CONYERS

Article

November 2022 | Cayman Islands

Revised Economic Substance Guidance Notes: Further Clarity for Entities Claiming to be Tax Resident Outside the Cayman Islands

Authors: Sarah Farquhar, Associate

The Department for International Tax Co-operation (DITC) issued a revised version (version 3.2) of the Guidance on Economic Substance For Geographically Mobile Activities in July 2022 (Revised ES Guidance Notes).

The main changes in the Revised ES Guidance Notes relate to entities claiming to be tax resident outside the Cayman Islands (TRO). By way of refresher, entities that are able to provide evidence they are TRO are not considered "relevant entities", and are therefore not required to satisfy the Economic Substance test. Such entities are required to complete and submit a TRO form annually via the DITC Portal to provide the DITC with the necessary information.

The changes to the TRO section are to:

1. Clarify the evidence which an entity needs to provide to substantiate its claim of being TRO

The Revised ES Guidance Notes provide a clearer summary of the DITC's position on what evidence will be required in order to substantiate an entity's claim of being TRO.

As a general rule, the DITC will require:

(a) Proof that the entity is tax resident in the other jurisdiction

Sufficient proof includes one or more of the following documents:

- Certificates or letters issued by the competent tax authority of the other jurisdiction;
- Tax assessments, demands, or evidence of payment issued by the competent tax authority of the other jurisdiction;
- Tax returns submitted to the competent tax authority of the other jurisdiction; or
- Rulings issued by the competent tax authority of the other jurisdiction.

and

(b) Proof that the entity is subject to the jurisdiction's corporate income tax system

Sufficient proof includes the following documents:

- Tax assessments, demands, or evidence of payment issued by the competent tax authority of the other jurisdiction;
- Tax returns submitted to the competent tax authority of the other jurisdiction;
- Confirmation that the entity is required to submit a corporate tax return to the competent tax authority of the other jurisdiction.

In the case of a disregarded entity for U.S. income tax purposes, the DITC will require a signed statement under penalty of perjury from an external tax advisor or 'C' level officer stating that all of that entity's income has been included on the corporate tax return of the U.S. parent company.

In the absence of the evidence as set out above, an entity will not be able to rely upon the TRO exemption.

2. Clarify that claiming to be tax resident in certain jurisdictions will not be accepted

The Revised ES Guidance Notes explain that where an entity claims to be tax resident in the following jurisdictions it will not be accepted, given the lack of a corporate income tax system: Anguilla, Bahamas, Bahrain, Barbados, Bermuda, British Virgin Islands, Turks and Caicos Islands, and the United Arab Emirates.

Author:

Sarah Farquhar
Associate
sarah.farquhar@conyers.com
+1 345 814 7780

For further information please contact: media@conyers.com