

Cayman Islands Update: Economic Substance Reporting Deadlines

Relevant entities that are carrying on a relevant activity under the International Tax Co-operation (Economic Substance) Act (As Revised) (the "ES Act") are reminded of pending reporting deadlines under the Cayman Islands economic substance regime ("ES").

For entities with a 31 December financial year end, the reporting deadline (in respect of the 2020 financial year) is 31 December 2021. For entities with an alternative financial year end, the ES reporting deadline is 12 months after the end of the applicable financial year.

ES Sample Returns and Form

The following sample ES returns and form (collectively the "ES Returns") are available at the Department for International Tax Cooperation ("DITC") website:

- Economic Substance Return¹;
- Economic Substance Return for Pure Equity Holding Companies²;
- Economic Substance Return showing the additional questions for High Risk IP Companies³; and
- Updated Form for Entity Tax Resident in Another Jurisdiction⁴.

¹<https://maples.com/pdf-es-sample-economic-substance-return>
²<https://maples.com/pdf-sample-economic-substance-return-for-pure-equity-holding-companies>

The DITC has also published notes that explain the purpose of the ES Returns and provide a high-level overview of the required data points.

Each ES Return (including any attached supporting documentation) will be considered in its entirety by the Tax Information Authority (the "Authority") before making a determination as to whether the ES test (the "ES Test") has been satisfied. Where flagged as at risk of failing the ES Test, the Authority may contact the entity to request additional information.

With respect to relevant entities carrying on the relevant activity of a holding company, the Authority has indicated that the ES Return will elicit less information than with respect to other relevant activities, commensurate with the reduced ES Test for this relevant activity. However, such entities will be required to submit a copy of their financial statements or books of account for the relevant entity's financial year. The Maples Group can assist with preparing such financial records and the filing of ES Returns for holding companies.

A summary of the ES Test requirements can be reviewed in our Cayman Islands Economic

³<https://maples.com/pdf-sample-economic-substance-return-showing-the-additional-questions-for-high-risk-ip-companies>

⁴<https://maples.com/pdf-updated-form-for-entity-tax-resident-in-another-jurisdiction-sample>

Substance Requirements for Certain Entities Legal Guide⁵.

DITC Portal and Responsible Persons

A relevant entity that conducted a relevant activity prior to 1 January 2021 for the purposes of the ES Act will have already notified the Authority through its registered office service provider of the identity of a person, being a director, manager or equivalent fiduciary of the entity, who will be the primary contact point for the Authority ("Responsible Person"). The Responsible Person will have access to the DITC portal for the purposes of filing ES Returns.

A relevant entity that first conducted a relevant activity in 2021 for the purposes of the ES Act will be required to notify the Authority of that relevant activity and the identity of its Responsible Person through its registered office service provider as part of completion of the entity's general registry annual return for 2022.

ES Returns can only be completed via the DITC portal. An ES portal user guide is also available on the DITC website. Responsible Persons identified by entities in their ES notifications should access the portal for filing of ES Returns.

Penalty for Late Filing of ES Return

Under the ES Act, a late penalty filing fee of US\$6,098 can be imposed together with an additional penalty fee of US\$610 for each day an ES Return continues to remain outstanding.

Offences

It is an offence for a person to knowingly or wilfully supply false or misleading information to the

Authority under the ES Act. Such an offence is punishable on summary conviction by a fine of US\$12,195, or imprisonment for a term of five years, or both.

Where an offence under the ES Act committed by a body corporate is proven to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other officer of the body corporate, or any person who was purporting to act in such a capacity, the officer or any person purporting to act in such capacity, as well as the body corporate, commits that offence and is liable to be proceeded against and punished accordingly.

Where the affairs of a body corporate are managed by its members, the foregoing shall apply in relation to defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

Further Assistance

If you have any questions relating to the ES Returns, the DITC Portal or ES generally, including accounting and / or filing services for ES Returns for holding companies, please reach out to any of the below members of our dedicated Regulatory & Compliance team or your usual Maples Group contact.

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⁵ <https://maples.com/en/knowledge-centre/2020/10/legal-guide--cayman-islands-economic-substance-requirements-for-certain-entities---overview>

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