



REPUBLIC OF THE MARSHALL ISLANDS (RMI) ECONOMIC SUBSTANCE

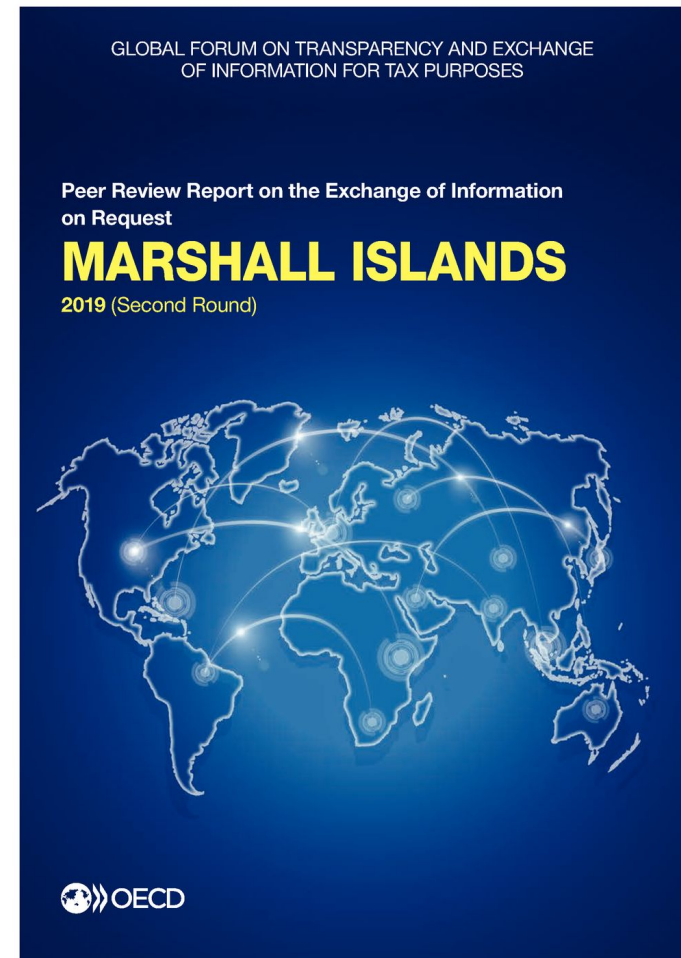
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ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD) UPDATE

- Peer review conducted in the RMI February 2019
- Final report adopted 12 November 2019
- RMI received an overall **Largely Compliant** rating
- Largely Compliant rating is an element of the European Union (EU) evaluation of jurisdictions and RMI expects to be moved to EU White List at the earliest opportunity

