

Cayman Islands Update: Additional Updates on Economic Substance

Further to our previous [update](#)¹, the Department for International Tax Cooperation ("DITC") has issued an [Industry Advisory](#)² on 12 November 2020 (the "Advisory") in relation to Economic Substance ("ES") matters under the International Tax Cooperation (Economic Substance) Law (2020 Revision) (the "ES Law").

ES Sample Returns and Form

The Advisory contains the following sample ES returns and updated form (collectively the "ES Returns"):

- (a) [Sample Economic Substance Return](#)³;
- (b) [Sample Economic Substance Return for Pure Equity Holding Companies](#)⁴;
- (c) [Sample Economic Substance Return showing the additional questions for High Risk IP Companies](#)⁵; and
- (d) [Updated Form for Entity Tax Resident in Another Jurisdiction \(Sample\)](#)⁶.

The Advisory includes a link to [notes](#)⁷ published by the DITC, which 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 or not the economic substance test (the "ES Test") has been satisfied or not. Where an entity is 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 DITC has indicated that the ES Return will elicit less information than with respect to other relevant activities, commensurate with the reduced economic substance 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.

¹ <https://maples.com/en/Knowledge-Centre/Industry-Updates/2020/11/Cayman-Islands-Update-Additional-Updates-on-AEOI-and-the-DITC-Portal>

² <https://www.ditc.ky/wp-content/uploads/Industry-Advisory-Economic-Substance-Updates-12-November-2020.pdf>

³ <http://maples.com/pdf-es-sample-economic-substance-return>

⁴ <http://maples.com/pdf-sample-economic-substance-return-for-pure-equity-holding-companies>

⁵ <http://maples.com/pdf-sample-economic-substance-return-showing-the-additional-questions-for-high-risk-ip-companies>

⁶ <http://maples.com/pdf-updated-form-for-entity-tax-resident-in-another-jurisdiction-sample>

⁷ <https://www.ditc.ky/es/es-legislation-resources/>

A summary of the ES Test requirements can be reviewed in our [Cayman Islands Economic Substance Requirements for Certain Entities Legal Guide](#)⁸.

DITC Portal Opening for ES Functionality

ES Returns can only be completed via the DITC portal. Functionality for the submission of ES Returns is expected to be launched in the coming weeks. An ES portal user guide will also be made available on the DITC website at this time.

In the meantime, "Responsible Persons" identified by entities in their ES notifications can expect to receive an email from the DITC providing an access link for use once the DITC portal goes live for filing of ES Returns.

Further information on the process for outsourced service providers ("OSP") to register via the DITC portal will be released in due course. A sample of the information, which the OSP will be required to provide in order to register as an OSP, can be found [here](#)⁹.

Extended Reporting Deadlines

In respect of this reporting year only, for entities with a 31 December financial year end, the Advisory notifies that ES reporting deadlines have been extended as follows:

- (a) For relevant entities carrying on intellectual property business - **31 January 2021**;
- (b) For all other ES Returns (including the Updated Form for Entity Tax Resident in Another Jurisdiction) - **28 February 2021**;
and

- (c) In respect of any reporting deadline falling due after 28 February 2021, the deadline continues to remain at 12 months after the end of the financial year, i.e. no change.

Penalty for Late Filing of ES Return

Under the ES Law, 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 Law. 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 Law 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.

⁸ <http://maples.com/Cayman-Islands-Economic-Substance-Requirements-for-Certain-Entities-Overview>

⁹ <https://www.ditc.ky/wp-content/uploads/Form-for-Outsource-Service-Providers.pdf>

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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