



BERMUDA

ECONOMIC SUBSTANCE AMENDMENT REGULATIONS 2019

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The Minister of Finance, in exercise of the power conferred by section 11 of the Economic Substance Act 2018, makes the following Regulations:

Citation

1 These Regulations, which amend the Economic Substance Regulations 2018 (the “principal Regulations”), may be cited as the Economic Substance Amendment Regulations 2019.

Amends regulation 2

2 Regulation 2 of the principal Regulations is amended as follows—

- (a) in the definition of “IP assets”, by inserting after the word “patents,” the word “copyright,” and by inserting after the word “goodwill” the words “that generate IP income”;
- (b) in the definition of “pure equity holding entity”, by deleting the words “regulation 14(1)”, and substituting the words “regulation 14(2)”;

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(c) by inserting in the appropriate alphabetical order the following—

“IP income” means income which accrues to the business from IP assets and IP activities (such income being separately identifiable from any income generated from any tangible asset);”.

Amends regulation 3

3 Regulation 3 of the principal Regulations is amended as follows—

- (a) in paragraph (2) (a)(ii), by inserting after the word “monitor” the words “and control”;
- (b) by inserting after paragraph (2) the following—

“(3) For greater clarity, an entity engaged in one or more relevant activities during a relevant financial period shall comply with economic substance requirements in respect of each applicable relevant activity.”.

Amends regulation 4

4 Regulation 4 of the principal Regulations is amended as follows—

- (a) in paragraph (1)(a) by inserting after the words “holding entity”, the words “as set forth in regulation 14(2); or”;
- (b) in paragraph (2), by deleting the word “means”, and substituting the words “to be applied pursuant to this regulation are”.

Amends regulation 5

5 Regulation 5(3) of the principal Regulations is amended by inserting after the word “provider,” the words “core income generating activities so outsourced must be undertaken in Bermuda and”.

Revokes and replaces regulation 14

6 Regulation 14 of the principal Regulations is revoked and replaced as follows—

“Holding entity

14 (1) An entity engages in business as a holding entity if it engages in activities including holding or managing any assets or equity participations.

(2) A holding entity is a “pure equity holding entity” where it only holds or manages equity participations, and earns passive income from dividends, distributions, capital gains and other incidental income only.

(3) A pure equity holding entity that is engaged in a relevant activity complies with the economic substance requirements if the entity—

- (a) complies with minimum economic substance requirements; and

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(b) has adequate employees for holding and managing equity participations, and adequate premises in Bermuda.

(4) For a holding entity that holds a variety of assets and earns different types of income (such as interest, rents and royalties), the core income generating activities are those activities that are associated with the income that the holding company earns.”.

Amends regulation 15

7 Regulation 15 of the principal Regulations is amended as follows—

(a) by deleting the heading to regulation 15 and substituting as the heading “Intellectual property”;

(b) by revoking paragraph (1) and replacing it as follows—

“(1) An entity engages in IP business if it engages in the creation or otherwise exploitation of IP assets.”;

(c) by revoking paragraph (2);

(d) by renumbering paragraph (3) as paragraph (2), and in the renumbered paragraph (2)—

(i) in subparagraph (a), by deleting the words “such as patents”, and by inserting at the end of subparagraph (a) after the semicolon the word “and”;

(ii) in subparagraph (b), by deleting the words “non-trade intangible assets such as trademarks” and substituting the words “IP assets”, and by deleting the semicolon and substituting a full stop;

(iii) by revoking subparagraphs (c) to (e).

Revokes and replaces regulation 16

8 Regulation 16 of the principal Regulations is revoked and replaced as follows—

“Enhanced IP economic substance requirements

16 (1) Where an entity engaged in IP business owns an IP asset that—

(a) was developed or created by the entity; or

(b) has been acquired from an entity other than an affiliate; and

(c) is licensed to an entity other than an affiliate,

paragraph (2) applies.

(2) Where such entity’s IP core income generating activities (as set forth in regulation 15(2)) are not undertaken in Bermuda during a relevant financial period, it is presumed that the entity does not comply with economic substance requirements, unless it is shown to the contrary that the entity—

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- (a) undertakes other core income generating activities associated with IP income in Bermuda as demonstrated by—
 - (i) taking the strategic decisions and managing and bearing the principal risks related to the development and subsequent exploitation of an IP asset;
 - (ii) carrying on the underlying trading activities through which IP assets are exploited and which lead to the generation of IP income from third parties; and
 - (b) has an adequate number of employees with the suitable qualifications who reside and perform the IP related relevant activities and adequate premises in Bermuda.
- (3) An entity engages in high risk IP activities where the entity owns an IP asset that—
- (a) has been acquired from an affiliate or has been obtained through the funding of overseas research and development activities; and
 - (b) is licensed to a foreign affiliate or is used to generate IP income through activities performed by such foreign affiliate,

and in such case, paragraph (4) applies.

(4) Where this paragraph applies, it is presumed (whether or not the entity's IP core income generating activities as set forth in regulation 15(2) are undertaken in Bermuda) that the entity does not comply with economic substance requirements unless it is also shown to the contrary that—

- (a) the entity satisfies the requirements set forth in paragraph (2)(a) and (b) above; and
- (b) the entity does not merely passively hold and generate IP income from IP assets in Bermuda, but a high degree of control over the development, exploitation, maintenance, enhancement and protection of the IP asset is, and historically has been, exercised by an adequate number of employees with suitable qualifications who reside and perform their IP related activities in Bermuda as demonstrated by the following—
 - (i) a detailed business plan;
 - (ii) information demonstrating the presence of an adequate number of employees in Bermuda during the relevant financial period who are suitably qualified and are responsible for control and oversight or execution of, and decisions in respect of, its IP core income generating activities; and
 - (iii) such additional information as the Minister may reasonably require for this purpose.”.

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Made this 22nd day of February 2019

Minister of Finance

[Operative Date: 22 February 2019]