

CITIZEN'S SECRETARIAL SERVICES LIMITED

Company Compliance & Consultation Services

Tel: (852) 2544 2323 Fax: (852) 2543 9762
citizen@tklo.com.hk www.tklo.com.hk



Circular Date: 16 August 2019

Offshore Company's Economic Substance Laws

Many offshore company jurisdictions, including BVI and Cayman Islands, passed Economic Substance Laws under international efforts of the European Union (EU) and the Organization for Economic Cooperation and Development (OECD) to regulate the tax avoidance of multinational organizations. Those Economic Substance Laws raise the tax transparency requirements and reporting obligations of all companies registered in these traditional tax havens. Unless the conditions of economic substance are satisfied, the registered company will not be accepted as a tax resident in the place of company registration. And there is a presumption that each non-accepted local tax resident company should be a tax resident in another jurisdiction which is expected to report and disclose.

In addition, banking and commercial services are demanded to comply with AML verification about owner's identity and nature of business activities. Companies in the recent years should come across more and more know-your-customer (KYC) enquiries in operation, e.g. in bank account operation, business license registration, investment and real properties transactions, legal and accountancy services, etc.

New Recommendations to Non-Multinational Group Company & SME Business

Although the detailed guidance and reporting requirements are not yet fully issued or clarified by offshore jurisdictions, we trust the request to report each offshore company's place of tax resident and taxpayer identification number (TIN) is unavoidable in future. In the past, we did not recommend customer to apply for registration as Non-Hong Kong Company in Hong Kong Companies Registries, as the Hong Kong law only requires the offshore companies which established a place of business in Hong Kong to apply for Hong Kong registration. Also, the registration would lead to obligations to report the business performance to the Hong Kong Inland Revenue Department for their assessment of Hong Kong Profits Tax. For the companies not having trading activities in Hong Kong and not subject to Hong Kong tax liabilities, the Hong Kong registration would create unnecessary administrative burden to prove its non-taxability status in Hong Kong. Moreover, even an offshore company has obtained registration from Companies Registry and Inland Revenue Department (IRD), it is still not able to obtain Certificate of Resident Status from IRD for enjoying tax benefits in double taxation arrangement with other countries.

CITIZEN'S SECRETARIAL SERVICES LIMITED

Company Compliance & Consultation Services

Tel: (852) 2544 2323 Fax: (852) 2543 9762
citizen@tklo.com.hk www.tklo.com.hk



Circular Date: 16 August 2019 (cont'd)

In the coming days, we would like to give new general recommendations to clients maintaining offshore company registration for private or business purposes as below.

1. Client is required to review its cost/benefits analysis for continuous renewal of offshore company registration. The benefits normally include keeping a greater privacy in shares ownership and keeping bank accounts for private money remittance between different countries or locations.
2. If an offshore company client has trading activities or income not subject to income tax in Hong Kong or other jurisdictions, it needs to decide which location is the most appropriate place of tax residence for the offshore company. If the most appropriate place is Hong Kong, the company should consider obtaining Non-Hong Kong Company Registration and Business Registration Certificate as a supporting document of Hong Kong tax resident reporting in future.
3. If an offshore company is a pure equity holding company (except for dividend income and capital, it should not have financial loans due from or to other parties or other activities), it can also consider obtaining Non-Hong Kong Company Registration and Business Registration Certificate for the easy reporting and compliance purposes. If an offshore company decides not to obtain Non-Hong Kong Company Registration and Business Registration Certificate, it needs to avoid having trading income or activities be subject to reporting obligations in the jurisdiction concerned.
4. As revised and new guidelines or regulations based on the economic substance laws may be issued by offshore company jurisdictions in future, the above recommendations should be adjusted and updated periodically.