



MEETING ECONOMIC SUBSTANCE REQUIREMENTS

SAINT VINCENT AND THE GRENADINES

Inland Revenue Department

Background in Brief:

- **JAN - OCT 2017** – ‘*Screening Exercise*’ undertaken by the EU Code of Conduct Group (Business Taxation) (EU COCG).
 - ***Certain aspects of SVG’s International Financial Sector (‘IFS’) sector had features of a preferential tax regime and thus harmful against the EU COCG’s ‘Good Governance’ tax criteria.***
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- **DEC 2018** – International Business Companies (‘IBC’) and International Trusts Acts amended to meet the new standards in the EU Code of Conduct Tax Governance Criteria and OECD’s BEPS Action 5.
 - ***SVG passed assessments by both bodies and avoided Blacklisting. Effective 1 January 2019, 30% CIT applied to IBCs (now referred to as ‘Business Companies’ or ‘BCs’) and Trusts***
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- **DEC 2020** – Territorial Taxation [0% taxation on Global Income] introduced. Income Tax Act amended. Territorial Taxation = Economic Substance Act (ES). International Co-operation (ES) Act enacted.
- ***Global Income ‘Exemption’ tax regime for registered trusts and registered companies. Exemption extends to all in scope companies [ref: Income Tax (Amendment) Act 2020, s.3]***
- Companies must meet ES requirements once engaged in relevant activities [not excluded].
- Registered Trusts are not required to meet ES Requirements.

Why Economic Substance in SVG?

Classification as a **‘Foreign Source Income Exemption’ (FSIE)** regime by the EU and OECD. FSIE = preferential tax regime

To support a Territorial Taxation regime, there must be “**substantial economic presence**” imposed which can demonstrate “**real economic activity**” in a country

Certain entities resident in SVG which carry on geographically mobile business, must meet ES requirements designed to ensure that real economic activity is being carried on in the jurisdiction, in respect of income generated by the entity from those types of businesses.

ES Legislative Framework Plus Guidance:

LAW:

International Co-operation (Economic Substance) Act ('ES Act')

International Co-operation (Economic Substance) Regulations ('ES Regulations')

Annual Economic Substance Return Form - Form 1 and Form 2

GUIDANCE:

Economic Substance Guidance for Geographically Mobile Activities ('ES Guidance')

Annex 1 – Sector Specific Guidance

Annex 2 - Guidance on Annual Return



ES Legislative Framework: ES Act –

Commencement and Transitional Provisions

- **Entered into force on 1 January 2021.**
- **FIRST assessment period of a transitioning business company*** - the period of six months commencing on **1 July 2021** and ending on **31 December 2021, OR**, such other period as may be approved by the Comptroller, upon the application of the business company.
- **FIRST assessment period for all other entities-** the period of twelve months commencing from **1 January 2021**

Ref:

- **ES Act, s. 33**
- **ES Guidance, s.4.0** outlines reporting obligations of transitioning business companies.

***Transitioning business company** = business company incorporated under the **International Business Companies (Amendment and Consolidation) Act** before **1 January 2019** - exceptions relating to intellectual property assets and income.

Applicability of ES Act:

* **The ES Act applies to every RESIDENT ENTITY**, although the application of the law on many entities will be limited to a reporting obligation. **AN ANNUAL REPORTING OBLIGATION IS IMPOSED ON EVERY RESIDENT ENTITY.**

* All “**relevant entities**” that carry on certain specified geographically mobile activities (defined as “**relevant activities**”) are required to satisfy ES requirements, unless **excluded** under the provisions of the Act.



Summary of ES Requirements:

A **relevant ENTITY** conducting a **relevant ACTIVITY** is required to:

1) be directed and managed in SVG in relation to that relevant activity;

2) having regard to the level of the relevant activity carried out in SVG and proportionate to the level of that activity –

- (i) have an adequate number of appropriately experienced and if appropriate, qualified full-time employees or other personnel in SVG;**
- (ii) have an adequate amount of operating expenditure incurred in SVG;**
- (iii) have adequate physical assets or presence in SVG; and**

3) Conduct core Income generating activities ‘CIGA’ in relation to that relevant activity in SVG [Section 8 of the ES Act sets out the CIGA of the different relevant activities].

