

Substantial Activity Requirements

Guidelines



FINANCIAL SERVICES AUTHORITY

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1. Introduction

These guidelines have been prepared by the Financial Services Authority (“the Authority”) to provide guidance on the substantial activity requirements for relevant licensees under the Securities Act and the Mutual Fund and Hedge Fund Act.

2. Background

2.1 BEPS initiative (Base Erosion and Profit Shifting)

The BEPS project is an international obligation, which Seychelles committed itself to at the request of OECD in 2016 to conform to international standards on tax matters in relation to the implementation of measures against tax avoidance strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations.

The project includes fifteen (15) Actions, four of which are minimum standards and should be implemented by all countries within a set time. These are Action 5 - countering harmful tax practices more effectively, Action 6 - Preventing Tax treaty abuses, Action 13 - Country by Country Reporting and Action 14 - Mutual Agreement Procedures in relation to disputes on bilateral Double Taxation Avoidance Agreements. Adherence to the BEPS Project involves changes to Seychelles current legislations and implementation of new ones.

2.2 Action 5 – Forum for Harmful Tax Practices

Preferential regimes continue to be a key pressure area in the international arena vis-à-vis standards and best practices. Current concerns are primarily about preferential regimes which can be used for artificial profit shifting and about a lack of transparency in connection with exchange of information. In the context of IP regimes such as patent boxes, the OECD has adopted the “nexus approach” which uses expenditures as a proxy for substantial activity and to ensure that taxpayers can only benefit from IP regimes where they engaged in research and development and incurred actual expenditures on such activities. The same principle can also be applied to other preferential regimes so that such regimes are found to require substantial activity where the taxpayer undertook the core income generating activities.

In the area of transparency, a framework has been developed for the compulsory spontaneous exchange of information that could give rise to BEPS concerns in the absence of such exchange.

Nevertheless, for the purpose of these guidelines, focus would strictly be on the monitoring of Seychelles commitment in lieu of legislative amendments to conform with Forum on Harmful Tax Practices standards (FHTP).

3. Substantial Activity Requirements

The legislative amendments to the Securities Act (i.e. Securities (Amendment) Act, 2018) and the Mutual Fund and Hedge Fund Act (i.e. Mutual Fund and Hedge Fund (Amendment) Act, 2018) provides that licensees will only be able to benefit from the preferential tax rates accorded under these legislations if the substantial activity requirements are met by these relevant licensees. Hence, where a licensee fails to meet the substantial activity requirements, the preferential tax rate will not apply to the licensee and the licensee will be liable to the general Seychelles’ business tax rate.

The Mutual Fund and Hedge Fund (Substantial Activity Requirements) Regulations, 2018 and the Securities (Substantial Activity Requirements) Regulations, 2018 provides the criteria for the

substantial activity requirements. The substantial activity requirements are met if the licensee undertakes the core income generating activities (as specified under the Regulations) in Seychelles:

- (a) by employing, either directly or indirectly, a reasonably adequate number of suitably qualified persons to carry out the core income generating activities, and
- (b) incurs an adequate amount of operating expenditures for such activities.

1.1. Reasonably adequate number of suitably qualified persons

When determining what is intended by the term “adequate number of qualified persons”, the assessment will be done on a case by case basis, looking at the specific circumstances of each licensee. Due regard will be given to the employee/s undertaking the core income generating activities and whether such individual/s are resident in Seychelles and are employed by the licensee on a full-time basis.

In determining whether the employees are “qualified”, regards will be made on whether such employees have been determined “fit and proper” by the FSA. It is to be noted that the fit and proper criteria require the FSA to look at, amongst other things, the employees' educational background, qualifications and experience so as to ensure that the employees can competently undertake the core income generating activities assigned to them.

In determining whether the number of full-time employees are “adequate”, regards will be made to the volume or size (i.e. the licensee’s total revenue) and complexity of business being serviced by the licensee and whether the volume and complexity of business is commensurate with the number of full-time employees. It is to be noted that all core income generating activities must be undertaken by full-time employee/s in Seychelles only.

1.2. Adequate amount of operating expenditures

In determining whether the amount of operating expenditures is “adequate”, regards will be made to the nature of core income generating activities conducted by the licensee, whereby from the total income of the licensee all costs relating to the regular operations of the business incurred by the licensee in Seychelles in a particular financial year would be used to determine adequate amount of operating expenditures. All expenses made should be commensurate with the nature, level, volume, size and complexity of the business.

