

Tax Information Authority



CAYMAN ISLANDS

ENFORCEMENT GUIDELINES: ECONOMIC SUBSTANCE (ES)

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PART 1 – OVERVIEW

1.1 Introduction

The Tax Information Authority (TIA or Authority) is responsible for monitoring compliance, carrying out compliance activities, and taking enforcement action in respect of Economic Substance (ES), under the following Act and Regulations:

- a. [International Tax Co-operation \(Economic Substance\) Act \(2021 Revision\): \(ES Act\)](#)
- b. [International Tax Co-operation \(Economic Substance\) \(Amendment of Schedule\) Regulations, 2021](#)
- c. [International Tax Co-operation \(Economic Substance\) \(Prescribed Dates\) \(Amendment\) Regulations, 2021](#)
- d. [International Tax Co-operation \(Economic Substance\) Regulations, 2020](#)
- e. [International Tax Co-operation \(Economic Substance\) \(Prescribed Dates\) Regulations, 2018](#)

These Enforcement Guidelines explain the Authority's requirements for persons subject to the Authority's compliance and enforcement actions under the ES Act, and should be read in line with the ES Guidance Notes and practice points, which are available on the [DITC website](#). The Authority may amend these Guidelines from time to time as the Authority considers reasonably necessary or convenient.

1.2 Functions of the Authority

Under section 4 of the Tax Information Authority Act (TIA Act), the Minister charged with responsibility for Financial Services is designated as the Tax Information Authority for the purposes of the TIA Act and any scheduled Agreement. Section 4 also provides that the Authority shall exercise its functions through a person designated by the Authority to act on its behalf, and shall be deemed to act in an administrative capacity.

The Minister for Financial Services has designated the Director and Deputy Director of the Department for International Tax Cooperation (DITC) as the Authority, and the functions of the Authority are carried out through the offices of the DITC.

Under the ES Act, the Authority has the following functions pursuant to section 3:

- a. To administer the ES Act;
- b. to determine whether a relevant entity that is required to satisfy the Economic Substance Test ("ES test") in relation to a relevant activity satisfies such test;
- c. to monitor compliance with the ES Act; and
- d. any other function specified in the ES Act.

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1.3 Power to determine whether ES Test is satisfied

Pursuant to section 6(1) of the ES Act, the Authority has the power to determine whether a relevant entity has passed or failed the ES test:

The Authority shall have the power, in accordance with this Act, regulations made under this Act and the guidance issued under section 5, to make a determination as to whether a relevant entity that is required to satisfy the ES test in relation to a relevant activity satisfies such ES test for any financial year of the relevant entity commencing on or after the date prescribed under section 4(6), except that such a determination shall not be made later than six years after the end of such financial year.

1.4 Scope of Application

These Guidelines apply to all persons within the scope of the Authority's compliance monitoring and enforcement powers under the ES Act.

These Guidelines only apply to penalties under the ES Act, and do not extend to the criminal provisions under the ES Act, or any other law. In the event of a suspected offence that carries criminal liability whereby a person is subject to potential imprisonment, the case will be referred to the Office of the Director of Public Prosecutions for consideration as to whether criminal prosecution is merited based on the available evidence.

These Guidelines are not legally binding. Their purpose is to provide guiding principles for the application of the administrative penalty regime to persons that are potentially subject to enforcement action.

1.5 The BEPS Action 5 Minimum Standard

The OECD Forum on Harmful Tax Practices (FHTP) has been conducting reviews of preferential regimes since its creation in 1998 in order to determine if the regimes could be harmful to the tax base of other jurisdictions. The current work of the FHTP comprises three key areas:

- The assessment of preferential tax regimes to identify features of such regimes that can facilitate base erosion and profit shifting ("BEPS"), and therefore have the potential to unfairly impact the tax base of other jurisdictions.
- The peer review and monitoring of the Action 5 transparency framework through the compulsory spontaneous exchange of relevant information on taxpayer-specific rulings which, in the absence of such information exchange, could give rise to BEPS concerns.
- The review of substantial activities requirements in no or only nominal tax jurisdictions to ensure a level playing field.

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1.6 Compliance Objectives

The core objective of the Authority's compliance monitoring and enforcement function is to ensure that entities comply with the obligations in the ES Act so that complete and accurate information is collected, reported and then exchanged with relevant Competent Authorities.

Failure by an entity to collect and report required information, and failure by the Authority to take enforcement action in respect of contraventions of the ES Act, present a significant risk of jeopardising Cayman's ability to demonstrate effective implementation of the ES framework.

