



BERMUDA

ECONOMIC SUBSTANCE AMENDMENT (NO. 2) ACT 2019

2019 : 50

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WHEREAS it is expedient to amend the Economic Substance Act 2018, the Companies Act 1981, the Limited Liability Company Act 2016, the Exempted Partnerships Act 1992 and the Overseas Partnerships Act 1995, and related statutory instruments;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act may be cited as the Economic Substance Amendment (No. 2) Act 2019.

Amends section 2

2 The Economic Substance Act 2018 is amended in section 2—

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- (a) by inserting the following definitions in the appropriate alphabetical order—
 - “Group” has the meaning given in the International Cooperation (Tax Information Exchange Agreements) Country-by-Country Reporting Regulations 2017;
 - “MNE Group” means any Group that includes two or more enterprises for which the tax residence 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;”;
- (b) in the definition of “holding entity”, by deleting the words “may include” and substituting the word “means”;
- (c) by repealing and replacing the definition of “local company” as follows—
 - “local company” means a company to which the requirements of Part I of the Third Schedule to the Companies Act 1981 applies, which carries on business only in Bermuda, and which is not a part of an MNE Group;”;
- (d) by repealing and replacing the definition of “local LLC” as follows—
 - “local LLC” means a limited liability company to which the requirements of section 11 of the Limited Liability Company Act 2016 applies, which carries on business only in Bermuda, and which is not a part of an MNE Group;”;
- (e) in the definition of “relevant activity”—
 - (i) in paragraph (d), by inserting after the word “financing” the words “and leasing”;
 - (ii) by repealing paragraph (e).

Amends section 5

3 The Economic Substance Act 2018 is amended in section 5(1) by deleting the words “in the prescribed form”, and substituting the words “in such form as the Registrar may determine”.

Amends section 12

4 The Economic Substance Act 2018 is amended in section 12(2), by deleting the word “Minister” where it first appears, and substituting the word “Registrar”.

Amendment of Companies Act 1981

5 (1) The Companies Act 1981 is amended in section 2 by inserting in the appropriate alphabetical order the following—

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“relevant activity” has the meaning given in section 2 of the Economic Substance Act 2018.”

(2) The Companies Act 1981 is amended by inserting after section 5 the following—

“Information regarding economic substance

5A Every company to which this Act applies shall provide to the Registrar on its application for incorporation or registration (in such form as the Registrar may determine) information as to whether or not the company proposes to carry on a relevant activity, and the type of relevant activity proposed to be carried on by the company.”

(3) The Companies Act 1981 is amended in section 117(3)(a) by inserting after subparagraph (iv) the following—

“(v) a statement of whether or not the company is carrying on a relevant activity, and the type of relevant activity carried on by the company; and”.

(4) The Companies Act 1981 is amended in section 131(1)(a) by inserting after subparagraph (i) the following—

“(ia) stating whether or not the company is carrying on a relevant activity, and the type of relevant activity carried on by the company; and”.

(5) The Companies Act 1981 is amended in section 135 by inserting after subsection (2) the following—

“(2A) Every permit company shall at the time of paying its annual fee also file with the Registrar a statement of whether or not the company is carrying on a relevant activity, and the type of relevant activity carried on by the permit company.”

Amendment of Companies (Forms) Rules 1982

6 (1) The Companies (Forms) Rules 1982 are amended in the Schedule, in Form No. 1 by inserting after paragraph 11 the following—

“12. State whether or not the company proposes to carry on or undertake a relevant activity as such term is defined in the Economic Substance Act 2018, and state the type of relevant activity proposed to be carried on or undertaken by the company.”

(2) The Companies (Forms) Rules 1982 are amended in the Schedule, in Form No. 14 by inserting after paragraph 9b the following—

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“10 Particulars of any relevant activity (as such term is defined in the Economic Substance Act 2018) which is carried on or undertaken by the Company.”

(3) The Companies (Forms) Rules 1982 are amended in the Schedule, in Form No. 15 by inserting after paragraph 7 the following—

“7A Particulars of any relevant activity (as such term is defined in the Economic Substance Act 2018) which the Company carries on or proposes to carry on.”

Amendment of Limited Liability Company Act 2016

7 (1) The Limited Liability Company Act 2016 is amended in section 2 by inserting in the appropriate alphabetical order the following—

“relevant activity” has the meaning given in section 2 of the Economic Substance Act 2018.”

(2) The Limited Liability Company Act 2016 is amended in section 17(4)(a) by inserting “and” at the end of subparagraph (iv), and by inserting after that subparagraph the following—

“(v) a statement of whether or not the local LLC is carrying on a relevant activity, and the type of relevant activity carried on by the local LLC;”.

(3) The Limited Liability Company Act 2016 is amended in section 30 by inserting after subsection (1)(d) the following—

“and shall be accompanied by a statement of whether or not the limited liability company proposes to carry on a relevant activity, and the type of relevant activity it proposes to carry on.”

(4) The Limited Liability Company Act 2016 is amended in section 254(1) by inserting after the word “company” where it last appears “and stating whether or not the limited liability company is carrying on a relevant activity, and the type of relevant activity carried on by the limited liability company”.

Amendment of Limited Liability Company (Forms) Regulations 2016

8 The Limited Liability Company (Forms) Regulations 2016 are amended in the Schedule in Form 6 by inserting after the Table the following—

“State whether or not the limited liability company proposes to carry on or undertake a relevant activity as such term is defined in the Economic Substance Act 2018 and state the type of relevant activity proposed to be carried on or undertaken by the limited liability company.”

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Amendment of Exempted Partnerships Act 1992

9 The Exempted Partnerships Act 1992 is amended in section 12(1), by inserting at the end “and stating whether or not the exempted partnership is carrying on a relevant activity as such term is defined in the Economic Substance Act 2018, and the type of relevant activity carried on by the exempted partnership”.

Amendment of Overseas Partnerships Act 1995

10 The Overseas Partnerships Act 1995 is amended in section 23, by inserting after subsection (2) the following—

“(2A) Every overseas partnership to which this section applies shall at the time of paying its fee in accordance with subsection (2) also file with the Registrar a statement of whether or not the overseas partnership is carrying on a relevant activity as such term is defined in the Economic Substance Act 2018, and the type of relevant activity carried on by the overseas partnership.”

Commencement

11 This Act shall come into operation on such day as the Minister of Finance may appoint by Notice in the Gazette.

[Assent Date: 20 December 2019]

[Operative Date: 24 December 2019]