



## **GOVERNMENT OF ANGUILLA**

### **INFORMATION SUMMARY ON AMENDMENTS TO INCORPORATION LEGISLATION TO INTRODUCE (EU) ECONOMIC SUBSTANCE REQUIREMENTS FOR ENTITIES CONDUCTING RELEVANT ACTIVITIES**

#### **What is the List of Non-Cooperative Jurisdictions for Tax Purposes?**

The Code of Conduct Group (Business Taxation) (COCG) was established within the ECOFIN Council of the European Union (EU) with the objective of curbing harmful tax competition. The COCG, using criteria endorsed by ECOFIN Council covering tax transparency, fair taxation and anti-base erosion and profit shifting (BEPS), screened 92 jurisdictions where EU treaties do not apply. The jurisdictions that were assessed as having harmful tax practices were placed on List of Non-Cooperative Jurisdictions for Tax Purposes.

Anguilla was assessed by the COCG based on Criterion 2.2, which requires that jurisdictions “should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction”. Anguilla was placed on Annex II, the ‘Grey List’ of jurisdictions that made commitments to make the necessary legislative reforms to comply with the economic substance requirements.

#### **What are the consequences of being placed on the List of Non-Cooperative Jurisdictions for Tax Purposes?**

Member States in the European Union have agreed in principle to employ defensive measures against jurisdictions that are on the EU List of Non-Cooperative Jurisdictions for Tax Purposes. These defensive measures have the potential to harm the economies in Non-Cooperative Jurisdictions.

#### **How has Anguilla responded?**

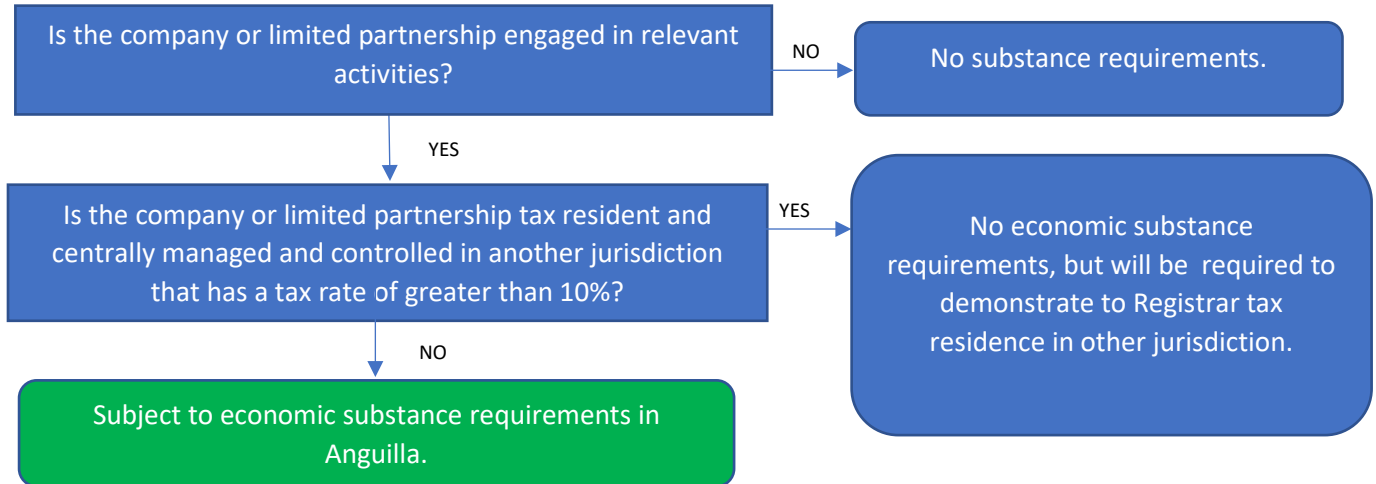
The Government of Anguilla (GOA) committed to implementing legislative measures to ensure that entities registered and tax resident in Anguilla have sufficient economic substance in the jurisdiction through the imposition of substance requirements and additional reporting requirements.

Amendments have been drafted to the Companies Act, the International Business Companies Act, the Limited Liability Companies Act and the Limited Partnership Act (Incorporation Legislation) that will implement the requirement necessary to avoid being listed as a non-cooperative jurisdiction.

The legislative amendments require that companies and limited partnerships registered in Anguilla that are engaged in relevant activities will be required to meet economic substance requirements and/or additional reporting requirements.

## Which companies and limited partnerships are required to meet economic substance requirements?

The chart below should be used as a guide to determine which companies and limited partnerships registered in Anguilla will be subject to economic substance requirements.