1.7 Enforcement Principles

Enforcement actions undertaken by the Authority for contraventions of the ES Act require the exercise of discretion, based on the available facts, to determine whether an entity has passed the ES test and, if not, the level of penalty to be issued to the entity.

The Authority adheres to general principles of fairness to ensure the decision-making process for enforcement action is consistently followed, and that the imposition of a penalty against an entity produces a fair result:

- The Authority will exercise its enforcement powers in a manner that is consistent with the ES Act and that is reasonable, transparent, lawful, rational, proportionate;
- The Authority will take enforcement action that is timely and effective in dissuading persons from future contraventions of the ES Act; and
- The Authority will exercise its enforcement powers in a manner that is procedurally fair.

1.8 Definitions

Authority: the Tax Information Authority designated under section 4 of the Tax Information Authority Act, or a person designated by the Authority to act on behalf of the Authority.

Director: in relation to an entity, means any director, member or other person in whom the management of the entity is vested and "board of directors" shall be construed accordingly.

Core Income Generating Activities (CIGA): means activities that are of central importance to a relevant entity in terms of generating relevant income and, must be carried on in the Cayman Islands. Refer to the ES Guidance Notes for a complete list of CIGA in relation to a particular relevant activity.

Economic Substance Test (ES test): shall be construed in accordance with section 4 of the ES Act.

Entity:

- (a) a company that is —
 - (i) incorporated under the Companies Act; or
 - (ii) a limited liability company registered under the Limited Liability Companies Act (LLC Act);
- (b) a limited liability partnership (LLP) that is registered in accordance with the Limited Liability Partnership Act (LLP Act);

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- (c) a company that is incorporated outside of the Islands and registered under the Companies Act.
- (d) a partnership under the Partnership Act;
- (e) an exempted limited partnership under section 2 of the Exempted Limited Partnership Act (ELP Act); or
- (f) a foreign limited partnership under section 42 of the ELP Act.

Investment Fund: An entity whose principal business is the issuing of investment interests to raise funds or pool investor funds with the aim of enabling a holder of such an investment interest to benefit from the profits or gains from the entity's acquisition, holding, management or disposal of investments and includes any entity through which an investment fund directly or indirectly invests or operates (but not an entity that is itself the ultimate investment held), but does not include a person licenced under the Banks and Trust Companies Act or the Insurance Act, or a person registered under the Building Societies Act or the Friendly Societies Act.;

Registrar:

- (a) in the case of a company that is incorporated or registered under the Companies Act, has the meaning given to that expression by section 2(1) of that Act;
- (b) in the case of a limited liability company that is registered under the LLC Act, has the meaning given to that expression by section 2 of that Act;
- (c) in the case of a LLP that is registered under the LLP Act, has the meaning given to that expression by section 2(1) of that Act.
- (d) in case of a partnership means the Registrar of Limited Partnerships under section 48 of the Partnership Act;
- (e) in the case of an exempted limited partnership means the Registrar of Exempted Limited Partnerships under section 8 of the ELP Act; or
- (f) in the case of a foreign limited partnership registered under section 42 of the ELP Act, means the Registrar of Exempted Limited Partnerships under section 8 of the ELP Act.

Relevant Activity:

- (a) banking business;
 - (b) distribution and service centre business;
 - (c) financing and leasing business;
 - (d) fund management business;
 - (e) headquarters business;
 - (f) holding company business;
 - (g) insurance business;
 - (h) intellectual property business; or
 - (i) shipping business;
- but does not include investment fund business.

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Relevant Entity:

- (a) a company, other than a domestic company, that is —
 - (i) incorporated under the Companies Act; or
 - (ii) a limited liability company registered under the LLC Act;
- (aa) a partnership as defined under section 3 of the Partnership Act, except where the partnership is a local partnership;
- (ab) an exempted limited partnership as defined under section 2 of the ELP Act;
- (ac) a foreign limited partnership registered under section 42 of the ELP Act;
- (b) a limited liability partnership that is registered in accordance with the LLP Act;
- (c) a company that is incorporated outside of the Islands and registered under the Companies Act, but does not include —
 - (i) an investment fund; or
 - (ii) an entity that is tax resident outside the Islands;

Relevant Income: in relation to an entity, means all of that entity's gross income from its relevant activities and recorded in its books and records under applicable accounting standards;

PART 2 – ADMINISTRATIVE PENALTIES UNDER THE ES ACT

The Authority has the power to impose administrative penalties under the ES Act for missed reporting, failure of the ES test in Year 1, and failure of the ES test in a subsequent financial year.

