

UWI OPEN CAMPUS COMPLIANCE WITH TAX TRANSPARENCY STANDARDS

Workshop

Tuesday 16th April, 2019

8:30

Teachers' Resource Centre



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Substantial Activities Requirements

Action 5 – Substantial Activities Requirement for no or nominal tax jurisdictions

EU Substance Requirements

Anguilla – Action 5 Economic Substance

- On 9th January, the House of Assembly approved a suite of legislation on Economic Substance requirements, part of a package of measures to enable Anguilla to meet its international commitments on tax transparency.
– IBC Act LLC Act LP Act COC Act.
- Specifically, the rules will require entities registered in Anguilla that are conducting certain ‘relevant’ activities and are not exempt entities, to demonstrate that they are conducting ‘real’ economic activity and have substantial presence in the jurisdiction.

Anguilla – Action 5 Economic Substance

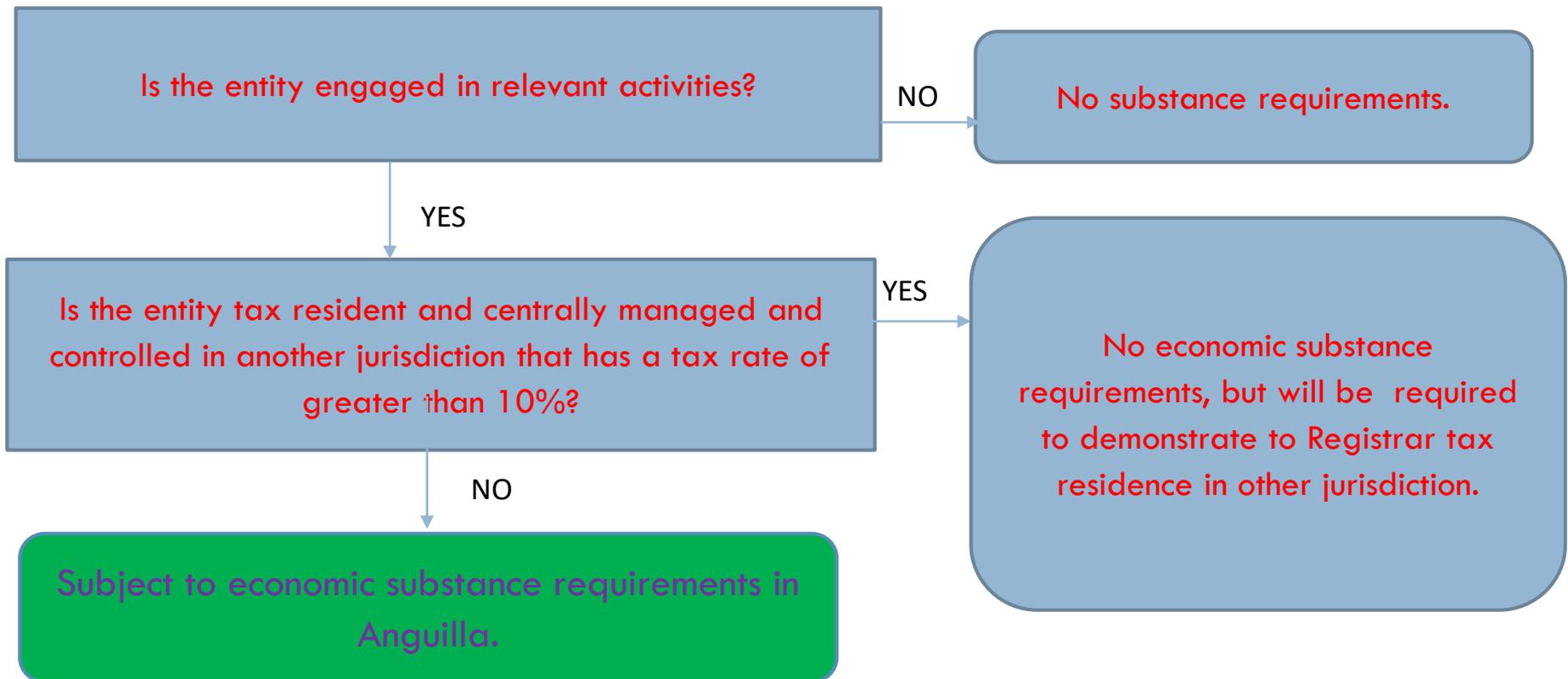
- An entity is an exempt entity if it is centrally managed and controlled or carries on the relevant activity in a jurisdiction where the rate at which the company may be charged tax is 10% or higher, and the company is resident for tax purposes in that jurisdiction.
- Entities registered in Anguilla will be required to file an annual return to declare whether they conduct relevant activity and whether they are compliant with the economic substance requirements.

What are the relevant activities?

- Banking
- Insurance
- Fund management
- Financing and leasing
- Distribution and service centres
- Shipping
- Intellectual property business
- Headquarters
- Holding company

Which entities must meet economic substance requirements?

The chart below should be used as a guide to determine which companies and limited partnerships registered in Anguilla will be subject to economic substance requirements.



