

<u>Economic Substance – Practice Points</u>	
<u>Economic Substance Notification (ESN)</u>	
1 - How do I submit the ESN?	
<p>The ESN is submitted via the General Registry system CAP.</p> <p>Entities which file on CBP will be required to confirm if they are carrying on a relevant activity.</p>	
2 - How do I reset my CAP password?	
<p>The DITC cannot assist with passwords for accessing CAP. Please send your request to the CORIS help desk: Corishelpdesk@gov.ky.</p> <p>Please note that password reset requests must be submitted by your CORIS Administrator.</p>	
3 - How do I get access to CAP?	
<p>The DITC cannot assist with any queries on accessing CAP. Please visit Registry's website for details: www.ciregistry.gov.ky.</p> <p>Please note that access to CAP is only available to locally licensed service providers.</p>	
4 - Where can I find the ESN once I am logged into CAP?	
<p>Manual Form – please refer to the detailed steps outlined in the User Guide (Linked here).</p> <p>Bulk Upload - please refer to the detailed steps outlined in the User Guide (Linked here).</p>	
5 - Is there a PDF version of the ESN available?	
<p>No, there is no PDF version available as the ESN is a Smart Form such that, each question depends on the answer to the previous, which will not be the same for each entity.</p> <p>There are many useful reference documents on the TIA website which include: ESN Decision Tree (Linked here) and ES Information Required (Linked here).</p>	
6 - Is there a fee to file the ESN?	
No.	
7 - Is the ESN an annual requirement?	
Yes.	
8 - What is the deadline to submit the ESN?	
The ESN is a prerequisite to filing the Annual Return (AR). The deadline is the same as the AR.	
9 – Is there a penalty for filing the ESN late?	
The Tax Information Authority (TIA) will not impose a separate penalty for the late filing of the ESN. The entity will be penalized through the AR process.	
10 – Is there a delay or approval process after the ESN is filed before the AR can be filed?	
No, once the ESN is filed correctly with no errors, the AR can immediately be filed.	

11 – How do I know the ESN was successfully filed? Where can I find confirmation?

Process to check Bulk File import Status:

- a. Click on “Manage” tab and then select “Contact Admin”.
- b. Go down to the Import Message section on the page.
- c. This will show if the ESN Bulk file was uploaded into the CAP system successfully.
- d. Keep in mind that this will show the number of ESNs for all Entities that you filed inside the bulk file.
- e. The system will show if there were any data format errors inside bulk upload file.
- f. Click on failures Icons to see errors (If any).

Process to check Economic Substance Status:

- a. Click on “Manage” tab and then select “Annual Return Batches”.
- b. Under the Economic Substance Status section the system will display all the completed ESN files for the completed Entities.
 - i. If you see the entity listed, it means the ESN upload was successful and you can proceed to file the Annual Return for that specific entity.
 - ii. Please note that you do not have to wait on the DITC Team to “Approve” the filings. Once the system is showing the ESN as filed you can proceed to file your Annual Return for that entity.
- c. You can export the list of Entities by selecting the date you uploaded the ESN bulk upload file and then click in Export. This will save all the details to a CSV file that you can then open in Excel.

You will not receive an email with confirmation status.

12 - If an entity was terminated, migrated to another jurisdiction, deregistered (as a foreign company) or merged or consolidated with one or more other entities, is it required to submit the notification?

Yes, as outlined in the guidance notes an entity will, so long as it exists, continue to have any obligations which the ES Law imposes on it. Practically, the general rule with regard to the ESN is that where the entity is still on CAP, the ESN is required. Where the entity has already become inactive in CAP such that it is not possible to file the ESN, the TIA requires that the entity provides the data required on the ESN via email to CaymanESportal@gov.ky. The data should be provided in the format outlined on the Sample Economic Substance Bulk Submission file, please refer to the [User Guide](#) for details on where to locate this file. Please password protect the file before sending and refrain from sending the password until the TIA have confirmed receipt.

We expect this manual notification to be a year 1 issue only as in future years the ESN will be available for filing before the entity terminates.

13 – How do I correct an error on an ESN that has been submitted?

Manual Form – please refer to the detailed steps outlined in the User Guide ([Linked here](#)).

Bulk Upload - please refer to the detailed steps outlined in the User Guide ([Linked here](#)).

