

Alert

Bermuda - Economic Substance Declaration Filings - 2022 Alert

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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 2021 will be required to file its completed Declaration Form by 30 June 2022).

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 relevant financial 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.

Nil Gross Revenue – Relevant Activity

Entities that do not earn any gross revenue in respect of a relevant activity are only required to file a ‘nil’ Declaration Form. Any entity conducting a relevant activity that does not earn gross revenue in a relevant financial period is not required to comply with economic substance requirements beyond completing and filing the ‘nil’ Declaration Form.

Entities Carrying on Fund Management

Due to a recent amendment to the Economic Substance Regulations 2018, an entity will be carrying on the relevant activity of fund management if it provides fund management to investment funds whether or not such entity requires to be licensed under the Investment Business Act 2003. The effective date of this amendment was 1 January 2022.

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.

For a newly in-scope fund management entity which has a financial year-end of 31 December, the first relevant financial period will be the financial year-end 31 December 2022. Such an entity will therefore be required to file its Declaration Form on or before 30 June 2023.

Where a newly in-scope fund management entity has, for example, a financial year-end of 31 March, the first relevant financial period will be the financial year-end 31 March 2022. Such an entity must make the relevant filing within 6 months following the financial year-end 31 March 2022 (i.e. on or before 30 September 2022).

'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 evidence 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. Final evidence of tax residence must be supplied by a date specified to the entity by the Registrar, or, in any event, no later than 12 months from the date of the provisional claim. Non-resident entities are not required to comply with economic substance requirements beyond completing and filing the Declaration Form and evidence or confirmation of their tax residency status.

The Registrar has advised that one or more of the following is sufficient final evidence to demonstrate an entity's tax residency outside of Bermuda:

- a letter or certificate from the competent authority or tax authority of the jurisdiction in question, stating that the entity is considered to be resident for tax purposes in that jurisdiction; or
- an assessment to tax on the entity, a confirmation of self-assessment to tax, a tax demand, evidence of payment of tax or any other equivalent document issued by the competent authority or tax authority for the jurisdiction in question.

Where an entity made a provisional tax residency claim in its Declaration Form filed in 2021, we recommend providing the Registrar with the final evidence once available, if this has not yet been done.

If an entity intends to make a claim for 'Non-resident Entity' status in its upcoming Declaration Form, we suggest requesting final evidence of this tax residency from the relevant tax authority as soon as practicable.

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.

Impact of COVID-19

The Registrar has advised that travel difficulties as a result of COVID-19 will be taken into account when considering whether an entity has complied with certain economic substance requirements, but it is not a 'cure' for non-compliance.

How can we help?

Conyers has been closely involved with the implementation of Bermuda's economic substance legislation. The Declaration Form can only be filed via the Registrar's Online Register 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 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 2022 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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