Exempt Entities (Relevant Activities)

- No substance Requirements!
- The company files with the Registrar evidence of its tax residence in another jurisdiction and declaration that an appropriate tax return has been submitted to the relevant tax authority of that jurisdiction in relation to the relevant activity.

Economic Substance Return – Generally

Satisfy all three conditions A, B and C in relation to the relevant activity.

- That the company – has an adequate number of qualified employees engaged in the relevant activity who are physically present in Anguilla; incurs in Anguilla an adequate level of operating expenditure in relation to the activity; and has adequate physical assets (whether leased, rented or owned) in Anguilla.
- That the company carries on the appropriate core-income generating activities in Anguilla for the relevant activity.
- That the mind and management for the relevant activity is in Anguilla, within the meaning of section 7.
- A company is deemed to satisfy the economic substance test in relation to a relevant activity if –
 - (a) it outsources the relevant activity to one or more third party providers;
 - (b) each of those providers satisfies both conditions A and B in Anguilla; and
 - (c) the company can demonstrate that it adequately supervises that relevant activity.

Outsourcing

- Non-CIGA activities (e.g. back office functions, IT, payroll, legal services) may be outsourced outside the jurisdiction
- Outsourcing of CIGA only permitted if CIGA is within the Jurisdiction and the Entity has to be able to prove that outsourcing is still being done with adequate number of full-time qualified employees and adequate amount of operating expenditures

Economic Substance Requirements – Holding Companies

- **Pure Equity Holding Companies** Requirement - has adequate human resources and adequate premises in Anguilla for holding and managing equity participations. Complies with all applicable statutory filing requirements- this relates to submitting the annual fee/return as is standard practice.
- **Non – Pure Equity Holding Companies which do NOT conduct relevant activities – NO SUBSTANCE Required.** No filing obligations.
- **Non – Pure Equity Holding Companies** (holds a variety of assets and earns different types of income such as interest, rents and royalties) which conduct relevant activities, the company, the core-income generating activities of the company are those activities that are associated with the income that holding companies earn.

Economic Substance Requirements – Intellectual Property

- Principle is the same as in general case –
 - ▣ With additional details for defining the core income generating activities
 - ▣ Some flexibility for low risk exceptional cases
 - ▣ Additional safeguards for high risk cases

- “a high-risk intellectual property entity” means an LLC that –
 - (a) acquired an intellectual property asset –
 - (i) from an affiliated entity; or
 - (ii) in consideration for funding research and development by another person situated in a country or territory other than Anguilla; and
 - (b) licenses the intellectual property asset to an affiliated entity, or otherwise generates income from the asset in consequence of activities (such as facilitating sale agreements) performed by an affiliated entity;

Lower risk scenarios

Higher risk scenarios (i.e. involvement of foreign related parties)

<p>1. IP assets (e.g. patents) Substantial activity = R&D</p>	+	Necessary staff, premises, equipment, expenditure, decision-making etc.	+	<p><u>Filing information</u> Type A. Business type, gross income, expenses and assets, premises, employees, proof of core income generating activities, etc.</p>	=	<input checked="" type="checkbox"/>	<p>1. IP assets (e.g. patents) Substantial activity = R&D</p>	+	Necessary staff, premises, equipment, expenditure, decision-making etc.	+	<p><u>Filing information</u> Type A. Business type, gross income, expenses and assets, premises, employees, proof of core income generating activities, etc.</p>	=	<input checked="" type="checkbox"/>
<p>2. Marketing assets (e.g. trademarks) Substantial activity = branding, marketing and distribution</p>	+	Necessary staff, premises, equipment, expenditure, decision-making etc.	+	<p><u>Filing information</u> Type A. Business type, gross income, expenses and assets, premises, employees, proof of core income generating activities, etc.</p>	=	<input checked="" type="checkbox"/>	<p>2. Marketing assets (e.g. trademarks) Substantial activity = branding, marketing and distribution</p>	+	Necessary staff, premises, equipment, expenditure, decision-making etc.	+	<p><u>Filing information</u> Type A. Business type, gross income, expenses and assets, premises, employees, proof of core income generating activities, etc.</p>	=	<input checked="" type="checkbox"/>
<p>3. Other Core Income Generating Activities (CIGA) Substantial activity = Strategic decision-making, managing and bearing principal risks, underlying trading activities, etc.</p>	+	Necessary staff, premises, equipment, expenditure, decision-making etc.	+	<p><u>Filing information</u> Type A. Business type, gross income, expenses and assets, premises, employees, proof of core income generating activities, etc.</p>	=	<input checked="" type="checkbox"/>	<p>3. Other Core Income Generating Activities (CIGA) Substantial activity = - High degree of DEMPE; and - Historical DEMPE; and - Full time highly skilled employees that permanently reside and perform CIGA in the no or only nominal tax jurisdiction</p>	+	Necessary staff, premises, equipment, expenditure, decision-making etc.	+	<p><u>Filing information</u> Type A information PLUS Type B information - Detailed business plans; - Employee information; - Proof of decision-making in jurisdiction</p>	=	<input checked="" type="checkbox"/>

Scenarios which are not sufficient to meet substance requirements for IP income

4. Merely passively holding the IP asset in the jurisdiction	=	<input checked="" type="checkbox"/>
5. Periodic decisions of non-resident board members	=	<input checked="" type="checkbox"/>

What are the penalties for non-compliance?

