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## **FREQUENTLY ASKED QUESTIONS**

### **General**

#### **1. What is economic substance?**

The EU adopted a resolution on a Code of Conduct for business taxation, the aim of which was counteracting the effects of zero tax and preferential tax regimes around the world including Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, Isle of Man and Jersey. Entities which seek to take advantage of another jurisdiction's zero or low tax regime, while carrying on their business substantially in another jurisdiction will be required to:

- a) ensure that the substance of the relevant activity is carried on within that jurisdiction, or
- b) discontinue the activity, or modify it so it no longer falls within the scope of a relevant activity, or
- c) demonstrate a tax residence in a jurisdiction outside the BVI.

#### **2. Does Economic Substance apply to my entity?**

In order to determine whether an entity is obliged to comply with the economic substance legislation, the following questions need to be addressed:

- a) is the entity of a type which falls within the economic substance legislation?
- b) if it is, is it carrying on a relevant activity?
- c) if it is carrying on a relevant activity, is it resident for tax purposes in a jurisdiction outside the BVI (and which is not on the EU list of non-cooperative jurisdictions for tax purposes).

Only if the answers to a) and b) are affirmative and the answer to c) is negative will the economic substance requirements apply to the entity.

#### **3. How is economic substance assessed?**

Economic substance will be assessed over a period of time, called a financial period. See paragraph 26 under Reporting for more information.

An entity which does not receive income during a financial period will still be required to complete an Economic Substance Return if it conducts a relevant activity.

#### **4. How does a BVI entity show substance?**

There are three aspects to showing economic substance:

- a) direction and management in the BVI;
- b) adequate expenditure and employees and appropriate premises in the BVI; and
- c) core income generating activities carried on in the BVI.

**5. What are ‘relevant activities’ and ‘core income generating activities’?**

Please see Schedule 1 for a list of the relevant activities and core income generating activities.

**6. How do I demonstrate that my company’s relevant activity is directed and managed in the BVI?**

For the relevant activity to be directed and managed from the BVI there must be an adequate number of board meetings held in the BVI, having regard to the nature of the relevant activity, and its importance in the overall business of the legal entity. For a board meeting to be held in the BVI there must be a quorum of directors physically present in the BVI. The directors of the legal entity attending such meetings must include among their number adequate expertise to direct the relevant activity. Decisions of the Board regarding the relevant activity must be minuted, and minutes of those decisions must be kept in the BVI.

**7. PBVI provides Director services to my entity. Is that sufficient to show my company’s relevant activity is directed and managed in the BVI?**

It should be noted that what is required is that the relevant activity is directed and managed in the BVI, not the legal entity which carries on the relevant activity. Where the legal entity’s only business is the relevant activity or activities in question, then that will mean that the entity itself must be directed and managed from the BVI.

See also question 5 above.

**8. What will be the general approach to the construction and application to the legislation?**

A pragmatic and commercially realistic application of the criteria such as the “adequacy” of expenditure and employment, the “suitability” of employee qualifications and the “appropriateness” of premises will be applied and will take in to account the usual way in which businesses carrying on the relevant activity on a commercial basis are structured and operate.

**Relevant Activities**

**9. My company conducts more than one relevant activity. Do the economic substance requirements apply to all the relevant activities?**

Yes. It is possible for an entity to carry on more than one relevant activity at a time. In that situation the economic substance requirements must be satisfied in relation to each economic activity carried on.

**10. Is an Investment Fund subject to Economic Substance requirements?**

No, an investment fund is not a relevant activity. It is outside the scope of the economic substance requirements in the same way as all other forms of business activity which are not specifically mentioned. Of course, if a legal entity carries on other activities besides being an investment fund, and those activities do constitute a relevant activity, the economic substance requirements will have to be fulfilled in respect of those other activities.

#### **11. Is Fund Management a relevant activity?**

Yes, fund management business means the conduct of an activity that requires the entity to hold an investment business license pursuant to the Securities and Investment Business Act, 2010 (see Schedule 1).

#### **12. If my entity lends money to a third party, will it be considered to be conducting Finance Business within the meaning of a Finance and Leasing Business?**

Finance and leasing business means the business of providing credit facilities of any kind for consideration. For example, if interest is charged.

An entity which provides credit as an incidental part of a different sort of business, for example, supplying goods on credit will not be treated as carrying on a finance and leasing business. Only where the provision of credit can be seen to be a business activity in its own right will the entity be treated as if its business or part of its business is a finance and leasing business. Entities which hold debt or debt instruments for the purpose of investment will not be regarded as being in the business of providing credit facilities.

### **Tax Residence**

#### **13. Where is my company tax resident?**

By virtue of the ES law and by incorporation, a BVI entity is automatically tax resident in the BVI. However, a BVI entity may be tax resident outside of the BVI subject to provision of the following evidence:

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

An entity whose only sources of income from relevant activities are subject to tax in a jurisdiction outside the BVI will be regarded as resident for tax purposes in that jurisdiction.

#### **14. If my company is not tax resident in the BVI do I still need to comply with Economic Substance?**

No, an entity that carries on a relevant activity during a reporting period will not need to meet the economic substance requirements during that reporting period if it is resident for tax purposes in a jurisdiction outside the BVI which is not on the EU taxation “blacklist” for the entirety of that reporting period.

#### **15. How is tax residence determined if my company is transparent for tax purposes?**

A “transparent entity” means an entity in respect of which the entire profits and gains are treated under the law of another jurisdiction as attributable to and taxable on some or all of the participators or partners in the entity in question. In the case of a transparent entity, tax residence in another jurisdiction must be demonstrated by reference to each of the participators or partners on whom the entity’s profits are taxable.

