

CAYMAN ISLANDS



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**A BILL FOR A LAW TO PROVIDE FOR AN ECONOMIC SUBSTANCE
TEST TO BE SATISFIED BY CERTAIN ENTITIES; AND FOR
INCIDENTAL AND CONNECTED PURPOSES**

**THE INTERNATIONAL TAX CO-OPERATION (ECONOMIC
SUBSTANCE) BILL, 2018**

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to provide for an economic substance test to be satisfied by certain entities and provides for incidental and connected purposes.

Clause 1 of the Bill contains the short title and commencement provisions.

Clause 2 of the Bill provides for the interpretation of words used throughout the Law and provides for words and expressions listed in the Schedule to be construed in accordance with that Schedule.

Clause 3 of the Bill specifies the functions of the Authority (the “Tax Information Authority” as defined in clause 2) which include administering the Law, determining whether a relevant entity satisfies the economic substance test, monitoring compliance with the Law and any other function specified in the Law.

Clause 4 of the Bill requires a relevant entity to satisfy the economic substance test in relation to any relevant activity carried on by that relevant entity. A relevant entity is required to satisfy the economic substance test in relation to a relevant activity from such date as may be prescribed.

Clause 5 gives the Authority the power to issue guidance on how the economic substance test may be satisfied.

Clause 6 gives the Authority the power to determine whether a relevant entity satisfies the economic substance test for any financial year of the relevant entity commencing on or after the date prescribed under clause 4(6).

Clause 7 requires a relevant entity to notify the Authority annually of whether or not it is carrying on a relevant activity; if the relevant entity is carrying on a relevant activity, whether or not all or any part of the relevant entity’s gross income in relation to the relevant activity is subject to tax in a jurisdiction outside of the Islands; and the date of the end of its financial year. A relevant entity that is required to satisfy the economic substance test is required to provide the Authority with a report which must include certain information in respect of the relevant entity.

Clause 7 also provides the Authority with the power, by notice served on any person that the Authority reasonably believes to have relevant information, to require that person to provide the Authority with information or make available for inspection books, records and other documents as may reasonably be required by the Authority for the purposes of discharging the Authority’s functions under this Law.

Clause 8 provides for notice of a failure to satisfy the economic substance test to be given to a relevant entity and provides for the imposition of penalties and for a court process through the Registrar for further action to be taken.

Clause 9 provides for appeals against a determination of the Authority.

Clause 10 gives the Authority the power, in accordance with relevant international standards and scheduled agreements, to provide the information provided to it under the Law in respect of a relevant entity that is required to satisfy the economic substance test in relation to a relevant activity to the competent authority in the relevant jurisdiction.

Clause 11 makes provision with respect to the confidentiality of information.

Clause 12 provides that the Authority is not liable in damages for anything done or omitted in the discharge of its functions under the Law unless it is shown that the act or omission was in bad faith.

Clause 13 creates a summary offence for knowingly or wilfully supplying false or misleading information to the Authority under the Law.

Clause 14 provides for the liability of officers of a body corporate where the offence is committed by the body corporate.

Clause 15 gives Cabinet the power to make regulations, including regulations prescribing enforcement provisions and appeals.

Clause 16 gives Cabinet the power to make regulations to provide for such savings, transitional and consequential provisions to have effect in connection with the coming into operation of any provision of the Law as are necessary or expedient.

The Schedule contains definitions for certain words and expressions used in the Law.

**THE INTERNATIONAL TAX CO-OPERATION (ECONOMIC
SUBSTANCE) BILL, 2018**

ARRANGEMENT OF CLAUSES

1. Short title and commencement
 2. Interpretation
 3. Functions of the Authority
 4. Requirement to satisfy economic substance test
 5. Guidance
 6. Determination of whether economic substance test is satisfied
 7. Requirement to provide information
 8. Failure to satisfy economic substance test
 9. Appeal
 10. Sharing of information
 11. Confidentiality
 12. Immunity
 13. Misleading information
 14. Offence by officers of a body corporate
 15. Regulations
 16. Savings, transitional and consequential provisions
- Schedule

CAYMAN ISLANDS

A BILL FOR A LAW TO PROVIDE FOR AN ECONOMIC SUBSTANCE TEST TO BE SATISFIED BY CERTAIN ENTITIES; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the International Tax Co-operation (Economic Substance) Law, 2018. Short title and commencement

(2) This Law shall come into force on 1st January, 2019.

