

British Virgin Islands ("BVI") Update to the Economic Substance Rules

Introduction

The Economic Substance (Companies and Limited Partnerships) Act, as amended (the "ESA"), requires BVI legal entities which engage in relevant activities to maintain economic substance in the BVI. Our 'Overview of the British Virgin Islands Economic Substance Requirements' can be found [here](#): The British Virgin Islands International Tax Authority ("ITA") is the designated competent authority with power to make rules under the ESA on how these economic substance requirements may be met. The ITA issued such rules (the "ES Rules") on 9 October 2019, and these were updated on 10 February 2020. The ITA further updated the ES Rules on 24 February 2023, and this most recent update provides additional guidance on the application of the ESA, and addresses the amendments made to the ESA following the Economic Substance (Companies and Limited Partnerships) (Amendment) Act, 2021.

Changes to the ES Rules

The most recent update to the ES Rules makes the following amendments to the previous version:

- No income does not necessarily mean no relevant activity – the ES Rules now clarify that, other than with regards to holding business and intellectual property business, not receiving income does not necessarily mean the entity is not conducting a relevant activity (although see 'finance and leasing business' below with regards to that relevant activity). However, the ES Rules confirm that a legal entity which carries on a relevant activity, but which has no gross income from such activity in a specific financial period, will not be expected to meet the economic substance requirements even though it will still be required to satisfy its notification and reporting requirements.
- Investment funds conducting relevant activity – the ES Rules clarify that although an investment fund may qualify as a "legal entity", the business of an investment fund is not regarded as a relevant activity. Any activities that a legal entity conducts in the course of being an investment fund will not be treated as a relevant activity. For a legal entity that is an investment fund to be found to be conducting a relevant activity, it will need to be shown that the investment fund is conducting a relevant activity as a separate and distinct business activity in its own right.
- ES Rules apply to limited partnerships with no legal personality – following amendments to the ESA to extend the definition of legal entity to cover limited partnerships with no legal personality, the ES Rules have been amended and modified to provide guidance on how the ES Rules apply to such legal entities.

- Tax residency overseas – the ES Rules provide further practical guidance on the circumstances in which a legal entity may be tax resident in a jurisdiction other than the BVI and what will be accepted by the ITA as evidence of tax residency overseas.
- Finance and leasing business – the ES Rules clarify that consideration must be received in order for a legal entity to be conducting finance and leasing business.
- Operation of yachts is not shipping business – the ES Rules confirm that the ownership, operation and chartering of yachts will not be considered shipping business by the ITA.
- Winding up – the ES Rules clarify that if a legal entity is in liquidation or is being wound up, it must continue to comply with any applicable economic substance requirements for any financial period during which it carries on relevant activities.
- These changes mainly reflect the most recent amendments to the ESA, and are consistent with industry standards and how economic substance has been implemented in other jurisdictions. As a result, the updates may not affect the existing economic substance compliance procedures that have already been implemented by most legal entities. However, the ES Rules do provide helpful practical guidance and confirmation of the approach taken by the ITA when assessing a legal entity's compliance with the ESA.

If you need advice regarding how the ESA or the ES Rules might apply to your BVI entity, please get in touch with your usual Walkers contact or alternatively contact the authors on the next page.

Contacts

Walkers has a dedicated Regulatory & Risk Advisory Practice Group that can offer legal advice and guidance in connection with all aspects of the economic substance regime as it continues to evolve. Walkers is also committed to providing economic substance solutions that will enable all clients impacted by the regime to satisfy the necessary requirements for substance in the British Virgin Islands.

For further information please speak with your usual contact at Walkers or the any of the following persons:

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