



VIRGIN ISLANDS
INTERNATIONAL TAX AUTHORITY
INTEGRITY | TRANSPARENCY | ACCESSIBILITY

Annual Report

2020

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Introduction

Chairman's Message

I am pleased to present the 2020 Annual Report for the International Tax Authority (“ITA”) and to set out below some of the highlights for 2020.

The year 2020 will be recorded by the ITA as a year of ‘substance’ due to the resources invested in launching the economic substance requirements as promulgated by the OECD and the EU. These requirements were more particularly set out in the Economic Substance (Companies and Limited Partnerships) Act, 2018. Whilst this legislation took effect on 1 January 2019, it is in 2020 that substance filings (that eventually led to an uptick in the level of activity) begun. The ITA is tasked with responsibilities both for substance compliance as well as for substance information exchange - thereby placing what may well turn out to be unprecedented levels of human resources on the agency. How well the machinery worked in 2020 will provide the foundation for reflection, review and refinement in the following years.

On the information exchange side of things, the ITA was also busy preparing for the OECD’s peer review scheduled to be launched around the very end of 2020. This will again prove unprecedented particularly as there will have to be a work-around for the on-site visit component in light of the Covid-19 pandemic as many borders continue to have restricted access requiring several days of mandatory quarantine.

Challenges are nothing new to the ITA and it was able to see 2020 to a successful end. Many thanks must go to the staff who made this possible by working together for the BVI.

It is my pleasure to present this report.

Lisa E Penn-Lettsome

Chairman

Director's Message

The year 2020 presented many challenges, exciting changes, and significant accomplishments for the International Tax Authority (“ITA”) despite the COVID 19 pandemic.

With the move to our new location at Peace House the ITA was able to constitute its Compliance Unit and increase its staff complement so that it could better meet its international obligations. Although hiring the COVID 19 pandemic brought with its unique challenges, the Support Services Unit ensured that the process was seamless with minimum risk to the staff of the ITA. The Compliance unit is responsible for ensuring compliance of all relevant persons with Mutual Legal Assistance Legislation. This includes the compliance of legal entities with the new Economic Substance requirements and Financial Institutions with the Common Reporting Standards (“CRS”).

These significant changes further demonstrate the commitment of the Virgin Islands in the international fight against financial and other crimes and to ensuring compliance with the International Standards. Despite the changes we had to make to our working environment to respond to the COVID 19 pandemic, the ITA continues to make every effort to fulfil its mandate and meet the requirements being imposed on the Territory.

The implementation of the economic substance requirements was not without challenges however, the first batch of declarations were successfully filed with the ITA during the middle and the end of 2020. This significant accomplishment was due to the hard work of the Industry, the ITA and the considerable investment made by the Government of the Virgin Islands into the technology utilized by the ITA to receive and evaluate declarations filed.

As we prepare to move forward in the new and upcoming year, the ITA will continue to utilize every effort to fulfil our mandate.

Once again, I wish to applaud and express my gratitude to the staff of the ITA for their continued hard work and dedication during the year 2020.



La Toya James
Director

Glossary of Terms

AEOI	Automatic Exchange of Information
BEPS	Base Erosion & Profit Shifting
BVIFARS	British Virgin Islands Financial Account Reporting System
CbCr/CBC	Country by Country Reporting
CRS	Common Reporting Standard
CTS	Common Transmission System
DTA	Double Taxation Agreement
EOIR	Exchange of Information on Request
ES	Economic Substance
EU	European Union
US FACTA	Financial Account Tax Compliance Act
G20	Group of 20 (countries)
ICU	International Co-operation Unit
IC	International Co-operation
IRS	Inland Revenue Service
IT	Information Technology
ITA	International Tax Authority
OECD	Organization for Economic and Co-operation Development
SSU	Support Services Unit
TIEA	Tax Information Exchange Agreement

Unit Reports

Support Services Unit (“SSU”)

The SSU now has a staff complement of 13 persons which enables it to provide administrative support, IT support, human resource management and accounts management services to the ITA. The SSU continues to play an important role in the functioning and operation of the ITA and has managed a number of important initiatives during the 2020 year.