2. (1) In this Law - Interpretation

“Authority” means the Tax Information Authority designated under section 4 of the Tax Information Authority Law (2017 Revision) or a person designated by the Authority to act on behalf of the Authority; (2017 Revision)

“Cayman Islands Monetary Authority” means the Authority established as such under section 5(1) of the Monetary Authority Law (2018 Revision); (2018 Revision)

“director”, in relation to an entity, means any director, member or other person in whom the management of the entity is vested and “board of directors” shall be construed accordingly;

“economic substance test” shall be construed in accordance with section 4; and

“Registrar” -

(a) in the case of a company that is incorporated or registered under the Companies Law (2018 Revision), has the meaning given to that expression by section 2(1) of that Law; (2018 Revision)

- (2018 Revision)
- (b) in the case of a limited liability company that is registered under the Limited Liability Companies Law (2018 Revision), has the meaning given to that expression by section 2 of that Law; or
 - (c) in the case of a limited liability partnership that is registered under the Limited Liability Partnership Law, 2017, has the meaning given to that expression by section 2(1) of that Law.

(2) In this Law, words and expressions listed in the Schedule are to be construed in accordance with that Schedule.

Functions of the Authority

3. Notwithstanding any other functions of the Authority under any other law, the Authority shall have the following functions -

- (a) to administer this Law;
- (b) to determine whether a relevant entity that is required to satisfy the economic substance test in relation to a relevant activity satisfies such test;
- (c) to monitor compliance with this Law; and
- (d) any other function specified in this Law.

Requirement to satisfy economic substance test

4. (1) Subject to subsections (5), (6) and (7) and to regulations made under section 15, a relevant entity that carries on a relevant activity is required to satisfy the economic substance test in relation to that relevant activity.

(2) Subject to subsections (3), (4) and (5), a relevant entity satisfies the economic substance test in relation to a relevant activity, if the relevant entity -

- (a) conducts Cayman Islands core income generating activities in relation to that relevant activity;
- (b) is directed and managed in an appropriate manner in or from within the Islands in relation to that relevant activity; and
- (c) having regard to the level of relevant income derived from the relevant activity carried out in or from within the Islands -
 - (i) has an adequate amount of operating expenditure incurred in or from within 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.

(3) A relevant entity complies with subsection (2)(b) if in relation to a relevant activity -

- (a) 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;

- (b) meetings of the board of directors are held in the Islands at adequate frequencies given the level of decision making required;
- (c) during a meeting of the board of directors described in paragraph (b), there is a quorum of directors present in the Islands;
- (d) the minutes of the meetings of the board of directors described in paragraph (b) record the making of strategic decisions of the relevant entity at the meeting; and
- (e) the minutes of all meetings of the board of directors and appropriate records of the relevant entity are kept in the Islands.

(4) A relevant entity satisfies the economic substance test in relation to a relevant activity if its Cayman Islands 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.

(5) A relevant entity that is only carrying on a relevant activity that is the business of a pure equity holding company is subject to a reduced economic substance test which is satisfied if the relevant entity confirms that -

- (a) it has complied with all applicable filing requirements under the Companies Law (2018 Revision); and
- (b) it has adequate human resources and adequate premises in the Islands for holding and managing equity participations in other entities.

(2018 Revision)

(6) A relevant entity that is carrying on a relevant activity shall satisfy the economic substance test from the date prescribed.

(7) A relevant entity that is carrying on a relevant activity that is a high risk intellectual property business is presumed not to have met the economic substance test for a financial year, even if there are core income generating activities relevant to the business and the intellectual property assets being carried out in or from within the Islands, unless the relevant entity -

- (a) can demonstrate that there was, and historically has been, a high degree of control over the development, exploitation, maintenance, enhancement and protection of the intangible asset, exercised by an adequate number of full-time employees with the necessary qualifications that permanently reside and perform their activities within the Islands; and
- (b) provides sufficient information under section 7(4)(j) to the Authority in relation to that financial year to rebut this presumption.

