



ADVISORY
Industry Information

Update in Respect of Cayman Islands Economic Substance Requirements

31 October 2019

The Cayman Islands Department for International Tax Cooperation (“DITC”) has issued an industry advisory regarding developments in relation to economic substance requirements. Our advisory with an overview of the economic substance requirements can be viewed [here](#) and our subsequent updates can be viewed [here](#) and [here](#).

Further Details of Notification Process

By way of recap, all Cayman Islands companies, limited liability companies, limited liability partnerships and registered foreign companies (“Entities”) must file an annual ES Notification regardless of whether or not they are Relevant Entities or claim an exemption from being a Relevant Entity by virtue of being an investment fund, tax resident in another jurisdiction or a domestic company. Partnerships and trusts do not have to file ES Notifications nor comply with any other economic substance requirements.

As summarised in our previous advisories, the DITC has confirmed that economic substance notifications (“ES Notifications”) for all potentially “relevant entities” will be via the General Registry and, in terms of timing, will be a prerequisite to filing an annual return on or before 31 January 2020. In a recent update to industry, the Ministry of Financial Services provided important further details of the process relating to ES Notifications which are summarised below.

All Entities will need to confirm whether or not they are conducting any Relevant Activity, regardless of whether or not they claim an exemption from being a Relevant Entity by virtue of being an investment fund, tax resident in another jurisdiction or a domestic company. The Relevant Activities are as follows:

- » banking business;
- » distribution and service centre business;
- » financing and leasing business;
- » fund management business;
- » headquarters business;
- » holding company business;
- » insurance business;
- » intellectual property business; and
- » shipping business.



An Entity which claims an exemption from being a Relevant Entity by virtue of being an investment fund is deemed not to be conducting any Relevant Activity and should always confirm in its ES Notification that it conducts no Relevant Activity. However, as part of the ES Notification an investment fund will be asked to provide its Cayman Islands Monetary Authority (“CIMA”) Reference Number (if any), Global Intermediary Identification Number (“GIIN”) and Tax Information Authority (“TIA”) Financial Institution Number.

An Entity which conducts banking business; fund management business; or insurance business will as part of its ES Notification also need to provide its CIMA Reference Number, GIIN and TIA Financial Institution Number regardless of whether it claims an exemption from being a Relevant Entity by virtue of being tax resident in another jurisdiction or a domestic company. An Entity which conducts distribution and service centre business; financing and leasing business; headquarters business; holding company business; intellectual property business; or shipping business is not required to provide any CIMA Reference Number, GIIN or TIA Financial Institution Number.

If an Entity has confirmed that it conducts Relevant Activity, it will then be asked to confirm whether it claims an exemption from being a Relevant Entity by virtue of being tax resident in another jurisdiction or a domestic company. Where an Entity claims any exemption it will not be required to upload information to validate the claim as part of the ES Notification but will need to provide such information subsequently.

An Entity which claims an exemption by virtue of being an investment fund, tax resident in another jurisdiction or a domestic company will not be required to file an annual ES report (“ES Report”). A Relevant Entity which does not conduct any Relevant Activity will also not be required to file an annual ES Report.

A Relevant Entity which conducts Relevant Activity will be required to submit an annual ES Report within 12 months of its financial year end. In other words, a Relevant Entity with a financial year end of 31 December will need to file its first ES Report prior to 31 December 2020. The TIA Portal for submission of ES Reports is not anticipated to open before July 2020.

ES Notifications may be filed by Entities’ corporate services providers. Notification forms and a user guide are available on the DITC’s website. Where Walkers Professional Services is your Entities’ corporate services provider, Walkers Professional Services and Walkers will work together to prepare the ES Notifications for your Entities and will contact you if further information is required.

It is expected that v.3 of the Economic Substance Guidance will be published in the coming weeks. The Economic Substance Guidance v.3 will incorporate sector specific guidance aimed to assist Entities to determine whether they are conducting any Relevant Activities and, if so, practical guidance on satisfying the economic substance test.

Contacts

Walkers has a dedicated global Regulatory & Risk Advisory Practice Group that can offer legal advice and guidance in connection with all aspects of the economic substance regime as it continues to evolve. Through its affiliate, Walkers Professional Services, Walkers is also committed to providing economic substance solutions that will enable all clients impacted by the regime to satisfy the necessary requirements for substance in the Cayman Islands, including notification and reporting.

For further information please speak with your usual Walkers contact or one of the following:

Legal Services - Regulatory & Risk Advisory



Lucy Frew
Partner - Cayman Islands
T: +1 345 814 4676
E: lucy.frew@walkersglobal.com



Alice Molan
Partner - Hong Kong
T: +852 2596 3425
E: alice.molan@walkersglobal.com



Sara Hall
Partner - London
T: +44 (0)20 7220 4975
E: sara.hall@walkersglobal.com



Professional Services



Anne Dolan
Director - Cayman Islands
T: +1 345 814 7620
E: anne.dolan@walkersglobal.com



Steven Manning
Director - Cayman Islands
T: +1 345 814 7612
E: steven.manning@walkersglobal.com



Judith Watler
Director - Cayman Islands
T: +1 345 914 6330
E: judith.watler@walkersglobal.com