



BERMUDA

ECONOMIC SUBSTANCE AMENDMENT (NO 2) REGULATIONS 2019

BR 38 / 2019

The Minister of Finance, in exercise of the power conferred by section 11 of the Economic Substance Act 2018, makes the following Regulations:

Citation

1 These Regulations, which amend the Economic Substance Regulations 2018, may be cited as the Economic Substance Amendment (No 2) Regulations 2019.

Revokes and replaces regulation 15

2 Regulation 15 of the Economic Substance Regulations 2018 is revoked and replaced as follows—

“Intellectual property

15 (1) An entity engages in IP business if the entity engages in the exploitation of IP assets (including non-trade intangible assets).

(2) For the purposes of paragraph (1), the core income generating activities associated with an intangible asset will depend on the following—

- (a) the nature of the IP asset, that is to say, whether it is a patent, technical know-how, trademark, customer lists or brand or goodwill; and
- (b) how the IP asset is being used to generate income for the entity.

(3) The core income generating activities for entities engaged in IP activities include the following—

- (a) conducting research and development in relation to IP assets, such as patents;

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- (b) marketing, branding and distribution of non-trade intangible assets, such as trademarks;
- (c) taking the strategic decisions and managing and bearing the principal risks related to the development and subsequent exploitation of an IP asset;
- (d) taking the strategic decisions and managing and bearing the principal risks related to any third party acquisition and subsequent exploitation of an IP asset; and
- (e) carrying on the underlying trading activities through which IP assets are exploited and which lead to the generation of income from third parties. ”.

Amends regulation 16

3 Regulation 16 of the Economic Substance Regulations 2018 is amended as follows—

- (a) in paragraph (2)—
 - (i) by deleting the words “regulation 15(2)” and substituting the words “regulation 15(3)(a) and (b)”;
 - (ii) by renumbering subparagraph (a)(ii) as subparagraph (a)(iii), and by inserting as subparagraph (a)(ii) the following—
 - “(ii) taking the strategic decisions and managing and bearing the principal risks related to any third party acquisition and subsequent exploitation of an IP asset; ”;
- (b) in paragraph (4), by deleting the words “regulation 15(2)” and substituting the words “regulation 15(3)”.

Made this 4th day of March 2019

Minister of Finance

[Operative Date: 04 March 2019]