14 – How should an entity with zero relevant income file the ESN?

The entity should follow the appropriate steps per the user guide to classify itself as normal in the ESN. Relevant income is only reportable when filing the ES Return (due 12 months after the year-end).

For example, a relevant entity doing a relevant activity i.e. financing and leasing will file the ESN on this basis. When filing the ES Return, the entity reports zero relevant income such that no further information on the ES test is required. This applies to all relevant activities except High Risk IP which will still be subject to exchange as outlined in s.10 of the ES Law.

15 – What happens where the registered office (RO) changes after the ESN is filed?

The new RO should obtain confirmation that the ESN was filed from outgoing RO. The new RO will not be able to see this information on CAP.

Where the ESN shows a relevant entity doing a relevant activity or an entity doing a relevant activity which is claiming the tax resident outside the Islands exemption and the outgoing RO was selected as the point of contact for access to the portal, the new RO should contact the TIA to update the information. Email address is CaymanESportal@gov.ky.

16 – What email address is automatically populated when RO is selected as point of contact for relevant entity doing a relevant activity or an entity doing a relevant activity which is claiming the tax resident outside the Islands exemption on the ESN?

The email address that the RO used at registration.

The RO should contact General Registrar to ensure the email details are current. Email address is Corishelpdesk@gov.ky.

The TIA encourages all ROs to ensure this email address is current to ensure important correspondence on next steps is received.

17 – Where do I obtain the Financial Institution (FI) number?

The FI number is a unique number which is allocated when the FI registers with the TIA. The number does not change for the lifetime of that FI. The TIA would expect that all service providers and clients have the FI number available in their files as it is required in almost all correspondence with the TIA. The FI number can also be obtained, by persons with access to the FI, on the DITC Portal.

18 - The entity changed its activity during the year. Which activity should be disclosed on the ESN?

The entity should disclose if it is doing a relevant activity, from the date the ES Law came into force, on its ESN. If the entity changes from carrying on one relevant activity to another relevant activity during the year, both should be disclosed on the ESN.

19 – How do I file the ESN for an SP which is not separately registered with GR?

The ESN does not have the functionality to allow the user to add entities which are not registered with General Registry. Therefore, the SPC should answer based on the situation of an SP which requires a further filing under the ES Law e.g. an entity which is required to file the ES Return or to provide information to prove the Tax Resident Outside the Islands exemption.

On the ES Return or Tax Resident outside the Islands form which are both filed through the DITC Portal, the SPC will be required to specify the SP(s) on whose behalf it is submitting the ES Return. A separate ES Return / Tax Resident outside the Islands form must be submitted by the SPC for each SP that is required to file.

For example an SPC has 10 SPs, nine are out of scope for the ES Law but one is carrying on a relevant activity and claiming the tax resident outside the Islands exemption. The SPC should answer the ESN questions as follows:

Did the entity carry on a Relevant Activity as defined in the ES Law, during the year? Yes.

Is this a confirmed Relevant Entity as defined in the ES Law? No.

What type of exemption applies? Tax resident outside the Islands

The entity should then select the appropriate point of contact for providing the information required to be filed on the Form for an Entity Tax Resident outside the Island on the DITC Portal.

20 – Please confirm how an entity with the following fact pattern, should complete the ESN:

- **Cayman entity is a relevant entity carrying on relevant activity**
- **Cayman entity has a foreign branch which is also carrying on a relevant activity. This foreign branch meets the requirements to avail of the tax resident outside the Islands exception.**

The ESN currently does not have the functionality to allow the user to select to be both a relevant entity carrying on a relevant activity and an entity which wishes to avail of the tax resident outside the Islands exception. Therefore, in this scenario, the entity should answer the ESN on the basis that it is a relevant entity carrying on a relevant activity. The responsible person selected on the ESN will receive a link to the ES Return once it is available on the DITC Portal.

An entity which has a foreign branch that is carrying on a relevant activity outside the Islands will not be required to satisfy the ES Test with respect to that foreign branch if the entity satisfies the Authority that the foreign branch is tax resident outside the Islands. The Authority will regard the branch as tax resident in a jurisdiction other than the Islands if the branch is subject to corporate income tax on all of its income from a relevant activity by virtue of its tax residence, domicile or any other criteria of a similar nature in that other jurisdiction. The financial performance of any such foreign branch should be excluded from the ES Return. Instead, the ES Return will provide the entity with an option to disclose the foreign branch name. The entity should then complete a Tax Resident Outside the Islands Form with respect to the relevant activity carried on by its foreign branch outside the Islands.

