

A BILL

entitled

ECONOMIC SUBSTANCE AMENDMENT ACT 2019

WHEREAS it is expedient to amend the Economic Substance Act 2018;

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 Act 2019.

Amends section 2

2 Section 2 of the Economic Substance Act 2018 ("the principal Act") is amended—

(a) in the definition of "entity" by inserting after the words "registered entity" the words ", but does not include a non-resident entity"; and

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

“non-resident entity” means an entity which is resident for tax purposes in a jurisdiction outside Bermuda that is not in Annex 1 to the EU list of non-cooperative jurisdictions for tax purposes;”.

Inserts section 5A

3 The principal Act is amended by inserting after section 5 the following—

“Filing of information by non-resident entity

5A With respect to a non-resident entity that carries on a relevant activity, the non-resident entity shall provide to the Registrar for each relevant financial period, the jurisdiction in which it claims to be resident for tax purposes together with sufficient evidence to support that tax residence.”

Amends section 6

4 Section 6 of the principal Act is amended—

(a) by inserting after subsection (1) the following—

“(1A) With respect to a non-resident entity, the Registrar shall provide to the competent authority the information provided to him under section 5A by the non-resident entity relating to the jurisdiction in which the entity claims to be resident for tax purposes together with evidence to support that tax residence.”;

- (b) in subsection (2) by inserting after the words “EU member state” the words “or other jurisdiction”;
- (c) by inserting after subsection (2) the following—

“(2A) Where the competent authority receives information from the Registrar under subsection (1A) relating to a non-resident entity, the competent authority shall provide the information so received relating to that non-resident entity for that relevant financial period to the foreign competent authority of the relevant EU member state or other jurisdiction in which the non-resident entity claims to be resident for tax purposes, and in which—

- (a) a holding entity;
- (b) the ultimate parent entity;
- (c) an owner; or
- (d) the beneficial owner,

of the non-resident entity is incorporated, formed, registered or resident.”;

- (d) in subsection (3) by inserting after the words “EU member state” the words “or other jurisdiction”;
- (e) in subsection (5), in the definition of “foreign competent authority”, by inserting after the words “EU member state” the words “or other jurisdiction”.

ECONOMIC SUBSTANCE AMENDMENT BILL 2019

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Economic Substance Act 2018 (“the principal Act”).

Clause 1 is self-explanatory.

Clause 2 amends section 2 of the principal Act (interpretation) to insert a definition of “non-resident entity”, and to amend the definition of “entity” so that it does not include a non-resident entity.

Clause 3 inserts a new section 5A into the principal Act (filing of information by non-resident entity). This requires a non-resident entity that carries on a relevant activity to provide to the Registrar for each relevant financial period the jurisdiction in which it claims to be resident for tax purposes together with sufficient evidence to support that tax residence.

Clause 4 amends section 6 of the principal Act (provision of information to competent authority). New subsection (1A) requires the Registrar to provide to the competent authority the information provided to him under section 5A (inserted by clause 3) by a non-resident entity. New subsection (2A) provides that the competent authority shall provide the information to the foreign competent authority of the relevant EU member state or other jurisdiction in which the non-resident entity claims to be resident for tax purposes, and to the foreign competent authority of the relevant EU member state or other jurisdiction in which the holding entity, ultimate parent entity, owner or beneficial owner of the non-resident entity is incorporated, formed, registered or resident. Subsections (2) and (3), and the definition of “foreign competent authority” in subsection (5), are amended to include a reference to “other jurisdictions” ie jurisdictions outside the EU.