- It is an offence for a company or limited partnership to -
 - ▣ Fail to file an annual return;
 - ▣ Fail to meet the economic substance requirements if they conduct relevant activities.
- The Registrar shall impose financial penalties for non-compliance and, in the case of continued non-compliance, the entity may be struck from the Commercial Register.
- The Government of Anguilla will be required to share information with EU member states subject to existing tax instruments given effect to by the Tax Information Exchange (International Cooperation) Act, in circumstances where a company or limited partnership is engaged in high risk intellectual property business or has not complied with the economic substance or reporting requirements.

Conclusion

- Questions and Answers
- Next Steps

Exchange of Information on Request

Protocols

EOIR

- Request by notice for production of information (Section 6 TIE Act) – Company Managers & Entities
- Type of Information – Ownership Information, Nature of Business Activities, Accounting Information, Banking Information
- Section 6 creates a statutory duty on any person on whom a notice has been served under an agreement for the provision of information for tax purposes, to provide the information requested. Irrespective of whether you have a legal obligation to keep information or whether that obligation is expired.

Accounting Information

□ Section 65 of the International Business Companies Act R.S.A. c. I20, as amended, an international business company must keep certain accounting records:

- (1) **An international business company must keep records and underlying documents such as books, deeds, contracts, vouchers and receipts that—**
 - (a) **are sufficient to record and explain the transactions of the company; and**
 - (b) **will, at any time, enable the financial position of the company to be determined with reasonable accuracy.**
- (2) **The period for which all records and underlying documents must be maintained is 6 years beginning on the date—**
 - (a) on which all activities taking place in the course of the transaction in question were completed; or
 - (b) of the ending of the business relationship for whose formation the record was compiled.
- (3) The records and underlying documents required to be kept under this section must be kept at the registered office of the international business company or at such other place as the directors may by resolution determine.
- 4) Where the records and underlying documents required to be kept under this section are kept at a place or places other than at the registered office of the international business company, the international business company shall provide the registered agent with a written—
- (6) The registered agent shall keep and maintain a record of the place or places outside Anguilla at which the international business company keeps its records and underlying documents and such record shall comprise—
 - (a) the name of the international business company;
 - (b) the address or addresses of the place or places at which the international business company's records and underlying documents are kept;
 - (c) the name of the person who maintains or controls the records and underlying documents ; and
 - (d) the date the written undertaking under subsection (4) (c) was given to the registered agent
- (7) **Whenever required to do so by the Commission or any other competent authority in Anguilla, the registered agent shall request and obtain from the international business company, the records and underlying documents in respect of the international business company.**

EOIR - Practices

- Request sent via registered mail or email.
- Time permitted to respond based on information requests.

Country By Country Reporting

Anguilla became an associate of the Inclusive Framework on BEPS in March 2018, and has proceeded to implement the four BEPS minimum standards/actions. The OECD and G20 countries developed a 15-point Action Plan to address BEPS. One of these actions was related to the transfer pricing documentation (“BEPS Action 13: Re-examine Transfer Pricing Documentation”). These Regulations give effect to Action 13 of the BEPS Action Plan

Country By Country Reporting

- These Regulations introduce a new obligation for multinational enterprises with Parent entities resident in Anguilla and with consolidated group revenue of \$850 million USD or more in a 12-month accounting period, to submit an annual country-by-country report to the Competent Authority.
- Country-by-Country Reporting will provide a clear overview of where profits, sales, employees and assets are located and where taxes are paid and accrued.

Country By Country Reporting

- The obligation to file a report will apply to accounting periods commencing on or after 1 January 2019. The country-by-country report will be filed electronically and its form and content will follow the OECD template.
- This measure will impact only Anguilla-headed Multi-National Entities (MNEs) with consolidated Group revenue of \$USD 850 million or more.

Country by Country Reporting

- Every Entity that is resident in Anguilla must determine whether or not it is a Constituent Entity of an MNE Group for the purposes of the CbC Regulations. A Constituent Entity that is resident in Anguilla must identify the Reporting Entity of the MNE Group (which may be itself).
- “MNE Group” means any group that—
 - (a) includes two or more enterprises the tax residence for which is in different jurisdictions, or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction; and
 - (b) is not an Excluded MNE Group;
- No local filing required and no Surrogate filing permitted.

Key Dates

- Notification obligation: Every Constituent Entity of an MNE Group that is resident in Anguilla for tax purposes shall, no later than the last day of the Reporting Fiscal Year of the MNE Group, notify the Competent Authority whether it is the Ultimate Parent Entity
- Filing Obligation: A Country-by-Country Report must be filed no later than 12 months after the last day of the Fiscal Year of the MNE Group.



**Thank you for
your attention.**

QUESTIONS ??