



Bermuda Economic Substance Reporting

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Bermuda's Economic Substance Portal launched as of 1 May 2020 to provide a reporting platform for filings from entities that are required to file declarations under the economic substance regime in the jurisdiction (**Economic Substance Regime**). The portal can be found at: www.registrarofcompanies.gov.bm.

Economic Substance Regime

Bermuda recently adopted an Economic Substance Regime that affects companies that carry on 'Relevant Activities', including banking, insurance, fund management, financing, leasing, headquarters, shipping, distribution and service centres, intellectual property and holding entities.

The Economic Substance Regime requires certain residency and physical presence obligations to be fulfilled. Entities within scope must be "managed and directed in Bermuda" which will include having strategic meetings (including board meetings) in Bermuda and having an adequate number of senior executives, employees and other persons in Bermuda who are suitably qualified and responsible for oversight or execution of the entity's core income generating activities, as well as holding meetings at which risk management and operational decisions are made.

The Economic Substance Regime applies to companies, limited liability companies and partnerships registered in Bermuda as well as overseas permit companies that carry on a Relevant Activity.

Entities are required to inform the Registrar of Companies, annually, as to whether or not they are carrying on a Relevant Activity, and the type of Relevant Activity. An entity that carries out Relevant Activities must demonstrate it has satisfied the Economic Substance requirements in respect of any particular financial period by filing a declaration form with the Registrar in respect of that financial period.

Legislation and Guidance

The Economic Substance Act 2018 and Economic Substance Regulations 2018 became operative on 31 December 2018 and provide the legislative framework for the Economic Substance Regime.

The purpose of the Economic Substance Regime is to ensure that Bermuda does not facilitate the use of structures which attract profits but which do not reflect real economic activity being undertaken in Bermuda.

Entities must determine if they are within the scope of the Economic Substance regime, whether they carry on any Relevant Activity, and how to satisfy the Economic Substance requirements as set out in the legislation. It is the responsibility of the Registrar of Companies to measure and assess the criteria for meeting the Economic Substance requirements.

The Economic Substance Guidance Notes can be found at the following link: <https://www.gov.bm/sites/default/files/GUIDANCE-NOTES-FINAL--24-Dec-2019.pdf>

There are also Sector-Specific Guidance Notes for each relevant sector: <https://www.gov.bm/sites/default/files/DRAFT--Relevant-Activity-specific-Guidance-Notes--30%20March-2020.pdf>

In the context of the Economic Substance Regime, the term Relevant Activity means carrying on as a business any one or more of the following: (a) banking; (b) insurance; (c) fund management; (d) financing and leasing; (e) headquarters; (f) shipping; (g) distribution and service centre; (h) intellectual property; and (i) holding entity. Each of these terms is defined in the Economic Substance Regulations 2018.

These activities will be seen as being carried on as a business where the relevant entity earns any gross income in respect of such activity during the relevant financial period. This refers to the gross revenue earned by an Entity in respect of a Relevant Activity (income before any deduction for expenses), and should not be read as "gross profit" (income less cost of goods sold). In other words, the Registrar will consider that a Relevant Activity is being carried on by an Entity as a business where the Entity earns any gross revenue from that Relevant Activity.

Annual Declarations

Entities that are subject to the Economic Substance Regime must file an economic substance declaration with the Registrar of Companies on an annual basis and can do so via the reporting portal. The declaration will at a minimum include the following information for the relevant financial period—

- (a) whether or not the entity is carrying on a Relevant Activity, and the type of Relevant Activity carried on or undertaken by the entity;
- (b) whether the entity is engaging in high risk IP activity;
- (c) whether the entity will outsource the relevant activity and to whom;
- (d) the core income generating activities that are undertaken in Bermuda with respect to the Relevant Activity;
- (e) the gross income for the relevant financial year;
- (f) the premises in Bermuda;
- (g) the name(s) and physical address(es) of the following—
 - (i) where the entity is a company, the director or directors;
 - (ii) where the entity is a limited liability company, the manager or managers;
 - (iii) where the entity is a partnership, the general partner or general partners, who are ordinarily resident in Bermuda;
- (h) the holding entity, the ultimate parent entity, the owner or the beneficial owner of the entity;
- (i) the operating expenses and assets for the relevant financial year;
- (j) the number of full time employees; and
- (k) such other information as may reasonably be required by the Registrar.

If an entity is engaged in more than one Relevant Activity during a relevant financial period, the Economic Substance requirements must be satisfied for each applicable Relevant Activity.

Penalties

The Registrar of Companies has a duty to ensure that Entities satisfy the requirements of the Economic Substance Regime. There are various measures for non-compliance including the issuance of a 'Notice to Comply' or a civil penalty.

It is important to note that it is an offence to knowingly provide false information to the Registrar of Companies which carries a punishment on summary conviction of a maximum fine of \$10,000 or two years' imprisonment or both. Where an entity commits the offence and it is proved to have been committed with the consent or connivance of an officer of the entity, the officer as well as entity commits the offence and will be liable to be proceeded against and punished accordingly.

Conclusion

The Economic Substance Regime requires entities to determine whether or not they carry out Relevant Activities, satisfy any relevant Economic Substance requirements, and to make appropriate filings with the Registrar of Companies.

If any entity is uncertain about its position under the Economic Substance Regime, it should obtain professional legal advice.



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