Relocation

The relocation of the ITA from the Omar Hodge Building to Peace House was one of the major projects undertaken in 2020. Space constraints and damages caused to the Omar Hodge building by the 2017 Hurricanes were the main factors prompting the relocation.

The relocation faced several setbacks caused by the measures implemented by the Government of the Virgin Islands in response to the COVID-19 pandemic. The move to Peace House was significant as it entailed a migration from the Government of the Virgin Islands’ IT infrastructure to a new independent IT infrastructure for the ITA which included the establishment of a physical network, the implementation of security measures to ensure data protection and the introduction of new telephone services and networking. This process was extremely critical in bringing all the components together to ensure that ITA was able to function independently, effectively, and efficiently. The move process interrupted access to the BVIFARS portal and access of the staff to the T:// drive and email system. During this down time the ITA took the opportunity to execute necessary updates to the BVIFARS portal and to organize and finalize its electronic filing database.

Although the relocation process was not complete on the promised timeline, due to necessity the ITA relocated to the Peace House location in August 2020, while works were ongoing. On moving, the ITA was able to establish COVID-19 protocols to be able to function in the new COVID-19 environment. The relocation was on budget although timelines were significantly affected by the COVID-19 pandemic. The new office space at Peace House consists of three (3) levels plus a basement and it has the potential to accommodate the full budgeted staff complement of 35.

Launch of ITA Website

The ITA launched its website on June 20th, 2020, providing an opportunity for persons accessing the website to achieve a greater understanding of its work and core responsibilities. The website is a valuable resource for all matters managed by the ITA including automatic exchange of information, spontaneous exchange of information and exchange of information upon request. It features the BVI Financial Accounting Reporting System (BVIFARS), and all Legislation relevant to the work of the ITA. The unique features of the website include the ability of persons to make an application for employment with the ITA and to register to receive automatic updates on new and other developments.

Human Resources- Staffing

The ITA started the 2020 year with 13 employees with a recruitment plan scheduled to be completed by the end of 2021. Continuing in its recruitment process, in the first half of 2020, a total of six (6) persons joined the staff. This included five (5) administrative staff members and one (1) compliance examiner. The Head of Compliance, one (1) Senior Compliance Examiner and Legal Counsel were also scheduled to join the ITA by mid-2020, which was interrupted by the move to the Peace House.

With the uncertainties associated with the pandemic further hiring was placed on hold temporarily.

Between September 16 to December 15, a total of 4 vacant positions were re-advertised with 74 applications were received. From those applications, two (2) additional positions were filled which included one (1) in the Compliance Unit and one (1) in the Administrative Unit. By the end of the year the ITA was at a staff complement of 24 persons.

Meetings/Training

Despite the suspension of travel in 2020, members of staff were still able attend professional development training seminars and meetings with relevant international organizations. These meetings were organized virtually due to the COVID-19 pandemic. These meetings included:

- Vizor AEOI Training;
- Automatic Exchange of Information virtual class;
- Monitoring Compliance and making use of data workshop;
- CTS Training for IT specialists;
- Peer Review Group Meetings;
- Steering Group Meetings;
- Inclusive Framework Meetings;
- Competent Authority Meetings; and
- The Global Forum Meeting.

The ITA continued its comprehensive internal training seminars which related mostly to the IT platforms utilized to meet the international standards and training in relation to the economic substance regime.

General Operations

The ITA continues to be supported financially by the Government of the Virgin Islands through a subvention. For the fiscal year 2020 the ITA received subventions totaling \$2.7 million dollars.

International Co-Operation Unit (“ICU”)

General Operation/Resources

Staffing/structure

The staff compliment of the International Co-Operation Unit (“ICU”) remained at five at the end of 2020 with four vacancies. It was anticipated that these vacant positions would be filled by the end of the third quarter of 2020 which unfortunately did not occur due to difficulties faced during the COVID 19 pandemic. The focus remains on ensuring that the ICU is fully staffed in order for it to meet its mandate.

