

Shipping Business

- Relevant Activity – What is a “shipping business”?
- Economic Substance Test
- CIGA for Shipping Business
- Examples
- Economic Substance Reporting

Relevant Activity – What is a “shipping business”?

An entity engages in a ‘shipping business’ where it conducts any of the following activities involving the operation of a ship anywhere in the world other than in the territorial waters of the Islands or between the Islands:

- (a) the business of transporting by sea, passengers or animals, goods or mail for a charge;
- (b) the renting or chartering of ships for the purpose described in paragraph (a);
- (c) the sale of travel tickets and ancillary ticket related services connected with the operation of a ship;
- (d) the use, maintenance or rental of containers, including trailers and other vehicles or equipment for the transport of containers, used for the transport of anything by sea; and
- (e) the functioning as a private seafarer recruitment and placement service,

but does not include a holding company business or the owning, operating or chartering of a pleasure yacht.

“Pleasure yacht” has the meaning given to that expression by section 11(6) of the Merchant Shipping Act (2016 Revision), namely a pleasure vessel and any vessel to which regulations made in respect of vessels in commercial use for sport or pleasure are stated to apply.

Source: Cayman Islands Economic Substance Guidance Notes v3.1, page 23

Economic Substance Test

A ‘relevant entity’ that conducts one or more ‘relevant activity’, will need to satisfy the Economic Substance Test (“**ES Test**”) in respect of each relevant activity conducted.

The ES Test requires that a relevant entity:

- (a) conducts ‘Core Income Generating Activities’ (“CIGA”) in relation to its relevant activity(ies);**

‘Core Income Generating Activities’ means activities that are of central importance to the relevant entity in terms of generating relevant income and must be carried on in the Cayman Islands.

A relevant entity will satisfy the ES Test in relation to a relevant activity if its core income generating activities in relation to that relevant activity are conducted by any other person and the relevant entity is

able to monitor and control the carrying out of the Cayman Islands core income generating activities by that other person.

(b) is directed and managed in an appropriate manner in the Islands in relation to its relevant activity(ies); and

The International Tax Co-operation (Economic Substance) Act (2021 Revision), as amended (the “ES Act”) provides that a relevant entity satisfies this limb of the ES Test if in relation to the relevant activity:

- (i) the relevant entity’s board of directors, as a whole, has the appropriate knowledge and expertise to discharge its duties as a board of directors in relation to the relevant activity;
- (ii) meetings of the board of directors are held in the Islands at adequate frequencies given the level of decision making required in relation to the relevant activity;
- (iii) during a meeting of the board of directors described in paragraph (ii), there is a quorum of directors present in the Islands;
- (iv) the minutes of the meetings of the board of directors described in paragraph (ii) record the making of strategic decisions of the relevant entity at the meeting; and
- (v) the minutes of all meetings of the board of directors and appropriate records of the relevant entity are kept in the Islands.

(c) having regard to the level of relevant income derived from the relevant activity carried out in the Islands (i) has an adequate amount of operating expenditure incurred in the Islands; (ii) has an adequate physical presence (including maintaining a place of business or plant, property and equipment) in the Islands; and (iii) has an adequate number of full-time employees or other personnel with appropriate qualifications in the Islands.

What is adequate or appropriate for each relevant entity will depend on the particular facts of the relevant entity and its business activity. A relevant entity will have to ensure that it maintains and retains appropriate records to demonstrate the adequacy and appropriateness of the resources utilized and expenditures incurred.

Source: Cayman Islands Economic Substance Guidance Notes v3.1, page 16

CIGA for Shipping Business

CIGA with respect to every type of relevant activity means activities that are of central importance to a relevant entity in terms of generating relevant income and must be carried on in the Islands.

In relation to shipping business, CIGA includes –

- (a) managing crew (including hiring, paying and overseeing crew members);
 - This CIGA includes compliance with the Maritime Labour Convention, 2006 by either a ship owner or a private seafarer recruitment and placement service.

(b) Overhauling and maintaining ships;

- This CIGA includes procuring and/or overseeing the overhauling and/or maintenance of ships.

(c) Overseeing and tracking deliveries;

- This CIGA includes tracking package and cargo deliveries as part of the business services of the vessel.

(d) Determining what goods to order and when to deliver them, organizing and overseeing voyages;

- This CIGA includes negotiating contracts for delivery of goods, managing shipping schedules and organizing and overseeing voyages. These activities can be carried out by an agent, manager or the master of the ship.

The [Tax Information Authority](#) (the “**Authority**”) will consider whether activities which may appear to fall within the CIGA as listed above, do in fact constitute a shipping business, or whether they are merely incidental to what is properly regarded as a different sort of business. The following examples provide further clarity on this point.

A foreign company, carrying on shipping business, that is registered in the Islands and which is tax resident outside the Islands, is not regarded as a relevant entity. Section II.B.2.c) of the *Cayman Islands Economic Substance Guidance Notes v3.1* (the “**Guidance**”) explains what is required to meet this exemption.