5. (1) The Authority shall, after private sector consultation and with the approval of the Cabinet, issue guidance on satisfying the economic substance test,

Guidance

including guidance as to the meaning of “adequate” and “appropriate” for the purposes of this Law.

(2) A relevant entity that is required to satisfy the economic substance test shall have regard to the guidance issued under subsection (1).

(3) The Authority shall publish the guidance issued under subsection (1) in the Gazette and in any other manner that the Authority considers will bring the guidance to the attention of the persons who are most likely to be affected by it.

(4) The Authority may, after private sector consultation and with the approval of the Cabinet, revise guidance issued under subsection (1) from time to time and any reference to guidance includes a reference to revised guidance.

Determination of whether economic substance test is satisfied

6. (1) The Authority shall have the power, in accordance with this Law, regulations made under this Law and the guidance issued under section 5, to make a determination as to whether a relevant entity that is required to satisfy the economic substance test in relation to a relevant activity satisfies such economic substance test for any financial year of the relevant entity commencing on or after the date prescribed under section 4(6), except that such a determination shall not be made later than six years after the end of such financial year.

(2) The limitation period of six years under subsection (1) shall not apply if the Authority is not able to make a determination within six years after the end of a relevant entity’s financial year by reason of any material misrepresentation, action taken in bad faith or fraudulent action by or on behalf of the relevant entity.

Requirement to provide information

7. (1) A relevant entity shall notify the Authority annually of -

- (a) whether or not it is carrying on a relevant activity;
- (b) if the relevant entity is carrying on a relevant activity, whether or not all or any part of the relevant entity’s gross income in relation to the relevant activity is subject to tax in a jurisdiction outside of the Islands; and
- (c) the date of the end of its financial year.

(2) The notification under subsection (1) shall be made at the time specified by the Authority and in the form and the manner approved by the Authority.

(3) Subject to subsection (4), a relevant entity that is carrying on a relevant activity and is required to satisfy the economic substance test shall, no later than twelve months after the last day of the end of each financial year of the relevant entity commencing on or after the prescribed date, prepare and submit to the Authority a report for the purpose of the Authority’s determination under section 6.

(4) The report under subsection (3) shall be in the form approved by the Authority and shall include the following information with respect to the relevant entity -

- (a) the type of relevant activity conducted by it;
- (b) the amount and type of relevant income in respect of the relevant activity;
- (c) the amount and type of expenses and assets in respect of the relevant activity;
- (d) the location of the place of business or plant, property or equipment used for the relevant activity of the relevant entity in the Islands;
- (e) the number of full-time employees or other personnel with appropriate qualifications who are responsible for carrying on the relevant entity's relevant activity;
- (f) information showing the Cayman Islands core income generating activities in respect of the relevant activity that have been conducted;
- (g) a declaration as to whether or not the relevant entity satisfies the economic substance test in accordance with this Law;
- (h) in the case of a relevant activity that is an intellectual property business, a declaration as to whether or not it is a high risk intellectual property business and, if it is, whether or not the relevant entity will provide the information under paragraph (j) to rebut the presumption in section 4(7) within the time specified in subsection (3);
- (i) details of any MNE Group in respect of which the relevant entity is a Constituent Entity for the purposes of the Tax Information Authority (International Tax Compliance) (Country-By-Country Reporting) Regulations, 2017;
- (j) in the case of a relevant entity that is carrying on a high risk intellectual property business -
 - (i) detailed business plans which demonstrate the commercial rational for holding the intellectual property assets in the Islands,
 - (ii) employee information , including level of experience, type of contracts, qualifications and duration of employment; and
 - (iii) evidence that decision making is taking place within the Islands; and
 - (iv) any other information as may be reasonably required by the Authority to determine whether the relevant entity meets the economic substance test; and
- (l) such other information as may be prescribed.