4. Third Party Outsourcing

Licensees may elect to outsource any of its core income generating activity to a third party service provider, provided that:

- the licensee is able to demonstrate adequate supervision of the outsourced activity.
- the outsourced activity is conducted in Seychelles where the core income generating activity is derived from.
- the substance requirements for third party contractors would not be counted multiple times by multiple licensees when evidencing their own substance in Seychelles.

However, the Regulations provide that a licensee which outsources any of its core income generating activity outside of Seychelles, the substantial activity requirements will be considered not to have been met.

5. Grandfathering

The amendments made to the Securities Act and the Mutual and Hedge Funds Act in 2018 provides a grandfathering period for “existing licensees” (i.e. licensees licensed on or before 16th October, 2017) to continue to enjoy the preferential tax rate accorded under the relevant legislation until 30th June, 2021 without having to meet the substantial activity requirements until 30th June, 2021.

While existing licensees can still benefit from the preferential tax rate until 30th June, 2021, the benefit is not applicable to new assets or activities introduced by the licensee after 16th October, 2017. New assets and activities will only benefit if the substantial activity requirements are being met by the licensee.

However, “new licensees” (i.e. licensees licensed after 16th October, 2017) will need to satisfy the substantial activity requirements as of 1st January, 2019 in order to enjoy the preferential tax rates.

As of 1st July, 2021, both existing licensees and new licensees will need to meet the substantial activity requirements if they wish to benefit from the preferential tax rates.

6. Claiming the preferential tax rate

A request to claim the preferential tax rates under the Seventh Schedule of the Business Tax Act must be made by the licensee through the submission of the relevant forms (annexed) as follows:

- All existing licensees: Annex 1
- Existing licensees claiming benefits for new assets or new activities introduced by the licensee after 16th October, 2017: Annex 1 **and**, in the case of a fund administrator Annex 2 or in the case of a licensee under the Securities Act Annex 3
- New licensees licensed after 16th October, 2017: In the case of a fund administrator Annex 2 or in the case of a licensee under the Securities Act Annex 3

The completed form(s) must be attached with the licensee’s relevant Annual Tax Return to be submitted to the Seychelles Revenue Commission (“SRC”).

Upon receipt of the application, SRC will liaise with FSA to verify and ascertain the information provided in the form and undertake its own assessment of the application to identify whether the substantial activity requirements have been met by the licensee. The FSA would have a minimum of 10 working days to provide a response to SRC, notwithstanding the probability of undertaking joint onsite inspections by the SRC and FSA at the business premise of the licensee.

In summary, a successful application should be able to demonstrate that all the core income generating activities are being performed within a business premise or office in Seychelles and, depending on the size, volume and nature of the business, with adequate competent full-time employees. In addition, the licensee must annually declare and be able to demonstrate the operating expenditures commensurate with the level of its business operation.

7. Monitoring of Substantial Activity Requirements and grandfathering provisions

SRC in collaboration with the FSA, will assess on a case by case basis whether a licensee meets the substantial activity requirements. Relevant data collected by the FSA during its desk-based monitoring and onsite inspections will be shared with the SRC. Examples of data to be shared with the SRC includes

the persons employed by the licensee determined “fit and proper” by the FSA, annual returns and audited accounts of the licensee and any relevant findings identified during onsite inspections.

In order to effectively administer the grandfathering provisions, the FSA will share its registers of licensees to SRC, contain the date on which the first licence of the licensee was issued, whereby it can be ascertained which licensees can benefit under the grandfathering provisions. SRC will use the list of companies in the registers for cross-checking purposes upon receipt of a claim for the application of the preferential tax rate from a licensee.

Annex 1



Notification of New Assets or Activities

This Form has been designed for the following Taxpayers which would like to claim the preferential tax rates afforded under the respective grandfathering provisions (for the period up to the 30th of June, 2021):

- *A relevant company under the Companies (Special Licences) Act, 2003*
- *A fund administrator under the Mutual Fund and Hedge Fund Act, 2008*
- *A non-domestic insurer under the Insurance Act, 2008*
- *A person holding an export services licence under the International Trade Zone Act, 1995*
- *A person licensed under Securities Act, 2007*

The completed Form must be attached to the relevant Annual Tax Return upon submission to the Seychelles Revenue Commission.