Developmental Measures for Staff

The ICU officers continue to receive training in areas that directly affect and or complement the work conducted on a daily basis. Training for the staff of the ICU begins in house and is supplemented by training initiatives offered by the Global Forum on Tax Transparency and exchange of information tax purposes, the Financial Services Commission (BVI) and any other international organization that offers training in cross border tax matters. Inhouse training programs focus on the various reporting obligations and standards and providing support to ICU officers in fulfilling their mandate. All training activities that ICU officers participate in are monitored and recorded by the Head of SSU in collaboration with the Head of the ICU.

Case-File Management Software

One of the most significant accomplishments of the ITA which directly impacts the work of the ICU insofar as exchange of information upon request (“EOIR”) is concerned, is the Electronic Management & Monitoring Application (“EMMA”) database developed to monitor and manage the EOIR process. The Virgin Islands has been exchanging information upon request since 2009, at which point all files relating to EOIR were kept manually. In the beginning of EOIR the number of requests received was low which meant that the manual file keeping process utilized at that time was feasible and did not affect the ITAs ability to effectively and efficiently manage EOIR. Over the years, the Virgin Islands has seen a significant increase in request for information and has responded to this increase, not only by establishing the ITA and increasing the staff complement but also, by increasing its technological resources which would aid in productivity. EMMA has been a work in progress over the last few years and its latest release and updates has ensured that the ICU has a system fit for purpose. Upon completion of EMMA all files relating to EOIR were made electronic and uploaded into EMMA. Despite the delays experienced due to COVID 19 and other matters this process was successfully completed in October of 2020 and the EMMA portal was at that point fully operational. EMMA has proven beneficial to the ICU as it not only has increased productivity of the ICU, but it assists greatly in the ITA being able to complete statistical reports needed for review and reporting purposes.

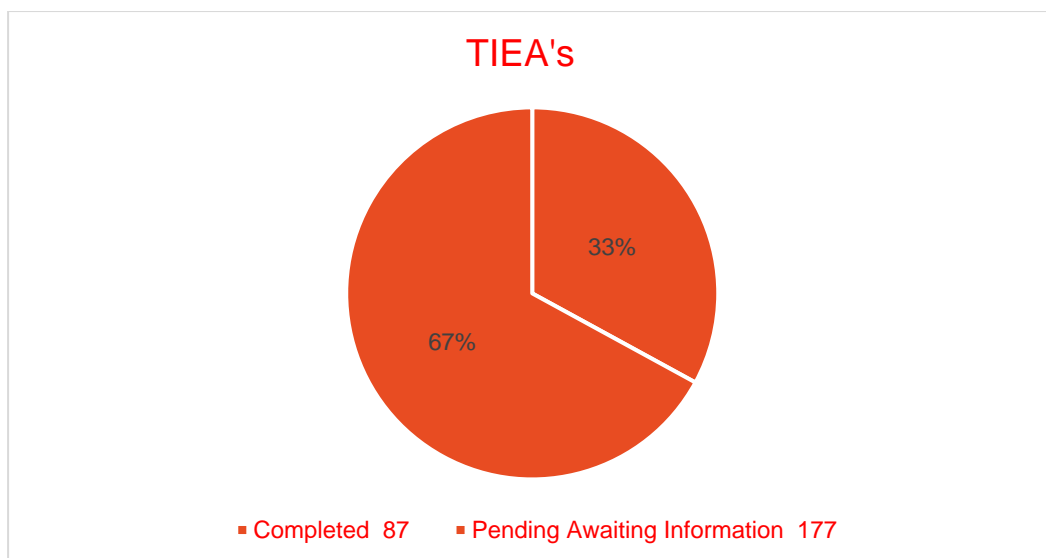
Exchange Upon Request

Exchange of Information upon request remains consistent despite the impact of Covid 19. In March 2020, the ITA had activated its continuity plan in the wake of mandatory lock downs during that time. The ICU’s main challenge arose with respect to receiving responses to Notices issued due to the recipients being affected by the pandemic.