### What are the relevant activities?

1. **Banking**

A "banking business" as defined in the Banking Act, 2015 and in the Trust Companies and Offshore Banking Act, R.S.A. c.T60.

2. **Insurance**

An "insurance business" as defined in the Insurance Act, R.S.A. c.I16.

3. **Fund management**

A business earning income from providing management services (including making decisions on investments) to an investment fund or its investors.

4. **Financing and leasing**

A business earning income from providing credit facilities for any kind of consideration to another person but does not include financial leasing of land or an interest in land, banking business, fund management business or insurance business.

5. **Distribution and service centre**

A business earning income from –

- (a) purchasing raw materials and finished products from other group members and reselling these; or
- (b) providing services to other entities of the same group, for example transporting and storing goods, managing stocks, taking orders, or providing consulting or other administrative services.

6. **Shipping**

A business earning income from shipping activities, for example –

- (a) managing the crew (including hiring, paying or overseeing crew members);
- (b) hauling and maintaining ships;

- (c) overseeing and tracking deliveries;
- (d) determining what goods to order and when to deliver them; or
- (e) organising and overseeing voyages.

**7. Intellectual property business**

A business earning income from intellectual property assets, including royalties and income from the sale of an intellectual property asset.

**8. Headquarters**

A business earning income from providing services such as managing, coordinating or controlling business activities for a group with which it is affiliated, whether for the group as a whole or for members of the group in a specific geographical area, for example –

- (a) taking relevant management decisions;
- (b) incurring expenditures on behalf of group entities; or
- (c) coordinating group activities.

**9. Holding company**

A business holding equity participation from which dividends or capital gains are earned.

**What are the general economic substance requirements?**

The economic substance requirements apply to all relevant activities generally, but there are reduced requirements for holding company business and enhanced obligations for high risk intellectual property business.

The company or limited partnership has an adequate number of qualified employees, operating expenditures and adequate physical assets (whether leased, rented or owned) in Anguilla.

The company or limited partnership, engages in core income generating activities (CIGAs) in Anguilla. See page 5 for definitions of CIGAs.

Mind and management for the company or limited partnership takes place in Anguilla.

**What are the economic substance requirements for high risk intellectual property business?**

High risk intellectual property entity is defined as a business that -

- (a) acquired an intellectual property asset –
  - (i) from an affiliated entity; or
  - (ii) in consideration for funding research and development by another person situated in a country or territory other than Anguilla; and

- (b) licenses the intellectual property asset to an affiliated entity, or otherwise generates income from the asset in consequence of activities (such as facilitating sale agreements) performed by an affiliated entity;

There has been a high degree of control over the development, exploitation, maintenance, enhancement and protection of its intellectual property asset, exercised by an adequate number of full-time employees with the necessary qualifications who permanently reside and perform these activities in Anguilla.

Must file with the Registrar a business plan with justification for holding the high risk intellectual property asset in Anguilla, details on the qualified employees working in Anguilla and evidence that the decision making is taking place in Anguilla.

**What are the economic substance requirements for holding companies?**

The economic substance requirements for pure equity holding companies have been reduced given the nature of the required activities.

Comply with all required statutory filing requirements.

The company or limited partnership, has adequate human resources and premises in Anguilla to hold and manage equity participations.

For companies that hold a variety of assets and earn different types of income, such as interest, rents and royalties, the CIGAs would be those activities that are associated with the income that the holding companies earn.

**What are the core income generating activities (CIGAs) that relevant entities must conduct in Anguilla?**

The CIGAs are detailed in the chart below. A company or limited partnership may elect to employ adequate qualified staff directly to conduct the CIGAs in Anguilla or outsource the functions to a third-party service provider that is physically present in Anguilla. The third-party service provider must have appropriately qualified staff and premises to perform the functions on behalf of the company or limited partnership.

Relevant activity	Core income generating activities
Banking	<ul style="list-style-type: none"> <li>(a) Raising funds by managing risk, including credit, currency or interest risk;</li> <li>(b) taking hedging positions;</li> <li>(c) providing loans, credit or other financial services to customers; or</li> <li>(d) managing capital.</li> </ul>