(5) A relevant entity shall, subject to subsection (6), provide the Authority with such additional information (including a copy of a relevant book, document or other record, or of electronically stored information) as shall be reasonably required by the Authority in making a determination under section 6.

(6) The information referred to in subsection (5) shall be in the form approved by the Authority and shall be provided within a reasonable time specified by the Authority.

(7) The Authority may, by notice served on any person that the Authority reasonably believes to have relevant information, require that person -

- (a) within a reasonable time specified by the Authority in the notice, to provide the Authority with information (including a copy of a relevant book, document or other record, or of electronically stored information); or
- (b) at a reasonable time, during office hours, specified by the Authority, to make available to the Authority for inspection, a book, document or other record, or any electronically stored information,

that is in the person's control or possession that the Authority reasonably requires in discharging its functions under this Law.

(8) A relevant entity that is required to satisfy the economic substance test in relation to a relevant activity shall retain for six years after the end of a financial year, a book, document or other record, including any information stored by electronic means that relates to the information required to be provided to the Authority under this section.

(9) A person who, having been required under this section to provide or make available to the Authority any information (including a copy of a relevant book, document or other record, or of electronically stored information) that is in that person's possession or under that person's control -

- (a) without lawful excuse fails so to do, within the time specified by the Authority under this section, or by the Authority by notice; or
- (b) knowingly or willfully alters, destroys, mutilates, defaces, hides or removes any such information,

commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of two years, or to both.

Failure to satisfy
economic substance test

8. (1) If the Authority determines under section 6 that a relevant entity that is required to satisfy the economic substance test in relation to a relevant activity has failed to satisfy such economic substance test for a financial year, the Authority shall issue a notice to the relevant entity notifying the relevant entity of -

- (a) the Authority's determination that the relevant entity has failed to satisfy the economic substance test in relation to the relevant activity for that financial year;
- (b) the reasons for the determination;
- (c) the amount of any penalty imposed under subsection (2);
- (d) the date on which the penalty under subsection (2) is due being not less than twenty-eight days after the date of issue of the notice;
- (e) the Authority's direction as to the action to be taken by the relevant entity to satisfy the economic substance test in relation to the relevant activity and the date by which such action must be taken; and
- (f) the relevant entity's right of appeal under section 9.

(2) The Authority may impose a penalty of ten thousand dollars on a relevant entity that is required to satisfy the economic substance test in relation to a relevant activity for failing to satisfy such economic substance test.

(3) If, for the financial year following a financial year in which a notice was issued under subsection (1) ("subsequent financial year"), the Authority determines a relevant entity that is required to satisfy the economic substance test in relation to a relevant activity has failed to satisfy the economic substance test in relation to such relevant activity, the Authority shall issue a further notice to the relevant entity notifying the relevant entity of -

- (a) the Authority's determination that the relevant entity has not satisfied the economic substance test in relation to the relevant activity for the subsequent financial year;
- (b) the reasons for the determination;
- (c) the amount of any penalty imposed on the relevant entity under subsection (4), in addition to the penalty previously imposed under subsection (1);
- (d) the date from which the penalty under subsection (4) is due, being not less than twenty-eight days after the issue of the notice;
- (e) the Authority shall make a report to the Registrar under paragraph (6);
- (f) the Authority's direction as to the action to be taken by the relevant entity to satisfy the economic substance test in relation to the relevant activity and the date by which such action must be taken; and
- (g) the relevant entity's right of appeal under section 9.

(4) The Authority may impose a penalty of one hundred thousand dollars on a relevant entity that is required to satisfy the economic substance test in relation to a relevant activity for failing to comply with the economic substance test in relation to that relevant activity for a subsequent financial year..

(5) The Authority shall not impose a penalty under this section after the earlier of the following -

- (a) one year after becoming aware of the contravention; or
- (b) six years after the contravention occurred.

(6) Following the issue of a notice under subsection (3), the Authority shall provide the Registrar with a report of the matters referred to in that notice together with any additional information (whether or not provided to the Authority under section 7).

(7) A penalty under this section must be paid before the end of the period of twenty-eight days commencing with the date mentioned in subsection (8).

