



PORTCULLIS NEWS

MCI (P) 023/06/2019

21 May 2019

CAYMAN ECONOMIC SUBSTANCE REQUIREMENT GUIDANCE NOTE v. 2.0

Further to our Newsletters of 28 January 2019 and 5 March 2019 on the Cayman Economic Substance requirements ("ES Requirements"), we inform that a revised version 2.0 of the Guidance Notes was issued on 30 April 2019.

You may download a copy of the Guidance Notes v.2.0 here

http://portcullis.co/pdf/Economic_Substance_-_Guidance_-_v2.0_Final_version.pdf.

The revised Guidance Notes essentially addressed matters which were previously covered by v.1.

However, the ambiguity in respect of how the Regulator expected some provisions to be met were clarified as follows:-

1. Entities tax resident outside the Islands will not be regarded as a relevant entity for the purposes of the ES Law. However, the evidence required to substantiate such claims were tightened. The Authority will regard an entity as tax resident in a jurisdiction other than the Islands if the entity is subject to corporate income tax on all of its income from a relevant activity by virtue of its tax residence, domicile or any other criteria of a similar nature in that other jurisdiction. Additionally, in the event that the entity is a disregarded entity for US income tax purposes, and has a US corporation as its parent, the Authority will consider the entity tax resident outside of the Islands if satisfactory evidence is provided.

The Authority will require any entity claiming to be tax resident outside the Islands to produce satisfactory evidence to substantiate the same. For example, the evidence may include a Tax Identification Number, tax residence certificate together with an income tax return, assessment or payment of a corporate tax liability on all of that entity's income arising in the Islands from a relevant activity, or, in the case of a disregarded entity for US income tax purposes, a signed statement under penalty of perjury from an external tax advisor or "C" level office stating that all the entity's income has been included on the Corporate tax return of the US parent company.

In the absence of such evidence the entity will be regarded as a relevant entity that is subject to ES law. The ES test must be satisfied with respect to any part of relevant income that is not subject to corporate income tax imposed by a jurisdiction other than the Islands.



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A business unit or division of the relevant entity that is not a separate legal person from the relevant entity (i.e. a **Branch**) will likewise be regarded as tax resident outside the islands if the branch is subject to corporate income tax on all of its income in another jurisdiction by reason of its domicile, residence or any other criteria of a similar nature. Satisfactory evidence as above must likewise be produced.

It is specifically stated that a relevant entity should take care not to claim it is tax resident or subject to corporate income tax in another jurisdiction on its gross income arising in the Islands from a relevant activity such that the result would be a circumvention of the ES Test.

2. Pure equity Holding Companies (means a company that only holds equity participations in other entities and only earns dividend and capital gains) are subject to a reduced ES requirement and in this respect, it will be considered as having met the ES requirements if:-

It has complied with all applicable filing requirements under the Companies Law (2018 Revision); and

It has adequate human resources and adequate premises in the Islands for holding and managing equity participation in other entities

It has been clarified that a pure equity holding company maintaining a registered office in the Islands engaging its registered office service provider in accordance with the Companies Law (2018 Revision) may be able to satisfy these reduced substance requirements in the Islands where the pure equity holding company is passively holding equity interests in other entities, depending on the level and complexity of activity required to operate its business.

A pure equity holding company is not required to be directed and managed in the Islands.

The Guidelines provide that a relevant entity may **outsource** either some or all of its activity to its service provider but must be able to demonstrate that it has adequate supervision over the outsourced activity. Some or all of the Cayman Islands Core Income Generating Activities (CIGA) may likewise be outsourced but the relevant entity must demonstrate that the CIGA is undertaken in the Islands.



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The Guidelines clearly state that the resources of the service provider will be taken into consideration when determining whether the properly an premises test is met. There must be no “double counting” in this regard. Likewise the term “double counting’ has been clarified. For example, if an employee of a service provider spends an hour performing Cayman Islands CIGA for a relevant entity, the same employee cannot spend the same hour performing Cayman Islands CIGA for a different relevant entity. Staff of a service provider should not, when carrying out Cayman Islands CIGA, do one task for multiple relevant entities (such as combined board meetings). Rather, tasks should be specific to each relevant entity so that there is no double counting of any specific task.

3. Notification and Reporting

The Tax Information Authority (“the Authority”) is developing an ES Portal to facilitate electronic filing and reporting to the Authority. A User Guide specifying rules and procedures for use will be published.

A relevant entity that is carrying on a relevant activity and is required to satisfy the ES Test must prepare and submit to the Authority a report for the purpose of the Authority’s determination whether the ES Test has been satisfied in relation to that relevant activity. The report must be made within twelve months after the last day of the end of each financial year of the relevant entity commencing on or after 1 January 2019. A full list of the information required can be found in the Guidance Notes on page 26.

The relevant entity remains responsible for ensuring accurate information is reported on its return and this will include precise details of the resources employed by its service providers, for example based on the use of timesheets.

Further information

Portcullis will be happy to review your structure and recommend preliminary solutions and work with Cayman Counsel if required.

For further information, please contact your Relationship Manager.



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