21 – What does the question “ESN Year” mean?

The ESN is based on the financial year of the entity and not the calendar year. The year selected in “ESN Year” should be the year in which the financial year to be reported on by the entity commenced. For example:

Financial Year Start	Financial Year End	ESN Year	Period in scope for the ESN (and ES Test)
1 Apr 2019	31 Mar 2020	2019	1 Jul 2019 -31 Mar 2020 (or Start Date from date entity commenced relevant activity, if entity incorporated in 2019)
1 Oct 2019	30 Sept 2020	2019	1 Oct 2019 – 30 Sept 2020
1 Jan 2020	31 Dec 2020	2020	1 Jan 2020 – 31 Dec 2020

	1 June 2020	31 May 2021	2020	1 June 2020-31 May 2021	
<p>Some entities will be required to provide details on the ESN in advance of their year-end in order to be able to comply with the Annual Return deadline. Accordingly, such entities should predict their activities for any period falling between the date of filing of their Annual Return and their financial year-end. The ESN for a given year will remain open for amendment until the end of the following calendar year should any predictions made in that regard prove incorrect, resulting in the ESN not accurately reflecting the activities conducted in the financial year. Such ESNs should be amended in accordance with instructions set out in the User Guides (Bulk and Manual) available on the DITC website. For example, the ESN Year 2020 remains open for amendment until 31 December 2021.</p>					
21 – When will “ESN Year 2019” be available until?					
<p>As outlined in the Industry Advisory released on 12 November, the reporting deadlines for this year for ES have been extended. Therefore, the ESN Year 2019 will remain available until 31 January 2021.</p>					
22 – When will “ESN Year 2020” be available?					
<p>The ESN submission window for the financial year commencing in 2020 is now open. Entities are now able to submit their ESNs via CAP or CBP (as the case may be).</p> <p>This notification is required as a prerequisite to filing an Annual Return and will be due annually. The ESN is based on the financial year of the entity and not the calendar year. For further information, please refer to the User Guides (Bulk and Manual) available on the DITC website.</p> <p>The submission window for the financial year commencing in 2021 is also now available in CAP. This is primarily to facilitate Entities who wish to file their ESN in advance of dissolving / winding up during the financial year which commences in 2021.</p>					
<u>Economic Substance (“ES”) Return</u>					
1 – Where will the ES Return and the Form for an entity Tax Resident in another Jurisdiction be filed?					
<p>The Cayman Islands DITC Portal (“DITC Portal”) will facilitate the electronic reporting of the ES Return and the Form for an entity Tax Resident in another Jurisdiction to the Authority. Once the ES reporting is available on the DITC Portal a link to access the portal will be sent to the responsible person as selected on the ESN.</p> <p>The ESN will still be required annually via CAP or CBP.</p>					
2 - If an entity which was required to file either the ES Return or the Form for an entity Tax Resident in another Jurisdiction was terminated, migrated to another jurisdiction, deregistered (as a foreign company) or merged or consolidated with one or more other entities, is it still required to submit its ES reporting?					
<p>Yes, as outlined in the guidance notes an entity will, so long as it exists, continue to have any obligations which the ES Law imposes on it.</p>					

Practically, where the entity has already become inactive before it was possible to file the required reporting on the DITC portal, the TIA requires that the entity provides the data via email to CaymanESportal@gov.ky. The entity should send a file outlining the required information as detailed on the sample PDFs available on the website. Please password protect the file before sending and refrain from sending the password until the TIA have confirmed receipt.

We expect this manual reporting to be a year 1 issue only as in future years the DITC portal will be available for filing before the entity terminates.

3 – When an entity uses a service provider to meet the requirements of the ES Law for Holding Company Business, does that service provider need to register with the Authority using the Form for Outsource Service Providers (“OSPs”).

No, the reduced substance test does not require outsourcing to be verified.

4 - Do agents need to register as OSPs if they are only providing registered office services to entities (including those conducting Holding Company Business)?

No.