(8) That date referred to in subsection (7) is the later of -

- (a) the date from which the penalty is due under subsection (1)(d) or (3)(d); or
- (b) if a notice of appeal is given pursuant to section 9, the date on which the appeal is finally determined or withdrawn.

(9) A penalty under this section shall be paid into the general revenue of the Islands and may be recovered as a civil debt due to the general revenue of the Islands.

(10) If the Registrar receives a report under subsection (6), the Registrar may apply to the Grand Court for an order under subsection (11).

(11) If, on receiving an application under subsection (10), the Grand Court is satisfied that the relevant entity was required to satisfy the economic substance test in relation to a relevant activity and failed to satisfy such economic substance test, the Grand Court may make such order as it sees fit including -

- (a) an order requiring the relevant entity to take such action as specified in the order, including for the purpose of satisfying such economic substance test; or
- (b) in the case of a relevant entity that is -
 - (i) a company that is registered or incorporated under the Companies Law (2018 Revision), an order that it is a defunct company to which Part VI of that Law applies;
 - (ii) a limited liability company that is registered under the Limited Liability Companies Law (2018 Revision), an order that it is a defunct company to which section 40 of that Law applies; or
 - (iii) a limited liability partnership that is registered under the Limited Liability Partnership Law, 2017, an order that the limited liability partnership be struck off in accordance with section 31 of that Law as if it is a limited liability

(2018 Revision)

(2018 Revision)

partnership that the Registrar has reasonable cause to believe is not carrying on business or is not in operation.

9. (1) A relevant entity that has been notified of a determination of a failure to satisfy the economic substance test and has a penalty imposed pursuant to section 8 may, within twenty-eight days after the notification, appeal against the determination and penalty to the Grand Court and such appeal shall act as a stay on the enforcement of the penalty. Appeal

(2) An appeal under this section may be made on questions of law or fact or both and the Grand Court may affirm or reverse the determination and penalty or substitute its own penalty for that imposed by the Authority.

(3) A person upon whom a penalty is imposed may appeal against the penalty on the ground that liability to a penalty does not arise.

10. (1) The Authority shall, in accordance with relevant international standards and scheduled agreements, provide the information provided to it under this Law in respect of a relevant entity that fails to satisfy the economic substance test in relation to a relevant activity for a financial year to - Sharing of information

- (a) the competent authority in the relevant jurisdiction in which the parent company, ultimate parent company and ultimate beneficial owner of the relevant entity resides; and
- (b) if the relevant entity is incorporated outside the Islands, the competent authority of the relevant jurisdiction in which the relevant entity is incorporated.

(2) In the case of a relevant entity that is carrying on a high risk intellectual property business, the Authority shall, in accordance with relevant international standards and scheduled agreements, provide the information provided to it under this Law in respect of the relevant entity to -

- (a) the competent authority in the relevant jurisdiction in which the parent company, ultimate parent company and ultimate beneficial owner of the relevant entity resides; and
- (b) if the relevant entity is incorporated outside the Islands, the competent authority of the relevant jurisdiction in which the relevant entity is incorporated.

11. (1) A person who discloses any information - Confidentiality

- (a) relating to the affairs of the Authority;
- (b) relating to the affairs of a relevant entity;
- (c) relating to the affairs of any officer, customer, investor, member, client or policyholder of a relevant entity; or
- (d) shared by or with a competent authority or any communication related thereto,

that the person has acquired in the course of the person's duties, or in the exercise of the Authority's functions, under this Law, commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for one year, or to both, and on conviction on indictment to a fine of fifty thousand dollars, or to imprisonment for a term of three years, or to both.

(2) Subsection (1) shall not apply to a disclosure -

- (a) lawfully made in accordance with section 3(1) of the Confidential Information Disclosure Law, 2016;
- (b) if the information disclosed is or has been available to the public from any other source;
- (c) where the information disclosed is in a summary or in statistics expressed in a manner that does not enable the identity of any relevant entity, or of any officer, customer, investor, member, client or policyholder of a relevant entity to which the information relates to be ascertained; or
- (d) by the Authority under this Law.

