

**CAYMAN ISLANDS**



# **INTERNATIONAL TAX CO-OPERATION (ECONOMIC SUBSTANCE) (AMENDMENT) BILL, 2019**

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**A BILL FOR A LAW TO AMEND THE INTERNATIONAL TAX CO-OPERATION  
(ECONOMIC SUBSTANCE) LAW, 2018 TO MAKE CHANGES TO THE ECONOMIC  
SUBSTANCE NOTIFICATION REQUIREMENTS AND THE REQUIREMENTS TO  
PROVIDE AND SHARE INFORMATION; AND FOR INCIDENTAL AND CONNECTED  
PURPOSES**

## PUBLISHING DETAILS

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**Sponsoring Ministry/Portfolio:** Ministry of Financial Services and Home Affairs  
(FSHA)



## Memorandum of OBJECTS AND REASONS

This Bill seeks to amend the *International Tax Co-operation (Economic Substance) Law, 2018*, (the “principal Law”) to make changes to the economic substance notification requirements and the provision and sharing of information.

Clause 1 provides the short title of the legislation.

Clause 2 amends section 4 of the principal Law to delete the words “Cayman Islands” where they appear in that section in relation to core income generating activity.

Clause 3 amends section 5 of the principal Law to remove the requirement for the Tax Information Authority (the “Authority”) to seek the approval of the Cabinet before issuing guidance.

Clause 4 amends section 7 of the principal Law by changing the notification requirements so that an entity rather than a relevant entity is required to notify the Authority annually of, among other things, whether or not it is carrying on a relevant activity and if it is carrying on a relevant activity, whether or not it is a relevant entity. In the case of an entity that is tax resident in a jurisdiction outside the Islands, the name and address of its immediate parent, ultimate parent and ultimate beneficial owner of the entity. The jurisdiction in which the entity is claiming to be tax resident and the supporting information is also required. The amendment also provides for the verification of any outsourcing of core income generating activities. A definition for the term “entity” is provided so that in section 7 of the principal Law the reference is to entities incorporated or registered in the Cayman Islands. Clause 4 also amends section 7 of the principal Law to give the Authority the power to impose a penalty for failure to comply with the requirement to provide a report under section 7 of the principal Law.

Clause 5 amends section 10 of the principal Law to substitute references to the terms “parent company” and “ultimate parent company” with references to the terms “immediate parent” and “ultimate parent”. Clause 5 also adds a new subsection to section 10. The new subsection imposes an obligation on the Authority, in the case of an entity that is tax resident in a jurisdiction outside of the Islands, in accordance with relevant international standards and scheduled agreements, to provide the information provided to it to the competent authority in —

- (a) the jurisdiction in which that entity is tax resident;
- (b) the jurisdiction in which the immediate parent, ultimate parent and ultimate beneficial owner of the entity resides; and
- (c) if the relevant entity is incorporated outside the Islands, the competent authority of the relevant jurisdiction in which the entity is incorporated.



Clause 5 also amends section 10 of the principal Law to give the Authority the power to provide the information provided to it under this Law as appropriate.

A definition for the term “entity” is provided so that in section 10 of the principal Law the reference is to entities incorporated or registered in the Cayman Islands.

Clause 6 inserts a new section 13A which provides that if a person enters into an arrangement, the main purpose or one of the main purposes of which is to avoid any obligation under the principal Law, the arrangement is deemed not to have been entered into by the person and this Law is to have effect as if the arrangement had never been in existence.

Clause 7 amends the Schedule to the principal Law to make changes to the definitions in light of the amendments made to the principal Law by this Bill.



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**INTERNATIONAL TAX CO-OPERATION  
(ECONOMIC SUBSTANCE) (AMENDMENT)  
BILL, 2019**

**Arrangement of Clauses**

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(ECONOMIC SUBSTANCE) (AMENDMENT)  
BILL, 2019**

**A BILL FOR A LAW TO AMEND THE INTERNATIONAL TAX CO-OPERATION (ECONOMIC SUBSTANCE) LAW, 2018 TO MAKE CHANGES TO THE ECONOMIC SUBSTANCE NOTIFICATION REQUIREMENTS AND THE REQUIREMENTS TO PROVIDE AND SHARE INFORMATION; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

**Short title**

1. This Law may be cited as the *International Tax Co-operation (Economic Substance) (Amendment) Law, 2019*.

**Amendment of section 4 of the International Tax Co-operation (Economic Substance) Law, 2018 - requirement to satisfy economic substance test**

2. The *International Tax Co-operation (Economic Substance) Law, 2018*, in this Law referred to as the “principal Law”, is amended in section 4 as follows —
  - (a) in subsection (2)(a) by deleting the words “Cayman Islands”; and
  - (b) in subsection (4) by deleting the words “Cayman Islands” wherever they appear.



### **Amendment of section 5 - guidance**

3. The principal Law is amended in section 5(1) and (4) by deleting the words “and with the approval of the Cabinet”.

### **Amendment of section 7 - requirement to provide information**

4. The principal Law is amended in section 7 as follows —
- (a) by repealing subsection (1) and substituting the following —
    - “(1) An entity shall notify the Authority annually of —
      - (a) whether or not it is carrying on a relevant activity;
      - (b) if it is carrying on a relevant activity, whether or not it is a relevant entity;
      - (c) in the case of an entity that is tax resident in a jurisdiction outside the Islands —
        - (i) the name and address of its immediate parent, ultimate parent and ultimate beneficial owner of the entity and any other information required to identify the immediate parent, ultimate parent and ultimate beneficial owner of the entity;
        - (ii) the date of the end of its financial year; and
        - (iii) the jurisdiction in which the entity is claiming to be tax resident and any other information required to support that claim;
      - (d) in the case of a relevant entity that is carrying on relevant activity, the date of the end of its financial year, and
      - (e) in the case of a relevant entity that is carrying on a relevant activity, the name and address of the officer who is responsible for providing information to the Authority,and shall provide appropriate evidence to support the information provided in the notification as may be required by the Authority.”;
  - (b) in subsection (4) —
    - (i) inserting after paragraph (e) the following paragraph —
      - “(ea) the name and address of any person other than the relevant entity who is conducting the relevant entity’s core income generating activities in relation to its relevant activity;”; and
    - (ii) in paragraph (f), by deleting the words “Cayman Islands”;
  - (c) by inserting after subsection (4), the following subsection —