## Holding Companies

### **16. What is 'holding business'?**

"Holding business" means the business of being a pure equity holding entity.

A "pure equity holding entity" means a legal entity that only holds equity participations in other entities and only earns dividends and capital gains.

### **17. My company only holds shares. Does it conduct 'holding business'?**

Yes, but only if it falls within the definition in 16 above and ONLY holds equity participations.

### **18. My company holds shares and other financial instruments such as an interest-bearing bond. Does it conduct 'holding business'?**

No. The ownership of any other form of investment (such as an interest-bearing bond) will take the legal entity outside the definition of 'holding business'. Entities which own other forms of asset (eg bonds, government securities, legal or beneficial interests in real property) will not be pure equity holding entities (even if they also own equity participations) and will not be treated as carrying on holding business.

### **19. My company holds shares in a subsidiary and a non interest-bearing loan to the subsidiary. Does it fall within the definition of a holding company of the BVI ES Law?**

No. A legal entity will only fall within the definition of a "pure equity holding entity" if it holds nothing but equity participations. Please note that it may still be subject to the BVI ES Law if it carries on other relevant activities.

### **20. I have a company which falls within the definition of a Holding Company. I understand that there are reduced requirements for Holding Companies in meeting the economic substance requirements. What are they?**

A pure equity holding entity, which carries on no relevant activity other than holding equity participations in other entities and earning only dividends and capital gains, 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, in the Virgin Islands, adequate employees and premises for holding equity participations and, where it manages those equity participations, has, in the Virgin Islands, adequate employees and premises for carrying out that management. A Holding Company should determine if the holding of the investment is entirely passive in nature or if such investment requires active management. If the holding of the investment is passive in nature, the retention of PBVI as the Registered Agent to perform the minimal services may be sufficient to demonstrate substance. However, if the holding requires active management the entity should have adequate and suitably qualified employees, and appropriate premises, in the BVI to carry out this function

**21. I have a company which falls within the definition of a Holding Company which requires active management. Can I outsource the conduct of the company's activities?**

Yes. There is no restriction on the extent to which a pure equity holding entity may outsource its activity. Where the activity is outsourced, the extent of the outsourcing will be taken into account in assessing the adequacy of the employees in the BVI, but only if the outsourcing is itself to a person operating in the BVI.

**22. I have a company which falls within the definition of a Holding Company. Must the company be directed or managed in the BVI?**

No. For a pure equity holding entity there is no requirement that the entity is directed or managed in the BVI.

**Reporting**

**23. Who will be the BVI Competent Authority for monitoring and enforcing Economic Substance?**

The International Tax Authority ("ITA") is the BVI's Competent Authority.

**24. What information needs to be reported to the ITA?**

- a) Portcullis already holds some of the required information on record. However, we will require the following information:
  - a) Confirmation of the entity's business activity or activities;
  - b) The entity's tax residence; and
  - c) If the entity is part of a group, the jurisdiction where the parent entity was formed.
  
- b) By way of self-reporting, an entity which carries on a relevant activity, and which is not a non-resident company or a non-resident limited partnership, in relation to each such activity which it carries on during a financial period, and in respect of that period:
  - a) the total turnover generated by the relevant activity;
  - b) the amount of expenditure incurred on the relevant activity within the Virgin Islands;
  - c) the total number of employees engaged in the relevant activity;
  - d) the number of employees engaged in the relevant activity within the Virgin Islands;
  - e) the address of any premises within the Virgin Islands which is used in connection with the relevant activity and the address of each such premises;
  - f) the nature of any equipment located within the Virgin Islands which is used in connection with the relevant activity; and
  - g) 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 Virgin Islands.

For entities conducting intellectual property business, additional information will be required. We recommend these entities contact the Legal Practitioner for further guidance.

**25. How is the information reported and whose obligation is it to make sure that the required information is provided to the ITA?**

Information required for reporting is gathered in two ways:

- c) First, by way of information-gathering and self-reporting under the BOSS Act; and
- d) Secondly, pursuant to specific information requests from the ITA

It is understood that self-reporting will be completed by the entity via an online platform. It is the entity's obligation to ensure it provides the ITA with the prescribed information within 6 months from the end of its financial period.

Further information on this process will be provided as soon as it becomes available.

**26. What is a Financial Period?**

In the case of an entity incorporated or formed on or after 1 January 2019, the entity shall notify the ITA within one year from the date of incorporation or formation of its financial period and thereafter each successive period of one year running from the end of that period.

In any other case, there is some flexibility as to when the first financial period begins, providing that it must have begun no later than 30 June 2019 and thereafter each successive period of one year running from the end of that period.

**27. My company was incorporated on or after 1 January 2019, I want to align my financial period to the calendar year 31 December 2019, can my first reporting period be shorter than one year?**

Yes, an entity can have a shorter financial period provided that notice is given to the ITA. The notice must be given within three months of the date of incorporation or, if later, within three months following 30 June 2019. The entity may not elect to terminate its first financial period on a date prior to the date of the notice.

**28. My company was incorporated prior 1 January 2019, I want to align my financial period to my accounting period, can my first reporting period be shorter than one year?**

Yes, an entity can have a shorter financial period provided that notice is given to the ITA. The notice must be given on or before 31 December 2019. The entity may not elect to terminate its first financial period on a date prior to the date of the notice.

**29. Can a financial period be altered or changed?**

Yes, notice to the ITA will be required. However, any alteration cannot have the effect of extending the length of the financial period beyond 12 months.

