

Alert

Bermuda Issues Final Economic Substance Guidance Notes for Shipping Sector

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On 7 July 2020, Bermuda’s Minister of Finance issued the final Revised Guidance Notes in relation to the Economic Substance Act 2018 (the “Act”). The Revised Guidance Notes provide sector-specific guidance for a number of relevant activities within scope of the Act. The sector-specific guidance for the shipping sector is as follows:

An entity will be carrying on the Relevant Activity of “shipping” if it engages in any of the following activities involving the operation of a ship anywhere in the world other than in the territorial waters of Bermuda:

- a. transporting, by sea, passengers or animals, goods or mail for a charge;
- b. renting or chartering of ships for the purpose described in paragraph (a);
- c. 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. functioning as a private seafarer recruitment and placement service.

The above listed activities will constitute the Relevant Activity of “shipping” only if carried on by an entity in conjunction with the operation of a ship. Where any of the above activities are carried on by an entity but do not involve the operation of a ship, the entity will not be carrying on shipping. For example, a crew management company that does not itself operate ships will not be carrying on shipping. Similarly, a travel agent selling passenger tickets, but which does not itself operate a ship will also not be carrying on shipping.

Where a ship is chartered, the question of whether the ship owner or the entity chartering the ship (or both) is carrying on shipping (and the shipping Core Income Generating Activities (CIGA) being carried on by either of them) may be determined by the terms of the relevant charter party.

Example: A shipowner (“ShipCo”) charters the ship that it owns to another entity (“CharterCo”) on a bareboat basis. CharterCo operates the ship in its international cargo transport business. ShipCo will generally not be carrying on shipping, because it does not operate the ship¹. CharterCo is operating the ship and will be carrying on shipping because it is transporting goods for a charge in connection with its operation of the ship.

Shipping CIGA

The CIGA related to shipping include:

- a. **managing the crew (including hiring, paying and overseeing crew members);**
includes compliance with the Maritime Labour Convention, 2006
- b. **hauling and maintaining ships;**
involves lifting ships from the water for maintenance, and includes procuring and/or overseeing the hauling or maintenance of ships
- c. **overseeing and tracking deliveries;**

¹ A bareboat charter may constitute the Relevant Activity of “financing and leasing” if, for example, the terms of the bareboat charter constitute a finance lease.

includes the logistical aspects of the transportation of cargo, including tracking package and cargo deliveries as part of the business activities of the ship

- d. **determining what goods to order and when to deliver them;**
includes determining how a ship is to be utilized, the types of cargo acceptable and the scheduling of voyages for the delivery of such cargos, and ensuring contingency arrangements are in place
- e. **organizing and overseeing voyages;**
includes the logistical aspects of the operation of ships, determining which routes to use and when, and making adequate contingency arrangements.

Tonnage Tax

Where an entity carrying on shipping as a Relevant Activity submits evidence to the Registrar that it is liable to a tonnage tax regime in a jurisdiction outside of Bermuda in respect of its shipping activity, the Registrar may regard that Entity as being a Non-resident Entity.

How can we help?

Should you have any questions in relation to the final Revised Guidance Notes for Shipping, please reach out to your usual Conyers contact or one of those listed below.

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