



Updates to Bermuda's economic substance legislation

Service area / [Taxation and Economic Substance](#)

Location / [Bermuda](#)

Date / [July 2019](#)

The month of June 2019 saw a number of important updates to Bermuda's economic substance regime ahead of the 1 July deadline for compliance for entities in existence when the legislation came into force. This bulletin contains a summary of those developments.

Entities tax resident overseas out of scope

The Economic Substance Amendment Act 2019 (the "**Amendment Act**") came into force on 28 June. The Amendment Act introduced to the Economic Substance Act 2018 and associated regulations (collectively, the "**ES Regime**") the concept of a "non-resident entity", which it defines as an entity which is resident for tax purposes in a jurisdiction outside Bermuda that is not in Annex 1 to the EU list of noncooperative jurisdictions for tax purposes (i.e. an entity resident in a "blacklisted" jurisdiction will not count as a non-resident entity). The Amendment Act further excludes non-resident entities from the scope of the ES Regime.

This means that non-resident entities carrying on a relevant activity will not be subject to Bermuda economic substance requirements. However, they are obliged to provide to the Registrar of Companies (the "**Registrar**") for each relevant financial period the name of the jurisdiction in which it claims to be resident for tax purposes together with sufficient evidence to support that tax residence.

¹The current EU list of noncooperative jurisdictions can be found [here](#).

In the guidance notes (on which see below), the Registrar has indicated it would expect to receive documentary evidence of tax residence overseas in the form of (i) 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 (ii) 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 document issued by the competent authority or tax authority for the jurisdiction in question.

Exchange of information

The Amendment Act also modifies the provisions governing exchange of information. The Registrar will now disclose information on entities who fail to comply with the economic substance requirements or who engage in high risk IP activities not only to authorities in the relevant EU member state where the entity's holding entity, the ultimate parent entity, an owner or the beneficial owner is incorporated, formed, registered or resident (as the case may be), but to authorities in any jurisdiction in which such owner is incorporated, formed, registered or resident.

Similarly, the Registrar will provide information provided to it in support of a non-resident entity's claim of tax residency overseas to the competent authority of the jurisdiction in which the non-resident entity claims to be resident for tax purposes

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and the competent authority of the jurisdiction in which a holding entity, the ultimate parent entity, an owner or the beneficial owner of the non-resident entity is incorporated, formed, registered or resident.

Guidance notes published

On 26 June, the Registrar published for industry consultation draft guidance notes on general principles relating to the ES Regime. These guidance notes aim to assist entities to determine whether they are in scope of the ES Regime and to provide guidance as to how the Registrar will measure and assess the criteria for meeting the economic substance requirements set out in the ES Regime. As the name suggests, the guidance notes focus more on matters of universal application to in-scope entities, in particular filing requirements and procedures and the criteria for fulfilling Bermuda's economic substance requirements, rather than specific considerations applying to particular industries or activities. It is anticipated that further, specific guidance notes will be published in relation to each relevant activity in due course.

Filing timelines

The Registrar is in the process of establishing an e-registration system to accept and manage the information and data it collects pursuant to the ES Regime, with the aim of having this system operational in the second quarter of 2020. In a recent update meeting with industry, the Registrar indicated its anticipation that the first filing deadline for in-scope and non-resident entities is currently expected to be 30 June 2020.

For further information or to discuss how Bermuda's economic substance regime may impact your business, please contact your usual Carey Olsen contact in Bermuda.



FIND US

Carey Olsen Bermuda Limited
2nd Floor
Atlantic House
11 Par-la-Ville Road
Hamilton HM11
Bermuda

T +1 441 542 4500

E bermuda@careyolsen.com



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Visit our taxation and economic substance team at [careyolsen.com](https://www.careyolsen.com)



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