

Substantial Activities in No or Only Nominal Tax Jurisdictions

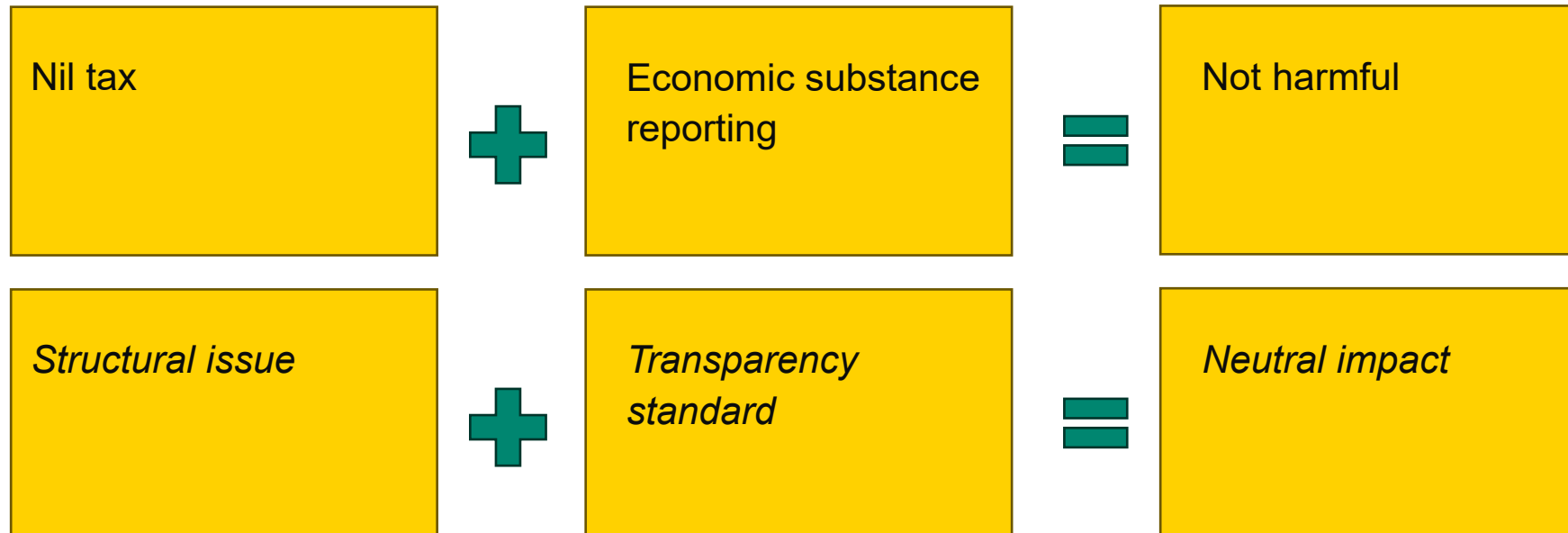


HM Revenue
& Customs



BEPS Action 5: Harmful tax practices

Basic premise and limitations:



No or Only Nominal Tax Jurisdictions

Anguilla

Bahamas

Bahrain

Barbados

Bermuda

British Virgin Islands

Cayman Islands

Guernsey

Isle of Man

Jersey

Turks and Caicos Islands

Economic Substance reporting: scope

Geographically mobile activities:

Banking

Distribution and services centre

Fund management

Financing and leasing

Headquarters business

Holding companies

Intellectual property

Insurance

Shipping

Economic substance reporting: what is reported?

Taxpayers in scope submit returns of information such as:

- Income
- Overheads
- Employees

To demonstrate they are **directed and managed** and undertake their **core income generating activities (CIGA)** in the jurisdiction

And

- Ownership

To determine who gets a report in the event of non-compliance.

Core income generating activities

These include:

- Investment decisions
- Risk analysis
- Risk management

It has to be confirmed that the CIGA take place in the jurisdiction (although some activities can be outsourced). Evidence may be required.

For high risk (i.e. imported) intellectual property:

- Rebuttable presumption CIGA do not take place in the jurisdiction
- Very high evidence threshold to overturn presumption

What do the NTJs have to do?

Collect returns of economic substance

Implement a fully equipped monitoring mechanism (FEMM), including:

- Triaging the data

- Performing audits

- Identifying case of non-compliance and

- Sanctioning the taxpayer
 - Sending a report to relevant exchange partners

Reports to exchange partners indicate either non-compliance or high-risk IP

Reports are also made of in-scope entities resident in another jurisdiction (these can be high in volume and relatively limited in usefulness).

Advantages

Use of data not restricted to TP and BEPS risks (unlike CbC data)

- The UK uses the data for attributing income to individuals

The sending jurisdiction **has already done the risking work**:

- Reports of non-compliance or high-risk IP represent a confirmed risk

Who gets a report

An exchange partner (i.e. MAAC or TIEA partner) who:

- Submits an opt-in notification
- Explains the foreseeable relevance of the data
- And where one of the following is resident in their jurisdiction:
 - Beneficial owner
 - Ultimate parent entity
 - Immediate parent entity

Countries that expect to have residents in the ownership chain should consider opting in.

Design limitation

- The information flow follows the ownership chain
- Connected companies under common control are not considered
- Information relevant to countries not in ownership chain is not spontaneously exchanged

Countries in this position should be aware what information exists and consider EOIR as a route to it.

Consider using the CbC report to identify entities in NTJs that may be of interest.

Sources

For general information and background on BEPS Action 5 (see *Global standard on substantial activities in no or only nominal tax jurisdictions*):

<https://www.oecd.org/en/topics/harmful-tax-practices.html>

For the OECD guidance on Substantial Activities in No or Only Nominal Tax Jurisdictions:

<https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/harmful-tax-practices/substantial-activities-in-no-or-only-nominal-tax-jurisdictions-guidance.pdf>

For practical insight from Guernsey, the Isle of Man and Jersey's joint guidance in relation to Economic Substance:

<https://www.gov.im/media/1367560/updated-economic-substance-guidance.pdf>

Questions?