- “(4A) A relevant entity shall provide the Authority with appropriate evidence to support the information provided to the Authority under subsection (4) as may be required by the Authority.”;
- (d) by inserting after subsection (6), the following subsection —
- “(6A) Where under section 4(4), a person is conducting core income generating activities in relation to the relevant activity of a relevant entity, that person may verify the information provided to the Authority under subsection (4) within thirty days after the day on which the information is provided.”;
- (e) by inserting after subsection (8), the following subsections —
- “(8A) Where a relevant entity that is required to satisfy the economic substance test fails to prepare and submit to the Authority the report required under subsection (3) within the time specified in that subsection, the Authority shall by notice in writing impose a penalty of five thousand dollars and an additional penalty of five hundred dollars for each day during which the failure to comply continues.
- (8B) The Authority shall not impose a penalty under subsection (8A) after the earlier of the following —
- (a) one year after becoming aware of the contravention; or
- (b) six years after the contravention occurred.
- (8C) A penalty under subsection (8A) must be paid before the end of the period of thirty days commencing with the date mentioned in subsection (8D).
- (8D) That date referred to in subsection (8C) is the later of —
- (a) the date from which the penalty is due under subsection (8A); or
- (b) if a notice of appeal is given under subsection (8F), the date on which the appeal is finally determined or withdrawn.
- (8E) A penalty under subsection (8A) shall be paid into the general revenue of the Islands and may be recovered as a civil debt due to the general revenue of the Islands.
- (8F) A relevant entity that has a penalty imposed pursuant to subsection (8A) may, within thirty days after the notice is given under that subsection, appeal against the penalty to the Grand Court and such appeal shall act as a stay on the enforcement of the penalty.

- (8G) A relevant entity upon whom a penalty is imposed under subsection (8A) may appeal against the penalty on the ground that liability to a penalty does not arise.
- (8G) An appeal under this section may be made on questions of law or fact or both and the Grand Court may affirm or reverse the penalty or substitute its own penalty for that imposed by the Authority.”; and
- (f) by inserting after subsection (9), the following subsection —
- “(10) In this section “entity” means —
- (a) a company that is —
    - (i) incorporated under the *Companies Law (2018 Revision)*; or
    - (ii) a limited liability company registered under the *Limited Liability Companies Law (2018 Revision)*;
  - (b) a limited liability partnership that is registered in accordance with the *Limited Liability Partnership Law, 2017*; or
  - (c) a company that is incorporated outside of the Islands and registered under the *Companies Law (2018 Revision)*.”.

### **Amendment of section 10 - sharing of information**

5. The principal Law is amended in section 10 as follows —
- (a) in subsections (1)(a) and (2)(a) by deleting the words “parent company, ultimate parent company” and substituting the words “immediate parent, ultimate parent”; and
  - (b) by inserting after subsection (2), the following subsections —
    - “(3) In the case of an entity that is tax resident in a jurisdiction outside of the Islands, the Authority shall, in accordance with relevant international standards and scheduled agreements, provide the information provided to it under this Law to the competent authority in —
      - (a) the jurisdiction in which that entity is tax resident;
      - (b) the jurisdiction in which the immediate parent, ultimate parent and ultimate beneficial owner of the entity resides; and
      - (c) if the relevant entity is incorporated outside the Islands, the competent authority of the relevant jurisdiction in which the entity is incorporated.
    - (4) The Authority may, in accordance with relevant international standards and scheduled agreements, provide any information provided to it under this Law as appropriate.



- (5) In this section “**entity**” means —
- (a) a company that is —
    - (i) incorporated under the *Companies Law (2018 Revision)*;  
or
    - (ii) a limited liability company registered under the *Limited Liability Companies Law (2018 Revision)*;
  - (b) a limited liability partnership that is registered in accordance with the *Limited Liability Partnership Law, 2017*; or
  - (c) a company that is incorporated outside of the Islands and registered under the *Companies Law (2018 Revision)*.”.

### Insertion of section 13A - anti-avoidance

6. The principal Law is amended by inserting after section 13, the following section —

#### “Anti-avoidance

**13A.** If a person enters into any arrangement, the main purpose or one of the main purposes of which is to avoid any obligation under this Law, the arrangement is deemed not to have been entered into by the person and this Law is to have effect as if the arrangement had never been in existence.”.

### Amendment of Schedule - construction of words and expressions

7. The principal Law is amended in the Schedule as follows —

- (a) in the definition of the words “Cayman Islands core income generating activities”, by deleting the words “**Cayman Islands core income generating activities**” and substituting the words “**core income generating activities**”;
- (b) by deleting the definition of the words “parent company”;
- (c) by inserting in the appropriate alphabetical sequence the following definition —
  - “**“immediate parent**”, in relation to an entity, means a person that owns directly twenty-five percent of the ownership interests in the entity.”; and

- (d) in the definition of the words “ultimate parent company” by deleting the word “**ultimate parent company**” and substituting the words “**ultimate parent**”.

**Passed by the Legislative Assembly the      day of                      , 2019.**

*Speaker*

*Clerk of the Legislative Assembly*

