

Final Rules on Economic Substance in the British Virgin Islands Released

The [Economic Substance \(Companies and Limited Partnerships\) Act, 2018](#) (the “**Act**”) was passed on 1 January 2019, introducing economic substance requirements in the British Virgin Islands (“**BVI**”) for certain BVI legal entities that are not tax “resident” in countries outside the BVI and carry on a “relevant activity” as further specified in the Act. On 22 April 2019, the International Tax Authority (“**ITA**”) of the BVI issued a draft Economic Substance Code (the “**Code**”) to provide guidance and interpretation in respect of the Act (for further information please see our earlier [client briefing](#)).

The draft Code then underwent a process of revision in the ensuing months which has recently been concluded. A final version was issued by the ITA on 9 October 2019. Now renamed “[Rules on Economic Substance](#)” (the “**Rules**”), they are expected to become effective shortly, when a further amendment to the [Beneficial Ownership Secure Search System Act](#), as amended^[1] (the “**BOSS Act**”) of the BVI is brought into force.

While the Rules reflect much of the content of the draft Code, some new points worth highlighting include the following.

Provisional Treatment of Tax Residency outside the BVI. An entity may apply to be treated as provisionally tax resident in a jurisdiction outside the BVI and submit evidence of this to the ITA within a “reasonable period”. The Rules now clarify that such period would typically not extend beyond two financial periods (inclusive of the financial period for which the entity has applied for provisional treatment). See paragraph 4.5 commenting on Rules 6 and 7.

Expenditure Incurred in the BVI. Rule 11 now clarifies that “expenditure” (as used in the requirement, that entities subject to the economic substance requirements must have adequate *expenditure* incurred in BVI, having regard to the nature and scale of the relevant activity, in section 8 of the Act and section 10 of the BOSS Act) means expenditure incurred in the operation of the relevant activity. See also paragraphs 7.8 to 7.11.

Liquidation of an Entity. Paragraph 10.8 states that it is expected that the economic substance requirements will need to be complied with during the time that an entity is in liquidation.

Additional Filing Requirements. Certain additional information must now be provided to the registered agent of relevant entities for uploading to its database, including:

- Confirmation as to whether an entity carries on a relevant activity within the scope of the Act;
- Residential address of each beneficial owner of an entity;
- Total expenditure incurred on the relevant activity and total number of employees engaged in the relevant activity;
- Certain further information in respect of an entity carrying on intellectual property business.

For further information please reach out to your usual Campbells contact.

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