**30. When should reporting be done?**

Reporting must be completed within 6 months of the end of the financial period. For example,

Date of Incorporation/Formation	Financial Period Start	Reporting Deadline
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Prior to 1 January 2019	30 June 2019	31 December 2020
On or after 1 January 2019	Date of Incorporation/Formation	Within 6 months of end of Financial Period

Entities may request to have their Financial Period changed by way of written notice to the ITA.

## **Outsourcing**

### **31. Can I outsource my relevant activity?**

*Banking, insurance, and fund management business* – An entity conducting a regulated activity under licence from the FSC must comply with any relevant restrictions on outsourcing imposed by that licence, in addition to observing the economic substance requirements in respect of outsourcing.

*Holding business* – There are no restrictions on the extent to which a pure equity holding entity may outsource its activity. Where activity is outsourced, the extent of the outsourcing will be taken into account in assessing the adequacy of the employees in the BVI, but only if the outsourcing is itself to a person operating in the BVI.

If the holding of an investment is passive in nature, the retention of PBVI as the Registered Agent to perform the minimal services may be sufficient to demonstrate substance and be considered as outsourcing.

*All other relevant activities* – see (32) below.

### **32. Can I outsource my core income generating activity?**

Entities are permitted to outsource core income-generating activity (CIGA) to a third party, providing that the following conditions are satisfied:

- a) no part of the entity's CIGA may be outsourced outside the BVI;
- b) only the part of the activity that generates income for the entity may be taken into consideration, when considering the extent of the outsourcing;
- c) the entity is able to monitor and control the carrying out of the activity done on its behalf by the third party.

### **33. Does outsourcing count towards substance?**

Yes, where an entity outsources part of its relevant activity, and that work meets the following requirements for outsourcing:

- a) the expenditure on the outsourcing will be taken into account when assessing the entity's expenditure in the BVI; and
- b) the extent of the work done under the outsourcing arrangement will be taken into account when assessing the adequacy of the number of the entity's employees, and the suitability of their qualifications.

### **34. How do I report that my entity is outsourcing all or part of its activity or core income generating activity?**

Information on the third party will be required as part of the entity's annual reporting to the ITA.



## **Enforcement**

### **35. Under what circumstances can my entity be penalised?**

An entity can be penalised:

- a) where there has been a failure to provide information, or information provided is inaccurate; and
- b) where there has been a failure to comply with economic substance requirements.

### **36. What enforcement action will the ITA take if the entity fails to meet the economic substance requirements?**

There will be a three stage process:

- c) On a first determination of non-compliance, the ITA will issue a notice, explaining the reasons for the determination, the amount of the penalty and the date from which the penalty is due and the action which the ITA considers should be taken by the entity and the date by which such action needs to be taken. It will also notify the entity of its right of appeal. The applicable penalty at this stage is a minimum of USD\$5,000 up to a maximum of US\$50,000 in case of high risk IP legal entity and US\$20,000 in all other cases.
- d) If the entity fails to take the action demanded of it in the first determination the ITA will issue a second determination which will contain a note that ITA may make a report to the Financial Services Commission. The applicable penalty at this stage is a minimum of USD\$10,000 up to a maximum of US\$400,000 in case of high risk IP legal entity and US\$200,000 in all other cases.
- e) Following the issue of a notice on a second determination of non-compliance, the ITA may, if it considers it appropriate to do so having regard to all the circumstances of the case, request that the legal entity be struck off the register.

If the ITA feels that there is no possibility of the entity meeting the economic substance requirements, it may bypass the three stage process and strike the company off.

The penalties set out are not exhaustive. A director of a company which has breached the economic substance requirements may also be the subject of disqualification proceedings.

### **37. Is there a right of Appeal?**

There is a right of appeal but any appeal must be filed within 30 days of the date of the notice of non-compliance.