Meeting Economic Substance Requirements Steps in Self-Assessment and Compliance

STEP 1: Determine whether the Company is a RESIDENT entity.

“resident entity” – defined in section 2 of the ES Act as:

- a) a company within the meaning of the Companies Act;
- b) a registered external company; or
- c) a business company within the meaning of the **Business Companies (Amendment and Consolidation) Act.**

ONCE the company is a resident entity, it is required to complete an Annual ES Return.

Meeting Economic Substance Requirements - Steps in Self-Assessment and Compliance

STEP 2: Determine whether the Company is an EXCLUDED entity

A resident entity is an excluded entity if it meets either of the following two tests:

1. The resident entity is tax resident in a country outside SVG which is not on the EU list of non-cooperative jurisdictions for tax purposes;
2. The resident entity meets the cumulative conditions of conducting its activities exclusively in SVG, is locally controlled, and is not part of a multinational enterprise ('MNE') group.

Ref:

ES Act, s. 2 for definition of 'excluded entity' and 'multinational enterprise.'

Sections 5 and 6 of the ES Act and Regulation 4(1) contain **comprehensive details** on the criteria to be satisfied and the information to be provided for an entity to be classified as an excluded entity.

ES Guidance, pages 13 and 14.

Meeting Economic Substance Requirements - Steps in Self-Assessment and Compliance

●STEP 2: Cont'd – (Determining whether Excluded)

'Locally owned and controlled' – *Ref: ES Act, Regulations and Guidance*

Section 6(3) of the ES Act - locally controlled if (in summary) each of the following conditions is met:

- 1) At least 60% of the issued shares of the entity are owned by local persons.
- 2) Local persons are entitled to exercise or control at least 60% of the voting rights in the resident entity.
- 3) At least 60% of the directors are local persons.

An individual is treated as a **“local person”** if the individual has a right to reside in SVG. This includes a right to reside granted under the Residence Act.

Meeting Economic Substance Requirements - Steps in Self-Assessment and Compliance

●STEP 2: Cont'd – (Determining whether Excluded)

Locally owned' - *There are 3 other categories of local person:*

The Government;
A local authority; and
A publicly owned entity within the meaning of the ES Regulations.

The ES Regulations provide that a **publicly owned entity** is an entity that is both:
constituted under an Act of Parliament (but excluding a company or a business company);
and
is wholly owned by the Government or a local authority.

Meeting Economic Substance Requirements - Steps in Self-Assessment and Compliance

STEP 2: Cont'd – (Determining whether Excluded)

- For the purposes of establishing **60% control**, the ownership of an issued share or the control of a voting right may be direct or indirect - **Section 6(3), ES Act.**
- **Direct ownership of a share** - The Comptroller will regard a person as having direct ownership of a share if the share is registered in the person's own name and the share is not held on trust or for the benefit of any other person.
- **Indirect ownership** - **Section 6(4), ES Act** outlines the circumstances which apply to show that a person owns an issued share in an entity indirectly.
- **Direct and indirect exercise of voting rights** – **Section 6(5), ES Act**
- **Controlling Interest** – **Section 6(6), ES Act.**

Meeting Economic Substance Requirements - Steps in Self-Assessment and Compliance

RESULT OF
STEPS 1 and 2 =

*Identifies whether the
company is a “relevant
entity”*

- Relevant Entity = Resident Entity AND not an Excluded Entity [2 preceding steps process]

Ref –

- Relevant Entity defined in section 2 of the ES Act.
- Criteria for determining whether a company is a “relevant entity” – ES Guidance, pages 13 and 14.

