

ANNEX 2:

Economic Substance For Geographically Mobile Activities

GUIDANCE ON ANNUAL RETURN

Issued under section 30 of the
International Tax Co-operation (Economic Substance) Act

SAINT VINCENT AND THE GRENADINES

Date of Issue: 2021

Version 1.0

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GUIDANCE IN RELATION TO INFORMATION REQUESTED ON THE CORPORATE (ECONOMIC SUBSTANCE) RETURN

1.0 GENERAL

- A) Section 11 (1) of the International Tax Cooperation (Economic Substance) Act (“the ES Act”) requires a **resident entity** to submit a **return** to the Comptroller of Inland Revenue (“the Comptroller”) for the purposes outlined. **Regulations 4 and 5** of the International Tax Cooperation (Economic Substance) Regulations (“the ES Regulations”) specify the information and documentation required for this return. This return will be made using an approved form entitled the “**Corporate (Economic Substance) Return Form**” It is issued by the Comptroller pursuant to section 29 of the ES Act and is to be completed and submitted by resident entities.
- B) *For the avoidance of doubt, the definition of a resident entity¹ is summarized to mean a company incorporated or continued under the Companies Act or the Business Companies (Amendment and Consolidation) Act or an external company registered under the Companies Act.*

2.0 RESIDENT ENTITIES

- A) The **Corporate (Economic Substance) Return Form** (the “**Return Form**”) must be completed annually by every company that is a ‘**resident entity**’. **PART 1A/Economic Substance Notification** requires every company that is a resident entity to specify whether it claims to be an ‘**excluded entity**’ and, if so, to specify whether the claim is based on tax residence outside St. Vincent and the Grenadines in a country which is not on the EU’s list of non-cooperative jurisdictions for tax purposes or on the company satisfying the criteria for a locally controlled entity.
- B) The company must provide details of the basis for its claim to be an excluded entity. The information required is outlined in Section 5 of the ES Act and Regulation 4(1)(b) and (c) of the ES Regulations. In addition, the company is required to provide any additional information requested by the Comptroller to establish its claim.
- C) A company that is an excluded entity is not required to complete the remainder of the Return form, which focusses on compliance with the ES requirements.

3.0 RELEVANT ENTITIES

- A) A ‘**relevant entity**’ is defined in the ES Act as a resident entity that is not an excluded entity.

¹ Defined in Section 2 of the ES Act, which definition has been previously reproduced under ‘Reporting Obligations’ in the main Guidance.

- B) Every company that is a relevant entity is required to complete **PART 1B/Economic Substance Return**, for the purpose of enabling the Comptroller to make a determination as to
 - i. whether or not the company is carrying on a relevant activity;
 - ii. if the company is carrying on a relevant activity, whether the company satisfies the economic substance requirements.
- C) A company that claims to be an excluded entity is not required to complete **Part 1B/ Economic Substance Return** unless the Comptroller does not accept the company's claim.

4.0 RELEVANT ACTIVITIES

- A) As indicated above, a company that is a relevant entity is required to state whether or not it is conducting any relevant activities.
- B) If it is conducting any relevant activities, the company is required to state which, if any, of the relevant activities it undertakes. A company must select all relevant activities that it undertakes if its activities fall within multiple definitions. In respect of each relevant activity, a company is required to provide the information specified in respect of that activity for the relevant assessment period.
- C) For each relevant activity, a company is required to enter the gross income generated from the relevant activity. The gross income is the total income in the assessment period before any deductions, analogous to the turnover from the activity. This is the income as measured on an accrual basis, not a paid basis.
- D) If a company confirms that it did not undertake any relevant activities during the assessment period or, if it did undertake any relevant activities, that it generated no gross income from the relevant activities during the assessment period, the company has completed the economic substance section of the return.

5.0 DIRECTED & MANAGED QUESTIONS

- A) This section relates to the directed and managed requirement as described in Sections 9(3)(a) and section 10 of the ES Act. A company that undertakes any relevant activities is required to confirm that it meets a number of statements in relation to each of the relevant activities indicated to demonstrate whether it meets the 'directed and managed' in St. Vincent and the Grenadines requirement, providing a numeric number for board meetings held in St. Vincent and the Grenadines where there was a quorum of directors physically present.

- B) The interpretation of quorum for this purpose, as previously referenced², is in line with company law, taking into account any additional requirements as described in the Articles of Association of the company itself.