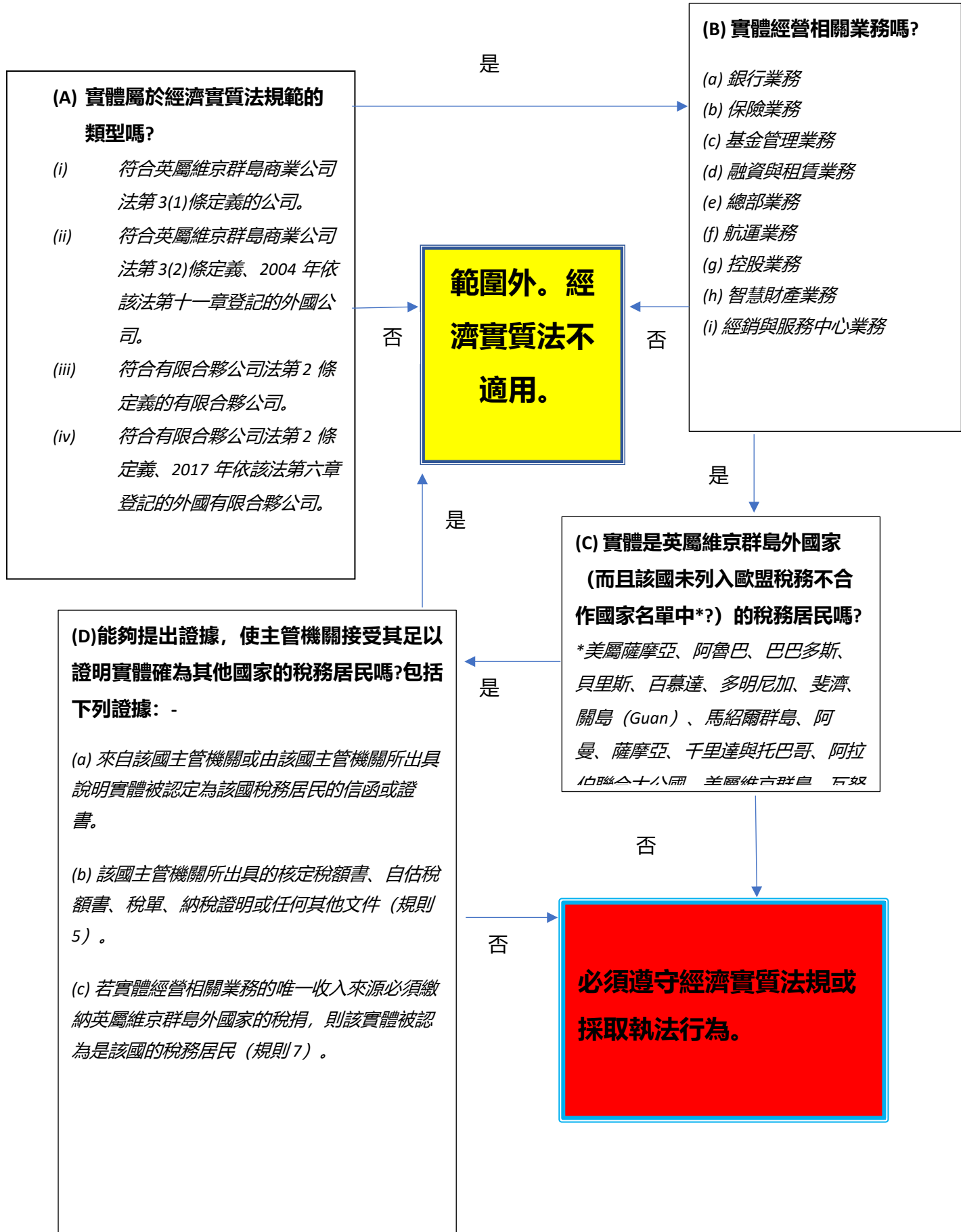
Where notice of appeal has been lodged, the time for complying with the requirements specified in the notice of non-compliance only starts to run from the date on which the appeal is finally determined or withdrawn.

## SCHEDULE 1

Each of the above activities is further defined in the Act, and it is expected that guidance will be issued to assist in determining if a particular entity is carrying on a relevant activity.

<b>Relevant Activities</b>	<b>Core Income Generating Activities</b>
<p>banking business;</p> <p>has the meaning specified in section 2(1) of the Banks and Trust Companies Act, 1990</p>	<ul style="list-style-type: none"> <li>- raising funds, managing risk including credit, currency and interest risk;</li> <li>- taking hedging positions;</li> <li>- providing loans, credit or other financial services to customers;</li> <li>- managing regulatory capital;</li> <li>- preparing regulatory reports and returns;</li> </ul>
<p>insurance business;</p> <p>has the meaning specified in section 3(1) of the Insurance Act, 2008;</p>	<ul style="list-style-type: none"> <li>- predicting and calculating risk;</li> <li>- insuring or re-insuring against risk;</li> <li>- providing insurance business services to clients;</li> </ul>
<p>fund management business;</p> <p>means the conduct of an activity that requires the legal entity to hold an investment business license pursuant to section 4 and category 3 of Schedule 3 of the Securities and Investment Business Act, 2010; which includes the following sub-categories:</p> <p>Investment Management Sub-category A: managing Segregated Portfolios (Excluding Mutual Funds); Sub-category B: Managing Mutual Funds; Sub-category C: Managing Pension Schemes; Sub-category D: Managing Insurance Products; Sub-category E: Managing Other Types of Investment</p>	<ul style="list-style-type: none"> <li>- taking decisions on the holding and selling of investments;</li> <li>- calculating risks and reserves;</li> <li>- taking decisions on currency or interest fluctuations and hedging positions;</li> <li>- preparing relevant regulatory or other reports for government authorities and investors;</li> </ul>
<p>finance and leasing business;</p> <p>means the business of providing credit facilities of any kind for consideration.</p>	<ul style="list-style-type: none"> <li>- agreeing funding terms;</li> <li>- identifying and acquiring assets to be leased (in the case of leasing);</li> <li>- setting the terms and duration of any financing or leasing;</li> <li>- monitoring and revising any agreements;</li> <li>- managing any risks;</li> </ul>
<p>headquarters business;</p> <p>means the business of providing any of the following services to an entity in the same Group:</p> <p>(a) the provision of senior management;</p> <p>(b) the assumption or control of material risk for activities carried out by any of those entities in the same Group; or</p> <p>(c) the provision of substantive advice in connection with the assumption or control of risk referred to in paragraph</p>	<ul style="list-style-type: none"> <li>- taking relevant management decisions;</li> <li>- incurring expenditures on behalf of affiliates;</li> <li>- co-ordinating group activities;</li> </ul>
<p>shipping business;</p> <p>means any of the following activities involving the operation of a ship anywhere in the world other than solely within Virgin Islands waters (as defined in section 2(2)(a) of the Merchant Shipping Act, 2001)</p>	<ul style="list-style-type: none"> <li>- managing the crew (including hiring, paying and overseeing crewmembers);</li> <li>- hauling and maintaining ships;</li> <li>- overseeing and tracking deliveries;</li> <li>- determining what goods to order and when to deliver them;</li> </ul>