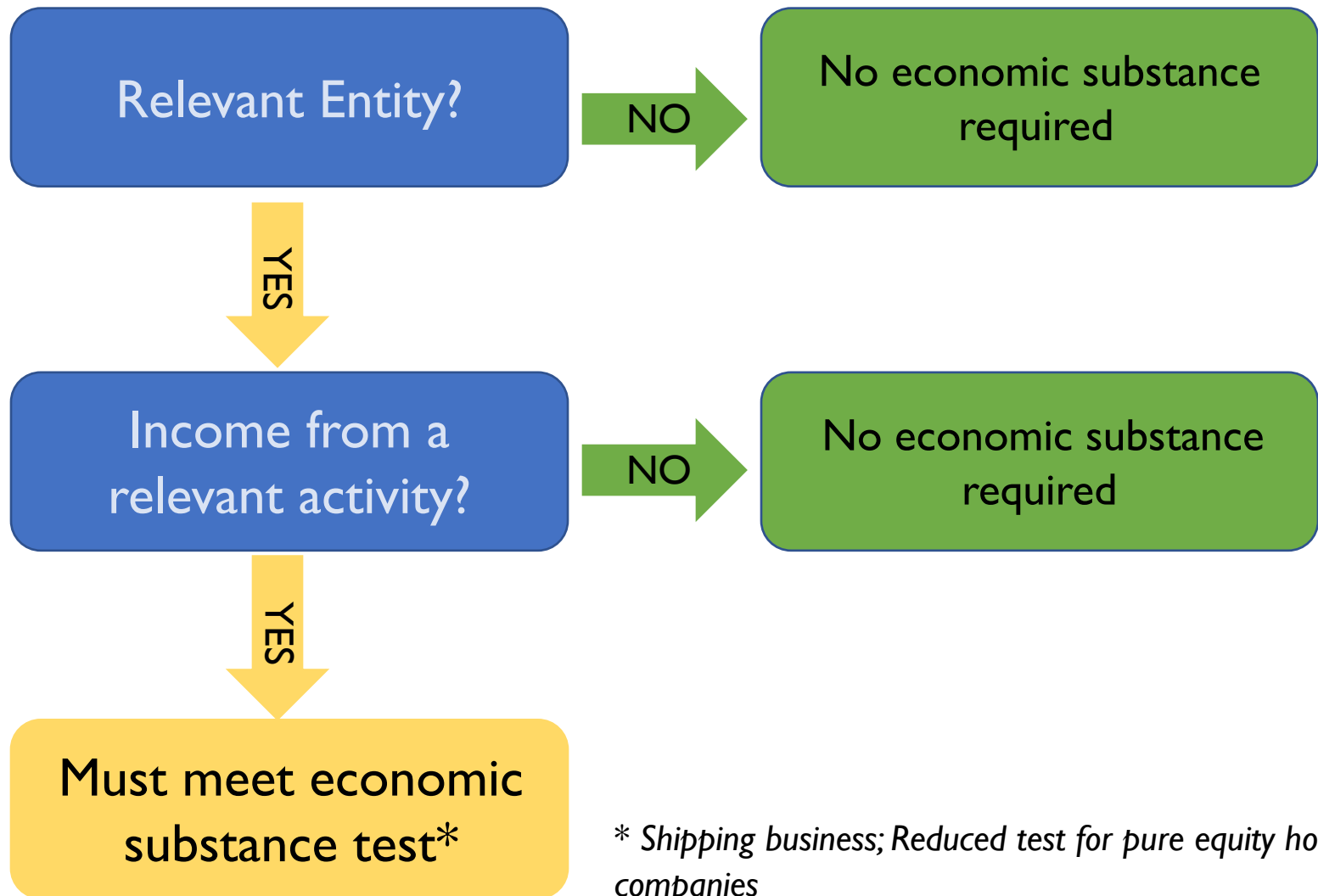


ECONOMIC SUBSTANCE REGULATIONS 2018 (ESRs)

- Entered into effect 1 January 2019
 - However, the RMI and EU continued to negotiate amendments to the ESRs and the RMI removal from the blacklist throughout 2019
 - RMI officially removed from EU blacklist on 4 October 2019
- Applicable to all relevant entities that perform a relevant activity



OVERVIEW



RELEVANT ENTITIES

- ESRs, Section 2(s) –

"relevant entity" means:

- i. a corporation, partnership, limited partnership, or limited liability company, other than a resident domestic corporation, partnership, limited partnership, or limited liability company, that is incorporated or formed under the Business Corporations Act, Revised Partnership Act, Limited Partnership Act, or Limited Liability Company Act, **unless its business is centrally managed and controlled outside the Republic and it is tax resident outside the Republic**; or
- ii. a corporation, partnership, limited partnership, limited liability company, or other entity incorporated or formed outside of the Republic (a "foreign entity") registered under the under the Business Corporations Act, Revised Partnership Act, Limited Partnership Act, or Limited Liability Company Act, including a foreign maritime entity, **whose business is centrally managed and controlled in the Republic, unless the foreign entity is tax resident outside the Republic**;



All non-resident domestic entities are relevant entities unless they can show otherwise



Only foreign maritime entities (FMEs) that are centrally managed and controlled in the RMI are relevant entities

NON-RELEVANT ENTITIES

- Tax resident outside of RMI or “subject to the tax regime of another jurisdiction” = non-relevant entity