Insurance	<ul style="list-style-type: none"> <li>(a) Predicting or calculating risk;</li> <li>(b) insuring or re-insuring against risk; or</li> <li>(c) providing insurance-related services to clients.</li> </ul>
Fund management	<ul style="list-style-type: none"> <li>(a) Taking decisions on the holding and selling of investments;</li> <li>(b) calculating risk and reserves; or</li> <li>(c) taking decisions on currency or interest fluctuations and hedging positions.</li> </ul>
Financing and leasing	<ul style="list-style-type: none"> <li>(a) Agreeing funding terms;</li> <li>(b) identifying and acquiring assets to be leased (in the case of leasing);</li> <li>(c) setting the terms and duration of any financing or leasing;</li> <li>(d) monitoring and revising any agreements; or</li> <li>(e) managing any risks.</li> </ul>
Distribution and service centre	<ul style="list-style-type: none"> <li>(a) Transporting and storing goods, components and materials;</li> <li>(b) managing stocks;</li> <li>(c) taking orders; or</li> <li>(d) providing consulting or other administrative services.</li> </ul>
Shipping	<ul style="list-style-type: none"> <li>(a) Managing crew (including hiring, paying and overseeing crew members);</li> <li>(b) overhauling and maintaining ships;</li> <li>(c) overseeing and tracking deliveries;</li> <li>(d) determining what goods to deliver and when to deliver them; or</li> <li>(e) organising and overseeing voyages.</li> </ul>
Intellectual property business	<p>In respect of a business exploiting an intellectual property asset which is a patent or an asset that shares features similar to a patent, research and development –</p> <ul style="list-style-type: none"> <li>(a) advancing the understanding of scientific relations or technologies;</li> <li>(b) addressing known scientific or technological obstacles;</li> <li>(c) increasing knowledge; or</li> <li>(d) developing new applications.</li> </ul> <p>In respect of a business exploiting an intellectual property asset that is a marketing intangible that shares features similar to a trademark, marketing, branding and distribution activities directly linked to the specific intangible.</p> <p>In exceptional cases, except in the case of a high-risk intellectual property entity, other core-income generating activities relevant to the business and the intellectual property assets may include:</p> <ul style="list-style-type: none"> <li>(a) taking strategic decisions and managing (as well as bearing) the principal risks related to development and subsequent exploitation of the intangible asset;</li> <li>(b) taking the strategic decisions and managing (as well as bearing) the principal risks relating to acquisition by third parties and subsequent exploitation and protection of the intangible asset; or</li> <li>(c) carrying on the underlying trading activities through which the intangible asset is exploited leading to the generation of revenue from third parties.</li> </ul>
Headquarters	<ul style="list-style-type: none"> <li>(a) Taking relevant management decisions;</li> <li>(b) incurring expenditures on behalf of group entities; or</li> <li>(c) co-ordinating group activities.</li> </ul>
Holding company	All activities related to that business.

**What are the economic substance reporting requirements?**

All companies and limited partnerships registered in Anguilla will be required to file an annual return to declare whether they conduct relevant activity and whether they are compliant with the economic substance requirements.

The following information must be provided in the annual return for companies and limited partnerships engaged in relevant activities.

- (a) Type of relevant activity conducted
- (b) Jurisdiction of tax residency, if other than Anguilla
- (c) The amount and type of relevant income in respect of the relevant activity;
- (d) The amount and type of expenses incurred in respect of the relevant activity
- (e) The location of the place of business or plant, property or equipment in Anguilla used for the relevant activity
- (f) The number of employees with appropriate qualifications or personnel of third-party service provider in Anguilla who are responsible for carrying on the relevant activity;
- (g) Description of the core income generating activities conducted in Anguilla in respect of the relevant activity
- (h) Declaration as to whether or not the relevant entity satisfies the economic substance test in accordance with this Law
- (i) In the case of a relevant activity that is an intellectual property business- a declaration as to whether or not it is a high-risk intellectual property business and, if it is:
  - (i) Detailed business plans which demonstrate the commercial rational for holding the intellectual property assets in Anguilla
  - (ii) Employee information, including level of experience, type of contracts, qualifications and duration of employment; and
- (j) Evidence that decision making is taking place within Anguilla.

Effective 1 January, 2019, all new companies and limited partnerships registered under the Incorporation Legislation will be required to meet the economic substance requirements. For existing companies and limited partnerships, the economic substance requirements will be effective on and after 1 July, 2019.

The Government of Anguilla will be required to share information with EU member states subject to existing tax instruments given effect to by the Tax Information Exchange (International Cooperation) Act, in circumstances where a company or limited partnership is engaged in high risk intellectual property business or has not complied with the economic substance or reporting requirements.

**What are the penalties for non-compliance?**

It is an offence for a company or limited partnership to -

- (a) Fail to file an annual return;
- (b) Fail to meet the economic substance requirements for relevant activities.

The Registrar shall impose financial penalties for non-compliance and, in the case of continued non-compliance, the entity may be struck from the Commercial Register.

For more information, please refer to the proposed amendments to the Incorporation Legislation which are available on the Government of Anguilla's website at [www.gov.ai](http://www.gov.ai).