“Year 1” means any reporting period that is not a subsequent financial year. A “subsequent financial year” means the financial year following a financial year in which a notice was issued pursuant to section 8(1) of the ES Act.

2.1 Missed Reporting: Section 7(8A)

Where a relevant entity that is required to satisfy the ES test fails to prepare and submit to the Authority the report required under section 7(3) within the time specified in that subsection, the Authority shall by notice in writing impose a penalty of five thousand dollars and an additional penalty of five hundred dollars for each day during which the failure to comply continues.

2.2 Failure of ES Test in Year 1: Section 8(2)

The Authority shall impose a penalty of ten thousand dollars on a relevant entity that is required to satisfy the ES test in relation to a relevant activity for failing to satisfy such ES test.

2.3 Failure of ES Test in the Subsequent Year: Section 8(4)

The Authority shall impose a penalty of one hundred thousand dollars on a relevant entity that is required to satisfy the ES test in relation to a relevant activity for failing to comply with the ES test in relation to that relevant activity for a subsequent financial year.

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PART 3 – INVESTIGATORY FUNCTIONS OF THE AUTHORITY

An overview of the investigatory functions of the Authority is provided below. A full list of information required to be submitted to the Authority and investigatory functions can be found in section 7 of the ES Act.

3.1 Verification of Information Submitted to the Authority

The Authority will conduct an initial analysis of the information submitted to the DITC via General Registry systems (i.e. ESNs) and via the DITC Portal (e.g. ES Returns and Tax Resident Outside the Islands (TRO) forms). In cases where, in the opinion of the Authority, a clarification of the information provided or additional documentary evidence is required, the Authority will contact the designated responsible person (“RP”). Where, in the opinion of the Authority, a clarification or additional information is not required, the Authority will not contact the RP before making a determination.

3.2 Economic Substance Notification (ESN)

Every entity shall, by means of an Annual Economic Substance Notification (“ESN”), notify the Authority annually of —

- (a) whether or not it is carrying on a relevant activity;
- (b) if it is carrying on a relevant activity, whether or not it is a relevant entity;
- (c) in the case of an entity that is carrying on a relevant activity and is tax resident in a jurisdiction outside the Islands —
 - (i) the name and address of its immediate parent, ultimate parent and ultimate beneficial owner and any other information reasonably required to identify its immediate parent, ultimate parent and ultimate beneficial owner;
 - (ii) the date of the end of its financial year; and (iii) the jurisdiction in which the entity is claiming to be tax resident and any other information as may reasonably be required to support that claim;
- (d) in the case of a relevant entity that is carrying on a relevant activity:
 - (i) the date of the end of its financial year, and
 - (ii) the name and address of the officer who is responsible for providing information to the Authority,

and shall provide appropriate evidence to support the information provided in the notification as may be reasonably required by the Authority.

The ESN is required as a prerequisite to the entity filing its Annual Return via the General Registry’s Corporate Administration Platform (CAP), as applicable for the particular type of entity. The deadline for submitting the ESN is the date after which the General Registry can impose penalties for late payment of the Annual Return fees, namely 31 March each year. There is a different process for entities using the Cayman Business Portal (“CBP”). Entities filing their Annual Return on the CBP are asked to confirm if they are carrying on a relevant activity.

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3.3 Tax Residence Outside the Islands (TRO Form)

The Authority will require any entity claiming to be tax resident outside the Islands to produce satisfactory evidence to substantiate the same. For example, the evidence may include a Tax Identification Number, tax residence certificate and assessment or payment of a corporate income tax liability on all of that entity's income in the Islands from a relevant activity, or, in the case of a disregarded entity for U.S. income tax purposes, a signed statement under penalty of perjury from an external tax advisor or 'C' level officer stating that all of that entity's income has been included on the corporate tax return of the U.S. parent company.

In the absence of such evidence the entity will be regarded as a relevant entity that is subject to the ES Act. The ES test must be satisfied with respect to any part of relevant income that is not subject to corporate income tax imposed by a jurisdiction other than the Islands.

A relevant entity should take care that it does not falsely claim to be tax resident or subject to corporate income tax in another jurisdiction on all of that entity's income in the Islands from a relevant activity such that the result would be a circumvention of the ES test.

3.4 Economic Substance Return (ES Return)

A relevant entity that is carrying on a relevant activity and is required to satisfy the ES test must prepare and submit to the Authority an ES return for the purpose of the Authority's determination as to whether the ES test has been satisfied in relation to that relevant activity. The ES return must be made within twelve months after the last day of the end of each financial year of the relevant entity commencing on or after 1 January 2019.

