Bermuda Economic Substance Update
– Key Amendments Enacted

8 January 2020

Following continued discussions with the EU's Code of Conduct Group and the OECD, Bermuda has passed amendments to its economic substance laws to more closely align Bermuda's regime to that of other 2.2 jurisdictions.

The Economic Substance Amendment (No. 2) Act 2019 and the Economic Substance Amendment (No. 3) Regulations 2019 came into force on 24 December 2019 and have introduced substantive changes to Bermuda’s economic substance laws, which are summarised below. Our full advisory with an overview of Bermuda’s economic substance requirements can be viewed here.

Holding entities
One of the key changes is to the definition of the relevant activity of engaging in business as a ‘holding entity’ which now means only ‘pure equity holding entity’. The definition of pure equity holding entity has also been revised such that an entity will only be engaged in business as a pure equity holding entity if, as its primary function, it acquires and holds shares or an equitable interest in other entities, performs no commercial activity and holds or controls alone, under an agreement with others, a majority of voting rights or has the right to remove or appoint the board of directors (or equivalent).

Financing and Leasing
Bermuda has amended the previously separate relevant activities of ‘financing’ and ‘leasing’ into one relevant activity of ‘financing and leasing’ and have revised the definition such that it now only covers entities which provide ‘credit facilities’ of any kind for consideration (including by way of interest) and where the provision of credit may be made by way of instalments for which a separate charge is made in connection with the supply of goods by hire purchase, financial leasing (excluding land and interests in land) or conditional sale or credit sale. The definition expressly excludes activities that fall under banking, insurance or fund management.

Shipping
A significant change to the definition of shipping has been made with the result that entities which merely own ships but do not operate them will be out of scope. The revised definition now captures the operation of a ship anywhere in the world (excluding Bermuda) for transporting by sea, passengers or animals, goods or mail for a charge, renting and chartering a ship for such purposes; the sale of tickets and ticket related services connected with the operation of a ship; use, maintenance or rental of containers for transportation by sea; and functioning as a private seafarer recruitment and placement service.
Insurance

The amendments now make it clear that insurance managers and other insurance intermediaries are not in scope and that the relevant activity of engaging in insurance business is limited to licensed (re)insurers.

Revised Guidance on the General Principles relating to Bermuda’s economic substance laws is also expected to be issued following the amendments.

Entities that were previously in scope of Bermuda’s economic substance laws but now fall out of scope as a result of these amendments will not be required to make any notification or report in respect of the period in which they were in scope and will not be subject to Bermuda’s economic substance laws.

Please contact any of the below individuals to discuss the changes and how they may impact your business further.

Contacts

For further information please speak with your usual contact or contact:

Sarah Demerling  
Partner - Bermuda  
T: +1 441 242 1525  
E: sarah.demerling@walkersglobal.com

Melanie Fullerton  
Senior Associate - Bermuda  
T: +1 441 242 1537  
E: melanie.fullerton@walkersglobal.com

Natalie Neto  
Partner - Bermuda  
T: +1 441 242 1533  
E: natalie.neto@walkersglobal.com