Source: Cayman Islands Economic Substance Guidance Notes v3.1, pages 82-83

Examples

(a) CayCo Ltd, a relevant entity, carries on the business of a general travel agent. As part of its business, CayCo Ltd sells tickets for passenger cruises.

- CayCo Ltd will not be treated as carrying on a shipping business merely because, amongst other things, it sells tickets for passenger cruises. This would be regarded as incidental to what is properly regarded as CayCo Ltd's main business (i.e. travel agent). CayCo Ltd will be required to file an Economic Substance Notification (“**ESN**”) as outlined in the Guidance.

(b) CayCo Ltd, a relevant entity, manufactures goods for export. CayCo Ltd arranges for those goods to be dispatched by sea, in containers or otherwise.

- CayCo Ltd will not be treated as carrying on shipping business merely because it arranges for those goods to be dispatched by sea. Similar to the above example, this would be regarded as incidental to what is properly regarded as CayCo Ltd's main business (i.e. manufacturing business). CayCo Ltd will be required to file an ESN as outlined in the Guidance.

(c) CayCo Ltd is registered as a foreign company in the Cayman Islands which is carrying on shipping business as defined in the ES Act.

- CayCo Ltd is not regarded as a relevant entity where it is tax resident outside the Islands. CayCo Ltd will be required to file an ESN and also to provide evidence that it is tax resident outside the Islands, as outlined in the Guidance.

If CayCo Ltd is not tax resident outside the Islands and it is carrying on shipping business as defined in the ES Act, it will be treated as a relevant entity carrying on a relevant activity and will be required to file an ESN, to satisfy the ES Test and to file an Economic Substance Return ("**ES Return**") as outlined in the Guidance.

(d) CayCo Ltd, a relevant entity, bareboat charters out a ship on a long term charter, which is typically for a period of between 2 and 10 years. CayCo Ltd. does not operate that ship or any other ship.

- CayCo Ltd is not carrying on the relevant activity of shipping business by chartering out its ship because it is not operating the ship. Thus, CayCo Ltd will be required to file an ESN as outlined in the Guidance. Cayco should also consider whether it is carrying on any other relevant activity, such as financing and leasing business.

(e) CayCo Ltd, a relevant entity, owns and runs an international shipping pool.

- If CayCo Ltd acts as agent for the ship-owners participating in the pool and does not, itself, charter in or out the ships, takes no economic risk and does not operate any ships in that regard, this would not constitute shipping business. CayCo Ltd will be required to file an ESN as outlined in the Guidance.

However, if CayCo Ltd takes economic risk and is involved in the operation of the ship with respect to the charter in the form of bareboat chartering in or time chartering out ships, this is carrying on the relevant activity of a shipping business. Thus, CayCo Ltd will be required to file an ESN, to satisfy the ES Test and to file an ES Return as outlined in the Guidance.

(f) ShipOwnCo Limited owns a ship and charters it on a bareboat charter basis to CharterCo Limited. ShipOwn Co Limited does not operate that ship, or any other ship. CharterCo Limited uses the ship it has chartered on a bareboat charter basis in its own ship operation business to carry cargo internationally.

- ShipOwn Co Limited is not carrying on shipping business for the purpose of the ES Act because the rental on charter basis of the ship is not directly in connection with or ancillary to its own operation of a ship. Thus, ShipOwn Co Limited will be required to file an ESN as outlined in the Guidance. ShipOwn Co Limited should also consider whether it is carrying on any other relevant activity, such as financing and leasing business.
- In contrast, CharterCo Limited is carrying on shipping business for the purpose of the ES Act because it is operating a ship in international traffic for the transport of cargo.

CharterCo Limited will be treated as a relevant entity carrying on a relevant activity and will be required to file an ESN, to satisfy the ES Test and to file an ES Return as outlined in the Guidance.

Economic Substance Reporting

Entities that are in-scope under the ES Act (i.e. ‘relevant entities’ conducting ‘relevant activities’) will be required to report certain information on their relevant activities in the Cayman Islands, in particular the extent to which core income generating activities are being conducted in the Cayman Islands, on an annual basis to the Authority.

An ES Return must be submitted each year within twelve months of the relevant entity’s financial year end. Together with the ES Return, the entity will be required to upload appropriate documents (i.e. financial statements or books of account) that give a true and fair view of the state of the entity’s affairs and to explain its transactions.

Source: Cayman Islands Economic Substance Guidance Notes v3.1, page 28

Contact your Campbells attorney or regulation@campbellslegal.com if you have questions about Economic Substance Reporting.

For more information about Relevant Activity, CIGA, the ES Test and Economic Substance Reporting, please review the Guidance and additional DITC-issued Resources available [here](#).

Disclaimer

The contents of this website are not intended to constitute legal, tax, investment or other advice and you are advised to seek independent legal counsel regarding your particular circumstances.