The ES return is submitted to the DITC Portal and must include the following information with respect to the relevant entity as of the end of the relevant financial year –

- (a) the type of relevant activity conducted by it;
- (b) the amount and type of relevant income in respect of the relevant activity;
- (c) the amount and type of expenses and assets in respect of the relevant activity;
- (d) the location of the place of business or plant, property or equipment used for the relevant activity of the relevant entity in the Islands;
- (e) the number of full-time employees or other personnel with appropriate qualifications who are responsible for carrying on the relevant entity's relevant activity;
- (ea) the name and address of any person other than the relevant entity who is conducting the relevant entity's core income generating activities in relation to its relevant activity;
- (f) information showing the CIGA in respect of the relevant activity that have been conducted;
- (g) a declaration as to whether or not the relevant entity satisfies the ES test in accordance with the ES Act;
- (h) in the case of a relevant activity that is an intellectual property business, a declaration as to whether or not it is a high risk intellectual property business and, if it is, whether or not the relevant entity will provide information under paragraph (j) to rebut the presumption that it has not met the ES test within the specified time;

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- (i) details of any MNE Group in respect of which the relevant entity is a Constituent Entity for the purposes of the Tax Information Authority (International Tax Compliance) (Country-By-Country Reporting) Regulations;
- (j) in the case of a relevant entity that is carrying on a high risk intellectual property business:
 - (A) detailed business plans which demonstrate the commercial rational for holding the intellectual property assets in the Islands;
 - (B) employee information, including level of experience, type of contracts, qualifications and duration of employment;
 - (C) evidence that decision making is taking place within the Islands, and
 - (D) any other information as may be reasonably required by the Authority to determine whether the relevant entity meets the ES test; and
- (k) such other information as may be prescribed.

A relevant entity shall provide the Authority with appropriate evidence to support the above-mentioned information provided to the Authority as may be reasonably required by the Authority.

A relevant entity must also provide the Authority with such additional information (including a copy of a relevant book, document or other record, or of electronically stored information) as shall be reasonably required by the Authority in making a determination whether the relevant entity has passed or failed the ES test. Such information shall be in the form approved by the Authority and shall be provided within a reasonable time specified by the Authority.

The Authority may, by notice served on any person that the Authority reasonably believes to have relevant information, require that person –

- (a) within a reasonable time specified by the Authority in the notice, to provide the Authority with information (including a copy of a relevant book, document or other record, or of electronically stored information); or
- (b) at a reasonable time, during office hours, specified by the Authority, to make available to the Authority for inspection, a book, document or other record, or any electronically stored information,

that is in the person's control or possession that the Authority reasonably requires in discharging its functions under the ES Act.

3.5 Misclassification of an Entity

If it comes to the Authority's attention that an entity has misclassified itself, and the deadline for the entity to submit its ES return has passed, the Authority will consider the entity to have missed reporting under section 7(8A) of the ES Act and issue a Penalty Notice to the entity. The entity will then have 30 days from the date of the notice to submit an ES return to the DITC Portal.

If the entity fails to submit an ES return within the deadline, the entity will be deemed to have failed the ES test and will be assessed the maximum penalty under either section 8(1) or 8(4) of the ES Act, as applicable.

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3.6 Failure to respond to an investigation

If a RP fails to respond to a request by the Authority for clarification or additional information, the Authority will make a determination as to whether the entity is required to satisfy the ES test, and/or as to whether the entity has satisfied the ES test on the basis of the information that has been provided.

PART 4 – MISSED REPORTING: SECTION 7(8A)

4.1 Determination the Entity has missed required reporting

A relevant entity that is required to satisfy the ES test must submit an ES return to the DITC Portal, no later than 12 months after the last day of the end of each financial year. The entity must indicate the dates of its financial year when submitting its ESN. If the entity fails to submit an ES return to the DITC Portal by that deadline, it will be assessed a penalty under section 7(8A) for missed reporting. Therefore, it is important to keep the contact details of the Responsible Person current and up-to-date.

The Authority's Penalty Notice under section 7(8A) will be in the form shown in section 9.2 of Part 9 of these Guidelines.

4.2 Penalty Notice: primary & additional penalties

If a relevant entity that is required to satisfy the ES test in relation to a relevant activity fails to prepare and submit to the Authority the report required under section 7(3) of the ES Act within the time specified in that subsection, the Authority shall issue a notice to the relevant entity notifying the relevant entity of:

- (a) the Authority's determination that the relevant entity has failed to submit an ES return for the relevant reporting period;
- (b) the date of the Penalty Notice;
- (c) the amount of any primary penalty imposed;
- (d) the amount of any additional penalty imposed; and
- (e) the date from which any additional penalty will begin to accrue.

