

BRIEFING

Economic substance laws – multi-jurisdiction comparison

In response to European Union requirements, many offshore jurisdictions have enacted legislation requiring certain tax resident entities to demonstrate sufficient economic substance in the relevant jurisdiction. The table below gives a high-level overview and comparison of the economic substance laws adopted in the BVI, Cayman Islands, Guernsey and Jersey.

	BVI	Cayman Islands	Guernsey	Jersey
Primary legislation	Economic Substance (Companies and Limited Partnerships) Act, 2018	International Tax Co-operation (Economic Substance) Law, 2018	Income Tax (Substance Requirements) (Implementation) Regulations, 2018, as amended	Taxation (Companies – Economic Substance) (Jersey) Law 2019
Guidance notes	Rules on Economic Substance in the Virgin Islands published by the BVI International Tax Authority on 9 October 2019	Published by the Cayman Tax Information Authority on 17 September 2019	Joint guidance for Crown Dependencies published on: <ul style="list-style-type: none"> • 20 December 2018; and • 22 November 2019 	
Entities in scope	<p>Entities which conduct any Relevant Activity which are:</p> <ul style="list-style-type: none"> • companies incorporated in the BVI or foreign companies registered under the BVI Business Companies Act, 2004; or • limited partnerships formed in the BVI or foreign limited partnerships registered under the Limited Partnership Act, 2017 <p>Excluded: Entities which are 'non-resident'</p> <p>Entities which are fund vehicles should be exempt if they do not conduct a Relevant Activity</p>	<p>Entities which conduct any Relevant Activity which are:</p> <ul style="list-style-type: none"> • companies incorporated under the Companies Law (2018 Revision) or registered as a limited liability company under the Limited Liability Companies Law (2018 Revision); • limited liability partnerships registered under the Limited Liability Partnership Law 2017; or • companies incorporated outside the Cayman Islands and registered under the Companies Law <p>Excluded: 'Domestic companies', investment funds and entities which are tax resident outside the Cayman Islands</p>	<p>Companies (whether incorporated under Guernsey company law or otherwise) which:</p> <ul style="list-style-type: none"> • are tax resident in Guernsey; and • receive income from a Relevant Activity whether on their own account or as a partner or member of a partnership <p>Certain exempt companies may also be in scope (although not collective investment vehicles unless they conduct a Relevant Activity)</p>	<p>Companies (whether incorporated under Jersey company law or otherwise) which:</p> <ul style="list-style-type: none"> • are tax resident in Jersey; • conduct any Relevant Activity; and • receive gross income from a Relevant Activity <p>Companies which are fund vehicles should be exempt if they do not conduct a Relevant Activity</p>

	BVI	Cayman Islands	Guernsey	Jersey
Relevant activities	<ul style="list-style-type: none"> • Banking • Insurance • Fund Management • Finance and Leasing • Shipping • Headquarters Activities • Distribution and Service Centre Activities • (Pure equity) holding company/entity • Intellectual property asset holding company 			
Substance requirements	<p>Subject to minor differences between the jurisdictions and certain expectations (notably (pure equity) holding entities – see below), entities which are in-scope must, in respect of each Relevant Activity which they carry on:</p> <ul style="list-style-type: none"> • be directed and managed in the relevant jurisdiction; • conduct their 'core income-generating activities' in the jurisdiction; and • have adequate employees, expenditure and physical assets/presence in the jurisdiction <p>Each of the jurisdictions permit outsourcing of core income-generating activities to third parties, provided that the core income-generating activities are undertaken in the relevant jurisdiction and are subject to adequate ongoing supervision</p>			
Substance requirements for (pure equity) holding entities	<ul style="list-style-type: none"> • Compliance with company/LP law as applicable; and • adequate employees and premises for holding equity participants and, where the entity manages those equity participants, adequate employees and premises for carrying out that management 	<ul style="list-style-type: none"> • Compliance with all applicable filing requirements under the Companies Law; and • adequate human resources and adequate premises in the Cayman Islands for holding and managing equity participations in other entities 	<ul style="list-style-type: none"> • Compliance with Guernsey company law; and • adequate level of people and physical presence in Guernsey in order to hold and manage the shares 	<ul style="list-style-type: none"> • Directed and managed in Jersey; and • adequate employees, expenditure and physical assets in Jersey
Special regime applicable to 'high risk IP entities'	<ul style="list-style-type: none"> • Rebuttable presumption that economic substance requirements have not been met; and • mandatory disclosure of information to tax authorities in jurisdiction(s) where entity's holding company/beneficial owner(s) are located 			
Reporting	Requirement to report to BVI International Tax Authority via Beneficial Ownership Secure Search System in respect of each financial period	Requirement to make annual reports to Cayman Tax Information Authority	Prescribed information evidencing compliance to be included in annual tax returns	

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Penalties for failure to meet substance test	<ul style="list-style-type: none"> • Minimum fine of \$5,000, up to \$20,000 after 1st offence (or \$50,000 if high risk IP entity) • Minimum fine of \$10,000, up to \$200,000 if breach not rectified by deadline specified in notice of 1st breach (or \$400,000 if high risk IP entity) • Potential striking off • Mandatory disclosure of information to tax authorities in jurisdiction(s) where entity's holding company/beneficial owner(s) are located 	<ul style="list-style-type: none"> • Fine of up to KY\$10,000 after 1st year offence • Fine of up to KY\$100,000 and potential striking off after 2nd year offence • Mandatory disclosure of information to tax authorities in jurisdiction(s) where entity's holding company/beneficial owner(s) are located 	<ul style="list-style-type: none"> • Fine of up to £10,000 and potential striking off after 1st year offence • Fine of up to £50,000 and potential striking off after 3rd year offence • Fine of up to £100,000 and potential striking off after 4th year offence • Mandatory disclosure of information to tax authorities in jurisdiction(s) where entity's holding company/beneficial owner(s) are located 	<ul style="list-style-type: none"> • Fine of up to £10,000 after 1st year offence • Fine of up to £100,000 and potential striking off after 2nd year offence • Mandatory disclosure of information to tax authorities in jurisdiction(s) where entity's holding company/beneficial owner(s) are located

How can Bedell Cristin assist you?

Our teams can assist you with the economic substance laws of the BVI, Cayman Islands, Jersey and Guernsey and provide guidance on the steps necessary to ensure compliance with the rules. If you would like any more information or assistance with the impact of the substance rules on your business, please contact one of our team and we will be happy to discuss this with you.