information on the parent of the entity, being name, company number and jurisdiction, if the entity has a parent and where “parent” refers to holding 75% or more of the shares or voting rights of the entity.

For those entities where one piece of evidence (such as an assessment) does not cover the entire Financial Period as defined in the ES Act, then it will be necessary to provide more than one piece of evidence such that the evidence spans the entire Financial Period.

When an entity is unable to provide evidence as indicated above, for example because it has not as of yet received an assessment for tax, then it may apply to be treated provisionally as resident in the other jurisdiction pending the availability of the evidence. In this instance, it will be necessary to demonstrate amongst other requirements that the evidence while not currently available will be forthcoming and provide the reason why it is not available (such as the entity being recently formed or recently assuming tax residency).

Holding Business: For those companies and limited partnerships with legal personality which are in scope of the economic substance requirements because they are carrying on a passive holding business, and are not tax resident in another jurisdiction, we anticipate the filing requirements being as follows:

- the total number of employees engaged in the relevant activity
- the number of employees engaged in the relevant activity within the British Virgin Islands
- the address of any premises within the British Virgin Islands which is used in connection with the holding business and the address of each such premises

The Rules indicate that the services of the registered agent will be taken into account when assessing economic substance for entities carrying on passive holding business. We note that most of our clients have us acting as registered agent and secretary. While at this point in time we cannot be certain, assuming the company has no other officers or employees, we anticipate this will be sufficient for most entities carrying on only passive holding business. We also anticipate that the registered office address will be sufficient for these purposes.

Other Relevant Activity: For those companies and limited partnerships with legal personality which are in scope of economic substance requirements because they are carrying on a Relevant Activity, other than passive holding business, and not tax resident in another jurisdiction, then these entities are required to have already established economic substance

in the British Virgin Islands as of 30 June 2019. These entities will need to provide the following information:

- the total turnover generated by the relevant activity
- the total amount of expenditure incurred on the relevant activity
- the amount of expenditure incurred on the relevant activity within the British Virgin Islands
- the total number of employees engaged in the relevant activity
- the number of employees engaged in the relevant activity within the British Virgin Islands
- the address of any premises within the British Virgin Islands which is used in connection with the relevant activity and the address of each such premises
- the names of the persons responsible for the direction and management of the relevant activity, together with their relationship to the company and whether they are resident in the British Virgin Islands

There is no requirement to file any documentation to evidence the responses, but the entity should be prepared to provide evidence if the ITA requests it following their review of the filing. It should also be noted that the responses should evidence that the Relevant Activity is in fact being carried on in the British Virgin Islands, for example by having an adequate number of employees in the British Virgin Islands.

For those entities carrying on intellectual property business, there are additional filing requirements. Please contact us for further information.

Conclusion

As indicated above, this bulletin is merely a preliminary indication as to your future filing requirements. Shortly after the end of each Conyers Corporate Services client's Financial Period we will be sending out notices to start the filing process formally.

In the interim, if you have any questions, please contact one of our lawyers listed below or your usual Conyers lawyer or manager. We recommend that all clients seek legal advice on how the economic substance requirements affect them. **To the extent your entity is a Legal Entity carrying on a Relevant Activity, other than passive holding business, and has not otherwise established economic substance in the British Virgin Islands, we recommend that you urgently contact your usual Conyers contact for legal advice.**

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For further information please contact: media@conyers.com