	<ul style="list-style-type: none"> <li>- organising and overseeing voyages;</li> </ul>
<p>holding business;</p> <p>means the business of being a pure equity holding entity</p>	<ul style="list-style-type: none"> <li>- carries on no relevant activity other than holding equity participations in other entities and earning dividends and capital gains</li> </ul>
<p>intellectual property business;</p> <p>means the business of holding intellectual property assets - means any intellectual property right in intangible assets, including but not limited to copyright, patents, trade marks, brand, and technical know-how, from which identifiable income accrues to the business (such income being separately identifiable from any income generated from any tangible asset in which the right subsists);</p> <p>A High Risk IP legal entity –</p>	<ul style="list-style-type: none"> <li>- where the business concerns intellectual property assets such as patents, research and development;</li> <li>- where the business concerns non-trade intangible assets such as brand, trademark and customer data, marketing, branding and distribution.</li> </ul>
<p>distribution and service centre business.</p> <p>means the business of either or both of the following:</p> <p>a) purchasing from foreign affiliates</p> <ul style="list-style-type: none"> <li>i. component parts or materials for goods; or</li> <li>ii. goods ready for sale; and</li> <li>iii. reselling such component parts, materials or goods;</li> </ul> <p>b) providing services to foreign affiliates in connection with the business</p>	<ul style="list-style-type: none"> <li>- transporting and storing goods;</li> <li>- managing stocks;</li> <li>- taking orders;</li> <li>- providing consulting or other administrative services;</li> </ul>



**本文件資訊乃根據現行的經濟實質法及立法草案，得予修改。本文件內容不得被當作或倚賴為法律意見或稅務建議。倘您希望獲得有關本文件事項的法律意見或稅務建議，請洽詢本公司，本公司將為您介紹適當的法律專家。**

## 常見問題

### 一般問題

#### 1. 什麼是經濟實質？

歐盟通過一項有關商業稅賦行為準則的決議，目的在於抵制全球零稅制及優惠稅制的影響，包括百慕達、英屬維京群島、開曼群島、根西、曼島及澤西島。實體若實質在另一個國家經營業務時，卻尋求利用另一個國家的零稅制或低稅制者，則必須：

- a) 確保相關業務的實質乃在該國境內進行；或
- b) 停止該業務，或修改該業務使其不再屬於相關業務範圍內；或
- c) 證明英屬維京群島外國家的稅務居民身分。

#### 2. 經濟實質適用於我的實體嗎？

為決定一家實體是否有義務遵守經濟實質法規，必須先提問下列問題：

- a) 該實體屬於經濟實質法規的類型嗎？
- b) 若是，其經營相關業務嗎？
- c) 若其經營相關業務，則其為英屬維京群島外國家（而且該國未列入歐盟稅務不合作國家名單中）的稅務居民嗎？

只在以上 a)及 b)的答案為肯定且 c)的答案為否定時，經濟實質法方能適用。

#### 3. 經濟實質如何評估？

經濟實質是在一段稱為財務年度的期間進行評估。詳情請參 [申報](#) 第 26 點。

實體若經營相關業務，則即使在財務年度內未獲得收入，仍必須完成經濟實質申報。

#### 4. 英屬維京群島實體如何表現經濟實質？

經濟實質可以表現於三方面：

- a) 在英屬維京群島進行主導及管理；
- b) 在英屬維京群島有足夠的費用與員工及適當的營業場所；及
- c) 在英屬維京群島經營產生核心收益的業務。

**5. 什麼是「相關業務」及「產生核心收益的業務」？**

關於相關業務及產生核心收益的業務，請參附表 1 的表格。

**6. 我如何證明我公司的相關業務是在英屬維京群島主導及管理？**

在英屬維京群島主導及管理相關業務者，必須在英屬維京群島召開足夠次數的董事會會議，論及相關業務的性質及其在法人整體業務中的重要性。在英屬維京群島召開董事會會議者，必須有法定最低人數的董事實際在英屬維京群島出席。參加董事會會議的董事中，必須有人具備足以主導相關業務的適當專業。董事會有關相關業務的決議必須予以記錄，且該些決議的會議記錄必須留存於英屬維京群島。

**7. 保得利(英屬維京群島)有限公司提供董事服務予我的實體。那足以表示我公司的相關業務是在英屬維京群島主導及管理嗎？**

應該注意的是，法律規定的是相關業務必須在英屬維京群島主導及管理，而不是經營相關業務的法律實體。若法律實體僅有的業務是一項或多項相關業務，則其意味著實體本身必須在英屬維京群島予以主導及管理。

請亦參以上第 5 點。

**8. 用來解釋及適用法律的一般方法是什麼？**

應採用務實且商業上實際可行的標準，諸如：費用與員工的「足夠性」、員工資格的「適合性」、營業場所的「適當性」等，並考量以商業方式經營相關業務的事業的一般結構及經營方式。

## **相關業務**

**9. 我的公司不只經營一項相關業務。經濟實質規定適用於全部相關業務嗎？**

是的。一家實體可能同時經營不只一項相關業務。在此情形下，每一項經營相關業務都必須遵守經濟實質規定。

#### 10. 投資基金必須遵守經濟實質規定嗎?

不必，投資基金不是相關業務。投資基金在經濟實質規定範圍外，如同其他未被具體指出的營業項目一樣。當然，如果一家法律實體除投資基金外尚經營其他業務，而該些業務確實構成相關業務者，則該些業務必須遵守經濟實質規定。

