

British Virgin Islands

The information in this article has been superseded by a government update. See the updated article here: <https://marburys.com/economic-substance-requirements-in-the-bvi>

Economic Substance Legislation in the British Virgin Islands

The Economic Substance Act

As part of its long standing commitment to tax transparency, the British Virgin Islands (BVI) has passed legislation prescribing economic substance criteria and reporting requirements for certain tax resident entities. This comes after the BVI and others were included in a list of countries whose tax policies and economic substance standards caused some concern for the EU Code of Conduct Group. For information on similar legislation enacted by Bermuda and the Cayman Islands, see our Updaters of 21 December 2018.

The Economic Substance (Companies and Limited Partnerships) Act, 2018 (the **Act**) came into force on 1 January 2019 and requires British Virgin Islands companies and limited partnerships that are tax resident and carrying out '**relevant activities**' (as defined below) to show economic substance. The new legislation applies to existing and new BVI entities.

Classification of a resident 'legal entity'

Legal entities are defined as being BVI companies and limited partnerships, and foreign companies and foreign limited partnerships registered in the BVI under the BVI Business Companies Act, 2004 or the Limited Partnerships Act, 2017.

The Act applies to legal entities conducting **relevant activities**, other than non-resident companies, non-resident limited partnerships and limited partnerships which have elected not to have a legal personality.

Companies and limited partnerships resident for tax purposes in a jurisdiction outside of the BVI are classed as 'non-resident', except for those claiming tax residency in jurisdictions included on the EU list of non-cooperative jurisdictions.

BVI Economic Substance Act

Relevant activities

A legal entity is subject to the economic substance requirements if it conducts any of the following **relevant activities**:

- Banking business
- Distribution and service centre business
- Finance and leasing business
- Fund management business
- Headquarters business
- Holding company business
- Insurance business
- Intellectual property holding business
- Shipping business

Each of the above activities is defined in the Act and we expect that additional guidelines will be issued to assist in determining if a particular entity is carrying on a relevant activity and to clarify the subsequent requirements of the Economic Substance Test.

The Economic Substance Test

In order to have economic substance in the BVI a resident legal entity that falls under the Act, with the exception of a pure equity holding entity (see below), must be able to demonstrate that:

- (a) the relevant activity undertaken is directed and managed in the BVI
- (b) the core income generating activities are carried out in the BVI
- (c) taking into account the level of income generated from that relevant activity carried out in or from within the BVI, it has
 - (i) an adequate number of full-time employees / personnel with appropriate qualifications in the BVI
 - (ii) adequate physical assets or physical presence in the BVI (including maintaining a place of business)
 - (iii) adequate operating expenditure incurred in or from within the BVI.

Core income generating activities

Core income generating activities are defined as activities that are being carried out in the BVI and are of central importance to the legal entity in terms of generating income. Depending on the relevant activity, core income generating activities will differ. Marbury advises that each resident legal entity carefully decipher which of its activities constitute as the core income generating ones.

BVI Economic Substance Act

Outsourcing of core income generating activities

The Substance Test above is satisfied in relation to a relevant activity if the legal entity outsources its BVI core income generating activities, in relation to that relevant activity, to a third-party within the jurisdiction. The legal entity must, however, be able to prove that it is able to monitor and control the BVI core income generating activities being carried out.

Holding entities

The economic substance test for pure holding entities is lower than that applicable to other in-scope legal entities. Where the holding entity carries out no relevant activity other than holding equity in other entities and earning dividends and capital gains, it has adequate substance if it

- (a) complies with its statutory obligations under the BVI Business Companies Act, 2004 or the Limited Partnership Act, 2017 (whichever is relevant)
- (b) has adequate employees and premises for holding equitable interests or shares and, where it manages those equitable interests or shares, has adequate employees and premises for carrying out that management.

Reporting obligations and mechanism

All legal entities will be required to provide information to enable the International Tax Authority in the BVI to monitor whether the entity is conducting **relevant activities**, and if so, in accordance with the economic substance requirements. The information will be integrated into the BVI's existing Beneficial Ownership Secure Search (BOSS) system which prescribes registered agents in the BVI to maintain up-to-date information on beneficial ownership which can be searchable by competent authorities. The Act now requires legal entities to also submit information in relation to any **relevant activities** and their tax residency status.

Existing legal entities that fall in scope of the Act are required to comply with the economic substance requirements by 30 June 2019 and to meet the BOSS reporting obligations by 30 June 2020. New legal entities formed on or after 1 January 2019 are required to comply with the new economic substance requirements immediately and to meet the BOSS reporting obligations within one year of formation.

Achieving compliance

Marbury would advise that all companies and limited partnerships undergo a review in order to determine whether they are or wish to be deemed as relevant legal entities, and if so, whether they conduct **relevant activities**. From there, relevant entities are advised to take the necessary steps to ensure compliance. We expect further guidelines will be provided and will keep our clients updated.

For further information on any aspect of this guide please contact your usual Marbury adviser.

Disclaimer

This guide provides an overview of economic substance in the British Virgin Islands and should not be read as legal advice. For more information, please contact Marbury.