

Alert

Cayman Economic Substance Updates

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The Department for International Tax Cooperation (“DITC”) has advised that the DITC Portal (which will be used for a range of regulatory notification and reporting purposes) opened in early November; initially for FATCA and CRS purposes, with functionality for Economic Substance and Country-by-Country reporting to follow.

A further advisory will be issued in due course once the DITC Portal is open for Economic Substance filings and further guidance materials are available.

Economic Substance Reporting Deadlines

Generally Economic Substance Returns are due to be filed within 12 months of an entity’s financial year end. Economic Substance reporting deadlines have been extended for the first Economic Substance reporting period (for entities with a financial year ending 31 December 2019 only) as follows:

- For relevant entities carrying on intellectual property business: until **31 January 2021**.
- For all other Economic Substance Returns (including for entities that are tax resident in another jurisdiction): until **28 February 2021**.

If an entity’s financial year for 2019 is other than a calendar year, for example, from 1 April 2019 – 31 March 2020, there is no extension such that the reporting deadline will be within 12 months of the financial year end (by 31 March 2021).

Economic Substance Notifications (“ESNs”)

ESNs in respect of the 2019 year should have already been submitted earlier this year by all Cayman Islands companies, limited liability companies and foreign incorporated companies registered under the Companies Act. On the basis that (i) some entities were required to submit an ESN in advance of their financial year end; and (ii) due to changes in law and practice since the time of filing that might result in inaccurate ESNs or Economic Substance Returns, it may be necessary for the 2019 ESN submitted by an entity to be amended. Accordingly, it will be possible to submit an amended ESN in respect of the 2019 reporting period until 31 December 2020.

We note that an updated ESN may be required in the following circumstances:

- Entities that conducted fund management business during 2019 as “excluded persons” pursuant to the Securities Investment Business Act and that re-registered as “registered persons” became subject to Economic Substance requirements from 15 January 2020. Accordingly, such entities with a financial year ending 31 December 2019 should have answered “**no**” that they did not conduct the relevant activity of fund management business in 2019. Those that answered “**yes**” should submit a corrected ESN.
- Entities that completed their ESN based on their activities as at the last date of their financial year. Revised Guidance indicates that if more than one relevant activity has been conducted during a financial year **all** relevant activities conducted during that year should be disclosed on the ESN. Similarly, if an entity completed its ESN on the basis that it was undertaking **no** relevant activities at the end of its financial year, if it in fact undertook one or more relevant activities for any period during its 2019 financial year, the ESN must be amended to disclose such, and the entity will be required to submit an Economic Substance Return in respect of each relevant activity it conducted during 2019.
- The relevant activity of holding company business can only be selected if the entity is conducting holding company business exclusively for part or all of a financial year. Holding company business under the Economic Substance Act cannot be conducted at the same time as any of the other relevant activities.

- The ESNs submitted earlier this year should have been in respect of the 2019 reporting period. If the ESN was submitted for 2020 instead of 2019, the ESN should be corrected. It is expected that it should be possible to submit ESNs for the 2020 financial year soon.

For any queries please contact one of the lawyers listed below.

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