#### 11. 基金管理是相關業務嗎?

是的，基金管理業務係指實體必須依2010年證券與投資事業法（Securities and Investment Business Act, 2010）持有投資事業執照所經營的業務（請參附表1）。

#### 12. 如果我的實體借錢給第三方，會被認為是在經營「融資與租賃業務」定義下的融資業務嗎?

融資與租賃業務係指基於對價而提供任何形式的信用額度的業務。例如，收取利息。

一家實體若提供信用作為其他類型業務的附帶行為，例如，以信用方式供應商品，該實體不被視為是在經營融資與租賃業務。僅在提供信用本身被視為一項業務時，該實體始被視為其業務或部分業務是融資與租賃業務。為投資目的而持有債務或債務票據的實體，不被視為從事提供信用額度的業務。

### 稅務居民

#### 13. 我的公司是哪裡的稅務居民?

藉由經濟實質法及設立後，英屬維京群島實體即自動成為英屬維京群島的稅務居民。然而，英屬維京群島實體亦可能是英屬維京群島外的稅務居民，但必須提供下列證據：

- a) 來自該國主管機關或由該國主管機關所出具說明實體被認定為該國稅務居民的信函或證書。
- b) 該國主管機關所出具的核定稅額書、自估稅額書、稅單、納稅證明或任何其他文件。

若實體經營相關業務的唯一收入來源必須繳納英屬維京群島外國家的稅賦，則該實體被認為是該國的稅務居民。

#### 14. 若我的公司不是英屬維京群島的稅務居民，我仍必須遵守經濟實質規定嗎?

不必，實體若在某一申報年度內經營相關業務，而其在該申報年度內全年皆為英屬維京群島外國家（不在歐盟稅賦「黑名單」上）的稅務居民，則其在該申報年度內無須遵守經濟實質規定。

#### 15. 若我的公司在稅務上是透明的，稅務居民身分如何決定?

「透明實體」是指一家實體，其全部利潤及獲利依他國法律被視為可歸屬於該實體的若干或全部參與人或合夥人，並得根據該實體的若干或全部參與人或合夥人予以課稅。就透明實體而言，欲證明他國稅務居民身分者，必須參照該實體利潤課稅所根據的每一個參與人或合夥人。

## **控股公司**

### **16. 什麼是「控股業務」？**

「控股業務」是指身為純股權控股實體的業務。

「純股權控股實體」是指僅持有其他實體的股權且僅賺取股利及資本利得的法律實體。

### **17. 我的公司只持有股份。我的公司是經營「控股業務」嗎？**

是的，但僅限它符合以上第 16 點的定義範圍，而且僅持有股權。

### **18. 我的公司持有股份及有息債券等其他金融商品。我的公司是經營「控股業務」嗎？**

不是。擁有任何其他形式的投資（例如配息債券）會使法律實體超出「控股業務」定義外。擁有其他資產（例如債券、政府證券、不動產的法律或受益股份等）的實體，即不屬於純股權控股實體（即使其亦擁有股權），而不被視為經營控股業務。

### **19. 我的公司持有子公司的股份及借款給子公司的無息貸款。我的公司符合英屬維京群島經濟實質法所定義的控股公司嗎？**

不符合。法律實體如唯一持有的是股權時，方符合「純股權控股實體」的定義。請注意，該實體若經營其他相關業務，可能仍須遵守英屬維京群島經濟實質法。

### **20. 我有一家符合控股公司定義的公司。我了解，控股公司必須遵守的經濟實質規定較為寬鬆。該些較為寬鬆的規定是什麼？**

純股權控股公司若未經營相關業務，而僅持有其他實體的股權並僅賺取股利及資本利得者，則在下列情形下，該純股權控股公司即已具有充分的經濟實質：

- a) 遵守其依維京群島2004年商業公司法或2017年有限合夥公司法（以適用者為準）的法定義務。
- b) 在維京群島擁有足以持有股權的足夠員工及營業場所。若其自行管理上述股權，則在維京群島亦擁有足以執行該管理工作的足夠員工及營業場所。控股公司應自行決定，其持有投資是否在性質上完全被動，或該投資需要主動管理。若其持有投資在性質上誠屬被動，則聘用保得利(英屬維京



群島)有限公司擔任註冊代理人提供最低程度的服務，可能足以證明經濟實質。然而，若其持有投資需要主動管理，則實體應在維京群島具備足夠且適當資格的員工及適當的營業場所，以便執行上述職能。

**21. 我有一家符合控股公司定義且需要主動管理的公司。我可以將公司業務委外經營嗎？**

可以。對於純股權控股實體得委外其業務的程度無限制規定。若業務委外經營，則在評估英屬維京群島員工的足夠性時，委外經營的程度將被列入考量，但僅限將業務委予在英屬維京群島經營之人。

**22. 我有一家符合控股公司定義的公司。該公司必須在英屬維京群島進行主導或管理嗎？**

不必。對於純股權控股實體是否必須在英屬維京群島進行主導或管理，並無規定。

## **申報**

**23. 誰是英屬維京群島負責監控及執行經濟實質的主管機關？**

國際稅賦管理局（下稱「稅管局」）是英屬維京群島的主管機關。

**24. 什麼資料必須向稅管局申報？**

a) 保得利已有若干必要資料的記錄。然而，本公司仍需要下列資料：

- a) 實體營業項目確認。
- b) 實體的稅務居民身分。
- c) 若實體是集團成員，則需母公司註冊的國家。

b) 藉由自行申報，經營相關業務且不是非居民公司或非居民有限合夥公司的實體，就有關其在某一財務年度經營的每項相關業務及就有關該財務年度的下列資料：

- a) 相關業務所產生的總營業額；
- b) 相關業務在維京群島內發生的費用金額；
- c) 從事相關業務的員工總人數；
- d) 在維京群島內從事相關業務的員工總人數；
- e) 在維京群島內就相關業務所使用的每個營業場所地址；
- f) 設於維京群島內就相關業務所使用的所有設備的性質；
- g) 負責主導及管理相關業務之人的姓名與其公司的關係，及其是否為維京群島居民。

