

BRIEFING

MARSHALL ISLANDS – ECONOMIC
SUBSTANCE REQUIREMENTS FOR
SHIPPING COMPANIES

JUNE 2019

- TRADITIONAL "OFFSHORE" SHIPPING JURISDICTIONS HAVE INTRODUCED "ECONOMIC SUBSTANCE" RULES
- AN EU AND OECD INSPIRED INITIATIVE REQUIRING "ADEQUATE SUBSTANCE" IN THE PLACE OF INCORPORATION
- SLOW IMPLEMENTATION AND UNCERTAIN REQUIREMENTS
- RELEVANT TO SHIP OWNING, OPERATING AND HOLDING COMPANIES
- ADVICE IS TO BE AWARE, BUT TO WAIT AND SEE



What are the "economic substance rules"?

These are rules, pushed forward by the EU and the OECD, as part of the continued battle against perceived "tax havens".

They seek to put pressure on zero tax jurisdictions by requiring entities formed in traditional "tax havens" to prove they have "adequate substance" in those jurisdictions to carry out the business they carry out or otherwise be tax resident in another jurisdiction.

"Adequate" is a deliberately vague term, capable of adapting itself to different fact patterns.

Which countries/territories are affected?

The first wave of countries and territories forced to introduce the rules included Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, Jersey and the Isle of Man.

The Marshall Islands has brought forward similar regulations although the rules remain subject to change.

Important guidance adding meaning, clarification and interpretation to some of the regulations is yet to be published.

What happens if you do not comply?

It is currently unclear exactly what actions will be required for an entity to be deemed compliant, especially for shipping groups. The regulations provide for fines to be imposed for non-compliance. The ultimate sanction for continued non-compliance is that the entity may be dissolved (and, so, will, in essence, cease to exist, although the legal consequences are more complicated than that).

What should I do today?

Awareness and alertness for changes seem like appropriate actions.

The relevant regulations are fairly detailed and, on review, some groups may be able to feel more relaxed than others as some groups may find themselves outside of the scope of the rules.

Shipping groups should be aware that the rules exist, will develop and may or may not require action in the future in relation to increased substance. There is unlikely to be a requirement to make wholesale changes to group structures at this stage.

FOR MORE INFORMATION

Should you like to discuss any of the matters raised in this briefing, please speak with a member of our team below. Richard and Daniel are Partners in our international Tax group, both with a focus on the shipping industry. Steven is a Corporate Partner in our New York office who is qualified in the Marshall Islands.



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