Immunity 12. Neither the Authority, nor any person designated to act on the Authority's behalf, shall be liable in damages for anything done or omitted in the discharge of their functions under this Law unless it is shown that the act or omission was in bad faith.

Misleading information 13. (1) A person shall not knowingly or wilfully supply false or misleading information to the Authority under this Law.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of five years, or to both.

Offence by officers of a body corporate 14. (1) Where an offence under this Law that has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other officer of the body corporate, or any person who was purporting to act in such a capacity, the officer or any person purporting to act in that capacity, as well as the body corporate, commits that offence and is liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

Regulations 15. (1) The Cabinet may make regulations -

- (a) prescribing anything that may be prescribed under this Law;
- (b) amending the Schedule;

- (c) further defining the scope of relevant entities that are required to satisfy the economic substance test;
- (d) further defining the scope of relevant activities;
- (f) providing for such matters as may be necessary or convenient for carrying out or giving effect to this Law and its administration.

(2) Regulations made under this Law may -

- (a) make different provision in relation to different cases or circumstances; or
- (b) contain such transitional, consequential, incidental or supplementary provisions as appear to Cabinet to be necessary or expedient for the purposes of such regulations.

(3) Regulations made under this Law may create an offence punishable by a fine not exceeding ten thousand dollars.

16. (1) Notwithstanding sections 4 and 15, the Cabinet may make regulations to provide for such savings, transitional and consequential provisions to have effect in connection with the coming into operation of any provision of this Law as are necessary or expedient.

Savings, transitional and consequential provisions

(2) Regulations made under subsection (1) may be given retrospective operation to a day not earlier than the day that this Law comes into force.

SCHEDULE

(Section 2(2))

Construction of words and expressions

1. In this Law -

“adequate” shall be construed in accordance with the guidance issued under section 5;

“appropriate” shall be construed in accordance with the guidance issued under section 5;

“arrangement” includes -

- (a) a scheme, agreement or understanding, whether or not it is legally enforceable; and
- (b) a convention, custom or practice of any kind,

but something does not count as an arrangement unless there is at least some degree of stability about it (whether by its nature or terms, the time it has been in existence or otherwise);

“banking business” has the meaning given to that expression by section 2 of the Banks and Trust Companies Law (2018 Revision);

“carrying on business in the Islands” has the meaning given to that expression by section 2(2) of the Local Companies (Control) Law (2015 Revision);

“Cayman Islands core income generating activities” means activities that are of central importance to a relevant entity in terms of generating income and that are being carried out in or from within the Islands including -

- (a) in relation to banking business -
 - (i) raising funds, managing risk including credit, currency and interest risk;
 - (ii) taking hedging positions;
 - (iii) providing loans, credit or other financial services to customers;
 - (iv) managing capital and preparing reports or returns, or both, to investors or the Cayman Islands Monetary Authority, or both;
- (b) in relation to a distribution and service centre business -
 - (i) transporting and storing goods, components and materials;
 - (ii) managing stocks;
 - (iii) taking orders;
 - (iv) providing consulting or other administrative services;
- (c) in relation to financing and leasing business -
 - (i) negotiating and agreeing funding terms;
 - (ii) identifying and acquiring assets to be leased;
 - (iii) setting the terms and duration of financing or leasing;
 - (iv) monitoring and revising financing or leasing agreements and managing risks associated with such financing or leasing agreements;
- (d) in relation to fund management business -
 - (i) taking decisions on the holding and selling of investments;
 - (ii) calculating risk and reserves;
 - (iii) taking decisions on currency or interest fluctuations and hedging positions;
 - (iv) preparing reports or returns, or both, to investors or the Cayman Islands Monetary Authority, or both;
- (e) in relation to headquarters business -
 - (i) taking relevant management decisions;
 - (ii) incurring expenditures on behalf of Group entities;
 - (iii) co-ordinating Group activities;
- (f) in relation to insurance business -
 - (i) predicting or calculating risk;
 - (ii) insuring or re-insuring against risk;