經營智慧財產業務的實體必須提交額外資料。本公司建議，這些實體洽詢法律專家。

## **25. 資料如何申報?誰有義務確保必要資料已提供給稅管局?**

必須申報的資料以兩種方式蒐集：

- c) 第一，依「最終受益人安全搜尋法 (BOSS Act)」所進行的資料蒐集及自行申報。
- d) 第二，依稅管局要求而蒐集的特定資料。

據了解，自行申報應由實體透過線上平台予以完成。實體有義務確保在其財務年度結束後六個月內，向稅管局提供規定的資料。

若有本項程序的進一步資訊時，本公司將立即提供。

## **26. 什麼是財務年度?**

2019年1月1日起設立或成立的實體，應在其設立或成立後一年內，向稅管局通告其財務年度及該年度結束後為期一年的後續每一財務年度。

在任何其他情形下，對於第一期財務年度何時開始，規定上有些彈性，但第一期財務年度必須在2019年6月30日之前開始，之後則維持在該年度結束後為期一年的後續每一財務年度。

## **27. 我的公司在2019年1月1日後設立，我希望將公司財務年度調整為與曆年2019年12月31日同步，我的第一次申報年度可以短於一年嗎?**

可以。實體可以有較短的財務年度，但必須通知稅管局。本項通知必須在公司設立日起三個月內提出，或更遲者，在2019年6月30日後三個月內提出。實體不得選擇在通知日之前的任何日期終止其第一期財務年度。

## **28. 我的公司在2019年1月1日前設立，我希望將公司財務年度調整為與公司會計年度同步，我的第一次申報年度可以短於一年嗎?**

可以。實體可以有較短的財務年度，但必須通知稅管局。本項通知必須在2019年12月31日前提出。實體不得選擇在通知日之前的任何日期終止其第一期財務年度。

## **29. 財務年度可以更改或變更嗎?**

可以，但必須通知稅管局。然而，任何變動不得導致財務年度期間延長超過12個月。

### 30. 什麼時候應該完成申報?

申報必須在財務年度結束後6個月內完成。例如：

公司設立/成立日	財務年度起始日	申報最後期限
2019年1月1日之前	2019年6月30日	2020年12月31日
2019年1月1日或之後	公司設立/成立日	財務年度結束後6個月內

實體得向稅管局提出書面通知，申請變更其財務年度。

## 委外經營

### 31. 我可以將相關業務委外經營嗎?

*銀行、保險及基金管理業務* – 實體若經營金融服務委員會核發的執照所規定的業務，則其必須遵守該執照對委外經營所訂定的限制規定，另須遵守有關委外經營的經濟實質規定。

*控股業務* – 對於純股權控股實體得委外其業務的程度無限制規定。若業務委外經營，則在評估英屬維京群島員工的足夠性時，委外經營的程度將被列入考量，但僅限將業務委予在英屬維京群島經營之人。

若持有投資在性質上誠屬被動，則聘用保得利(英屬維京群島)有限公司擔任註冊代理人提供最低程度的服務，可能足以證明經濟實質，並被視為委外經營。

*所有其他相關業務* – 請參以下第(32)點。

### 32. 我可以將產生核心收益的業務委外經營嗎?

實體被允許將產生核心收益的業務（下稱「核心收益業務」）委予 第三方經營，但必須符合下列條件：

- a) 實體的任何核心收益業務不得委予英屬維京群島境外經營。
- b) 在考量委外經營的程度時，只能考量為實體產生收益的業務。
- c) 實體有能力監督並控管由第三方代表實體所進行的業務經營。

### 33. 委外經營算是經濟實質的一部份嗎?

是的，在實體將其部分相關業務委外經營，而且該工作符合下列委外規定的情形下：

- a) 於評估實體在英屬維京群島的費用時，委外經營的費用將被列入考量。
- b) 於評估實體員工人數足夠性及員工資格適合性時，依委外協議所完成的工作程度將被列入考量。

### 34. 我如何申報我的實體委外經營其全部或部分業務或產生核心收益的業務？

實體向稅管局提出的年度申報必須納入該第三方的資料。

## **執行實施**

### 35. 在什麼情況下我的實體會被懲處？

在下列情況下實體會被懲處：

- a) 未提供資料或提供的資料不確實；及
- b) 未遵守經濟實質規定。

### 36. 實體未遵守經濟實質規定時，稅管局會採取什麼強制執行措施？

執行程序分三階段：

- c) 在首次判決未守法時，稅管局會發出一份通知書，說明判決未守法的理由、罰款金額、罰款付款日、稅管局認為實體應採取的行為、以及必須採取該行為的最後期限。其中亦會通知實體的上訴權。在此階段的適用罰款，對於高風險的智慧財產法律實體，最低可罰美元 5,000 元，最高可達美元 50,000 元，對於所有其他情形則為美元 20,000 元。
- d) 若實體未採取在首次判決時對實體要求採取的行為，則稅管局會發出第二判決書，其中包含一份告示，說明稅管局可能向金融服務委員會呈報。在此階段的適用罰款，對於高風險的智慧財產法律實體，最低可罰美元10,000元，最高可達美元400,000元，對於所有其他情形則為美元 200,000元。
- e) 在發出未守法的第二判決通知書後，若在審酌事件的所有情況後，稅管局可要求將法律實體除名。