TIEA/EOIR Chart

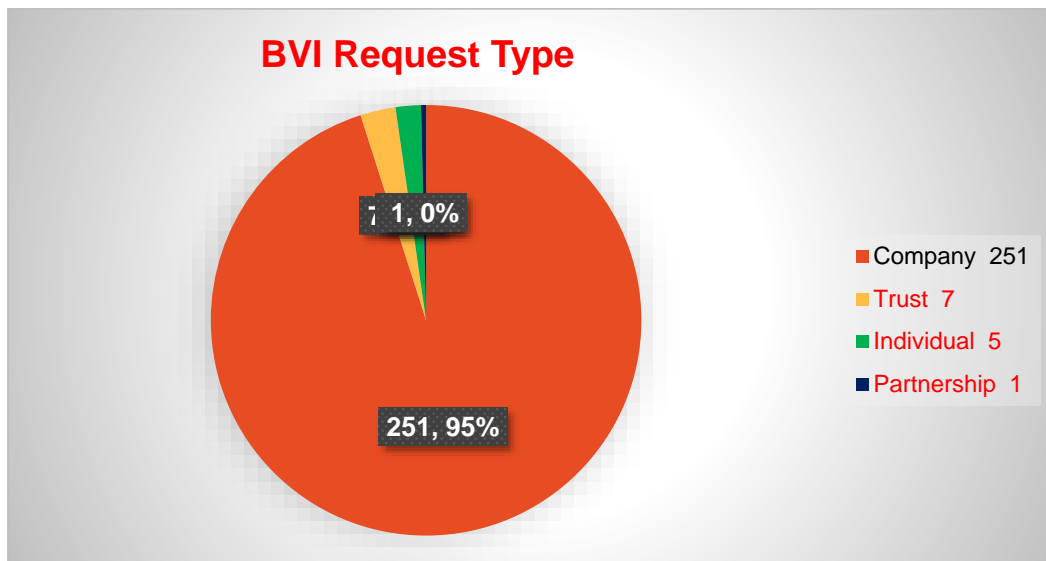
During the 2020 year the Virgin Islands had agreements in place with approximately 117 jurisdictions. Of those agreement 28 were bilateral Tax Information Exchange Agreements (“TIEAs”) and the other relationships were under the Convention on Mutual Administrative Assistance in Tax Matters (“MAAC”). These agreements have been uploaded on our website and can be accessed by the public. Although the Virgin Islands has relationships with approximately 117 jurisdictions, during the 2020 year only ... jurisdictions sent requests for information to the Virgin Islands totaling 264 requests for information received. Of the 264 requests received, responses have been provided in 87 cases with 177 pending at the end of the 2020 year. The chart below depicts the number of requests received and processed in 2020.

Statistical Chart depicting completed and outstanding requests.



Of the 264 requests received during the year 2020, the majority related to British Virgin Islands Business Companies (“BVI Business Companies”), which accounted for 95% of all requests received. Requests relating to Trust accounted for approximately 3% of the total requests received and requests relating to individual accounted for 2% of the total requests received. As there was only 1 request received for partnership, the statistical data percentage shows that this single request accounted for less than a percent of the total request received.

The statistical chart below depicts the type of request received during the year 2020



EOIR that is received by the ITA may either be of a criminal nature, civil nature or a combination of both. During the year 2020, 137 requests were of a civil nature, 117 requests were of a criminal nature, and 20 requests consisted of both criminal and civil.

To process a request for information to provide information to a requesting jurisdiction requires the ITA to issue Notices to Produce information to a number of entities. In 2020, the ITA issued over 350 Notices to Produce information to Registered Agents, Banks, Entities, Individuals and Government Entities and Bodies to collect the information required to be exchanged.

