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British Virgin Islands – Economic Substance Requirements.

The British Virgin Islands ("BVI") has on the 1st of January 2019 passed a legislation through which it requires the establishment of the "economic substance" for BVI companies and partnerships that are "resident" in the BVI.

The Economic Substance (Companies and Limited Partnerships) Act 2018 ("the Act") applies to all BVI companies and limited partnerships which are registered under the BVI and which are tax resident in the BVI, as well as on foreign companies and limited partnerships

The entities which are excluded from the "economic substance test" are the legal entities which can demonstrate that they are tax resident in another jurisdiction.

A non-resident company or non-resident limited partnership is a company or limited partnership which is resident for tax purposes in a jurisdiction outside the BVI (except for jurisdictions which have been included on the EU list of non-cooperative jurisdictions).

The Act requires all BVI entities which are tax residents in the BVI and carry "relevant activity" to establish economic substance in the BVI. "Relevant Activity" as per the terms of the act mean:

- (a) Banking business
- (b) Insurance business
- (c) Fund management business
- (d) Financial and leasing business
- (e) Headquarter business
- (f) Shipping business
- (g) Holding business
- (h) Intellectual property business
- (i) Distribution and service centre business

The entities subject to the economic substance test should comply with the economic substance requirements which are the following:

- Adequate number of suitably qualified employees physically present in the BVI;
- Appropriate physical offices / premises in the BVI to support its core income generating activities;
- Adequate expenditure in the BVI;
- In the case of an intellectual property business that requires the use of specific equipment, such equipment to be located in the BVI;

A different test applies to 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. Under this test, the relevant entity will be deemed to have adequate substance if it

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complies with its statutory obligations under the BVI companies / limited partnership laws and has adequate employees and premises for holding and, where relevant, managing those equity interests.

Under the Act, economic substance will be measured by reference to reporting periods which are not longer than one year, recognising that compliance can only be evaluated over a period of time. Companies and limited partnerships which are incorporated or formed from 1 January 2019 (New Entities) and which need to demonstrate economic substance will have to comply for any reporting period ending on or after 31 December 2019. New Entities must elect to have a first financial period of not more than one year from the date of incorporation or formation, as applicable. Companies and limited partnerships in existence on 1 January 2019 and which need to demonstrate economic substance will have to comply for each reporting period starting no later than 30 June 2019.

Possible Options:

Taking into consideration the above developments in the legislation, we have included in the present letter the ways in which the company can avoid the substance requirements imposed by the Act.

[A] The company can choose to be registered as a Cyprus tax resident company and therefore not be subject to the substance requirements.

A BVI company shall register with the Tax Authorities in Cyprus if it is managed and controlled from Cyprus. Once becoming a Cyprus Tax Resident, a BVI company has the same obligations under the Law as all Cyprus Tax residents, such as:

1. Preparing annual audited financial statements.
2. Filling a tax form every year based on the audited financial statements.
3. Declaring and paying tax on its worldwide income.

A Cyprus Tax resident BVI company may also benefit from Cyprus' extended double tax treaty network and tax incentives.

For the registration of the company with the Tax Authorities in Cyprus the corporate documents from

the BVI are needed.

It is estimate that a TIC number can be obtained within a week.

Our fees for the registration of the BVI company with the Tax Authorities in Cyprus are €300+VAT.

A Tax residency certificate for the company may be issued at the request of the company.

[B] Proceed with the domiciliation of the BVI company to Cyprus.

We can assist you with this process whereby the company shall be redomiciled in Cyprus and therefore shall not be subject to the BVI requirements. The timeframe for the re domiciliation shall be from 3 to 6 months and our fees including expenses shall amount to €5,000 + VAT.

We can provide you with more information for the above procedure upon request.

[C] The liquidation of the BVI company and transfer of the assets of such BVI companies under the ownership of companies in other jurisdictions such as Cyprus.

Kindly note that we are waiting for more information of the substance requirements and shall update you accordingly for any feedback received from the BVI.

The above is intended to provide brief guide only, we remain at your disposal for any n professional advice you may need.