Name of Taxpayer	
Legislation under which the Taxpayer is licensed	
Date of first issuance of licence ¹	
Details of new assets or activities introduced in the business after 16 th October, 2017 (if any)	

¹ Taxpayers are automatically eligible for the tax concession/exemption if licensed on or before 16th October, 2017. However, if licensed after 16th October, 2017, tax concession/exemption would be subjected to meeting substance requirement.

I/We declare to the best of my/our knowledge that all the information provided in this Form is true and correct. I/We acknowledge that, pursuant to section 50 of the Revenue Administration Act, any person who with deliberate intention to defraud the Government or with intentional disregard of the revenue laws:

- (a) makes a statement to a revenue officer that is false or misleading in a material particular;
- (b) omits from a statement made to a revenue officer any matter or thing without which the statement is false or misleading in a material particular,

commits an offence.

Director 1

Director 2

Signature: _____

Signature: _____

Name: _____

Name: _____

Date: _____

Date: _____

Annex 2



Self-Declaration Form for Substantial Activity Requirements
Fund Administrators

This Form must be completed by a fund administrator claiming the preferential tax rates under the Seventh Schedule of the Business Tax Act. The completed form must be attached to the relevant Annual Tax Return upon submission to the Seychelles Revenue Commission.

Name of Fund Administrator: (.....)

Financial Year End: (.....)

I/We the undersigned declare to the best of my/our knowledge that the abovementioned Fund Administrator has complied with the Substantial Activity Requirements as prescribed within the Mutual Fund and Hedge Fund (Substantial Activity Requirements) Regulations for the financial year ending specified above and therefore the Fund Administrator is entitled to the tax concessions specified in *the Seventh Schedule of the Business Tax Act*.

Core Income Generating Activity	Name of individual(s) undertaking the activity	Has the individual been assessed by the FSA? Yes/ No	Is the individual's role full time? Yes/ No	Details of any front office activity undertaken outside Seychelles
Administration services with respect to the operations of a mutual fund or hedge fund, including accounting, valuation or reporting services				
The management of a mutual fund or hedge fund, including the controlling of the assets of a mutual fund or hedge fund				

Details of any Core Income Generating Activity outsourced in Seychelles	
Details of any Core Income Generating Activity outsourced outside Seychelles	
Level of Income for the Financial Year	
Level of Expenditure for the Financial Year	

I/We acknowledge that, pursuant to section 50 of the Revenue Administration Act, any person who with deliberate intention to defraud the Government or with intentional disregard of the revenue laws:

- (a) makes a statement to a revenue officer that is false or misleading in a material particular
- (b) omits from a statement made to a revenue officer any matter or thing without which the statement is false or misleading in a material particular

commits an offence.

Director 1

Director 2

Signature: _____

Signature: _____

Name: _____

Name: _____

Date: _____

Date: _____

Annex 3



Self-Declaration Form for Substantial Activity Requirements
For Licensees under the Securities Act

This Form must be completed by a licensee claiming the preferential tax rates under the Seventh Schedule of the Business Tax Act. The completed form must be attached to the relevant Annual Tax Return upon submission to the Seychelles Revenue Commission.

Name of Licensee: (.....)

Type of License: (.....)

Financial Year End: (.....)

I/We the undersigned declare to the best of my/our knowledge that the abovementioned licensee has complied with the Substantial Activity Requirements as prescribed within the Securities (Substantial Activity Requirements) Regulations for the financial year ending specified above and therefore the licensee is entitled to the tax concessions specified in *the Seventh Schedule of the Business Tax Act*.

Core Income Generating Activity²	Name of individual(s) undertaking the activity	Has the individual been assessed by the FSA? Yes/ No	Is the individual's role full time? Yes/ No	Details of any front office activity undertaken outside Seychelles

² As define under Regulation 4 for of the Securities (Substantial Activity Requirements) Regulations, 2018.

Details of any Core Income Generating Activity outsourced outside Seychelles	
Level of Income for the Financial Year	
Level of Expenditure for the Financial Year	

I/We acknowledge that, pursuant to section 50 of the Revenue Administration Act, any person who with deliberate intention to defraud the Government or with intentional disregard of the revenue laws:

- (a) makes a statement to a revenue officer that is false or misleading in a material particular
- (b) omits from a statement made to a revenue officer any matter or thing without which the statement is false or misleading in a material particular

commits an offence.

Director 1

Director 2

Signature: _____

Signature: _____

Name: _____

Name: _____

Date: _____

Date: _____