US FACTA and CRS Exchange Mechanism

In the first half of 2020, the ITA received less than 100 filings and received reports from Financial Institutions (“FIs”) about difficulties experienced in meeting the reporting deadlines due to the Global Pandemic. Extensions were granted to individual FIs where they provided evidence of their inability to file. Having considered the circumstances faced worldwide the Internal Revenue Service (“IRS”) and the OECD approved extensions for reporting under the respective regimes. Following which the ITA approved extensions to all FIs negatively affected by the COVID 19 pandemic to register and submit their FATA and CRS filings. As a result of the extensions granted, information exchanged was concluded in December 2020 rather than September 2020. The ITA subsequently exchanged over 13,000 filings in December 2020. Although the covid-19 situation is still fluid in many parts of the world, unless the contrary is indicated by the international bodies or there are exceptional circumstances advanced to or experienced by the FIs or the ITA, there will be no extensions for 2021 registration and filing dates and 30 September 2021 exchange deadline remain unchanged.

COUNTRY BY COUNTRY REPORTING

Actions 13 has been implemented by an amendment to the Mutual Legal Assistance (Tax Matters) Act, 2003 (“MLA”), namely Act No. 8 of 2018. Submission of filings were to be

concluded in December, 2019; however, this was not achieved as BVIFARs had not yet been updated to accept such filings. The Virgin Islands however, accepted the manual registration of relevant entities by the 2019 deadline. As BVIFARs was updated in the first quarter of 2020 (Feb) to receive registration and filings directly into the portal for constituent entities that were either the ultimate parent entities or surrogate parent entities of Multinational Entities (“MNE’s), BVIFARs received 22 additional registrations of constituent entities with reporting obligations under the Country-by-Country reporting (“CbCr”) regime. Despite the challenges faced in expanding the BVIFARs portal to accept CbCr filings, the ITA received 29 filings for 2018 and 43 filings for 2019 which were subsequently exchanged at the end of 2020.

The ITA continues its work in addressing and implementing measures that may arise with respect to Action 14.

ECONOMIC SUBSTANCE

The ITA continues its work under the economic substance regime with the compliance unit leading these reviews. However, the ICU has been able to exchange information with treaty partners outside of the cts concerning those entities that have claimed to be non-resident under the economic substance legislation. The ICU continues to focus on exchanges via the cts and has tested this information exchange with a number of partners. This test process has revealed many technical hurdles that we are working hard to address. Once these matters have been addressed the exchange of information under the economic substance regime will commence via the cts.

The Compliance Unit

Overview

The Compliance Unit (“CU”) began 2020 focusing on developing systems, procedures, and processes to ensure that the ITA had a comprehensive compliance regime in place to respond to the requirements outlined in CRS and Economic Substance. The CU has been able to rely on the experience of the FSC in ensuring that it develops a regime that works within the Financial Services Industry and climate of the Virgin Islands.

Staffing

By the end of 2020 the staff of the CU had grown to four members of staff with four vacancies to be filled. It was anticipated that these vacant positions would be filled by the end of the third quarter of 2020 which unfortunately did not occur due to difficulties faced during the COVID 19 pandemic. The focus remains on ensuring that the CU is fully staffed in order for it to meet its mandate. Staffing is expected to increase to the full complement by early 2021.

Training

A comprehensive training schedule was put in place for the CU which included AEOI training seminars, training on the use of the BOSSs portal and inhouse tailored training focusing on the requirements of Economic Substance, CRS, AEOI, and EOIR. The training introduced needed clarification and proved to be both beneficial and informative to the Unit. Some examples of these trainings are as follows:

- BDO ESS CA Portal
- BOSSs ESS Webinar
- Vizor AEOI Online Training
- Global Forum on Transparency and Exchange of Information for Tax Purposes
- Implementation Standard for CRS
- Vizor Certified Administration for Tax Authority

Economic Substance

The CU continued the compliance review under the economic substance regime. These included the following:

- 1) the review of declarations received for entities with the Financial Period ending 2019. The ITA received 3225 declaration in relation to those entities whose financial periods ended in 2019;
- 2) Non-residence claims made by entities with Financial Periods ending 2019. There were 94 such non-residence claims made to the ITA, of which the ICU exchanged this information with 12 jurisdictions;
- 3) Reopening of declarations where corrections needed to be made (for example the incorrect financial period inserted etc.). The ITA received 1994 requests to reopen applications and required the resubmission of a number of applications due to errors identified in the declarations;
- 4) Processing of requests made to change the financial periods of a corporate and legal entity. A total of 4,286 requests to change the Financial Period of entities were received and processed in 2020 relating to different entities with different financial periods; and

- 5) Identification process to ensure that all corporate and legal entities required to file under the economic substance regime had filed. During the compliance review the ITA was able to identify 3546 entities that were required to file a declaration but had failed to do so for those financial periods ending in 2019.

The Compliance review of entities continues with the aim of completing these by the second quarter of 2021. Simultaneously, the compliance unit has begun the review of declarations filed in relation to entities with Financial Periods ending in 2020. This review is ongoing.

Common Reporting Standard (“CRS”)

The CU continued its review of Financial Institutions (“FIs”) during the year 2020. Many FIs were asked to produce copies of their policies and procedures to confirm their compliance with the CRS requirements. To date 578 policies and procedures have been received. After review, these FIs were considered compliant with the requirements of the Standard. The team also identified three local FIs which were not compliant and took appropriate measures to ensure that they were brought into compliance. The review process continues with a plan to conduct desk-based reviews and onsite inspections of Financial Institutions.

The compliance unit has also conducted reviews of undocumented accounts to ensure that these are being filed in line with the CRS standard. Where undocumented accounts have been identified the CU has begun their review and monitoring of those FIs that have filed such accounts.

EOIR

The CU has been reviewing its obligations to ensure the entities comply with the various obligations contained within the EOIR standard. It has been determined that the entities that have requirements under the EOIR standard are effectively monitored by the Financial Services Commission (“FSC”). The CU will continue to work with the FSC to ensure full compliance and utilize the Memorandum of Understanding (“MOU”) to ensure effective compliance.

Legal

Primary roles, functions, and duties

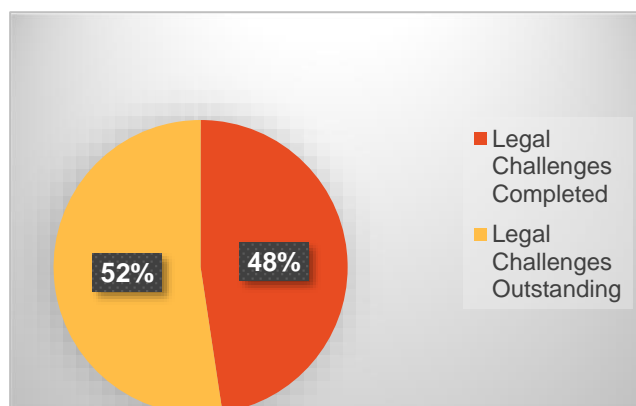
The ITA currently has one in-house legal counsel that provides on-going support to the Units within the ITA and acts as legal counsel in civil and other litigation matters before the Court. These generally comprise of applications in respect of Notices to Produce Information issued by the ITA under section 5(1) of the Mutual Legal Assistance (Tax Matters) Act, 2003 (as amended).

In addition, the Legal Unit is responsible for advising on the interpretation and application of all legislation by which the monitoring and supervisory functions of the ITA are governed, as well as other BVI and foreign legislation from time to time. In this regard the Legal Unit is responsible for providing guidance to ensure that the ITA's internal procedures are efficient and its decisions fair, consistent and proportionate.

