

Economic Substance Requirements

Impact on Bermuda-domiciled entities



Overview

The Economic Substance Act 2018 (the “Act” or “ESA”) was passed by the Bermuda Government in response to concerns raised by the European Union’s Code of Conduct Group (Business Taxation). The Act is effective from 1 January 2019 and addresses the issue of economic substance for relevant businesses by defining ‘relevant activity’ and ‘core income generating activities’.



Who is subject to economic substance requirements?

Every entity that is engaged in a “relevant activity”. A ‘relevant activity’ is one where an entity is operating in one or more of the following categories:

- Banking
- Insurance
- Fund management
- Financing and leasing
- Headquarters
- Shipping
- Distribution and service centre
- Intellectual property
- Holding companies



What are the economic substance requirements?

An in-scope entity must meet the following economic requirements:

- Managed and directed in Bermuda
- ‘Core income generating activities’ are undertaken in Bermuda with respect to the ‘relevant activity’
- Maintains adequate physical presence in Bermuda
- Has adequate full-time employees in Bermuda with suitable qualifications
- Incurs adequate operating expenditure in Bermuda in relation to the ‘relevant activity’



What are the economic substance reporting requirements?

Once adopted, affected companies will be required to file an annual Economic Substance Declaration (an “ESD”) with the Bermuda Registrar of Companies (the “ROC”).¹

Timing of compliance with the Act

Existing entities ²	Must comply with the provisions of the Act by 1 July 2019 with the first return due in 2020.
New incorporated entities ³	Must comply with the provisions of the Act upon incorporation, with the first return due in 2020.



¹ If an entity fails to comply with the reporting requirements, the ROC may impose fines and penalties applying the powers granted by the Registrar of Companies (Compliance Measures) Act 2017.

² Refers to an entity which exists on the date of the coming into operation of the ESA.

³ Refers to an entity incorporated on or after the date in which the ESA comes into operation.

How we can help you

PwC Bermuda can assist companies to assess potential impact to their business model as follows:

1 | Assisting new entities in meeting the requirements of the Act

- Review your business model and outsourcing arrangements prior to undertaking a 'relevant activity'
- Support you in identifying suitably qualified personnel to operate locally
- Support you in developing an operating model which aligns with the ESA

2 | Conduct current state assessment

- Review current corporate structure including physical presence in Bermuda
- Assess location of current 'core income generating activities' undertaken (Bermuda vs. off-island)
- Review local employees roles and respective qualifications

3 | Conduct gap analysis and options analysis

- Conduct a gap analysis comparing current state to the requirements of the Act
- Provide an options analysis and propose mitigating actions to assist you in achieving compliance with the Act by 1 July 2019

4 | Prepare Annual ESD

- Interview management and gather information from management
- Prepare and file your Annual Returns for submission to the ROC

Please reach out to any of our team below with any questions or concerns on how to respond to economic substance requirements your business is subject to.

Talk to us about economic substance in Bermuda



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Talk to us about economic substance in Cayman

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