4.3 Obligation to complete the ES Return

An entity that fails to submit an ES return by the deadline continues to have an obligation to submit the ES return to the DITC Portal. If the entity does not submit the ES return within 30 days of the date of the Penalty Notice, it will be deemed to have failed the ES test.

4.4 Failure of the ES Test due to non-submission of the ES Return

In the event the entity fails to submit an ES return as required and is deemed to have failed the ES test, the entity will be assessed the maximum value of the penalty indicated in section 8(2) or 8(4) of the ES Act, as applicable.

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PART 5 – FAILURE OF THE ECONOMIC SUBSTANCE TEST: SECTIONS 8(1) & 8(3)

5.1 Determination of Failure by the Authority

The Authority will assess the information submitted in the ES return to make a determination as to whether the entity has passed the ES test, in accordance with section 6(1) of the ES Act. If there is sufficient information to determine that the entity has passed the ES test, the Authority will not contact the entity for further information, or confirm that the entity has passed the ES test.

If the Authority is unable to determine whether an entity has passed the ES test using the information that was submitted to the DITC Portal, it will engage with the entity and conduct an investigation. The Authority will not, however, conduct additional investigations if the evidence submitted on the ES return is sufficient to determine a clear failure of the ES test.

5.2 Declaration by the entity confirming it has not passed the ES Test

It should be noted that where a relevant entity submits an ES return and indicates it has not passed the ES test and does not submit any evidence that suggests it has passed the test, the Authority will not request the reason for this self-determination as part of its investigation.

If an entity submits an ES return and indicates it has not passed the ES test, but submits information that suggests the entity has passed, or passed in part, the ES test, the Authority will conduct further investigation to clarify the reasons the entity believed it had not passed the test.

The Authority will adjust the amount of the penalty to the appropriate level in consideration of the element(s) of the test that have been satisfied. For example, if the Authority concludes that the entity has passed the “directed and managed” test, but failed the other elements of the test, it will be assessed a penalty of eight thousand dollars, instead of the maximum amount, as indicated in the second and third tables under 6.2 – Failure of the ES Test: Section 8(2).

5.3 Limitation Period

The Authority shall not impose a penalty after the earlier of the following —

- (a) one year after becoming aware of the contravention; or
- (b) six years after the contravention occurred.

With respect to a breach of a statutory filing deadline, the Authority is deemed to become aware of the offence on the day immediately after the filing is due. Where an investigation is warranted to make a determination, the Authority is deemed to become aware that the entity has failed the ES test on the date the investigation is complete, and the determination is made.

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5.4 Penalty Notice: Section 8(1)

If the Authority determines under section 6 that a relevant entity that is required to satisfy the ES test in relation to a relevant activity has failed to satisfy such ES test for a financial year, the Authority shall issue a notice to the relevant entity notifying the relevant entity of —

- (a) the Authority's determination that the relevant entity has failed to satisfy the ES test in relation to the relevant activity for that financial year;
- (b) the reasons for the determination;
- (c) the amount of any penalty imposed under section 8(2);
- (d) the date on which the penalty under section 8(2) is due being not less than twenty-eight days after the date of issue of the notice;
- (e) the Authority's direction as to the action to be taken by the relevant entity to satisfy the ES test in relation to the relevant activity and the date by which such action must be taken; and
- (f) the relevant entity's right of appeal under section 9.

The Authority's Penalty Notice under section 8(1) will be in the form shown in section 9.1 of Part 9 of these Guidelines.

5.5 Penalty Notice: Section 8(3)

If, for the financial year following a financial year in which a notice was issued under section 8(1) ("subsequent financial year"), the Authority determines a relevant entity that is required to satisfy the ES test in relation to a relevant activity has failed to satisfy the ES test in relation to such relevant activity, the Authority shall issue a further notice to the relevant entity notifying the relevant entity of —

- (a) the Authority's determination that the relevant entity has not satisfied the ES test in relation to the relevant activity for the subsequent financial year;
- (b) the reasons for the determination;
- (c) the amount of any penalty imposed on the relevant entity under section 8(4), in addition to the penalty previously imposed under section 8(1);
- (d) the date from which the penalty under section 8(4) is due, being not less than twenty-eight days after the issue of the notice;
- (e) the Authority shall make a report to the Registrar under section 8(6);
- (f) the Authority's direction as to the action to be taken by the relevant entity to satisfy the ES test in relation to the relevant activity and the date by which such action must be taken; and
- (g) the relevant entity's right of appeal under section 9.

