



BVI introduces substance requirements

18 February 2019 - The government of the British Virgin Islands (BVI) has enacted a new legislation, entitled the “Economic Substance (Companies and Limited Partnerships) Act 2018” that introduces ‘adequate substance’ requirements for certain BVI-resident legal entities.

As there are a lot of issues that will need to be clarified and guidelines to be issued (expected within March 2019) clients that affected by this legislation will need to monitor these developments closely.

The new substance provisions apply as from 1 January 2019, with a six-month transitional period for existing companies. The requirements apply to all BVI companies and limited partnerships with Legal Personality (LPs), unless they are considered non-resident for the purposes of the BVI legislation, and to all foreign companies and LPs doing business in the BVI that are engaged in “relevant activities.”

The relevant legislation can be found by clicking on this [link](#).


A non-resident company or LP is a company or LP that is resident for tax purposes in a jurisdiction outside of the BVI and which that jurisdiction is not included in Annex I to the EU list of non-cooperative jurisdictions for tax purposes, i.e., American Samoa, Guam, Namibia, Samoa, Trinidad and Tobago, and the US Virgin Islands.

The new legislation imposes economic substance requirements on any BVI company which carries on one or more of the following relevant activities:

- Banking business
- Insurance business
- Fund management business
- Finance and leasing business
- Headquarters business
- Shipping business
- Holding business
- Intellectual property business
- Distribution and service centre business

Further guidance will be issued that will assist in determining if a particular entity is carrying on a "relevant activity" sometime in March 2019.

Each legal entity which will be considered tax resident of the BVI (other than a pure equity holding entity which carries on no relevant activity other than holding equity participations in other entities and earning dividends and capital gains) must, in relation to any relevant



activity, carry out defined core income-generating activities in the BVI and demonstrate economic substance by reference to the following criteria, having regard to the nature and scale of the relevant activity:

1. The relevant activity being directed and managed in the BVI;
2. Adequate numbers of suitably qualified employees who are physically present in the BVI (whether or not employed by the relevant legal entity or by another entity and whether on temporary or long-term contracts);
3. Adequate expenditure incurred in the BVI;
4. Appropriate physical offices or premises in the BVI; and
5. Where the relevant activity is intellectual property business and requires the use of specific equipment, the equipment is located in the BVI.

Outsourcing of core income generating activities is permitted under certain circumstances.


Pure holding companies are required to meet a reduced test for economic substance, while at the other end of the scale, intellectual property companies will face more onerous requirements.

Penalties are also expected to be imposed both for failure to provide required information, and for operating a legal entity in breach of the economic substance requirements. Such penalties will include fines, imprisonment and/or strike-off.

The minimum initial fine is \$5,000 increased up to \$20,000 (or up to \$50,000 for high risk IP legal entities). Continued failure to meet the test in the following year could lead to an additional penalty of up to \$200,000 (or up to \$400,000 for high risk IP legal entities). In case of failure to provide information requested by the authorities or to intentionally provide false information, will be punishable by a fine of up to \$75,000 and/or up to five years' imprisonment.

Even though the BVI authorities have not yet issued detailed guidelines on what constitutes economic substance in the BVI, and despite the fact that a six-month transitional period has been granted to existing BVI companies in order to implement such substance, clients owning BVI legal entities are encouraged to evaluate their options at this stage, so as to be ready to take action once the guidelines on economic substance have been issued. The options are as follows:

1. Create economic substance in the BVI and be fully be compliant with the newly enacted provisions (once these are clarified);
2. Re-domicile (i.e. transfer the legal seat of) the current BVI entities to another jurisdiction which is not included in any black list;
3. Transfer the management and control (i.e. transfer the tax residency status) of the BVI entities to a tax efficient jurisdiction;



The legislation has been introduced in response to concerns expressed by the Council of the European Union about the absence of clear general legal substance requirements for entities doing business in and through the BVI.

As always, The Taxation Department of Costas Tsielepis & Co Ltd is at your disposal should you require any further information or clarifications.