



Alert

Expansion of Cayman Economic Substance Regime to Include Partnerships

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With effect from 30 June 2021 the International Tax Co-operation (Economic Substance) (Amendment) of Schedule Regulations, 2021 serve to expand the application of the International Tax Cooperation (Economic Substance) Act (2021 Revision) (the “ES Act”) to general partnerships, limited partnerships, exempted limited partnerships and foreign limited partnerships.

The ES Act requires all Cayman Islands entities (now including all types of partnerships) to notify the Tax Information Authority (the “TIA”) of, amongst other things, whether or not they are carrying on certain prescribed “relevant activities” and if so, whether or not they are a “relevant entity”. Subject to certain exemptions, relevant entities carrying on one or more relevant activities must satisfy an “economic substance test” as set out in the ES Act. Notification, and where applicable, compliance and reporting is required on an annual basis.

Practical effect

It is anticipated that a large number of partnerships will not be required to satisfy the economic substance test and complete annual reporting on the basis that they are either exempt investment funds, exempt domestic businesses, tax resident outside Cayman or subject to limited requirements as pure equity holding entities. All entities will however remain subject to the annual notification requirements.

Timing

Pursuant to the International Tax Co-operation (Economic Substance) (Prescribed Dates) (Amendment) Regulations, 2021, for entities not in existence as at 30 June 2021, the economic substance test (if applicable) must be satisfied from the date the partnership commences a relevant activity. For entities that were in existence prior to 30 June 2021, the economic substance test (if applicable) must be satisfied by 1 January 2022.

Partnership relevant entities that are carrying on a relevant activity and are therefore required to satisfy the economic substance test will be required to, no later than 12 months after the last day of the end of each financial year of the relevant entity commencing on or after 1 July 2021, prepare and submit a report to the TIA.

Background to the introduction of the ES Act

The ES Act was introduced in order to address concerns raised by the EU Code of Conduct Group that the Cayman Islands permits structures perceived to be lacking in economic substance. The ES Act as originally enacted, only applied to legal entities (companies, limited liability companies and limited liability partnerships). Following further concerns raised by the European Commission, the Cayman Islands Ministry of Financial Services conducted an industry consultation in early 2021, resulting in the current amendments which expand the scope of the ES Act to partnerships.

Next steps

The TIA plans to update their notification and reporting platform and reporting forms to address reporting by partnerships. It was acknowledged during the consultation process that there might be certain challenges reporting in respect of partnerships that are tax resident outside the Cayman Islands ("TRO"). According to the TIA's Economic Substance Guidance v3.1 issued on 30 June 2021, they will regard a partnership as TRO if the general partner of such a partnership provides objective and sufficient evidence that the place of effective management of the partnership is in another (non-Cayman) jurisdiction and that the partnership is either subject to tax in that other jurisdiction or is required to satisfy a test in that other jurisdiction which is substantially the same as the economic substance requirements under the ES Act. Where a claim of TRO is accepted by the TIA, the general partner of a partnership will not be required to make a separate TRO report for itself.

For further details regarding the ES Act requirements generally, please see our previous Alerts [here](#) and [here](#) or contact your usual Conyers contact or one of the contacts listed below.

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