It should be noted that a "subsequent financial year" is the year subsequent to which a penalty notice was issued pursuant to section 8(1). The Authority will not issue a section 8(3) penalty until the entity has received a notice under section 8(1) and has had an opportunity to address the requirements provided by the Authority for the entity to pass the test.

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The following example illustrates the possible timing of section 8(1) and section 8(3) notices where a relevant entity (Cayco) never satisfies the ES Test.

Calendar Year	Cayco's Financial Year	Cayco's ES Return (ESR)	Authority's s8(1) Notice #1	Authority's s8(1) Notice #2	Authority's s8(1) Notice #3	Authority's s8(3) Notice
2020	2020					
2021	2021	2020 ESR*				
2022	2022	2021 ESR	2020 FY			
2023	2023	2022 ESR		2021 FY		
2024	2024	2023 ESR			2022 FY	
2025	2025	2024 ESR				2023 FY

*The DITC permitted relevant entities to file 2020 ES Returns slightly later than their 12 month deadline.

5.6 Notice to Registrar of Companies: Section 8(6)

Pursuant to section 8(6), following the issue of a notice under section 8(3), the Authority shall provide the Registrar with a report of the matters referred to in that notice together with any additional information (whether or not provided to the Authority under section 7). If the Registrar receives a report under subsection (6), the Registrar shall apply to the Grand Court for an order under subsection (11).

If the Grand Court is satisfied that the relevant entity was required to satisfy the ES test in relation to a relevant activity and failed to satisfy such ES test, the Grand Court may make such order as it sees fit including —

- (a) an order requiring the relevant entity to take such action as specified in the order, including for the purpose of satisfying such ES test; or
- (b) in the case of a relevant entity that is —
 - (i) a company that is registered or incorporated under the Companies Act (2021 Revision), an order that it is a defunct company to which Part VI of that Act applies;
 - (ii) a limited liability company that is registered under the Limited Liability Companies Act (2021 Revision), an order that it is a defunct company to which section 40 of that Act applies; or
 - (iii) a limited liability partnership that is registered under the Limited Liability Partnership Act (2021 Revision), an order that the limited liability partnership be struck off in accordance with section 31 of that Act as if it is a limited liability partnership that the Registrar has reasonable cause to believe is not carrying on business or is not in operation.

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PART 6 – AMOUNT OF PENALTY

The Authority will use its discretion to determine the level of penalty to be applied to a relevant entity that fails to submit an ES Return, or fails the ES test with respect to the relevant activity that it conducted for the reporting period, based on the facts and circumstances of each particular case.

The following amounts are baseline penalties and the Authority reserves the right to exercise its discretion to issue penalty amounts different to those identified below if the facts and circumstances of a case require it to do so to prevent an unfair result.

6.1 Missed Reporting: Section 7(8A)

Section 7(8A) Penalty	
Missed Reporting primary penalty (Year 1)	\$2,500
Missed Reporting additional penalty; daily amount (Year 1 – first 90 days)	\$50
Missed Reporting additional penalty; daily amount (Year 1 – second 90 days)	\$100
Missed Reporting additional penalty; daily amount (Year 1 – after 180 days)	\$250
Missed Reporting (Any year other than Year 1)	\$5,000
Missed Reporting additional penalty; daily amount (Any year other than Year 1 – first 90 days – first offence)	\$100
Missed Reporting additional penalty; daily amount (Any year other than Year 1 – second 90 days – first offence)	\$200
Missed Reporting additional penalty; daily amount (Any year other than Year 1 – after 180 days – first offence)	\$400
Missed Reporting additional penalty; daily amount (Any year other than Year 1 – first 90 days – other than first offence)	\$200
Missed Reporting additional penalty; daily amount (Any year other than Year 1 – second 90 days – other than first offence)	\$400
Missed Reporting additional penalty; daily amount (Any year other than Year 1 – after 180 days – other than first offence)	\$500

Year 1 is the first year that a particular entity is required to submit an ES return.

Tax Information Authority



CAYMAN ISLANDS

The amount of any additional penalty will be calculated from a date indicated on the Penalty Notice, with the earliest date being the day after the ES Return was due, and will apply until the day the ES Return is or has been submitted.

