

Economic substance

Navigating regulatory change in The Bahamas

What is economic substance?

The European Union (EU) released a scoping paper in June 2018 to highlight how economic substance matter might impact a number of jurisdictions, considering local tax policies and whether they meet the EU standards of good governance and fair taxation. The Bahamas enacted economic substance legislation – Commercial Entities (Substance Requirements) 2018 (the Act) – under the Organisation for Economic Co-operation and Development (OECD) Action 5, effective 1 January 2019.

The new substance requirements apply to entities that perform certain activities, generally described as relevant activities. These include not only banking, insurance and fund management but also headquarter companies, financing and leasing, distribution, service centers, shipping, and intellectual property businesses, among others. An included entity carrying on relevant activities must conduct core income generating activities (CIGA) in The Bahamas, which presupposes adequate amounts of annual operating expenditure, levels of qualified full-time employees, physical offices, levels of board management and control within The Bahamas. Additionally, no included entity shall outsource any of its CIGA to an entity or person outside of The Bahamas. Special considerations must be considered for holding companies and intellectual property companies.

Entities are required to file requisite form(s) to the Department of Inland Revenue within nine months of the fiscal year end in the manner specified by the Act.

What's next?

Final determinations and guidance from The Bahamas Authority are expected to be released in the coming months. Key considerations around current structure and local presence include:

- ▶ What “relevant activities” are in scope for the structure?
- ▶ Which aspects of “relevant activities” are core income generating activities?
- ▶ To what extent can these activities be outsourced?
- ▶ Is the company registered at The Bahamas an included entity or a non-included entity?
- ▶ Which reporting shall be carried out?

How we can help

We can help you navigate the recent legislation, as well as develop sustainable business agendas that adapt and evolve with our rapidly changing global tax environment. Our three-phase approach to economic substance is as follows:

- 1 Let's start today!**
 - ▶ Complete legal entity analysis and determination of entities considered "relevant" and within the scope of the economic substance rules
 - ▶ Produce a gap analysis based on these "relevant activities"
- 2 Recommendation and business framework**
 - ▶ Provide recommendations to drive compliance with the economic substance rules based on the gap analysis in Phase 1 after final guidance is issued
- 3 Implementation and restructuring**
 - ▶ Assist with local economic substance declaration filings to registrars
 - ▶ Support process and modeling to implement local business and infrastructure
 - ▶ Work with our Transaction Advisory Services team to incorporate local financial, tax and transaction due diligence, as well as any potential restructuring

Contact us

For more information, please reach out to your regular EY contact or any of our tax leaders below.



Bill Bailey
Partner, Bahamas,
Bermuda, BVI and Cayman
Islands Regional Tax Leader
EY Bermuda Ltd.
bill.bailey@bm.ey.com
+1 441 294 5319



Erica Culmer-Curry
Manager, Business Tax
Advisory
Ernst & Young Ltd., Bahamas
erica.culmer-curry@bs.ey.com
+1 242 396 3052



Emily Simpson
Manager, Global
Compliance & Reporting
EY Bermuda Ltd.
emily.simpson@bm.ey.com
+1 441 294 5524

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EYG no. 003240-19GbI

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