

CAYMAN ISLANDS ECONOMIC SUBSTANCE REGULATORY UPDATE

THE ECONOMIC SUBSTANCE RETURN FILING DEADLINE DRAWS CLOSER

December 2022 filing deadline

Entities subject to the economic substance test (**ES Test**) contained within the Cayman Islands Economic Substance Regime¹ are required to file an economic substance return (**ES return**) with the Tax Information Authority (**TIA**) within twelve months following the last day of their financial year end and to maintain economic substance in the Cayman Islands.

This means that entities with a financial year end of **31 December** are required to file their **ES return** by **31 December 2022** for the 2021 reporting period in order to demonstrate compliance with the ES Test.

All legal entities domiciled or registered in the Cayman Islands are required to file an economic substance notification (**ESN**) to the TIA by **31 January** each calendar year irrespective of whether or not they are a Relevant Entity conducting a Relevant Activities (each as defined below) during their previous financial year. The ESN is submitted via the Cayman Islands general registry and is a prerequisite to the filing of the government annual return.

Appleby and Appleby Global Services can guide you through this process to help ensure you are fully compliant with the Economic Substance Regime.

Scope and General Update on Economic Substance Requirements

The test for determining whether or not an entity is subject to the ES Test is as follows:

1. an entity must be a relevant entity; and
2. that entity must be carrying on one or more relevant activities.

Relevant entities comprise of the following entities:

- ordinary companies;
- limited liability companies;
- limited liability partnerships and exempted limited partnership;
- Cayman Islands registered foreign companies; and
- Cayman Islands registered foreign limited partnerships.

Relevant activities means one or more of the following nine relevant activities:

1. banking business;
2. distribution and service centre business;
3. financing and leasing business;

¹ Reference to the term Economic Substance Regime means the legal framework for economic substance requirements in the Cayman Islands as contained in the International Tax Co-operation (Economic Substance) Act (as revised) and the related regulations.

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4. fund management business;
5. headquarters business;
6. holding company business;
7. insurance business;
8. intellectual property business; and
9. shipping business.

ES Test

The ES Test requires a relevant entity conducting a relevant activity:

- to conduct core income generating activities in relation to that relevant activity in the Cayman Islands;
- be directed and managed in an appropriate manner in the Cayman Islands in relation to that relevant activity; and
- having regard to the level of relevant income derived from the relevant activity carried out in the Cayman Islands
 - incur an adequate amount of operating expenditure in the Cayman Islands;
 - have a physical presence (e.g., place of business, property and equipment) in the Cayman Islands; and
 - have an adequate² number of full-time employees or other personnel with appropriate³ qualifications in the Cayman Islands.

The TIA Economic Substance Guidance for Geographically Mobile Activities (version 3.1 June 2021) (available [here](#)) contains sector specific guidance on the practical application of the ES Test to the various types of relevant activities.

Current filing exemption for certain partnerships

As mentioned in our earlier briefing (available [here](#)), certain partnerships in existence prior to 1 July 2021⁴, and subject to economic substance requirements can rely upon an exemption from the requirement to file an ES return.

Consequence of breach

A breach of the economic substance requirements permits the TIA to take enforcement action against an entity which may result in the TIA imposing a financial penalty and/or requiring remediation action against the entity responsible for the breach.

² The term “adequate” shall mean “as much or as good as necessary for the relevant requirement or purpose”.

³ The term “appropriate” shall mean “suitable or fitting for a particular purpose, person, occasion”.

⁴ The Economic Substance Regime was expanded on 30 June 2021 to bring partnerships, exempted limited partnerships and foreign limited partnerships within scope.

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How Appleby and Appleby Global Services can help

ES return: we can prepare and file the ES return with the Department for International Tax Cooperation following receipt of all required information and supporting documentation (e.g., financial statements) to ensure this important filing obligation is fulfilled and no penalties against your entity are imposed.

ESN: we can also prepare and file the ESN via the general registry for new and existing clients where Appleby Global Services provides registered office services. All Cayman Islands entities (incorporated, established or foreign registered) must file this ESN irrespective of whether or not they are subject to the ES Test.

Economic substance compliance: Appleby's legal professionals in its regulatory and risk advisory practice group can provide tailored legal advice and guidance specific to your business in order to comply with economic substance requirements.

Along with our affiliate Appleby Global Services, Appleby is committed to providing economic substance compliance solutions to enable all clients to comply with the requirements for substance in the Cayman Islands, including notification and reporting.

KEY CONTACTS

For further information please contact one of the primary contacts listed below.



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