Example 1

The date of the Penalty Notice is 1 May 2022. The date indicated on the Penalty Notice from which the additional penalty will begin to accrue is 1 June 2022. The ES Return is submitted on 15 June 2022. The penalty amount will be (assuming it is Year 1):

$\$2,500$ (primary penalty) + $\$750$ (additional penalty of $\$50$ per day for 15 days) = **$\$ 3,250$** (KYD)

Example 2

The date of the Penalty Notice is 1 January 2023. The date indicated on the Penalty Notice from which the additional penalty will begin to accrue is 1 January 2023. The ES Return is submitted on 16 February 2023. The penalty amount will be (assuming it is not Year 1):

$\$5,000$ (primary penalty) + $\$4,600$ (additional penalty of $\$100$ per day for 46 days) = **$\$ 9,600$** (KYD)

Example 3

The date of the Penalty Notice is 5 January 2024. The date indicated on the Penalty Notice from which the additional penalty will begin to accrue is 1 January 2024. The ES Return is submitted on 10 January 2024. The penalty amount will be (assuming it is not Year 1):

$\$5,000$ (primary penalty) + $\$2,500$ (additional penalty of $\$500$ per day for 5 days) = **$\$ 7,500$** (KYD)

Example 4

The date of the Penalty Notice is 1 January 2024. The date indicated on the Penalty Notice from which the additional penalty will begin to accrue is 1 January 2024. The ES Return is submitted on 1 August 2024 (213 days after it was due). The penalty amount will be (assuming it is not Year 1, and it is the first offence):

$\$5,000$ (primary penalty) + $\$9,000$ (additional penalty of $\$100$ per day for first 90 days) + $\$18,000$ (additional penalty of $\$200$ per day for second 90 days) + $\$13,200$ (additional penalty of $\$400$ per day for 33 days) = **$\$ 45,200$** (KYD)

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6.2 Failure of the ES Test: Section 8(2)

The penalty under section 8(1) shall be calculated as follows and the total amount of the penalty shall be the sum of all elements that apply in the particular case.

Section 8(2): Pure Equity Holding Company	
Entity has not complied with all applicable filing requirements under the Companies Act	\$2,500
Entity did not have adequate human resources and adequate premises in the Islands for holding and managing equity participations in other entities	\$2,500

Section 8(2): High Risk IP	
Entity did not conduct all core income generating activities in relation to that relevant activity in the Islands (i.e. fails the CIGA test)	\$4,000
Entity did not rebut the presumption that it failed the ES test. That is, the Entity has not provided sufficient information under section 7(4)(j) of the ES Act to the Authority to demonstrate that there was a high degree of control over the development, exploitation, maintenance, enhancement and protection of the intangible asset, exercised by an adequate number of full-time employees with the necessary qualifications that permanently reside and perform their activities within the Islands.	\$4,000
Entity was not directed and managed in an appropriate manner in the Islands in relation to that relevant activity (i.e. fails the “directed and managed” test)	\$2,000

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Section 8(2): Full ES Test	
Entity did not conduct all core income generating activities in relation to that relevant activity in the Islands (i.e. fails the CIGA test)	\$4,000
Entity fails as having regard to the level of relevant income derived from the relevant activity carried out in the Islands the entity did not— (i) have an adequate amount of operating expenditure incurred in the Islands; (ii) have an adequate physical presence (including maintaining a place of business or plant, property and equipment) in the Islands; and (iii) have an adequate number of full-time employees or other personnel with appropriate qualifications in the Islands (i.e. fails the substance test).	\$4,000
Entity was not directed and managed in an appropriate manner in the Islands in relation to that relevant activity (i.e. fails the “directed and managed” test)	\$2,000

6.3 Failure of the ES Test: Section 8(4)

The penalty under section 8(4) shall be calculated as follows and the total amount of the penalty shall be the sum of all elements that apply in the particular case.

Section 8(4)	
Entity did not conduct all core income generating activities in relation to that relevant activity in the Islands (i.e. fails the CIGA test)	\$40,000
Entity having regard to the level of relevant income derived from the relevant activity carried out in the Islands did not— (i) have an adequate amount of operating expenditure incurred in the Islands; (ii) have an adequate physical presence (including maintaining a place of business or plant, property and equipment) in the Islands; and (iii) have an adequate number of full-time employees or other personnel with appropriate qualifications in the Islands (i.e. fails the substance test).	\$40,000
Entity was not directed and managed in an appropriate manner in the Islands in relation to that relevant activity (i.e. fails the “directed and managed” test)	\$20,000

Tax Information Authority



CAYMAN ISLANDS

PART 7 – APPEALS PROCESS

7.1 Appeal of Penalty Notice issued pursuant to Section 7(8A): Missed Reporting

A relevant entity that has a penalty imposed pursuant to section 7(8A) may, within thirty days after the notice is given under that subsection, appeal against the penalty to the Grand Court and such appeal shall act as a stay on the enforcement of the penalty.