- (iii) preparing reports or returns, or both, to investors or the Cayman Islands Monetary Authority, or both;
- (g) in relation to intellectual property business -
 - (i) where the intellectual property asset is a -
 - (A) patent or an asset that is similar to a patent, research and development; or
 - (B) non-trade intangible (including a trademark), branding, marketing and distribution
 - (ii) in exceptional cases, except if the relevant activity is a high risk intellectual property business, other core income generating activities relevant to the business and the intellectual property assets, which may include –
 - (A) taking strategic decisions and managing (as well as bearing) the principal risks related to development and subsequent exploitation of the intangible asset generating income;
 - (B) taking the strategic decisions and managing (as well as bearing) the principal risks relating to acquisition by third parties and subsequent exploitation and protection of the intangible asset;
 - (C) carrying on the underlying trading activities through which the intangible assets are exploited leading to the generation of income from third parties;
- (h) in relation to shipping business -
 - (i) managing crew (including hiring, paying and overseeing crew members);
 - (ii) overhauling and maintaining ships;
 - (iii) overseeing and tracking deliveries;
 - (iv) determining what goods to order and when to deliver them, organising and overseeing voyages; or
- (i) in relation to holding company business, all activities related to that business;

“competent authority” means, for each respective jurisdiction, the persons and authorities authorised pursuant to a scheduled agreement;

“Consolidated Financial Statements” has the meaning given to that expression by section 2(1) of the Tax Information Authority (International Tax Compliance) (Country-By-Country Reporting) Regulations, 2017;

“Constituent Entity” has the meaning given to that expression by section 2(1) of the Tax Information Authority (International Tax Compliance) (Country-By-Country Reporting) Regulations, 2017;

“distribution and service centre business” means the business of either or both of the following -

- (a) purchasing from an entity in the same Group -
 - (i) component parts or materials for goods; or
 - (ii) goods ready for sale, andreselling such component parts, materials or goods outside the Islands;
- (b) providing services to an entity in the same Group in connection with the business outside the Islands,

but does not include any activity included in any other relevant activity except holding company business;

“domestic company” means a company that is not part of an MNE Group and that is -

- (a) carrying on business in the Islands and which complies with section 4(1) of the Local Companies (Control) Law (2015 Revision) or section 3(a) of the Trade and Business Licensing Law (2018 Revision);
- (b) a company referred to in section 9 or 80 of the Companies Law (2018 Revision),

or a subsidiary company of any such company;

“financing and leasing business” means the business of providing credit facilities for any kind of consideration to another person but does not include financial leasing of land or an interest in land, banking business, fund management business or insurance business;

“fund management business” means the business of managing securities as set out in paragraph 3 of Schedule 2 to the Securities Investment Business Law (2015 Revision) carried on by a relevant entity licensed under that Law for an investment fund;

“Group” has the meaning given to that expression by section 2(1) of the Tax Information Authority (International Tax Compliance) (Country-By-Country Reporting) Regulations, 2017;

“headquarters business” means the business of providing any of the following services to an entity in the same Group -

- (a) the provision of senior management;
- (b) the assumption or control of material risk for activities carried out by any of those entities in the same Group; or
- (c) the provision of substantive advice in connection with the assumption or control of risk referred to in paragraph (b),

but does not include banking business, financing and leasing business, fund management business, intellectual property business, holding company business or insurance business;

“high risk intellectual property business” means an intellectual property business carried on by -

- (a) an entity that -
 - (i) did not create the intellectual property in an intellectual property asset that it holds for the purposes of its business,
 - (ii) acquired the intellectual property asset -
 - (A) from an entity in the same Group; or
 - (B) in consideration for funding research and development by another person situated in a country or territory other than the Islands; and
 - (iii) licences the intellectual property asset to one or more entities in the same Group or otherwise generates income from the asset in consequence of activities (such as facilitating sale agreements) performed by entities in the same Group; or
- (b) an entity that does not carry out research and development, branding or distribution as part of its Cayman Islands core income generating activities;

“holding company business” means the business of a pure equity holding company;

“insurance business” has the meaning given to that expression by section 2 of the Insurance Law, 2010;

