

BVI economic substance requirements

As you may know, on January 1, 2019 the Economic Substance (Companies and Limited Partnerships) Act, 2018 of the British Virgin Islands (the “Economic Substance Act”) and amendments to the Beneficial Ownership Secure Search System Act, 2017 of the British Virgin Islands (the “BOSS Act”) entered into force. The Economic Substance Act and the BOSS Act require companies, limited partnerships and foreign companies registered on the BVI to identify whether they carry on one or more of the following activities: banking business, insurance business, fund management business, finance and leasing business, headquarters business, shipping business, holding business, intellectual property business, distribution and service center business.

If any of the above business is carried on, the legal entity must report to its registered agent about such activity along with information about tax residence of the legal entity. Unless the legal entity can evidence a tax residency of a jurisdiction other than the BVI (except for so-called “non-cooperative jurisdictions”: American Samoa, Guam, Samoa, Trinidad and Tobago, US Virgin Islands), it must comply with economic substance requirements by 30 June 2019. The economic substance requirements are aimed at identification of whether a legal entity has a real economic activity and substantial economic presence in BVI. These requirements include, among other, that the activity of the legal entity is directed and managed in the BVI, there is an adequate expenditure incurred in the BVI, an adequate number of suitably qualified employees physically present in the BVI, there are physical offices or premises for the BVI core income-generating activities. Further regulations and guidance clarifying economic substance requirements and their application are expected in due course.

The International Tax Authority of the BVI has been charged with monitoring and enforcement of the economic substance requirements. The penalty is both for non-provision of information and noncompliance with the requirements. The non-provision can lead to a fine of up to USD 75,000 USD and up to 5 years in prison. The maximum penalty for noncompliance with economic substance requirements is USD 200,000 for legal entities and USD 400,000 for a high-risk IP legal entities.

If your group of companies has a BVI legal entity in the group structure or you would like to receive more information on the economic substance regulation, please contact us at your earliest convenience.

This legal update is prepared for the purpose of information of our clients only. It is not intended to be a comprehensive study or professional opinion and shall not be used as a substitute for a legal advice.