Legal Challenges

To assist the British Virgin Islands in meeting its obligations with the international standards on transparency and the EOIR standards, section 5(1) of the MLA, permits the ITA to make a request for information from persons/entities reasonably believed to have the information sought in their possession. During the year of 2020, twenty-one (21) legal challenges were referred to the Legal Unit from the ICU, in respect of EOIR related Requests. Twenty (20) of those legal challenges were brought by BVI Business Companies, one (1) by a director of a BVI Business Company and one by a Registered Agent of a BVI Business Company. In each case, the ITA had served a section 5 Notice on the entity or person, and the recipient of the Notice sought sufficient level and degree of information from the ITA, to enable representations to be made as to the lawfulness of the Notice to Produce Information which had been served on it. By December of 2020, the ITA received complete responses to the Notices in respect of ten (10) legal challenges. In nine (9) of those legal challenges the ITA provided further information to the recipient of the Notice and in one matter the ITA declined the request made for additional information. The additional twelve (12) matters were still under review at the end of 2020.

Statistical chart depicting completed and outstanding legal challenges:



Court Proceedings

Criminal Division

All offences created by the ITA legislations, whether summary or indictable, that attract a penalty on conviction, are treated as offences of a criminal nature committed against the State and continue to be prosecuted by the Director of Public Prosecutions. During the year of 2020, the Legal Unit referred four (4) matters to the Royal Virgin Islands Police Force for further investigations into alleged failures to comply with Notices to Produce Information issued by the ITA. By the end of 2020, criminal proceedings were instituted in all four (4) matters and the Director of Public Prosecution had assumed primary conduct of same.

In addition, during the year of 2020, one matter was successfully prosecuted against a BVI Business Company at the High Court for the offence of failing to Comply with a Notice to Produce Information issued by the ITA.

Civil Division

During the year of 2020, one litigation matter was considered before the High Court. This application related to the judicial review of a section 5(1) Notice issued to the ITA, an sought an order that the Notice be quashed or that an order of the Court be made for the ITA to disclose sufficient level or degree of information to enable representations to be made as to the lawfulness and validity of the Notice. The Attorney General Chambers appeared on behalf of the ITA in this matter, given that they had previously represented the ITA in all pre-trial hearings concerning this matter. The judgment of this matter has been reserved.

2021 outlook

As the monitoring and supervisory functions of the ITA expands, the Legal Unit anticipates a growth of its role within the ITA. The end of year 2020, saw the first batch of filings of declarations in respect of the Economic Substance requirements. It is projected that for 2021, the Legal Unit will receive requests for advice on the interpretation and application of the powers under the ESA. Additionally, in fulfillment of its enforcement role, the Legal Unit will also provide advice to the recently introduced Compliance Unit to address regulatory breaches of the ITA legislations, and in respect of the enforcement of the ITA's newly acquired powers to administer administrative penalties for breaches under the ESA.

In addition, reviews have commenced in respect of both the MLA and the ITA, with the intent of further strengthening the monitoring, supervisory and enforcement powers of the ITA, including the prescribing of greater administrative penalties to work alongside the criminal sanctions which already exist. It is envisioned the enhancement of the ITA's enforcement powers will further ensure that legal entities and persons comply with the requirements of the various legislations of the ITA and assist the ITA to achieve its objectives as set out in the ITA Act.

Challenges

Due to the Corona Virus- Covid-19 Pandemic, Government of the Virgin Islands mandated a lockdown and curfew that forced the staff of ITA to carry out their duties while at home and in addition the process of relocating and hiring were delayed.

Strategic Aims

In 2021, the ITA will be able to better meet current and upcoming international obligations as we are now settled into our new space.

The ITA has embarked on implementing the Mandatory Disclosure Rules for Common Reporting Standard in 2020 to further demonstrate its commitment to the implementation of the international standards. In 2021, the ITA will ensure that the Mandatory Disclosure Rules' is implemented along with conducting ongoing reviews of the International Tax Authority's legislation, continue to make recommendations for changes where applicable, ensure that the ITA operates effectively and efficiently, decrease challenges to Notices to Produce Information and to conclude, raise public awareness of the ITA and its' function by developing and implementing a system of continuing education.