6.0 EMPLOYEES QUESTIONS

- A) The Comptroller expects employees to collectively demonstrate appropriate qualifications, experience, competency and a complementary skill set, appropriate to the relevant activities undertaken.
- B) The Corporate Tax (Economic Substance) Return requires the numbers of employees in St. Vincent and the Grenadines and the numbers of those employees with qualifications to be stated, as applicable.
- C) Qualifications and/or experience which are linked, or are clearly transferrable, to the relevant activities undertaken should be reported. It is not possible to dictate which qualifications are relevant as this depends on the specific circumstances and activities of the company, but in most cases, they would form part of 'job specification' of an employee's role.

7.0 OPERATING EXPENDITURE IN ST VINCENT AND THE GRENADINES

- A) This is the total gross expenditure incurred by a company (being a relevant entity) in the assessment period, in relation to the relevant activity undertaken, less any sums expended by or attributed to any overseas Permanent Establishment³ of the company.
- B) The total gross expenditure incurred on outsourcers in St. Vincent and the Grenadines is a subset of the total gross expenditure in St. Vincent and the Grenadines and includes all expenditure on outsourcing providers in the financial period who provided their services in St. Vincent and the Grenadines. The outsourcing includes any relevant activities.

8.0 IDENTIFYING THE SPECIFIC CORE INCOME GENERATING ACTIVITIES ("CIGA") PERFORMED

- A) The Form presents a list of all the CIGA, as set out in the ES Act, to be declared, which are performed as part of its relevant activities. A company that is a relevant entity must tick any/all the CIGA which form part of its relevant activities. In addition, there is an 'other' box, which if ticked, flows into a text box for details to be entered.

² Part 3.2 of the main Economic Substance Guidance also refers.

³ Defined in the Income Tax Act, as amended by the Income Tax (Amendment) Act 2021.

- B) For a holding company business, companies are not required to declare the CIGA as there is only one in the ES Act.

9.0 OUTSOURCING QUESTIONS

- A) These questions relate to expenditure on outsourcing providers and seek to gather further relevant information. The initial question clarifies if any of the relevant activities outsourced would constitute the outsourcing of one or more CIGA. If the activities outsourced are not a CIGA, then this section is complete.
- B) Where one or more CIGA have been outsourced, the company is required to provide the following information for each of these outsourcing providers -
- the name;
 - the total expenditure;
 - either their TIN or address; and
 - confirmation if the figures in the return for employees and premises include this outsourcing providers' employees or premises.

10.0 FURTHER QUESTIONS FOR HIGH-RISK IP COMPANIES

- A) A company that undertakes the relevant activity of IP Holding Entity is required to state if the company is a high-risk IP entity.⁴
- B) A company that confirms this, or where other entries on the return suggest that the company is a high-risk IP company, is required to provide details of its -
- Immediate Parent;
 - Ultimate Parent; and
 - Ultimate Beneficial Owner.
- C) The company is requested to provide evidence to rebut the presumption that the economic substance CIGA requirements have not been met.

11.0 END OF INFORMATION FILING REQUIREMENT - SELF-DECLARATION

- A) A company must declare if, on its own assessment, it has met the economic substance requirements pursuant to Section 9 of the ES Act, in respect of each relevant activity that it undertook during the assessment period.
- B) This Self- Declaration ends the specific economic substance questions. However, the Form also has a 'free text' box in which additional information can be entered if required or desired, and additional documents recorded and submitted if required/desired.

⁴ Defined in section 4 of the ES Act, which definition is also included in the Sector Specific Guidance.

12.0 OPPORTUNITY FOR DUE PROCESS

If the Comptroller seeks to question satisfaction of the economic substance requirements by a company, the company will have the opportunity to justify why it considers the economic substance requirements are met for its specific circumstances.

13.0 REQUIREMENT FOR ANNUAL SUBMISSION

- A) The ES return must be made within twelve months after the last day of the end of each financial year of the relevant entity commencing on or after January 01, 2021. The exception is that transitioning business companies⁵ are required to submit the ES return within twelve months after the last day of the end of each financial year commencing on or after July 01, 2021.

- B) The Comptroller strongly recommends that the ES return is submitted in a timely manner, otherwise a company's ability to obtain a Certificate of Good Standing from the relevant Companies Registrar will be impaired. The Comptroller also wishes to underscore that failure to submit the ES return results in the commission of a criminal offence with liability to a fine of up to EC\$100,000.00 or two years imprisonment, or both.

This Annex forms part of the Economic Substance Guidance V 1.0 issued by the Comptroller of the Inland Revenue Department of St. Vincent and the Grenadines.

⁵ Defined by section 33 of the ES Act.