“intellectual property business” means the business of holding, exploiting or receiving income from intellectual property assets;

“intellectual property asset” means an intellectual property right including a copyright, design right, patent and trademark;

“investment fund” means an entity whose principal business is the issuing of investment interests to raise funds or pool investor funds with the aim of enabling a holder of such an investment interest to benefit from the profits or gains from the entity's acquisition, holding, management or disposal of investments and includes any entity through which an investment fund directly or indirectly invests or operates, but does not include a person licenced under the Banks and Trust Companies Law (2018 Revision) or the Insurance Law, 2010, or a person registered under the Building Societies Law (2014 Revision) or the Friendly Societies Law (1998 Revision);

“investment fund business” means the business of operating as an investment fund;

“investment interests” means a share, trust unit, partnership interest or other right that carries an entitlement to participate in the profits or gains of the entity;

“joint arrangement” means an arrangement between the holders of shares or rights that they will exercise all or substantially all the rights conferred by their respective shares or rights jointly in a way that is pre-determined by the arrangement;

“MNE Group” has the meaning given to that expression by section 2(1) of the Tax Information Authority (International Tax Compliance) (Country-By-Country Reporting) Regulations, 2017;

“parent company”, in relation to a relevant entity, means a body corporate that -

- (a) holds a majority of voting rights in the relevant entity;
- (b) is a member of the relevant entity and has the right to appoint or remove a majority of the board of directors of the relevant entity;
- (c) is a member of the relevant entity and controls alone, pursuant to a joint arrangement with other shareholders or members, a majority of the voting rights in the relevant entity; or
- (d) has the right to exercise, or actually exercises, dominant direct influence or control over the relevant entity;

“pure equity holding company” means a company that only holds equity participations in other entities and only earns dividends and capital gains;

“relevant activity” means -

- (a) banking business;
- (b) distribution and service centre business;
- (c) financing and leasing business;
- (d) fund management business;
- (e) headquarters business;
- (f) holding company business;
- (g) insurance business;
- (h) intellectual property business; or
- (i) shipping business;

but does not include investment fund business;

“relevant entity” means -

- (a) a company, other than a domestic company, that is -
 - (i) incorporated under the Companies Law (2018 Revision); or
 - (ii) a limited liability company registered under the Limited Liability Companies Law (2018 Revision),
unless its business is centrally managed and controlled in a jurisdiction outside the Islands and the company is tax resident outside the Islands;
- (b) a limited liability partnership that is registered in accordance with the Limited Liability Partnership Law, 2017, unless its business is centrally managed and controlled in a jurisdiction outside the Islands and the limited liability partnership is tax resident outside the Islands;

(2018 Revision)

- (c) a company that is incorporated outside of the Islands and registered under the Companies Law (2018 Revision) whose business is centrally managed and controlled in the Islands, unless the company is tax resident outside the Islands;

but does not include an investment fund;

“relevant income” shall be construed in accordance with guidance issued under section 5;

“relevant jurisdiction” means a country or territory that is a party to a scheduled agreement;

“scheduled agreement” means an agreement that is scheduled to the Tax Information Authority Law (2017 Revision) in accordance with the provisions of that Law; (2017 Revision)

“shipping business” means 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 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; or
- (e) the management of the crew of a ship,

but does not include a holding company business;

“subsidiary company” means, with respect to another company, a company of which that other company is the parent company;

“ultimate beneficial owner” has the same meaning given to “beneficial owner” in section 244 of the Companies Law (2018 Revision); and (2018 Revision)

“ultimate parent company” means a Constituent Entity of a Group that meets the following criteria -

- (a) it owns directly or indirectly a sufficient interest in one or more other Constituent Entities of the Group such that it is required to prepare Consolidated Financial Statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on public securities exchange in its jurisdiction of tax residence; and

- (b) there is no other Constituent Entity of the Group that owns directly or indirectly an interest described in paragraph (a) in the first mentioned Constituent Entity.

Passed by the Legislative Assembly the day of , 2018.

Speaker.

Clerk of the Legislative Assembly.