Meeting Economic Substance Requirements

Steps in Self-Assessment and Compliance

Step 3: Determine if (the relevant entity is) carrying out a relevant activity

Nine (9) categories of relevant activities listed and defined in the Act, namely:

- banking business;
- distribution and service centre business;
- finance and leasing business;
- fund management business;
- headquarters business;
- holding entity business;
- insurance business;
- intellectual property holding business; and
- shipping business.

- **Each of these terms is defined in the ES Act.**

Meeting Economic Substance Requirements - Steps in Self-Assessment and Compliance

Step 4: Ensure ES Requirements are being met [once it is a relevant entity carrying out a relevant activity]

The “ES TEST”

Not a single test but broken down into the 3 test components, referred to as:
the ‘**directed and managed test**,’ – pages 20 -22 of ES Guidance
the “**adequacy test**” – pages 22-25 of ES Guidance
the ‘**CIGA test**’ – Page 26 and Annex 1 *Sector Specific Guidance*

Ref:

Section 9 of the ES Act

ES Guidance, as above

Sector Specific Guidance outlined in Annex 1 examines the CIGA corresponding to each relevant activity and provides additional guidance on the practical application of the ES requirements to the various relevant activities.

Meeting Economic Substance Requirements

Steps in Self Assessment and Compliance

Step 5:

Complete Annual Return Form and Submit to the IRD by end of April or by the end of the Company's approved basis period annually,

This return must be made within **4 months** after the last day of the end of each financial year of the relevant entity.

The return is made using an approved form entitled the **ANNUAL ECONOMIC SUBSTANCE RETURN FORM 1 and/or FORM 2**, issued by the Comptroller pursuant to **section 29 of the ES Act**.

Return to be completed and submitted by all resident entities - **Section 11 (1) of the ES Act**.

ES Regulations 4 and 5 specify the information and documentation required for this Return.

Meeting Economic Substance Requirements

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Steps in Self Assessment and Compliance

Step 5 Cont'd:

- All Companies [i.e. resident entities] must complete Form 1
- ONLY relevant companies/entities must complete Forms 1 and 2.
- Form 1 – Determination by Comptroller if company is a resident entity and whether excluded or not.
- Form 2 – Determination by Comptroller whether ES requirements are being met.
- *Under Form 2 - Complete only section pertaining to the Company's relevant activity*, or if more than 1 relevant activity, for all relevant activities being undertaken.
- **GUIDANCE –**
- ES Sector Specific Guidance (Annex 1) per ES requirements for each relevant activity.
- Entire Guidance Note (Annex 2) dedicated to Completing Annual Return.

Steps in Assessment and Compliance – Step 5 Cont'd - Submission of Annual Return

ES GUIDANCE - ANNEX 2:

Economic Substance For Geographically Mobile Activities

GUIDANCE ON ANNUAL RETURN

1.0 General

2.0 Resident Entities

3.0 Relevant Entities

4.0 Relevant Activities

5.0 Directed and Managed Questions

6.0 Employees Questions

7.0 Operating Expenditure Questions

8.0 Identifying the Specific CIGA Questions

9.0 Outsourcing Questions

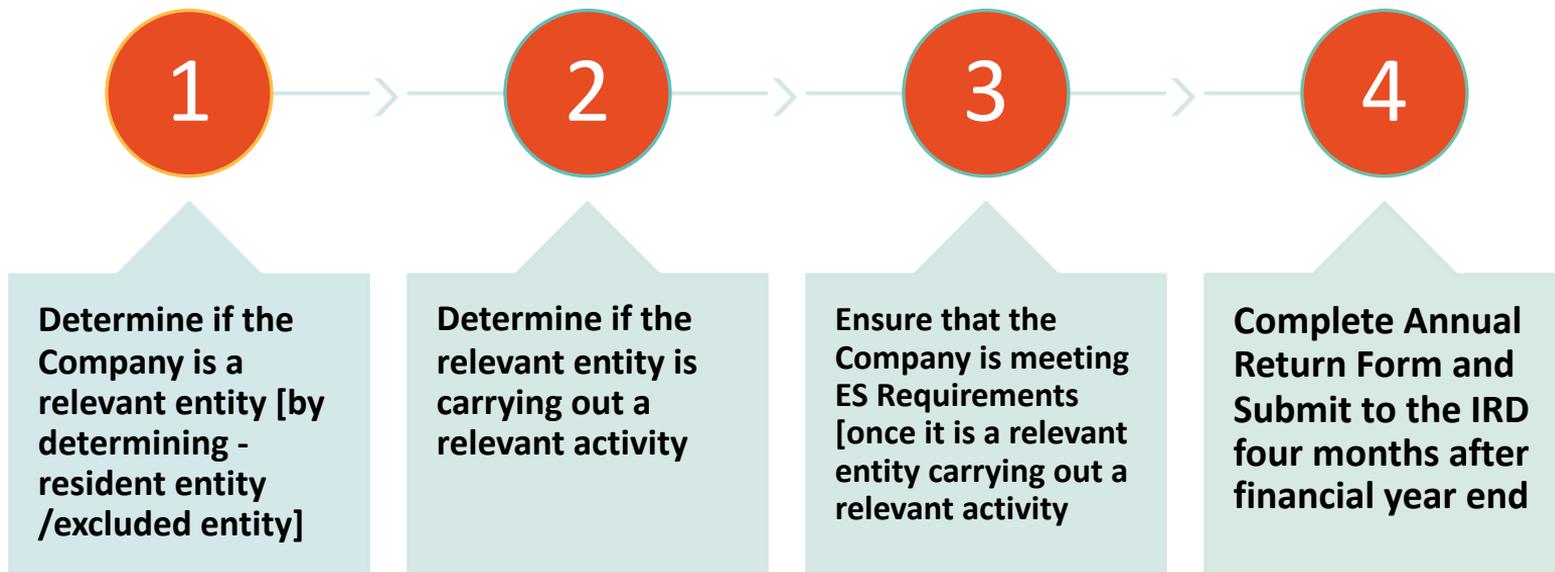
10.0 Further Questions for High-Risk IP Companies

11.0 Self-Declaration

12.0 Opportunity for Due Process

13.0 Requirement for Annual Submission

Compliance Summary Steps



Role of the Comptroller of Inland Revenue

The Comptroller is responsible for administering and applying the provisions of the ES legislation [s.25, ES Act].

Information indicated on the Annual Return must assist the Comptroller:

- to determine whether a resident company is a relevant company, and, if so;

- whether it is subject to ES requirements; and

- whether the ES requirements have been satisfied.

Role of the Comptroller of Inland Revenue

Comptroller's Responsibility Extends to:

Powers of Enforcement and Sanctions

Review and Appeals

Determining Misleading Information

Exchange of Information as Required

Refs:

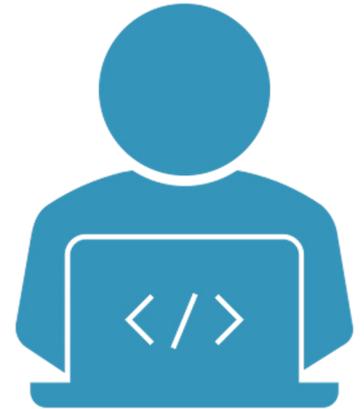
Sections 14, 15, 16, 17, 19, 22, 23 and 27, ES Act.

Comptroller's Approach to ES -

In general, the Comptroller will take a practical approach to the interpretation and application of the ES requirements.

In assessing each Entity, the Comptroller will have regard to the **nature, scale and complexity** of that entity's business, and will apply criteria such as **"adequacy" in that context.**

What is adequate or appropriate for each relevant entity will be dependent on the particular facts of the relevant entity and its business activity.



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Thank You!