- Entities must declare annually they are able to provide objective evidence, such as:
 - Tax Identification Number;
 - Tax Certificate;
 - Proof of assessment or payment of tax liability; or
 - Other evidence as requested by the Registrar of Corporations, where the above are not available

- Non-relevant entities are not required to have economic substance in the RMI



RELEVANT ACTIVITIES

ESRs, Section 3 lists the following relevant activities:

- distribution and service center business;
- financing and leasing business;
- fund management business;
- headquarters business;
- **holding company business;**
- intellectual property business;
- **shipping business;**
- banking business;* and
- insurance business.*

** Banking and insurance businesses are prohibited by the Associations Law for non-resident domestic entities.*



RELEVANT ACTIVITIES – PURE EQUITY HOLDING COMPANIES

- “Pure equity holding company” means a company that only holds equity participations in other entities, only earns dividends and capital gains, and performs no commercial activity

- Reduced Economic Substance Test:
 - (1) Must comply with its statutory obligations, as appropriate; and
 - (2) Must have adequate human resources and premises in the RMI for holding and managing equity participations in other entities

RELEVANT ACTIVITIES – SHIPPING BUSINESS

- “Ship” means a vessel registered in the Republic pursuant the Maritime Act 1990, Title 47 of the MIRC
- “Shipping business” means the operation of ships in international traffic for income from the transport of passengers or cargo and includes any of the following activities where the relevant activity is directly connected with, or ancillary to, such operation:
 - the rental on a charter basis of a ship;
 - the sale of tickets or similar documents and the provision of services connected with the sale of tickets or similar documents, either for the enterprise itself or any other enterprise;
 - the use, maintenance, or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise; or
 - the management of the crew of a ship;
 - the registration of a ship;
 - the recording of a financial instrument or lien in relation to a ship;
 - the ownership of a ship;
 - the financing of a ship;
 - the obtaining of statutory certificates for a ship;
 - the surveying of a ship; or
 - the provision of services related to the foregoing.



RELEVANT ACTIVITIES – SHIPPING BUSINESS (continued)

- How will the Registrar determine whether entities engaged in shipping business meet the economic substance test?
 - ESRs, Section 5(g), footnote 3:

“The determination of economic substance in the context of shipping business recognizes that significant core income generating activities within shipping are performed in transit outside of the Republic, and that the value creation attributable to the core income-generating activities that occur from a fixed location is more limited than for other types of regimes for mobile business income. The determination further considers whether the relevant entity handles all obligations under the Associations Law and Maritime Act 1990, including compliance with applicable International Maritime Organization regulations, customs, and manning requirements.”
 - Derived from the OECD 2017 Progress Report on Preferential Regimes

ECONOMIC SUBSTANCE TEST

- For relevant activities other than pure equity holding companies
- Entities must have economic substance for all financial periods in which income is derived from a relevant activity
- Three-part test:
 - Directed and managed in the RMI
 - Adequate level of activity in the RMI – “people and premises”
 - Carries out its core income generating activities (CIGAs) in the RMI
- “Adequate” is not defined and would be determined on a case-by-case basis

REPORTING

- All entities and FMEs will be required to submit an annual report to the Registrar declaring:
 - (1) Whether the entity is a relevant entity or not
 - (2) If a relevant entity, whether it earned income from a relevant activity for the previous financial period
 - (3) For all relevant entities that have performed a relevant activity, additional reporting is required:
 - business type (to identify the type of mobile activity);
 - amount and type of gross income;
 - amount and type of expenses and assets;
 - premises;
 - number of employees, including full-time employees; and
 - information showing that it has conducted relevant CIGAs in the RMI
- Online portal – anticipated mid-2020

PENALTIES

- Failure to satisfy economic substance test:
 - First offense – financial penalty up to \$50,000 and/or forcible annulment.
 - Subsequent offenses – financial penalty up to \$100,000 and/or forcible annulment.

- Failure to report:
 - Financial penalty up to \$10,000 and/or forcible annulment.

- Providing false or misleading information:
 - Financial penalty up to \$50,000 and/or forcible annulment.

THANK YOU



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