

Alert

Bermuda - Economic Substance Declaration Filings - Update

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The Economic Substance Act 2018 (the “Act”)¹ requires Bermuda-based entities that are carrying on a “relevant activity” in a relevant financial period and entities claiming “non-resident entity” status under the Act to file an Economic Substance Declaration Form (a “Declaration Form”) with the Bermuda Registrar of Companies (the “Registrar”). Such Declaration Form must be filed annually, within six months of the last day of the entity’s financial year (which means an entity with a financial year-end of 31 December 2020 will be required to file its completed Declaration Form by 30 June 2021).

Relevant Activities

The following are relevant activities, as defined by the Act:

- Banking
- Insurance
- Fund management
- Financing and leasing
- Headquarters
- Shipping
- Intellectual property
- Distribution and service centres
- Holding entity

Economic Substance Declaration

Every entity carrying on a relevant activity in respect of the filing period must file a Declaration Form. The Declaration Form requires certain financial and other information and the extent of the information required will depend on the nature of the relevant activity and the particular circumstances of the entity.

Entities with Zero Gross Income

Previously an entity that was conducting a relevant activity, but that did not earn any gross revenue in a relevant financial period was not considered to be carrying on a relevant activity as a business and was not required to file a Declaration Form. As noted in our prior alerts, the Registrar has updated the Economic Substance Declaration Portal and has issued an industry notice confirming that any entity conducting a relevant activity that does not earn gross revenue in a relevant financial period must now file a ‘nil’ Declaration Form on the portal. Such an entity is not required to comply with economic substance requirements beyond completing and filing the Declaration Form.

¹ In 2018, Bermuda enacted legislation with respect to economic substance requirements for relevant entities based in the jurisdiction. All other major offshore jurisdictions have enacted similar legislation.

'Non-resident Entity' Status

Entities that are tax resident outside of Bermuda (in a jurisdiction that is not on the European Union's list of non-cooperative jurisdictions for tax purposes) are only required to file proof or confirmation of their tax residency. Where documentary evidence is not available for the entire relevant financial period at the time of filing the Declaration Form, it is possible for the entity to file a provisional claim of residency for tax purposes. Non-resident entities are not required to comply with economic substance requirements beyond completing and filing the Declaration Form and proof or confirmation of their tax residency status.

Economic Substance Requirements

Where an entity is (i) not a non-resident entity, (ii) has conducted a relevant activity and (iii) earned gross revenue in a relevant financial period in respect of such activity, its economic substance requirements will depend on the nature of the relevant activity and the particular circumstances of the entity. For an overview of economic substance requirements for Bermuda-based entities, [click here](#). However, we recommend seeking legal advice in Bermuda concerning the individual situation of any entity or proposed entity.

How can we help?

Conyers has been closely involved with the implementation of Bermuda's economic substance legislation as well as the Registrar's Economic Substance Declaration Portal. The Declaration Form can only be filed via the Economic Substance Declaration Portal, which is accessed via the following web link: www.registrarofcompanies.gov.bm

Our lawyers have advised and assisted our clients with their assessment of the impact of the economic substance requirements, as well as the filing of their initial Declaration Forms. In so doing, we have acquired an unrivalled understanding in Bermuda of the economic substance requirements of various types of entity, across all relevant activities.

Please reach out to your usual Conyers contact, or contact our economic substance team at substanceinfobda@conyers.com for help with:

- determining the status of an entity for economic substance purposes
- advising on the compliance of an entity with the economic substance requirements
- clarifying the reporting obligations of an entity
- completing and filing the Declaration Form.

If you would like Conyers to assist with any of the above in connection with your 2021 Economic Substance filings, please contact us as soon as possible.

Corporate Services

In some instances, entities required to meet economic substance requirements may benefit from our fiduciary services, including local directorship services. Contact us to find out whether we can assist you in fulfilling your obligations under the economic substance regime.

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