倘稅管局認為某實體不可能遵守經濟實質規定，則其得略過上述三階段程序，直接將公司除名。

上述罰款並非全部罰則。違反經濟實質規定的公司，其董事亦可能成為撤銷資格程序的對象。

### 37. 有上訴權嗎？

有上訴權，但任何上訴必須在未守法通知書所載日期之30天內提出。

若上訴通知書已發出，則未守法通知書上所指必須遵守經濟實質規定的時間，應自上訴最終判定或撤銷之日起開始算。

## 附表 1

法律對上述各項業務有進一步定義，且施行細則預計即將發布，俾便協助判定某特定實體是否經營相關業務。

相關業務	產生核心收益的業務
<p><b>銀行業務</b></p> <p>其意思依1990年銀行暨信託公司法第2(1)條之定義。</p>	<ul style="list-style-type: none"> <li>- 募集資金、管理風險，包括信用、貨幣及利息風險等。</li> <li>- 接受避險部位。</li> <li>- 提供貸款、信用或其他金融服務給顧客。</li> <li>- 管理法定資本。</li> <li>- 編製監管報告書及申報書。</li> </ul>
<p><b>保險業務</b></p> <p>其意思依2008年保險法第3(1)條之定義。</p>	<ul style="list-style-type: none"> <li>- 預測及計算風險。</li> <li>- 針對風險投保或再投保。</li> <li>- 提供保險服務給客戶。</li> </ul>
<p><b>基金管理業務</b></p> <p>係指法律實體必須依2010年證券暨投資事業法第4條及附表3第3類規定持有投資事業執照所經營的業務，<b>其中包括下列次類目：</b></p> <p>投資管理次類目A：管理獨立投資組合（不包括共同基金）；</p> <p>次類目B：管理共同基金；</p> <p>次類目C：管理退休金計劃；</p> <p>次類目D：管理保險產品；</p> <p>次類目E：管理其他類型投資項目。</p>	<ul style="list-style-type: none"> <li>- 做出持有或出售投資項目的決定。</li> <li>- 計算風險及準備金。</li> <li>- 做出貨幣或利息波動及避險部位的決定。</li> <li>- 為政府機關及投資人編製相關監管報告或其他報告。</li> </ul>
<p><b>融資與租賃業務</b></p> <p>係指基於對價而提供任何形式的信用額度的業務。</p>	<ul style="list-style-type: none"> <li>- 協議資金提供條款；</li> <li>- 確認並取得要租賃的資產（租賃的情形下）；</li> <li>- 訂定任何融資或租賃條款及持續期間；</li> <li>- 監管及修改任何合約書；</li> <li>- 管理任何風險。</li> </ul>
<p><b>總部業務</b></p> <p>係指對同集團旗下實體提供下列任何服務的業務：</p> <p>(a) 提供高階管理；</p> <p>(b) 承擔或控管同集團旗下任何實體所營業務的重大風險；或</p> <p>(c) 提供與承擔或控管前項風險有關的實質建議。</p>	<ul style="list-style-type: none"> <li>- 做出相關管理決定；</li> <li>- 代表關係企業發生費用；</li> <li>- 協調集團業務活動。</li> </ul>

<p><b>航運業務</b></p> <p>係指牽涉在全世界任何地方（而非僅在維京群島海域範圍內）的船舶營運的下列任何業務（依2001年商船航運法第2(2)(a)條之定義）。</p>	<ul style="list-style-type: none"> <li>- 管理全體船員（包括僱用、給付及監督各船員）；</li> <li>- 拖曳及維修船舶；</li> <li>- 監督及追蹤託運貨物；</li> <li>- 決定訂購什麼商品及何時交付；</li> <li>- 安排及監督航程。</li> </ul>
<p><b>控股業務</b></p> <p>係指身為純股權控股實體的業務。</p>	<ul style="list-style-type: none"> <li>- 未經營相關業務而僅持有其他實體的參股股權且僅賺取股利及資本利得。</li> </ul>
<p><b>智慧財產業務</b></p> <p>係指持有智慧財產資產的業務 – 指無形資產的任何智慧財產權，包括但不限於著作權、專利、商標、品牌、技術專業知識，而其為業務產生可識別收益的來源（本項收益，可與智慧財產權所存在的任何有形資產所產生的任何收益分開識別）。</p> <p>高風險智慧財產權法律實體 –</p>	<ul style="list-style-type: none"> <li>- 若業務涉及智慧財產資產，例如專利、研發等。</li> <li>- 若業務涉及非貿易無形資產，例如品牌、商標、顧客資料、行銷、品牌化及經銷等。</li> </ul>
<p><b>經銷與服務中心業務</b></p> <p>係指下列任一項或兩項業務：</p> <p>a) 向外國關係企業採購：</p> <ol style="list-style-type: none"> <li>i. 商品零組件或材料；</li> <li>ii. 現成商品；</li> <li>iii. 轉售上述零組件、材料或商品。</li> </ol> <p>b) 提供與業務有關的服務給外國關係企業。</p>	<ul style="list-style-type: none"> <li>- 運輸及儲存商品；</li> <li>- 管理存貨；</li> <li>- 接受訂單；</li> <li>- 提供諮商或其他行政服務。</li> </ul>