A relevant entity upon whom a penalty is imposed under section 7(8A) may appeal against the penalty on the ground that liability to a penalty does not arise. An appeal under section 7 may be made on questions of law or fact or both.

7.2 Appeal of Penalty Notice issued pursuant to Sections 8(1) or 8(3): Failure of ES Test

Pursuant to section 9(1) of the ES Act, a relevant entity that has been notified of a determination of a failure to satisfy the ES test and has a penalty imposed pursuant to section 8 may, within twenty-eight days after the notification, appeal against the determination and penalty to the Grand Court and such appeal shall act as a stay on the enforcement of the penalty.

An appeal under section 9 may be made on questions of law or fact or both and the Grand Court may affirm or reverse the determination and penalty or substitute its own penalty for that imposed by the Authority.

A person upon whom a penalty is imposed may appeal against the penalty on the ground that liability to a penalty does not arise.

7.3 Appeal Hearing and Outcome

With respect to appeals made in response to a Penalty Notice issued pursuant to section 7(8A), section 8(1), or section 8(3) of the ES Act, the Grand Court may affirm or reverse the determination and penalty or substitute its own penalty for that imposed by the Authority.

Tax Information Authority



CAYMAN ISLANDS

PART 8 - PAYMENT OF PENALTY

8.1 Payment Instructions

All correspondence must be sent by email to: DITC.Payment@gov.ky

All emails **must** include:

- Penalty Reference
- Entity Name
- Entity Number

The Penalty Reference and Entity Name/Number must also be included when making a payment.

Payment must be made in accordance with the instructions below, and the amount being paid must be exactly in accordance with the instructions. Failure do so will result in the payment being rejected by the Cayman Islands Government or the bank, and the penalty being treated as unpaid.

The Entity must confirm the amount paid, the date the amount was paid, and provide evidence that the payment was successful (E.g. a copy of the wire transfer confirmation).

8.2 Payment Account Details

WIRE TRANSFER
Please include \$7.50 KYD (\$9.15 USD) for bank charges.
Intermediary Bank: J.P. Morgan Chase Intermediary Bank Address: 1 Chase Manhattan Plaza New York, N.Y. 10081 U.S.A. Swift Code: CHASUS33 ABA Number: 021 0000 21 Beneficiary Bank: RBC Royal Bank (Cayman) Limited Beneficiary Bank Address: 24 Shedden Road, Royal Bank House, P.O. Box 245 Grand Cayman KY1-1104 CAYMAN ISLANDS Telephone: 345-949-4600 Swift Code: ROYCKYKY Account Number: 001 1153 103 Beneficiary Account Name: Cayman Islands Government, Ministry of Financial Services & Commerce.

Tax Information Authority



CAYMAN ISLANDS

Beneficiary Account Number (KYD) : 06975-115-226-3

Beneficiary Account Number (USD) : 06975-264-241-1

Note: these Payment Instructions will be included in the in the relevant Penalty Notice.

8.3 Civil Debt

Sections 7(8E) and 8(9) state that a penalty shall be paid into the general revenue of the Islands and may be recovered as a civil debt due to the general revenue of the Islands.

Tax Information Authority



CAYMAN ISLANDS

PART 9 – APPENDICIES

9.1 Penalty Notice – Failure of Economic Substance Test

International Tax Co-operation (Economic Substance) Act

ES PENALTY NOTICE

Penalty Reference: **[Insert]**

This Penalty Reference must be included in all correspondence.

By email: [Responsible Person Name] (“RP”) – [\[RP email address\]](#)

Date: [Insert]

Entity Name: [Insert]

Entity Number: [Insert]

TAKE NOTICE: The Tax Information Authority (“the Authority”) issues this Penalty Notice to [Entity Name] (“Relevant Entity”) pursuant to Section 8(1) of the [International Tax Co-operation \(Economic Substance\) Act \(2021 Revision\)](#) (“ES Act”) for failure to satisfy the Economic Substance Test.

REASONS: The Authority has determined under Section 6 that the Relevant Entity was required to satisfy the Economic Substance Test in relation to [relevant activity] for the [YEAR] Financial Year. In particular, the Authority has determined that the Relevant Entity has failed to satisfy [the Core Income Generating Activities (“CIGA”) element under Section 4(2)(a), the directed and managed element under Section 4(2)(b), and/or the substance element under Section 4(2)(c)].

The reasons which constitute the failure are as follows:

-
-

PENALTY AMOUNT: \$ _____ KYD (\$ _____ USD)

PAYMENT DUE DATE: **[DATE]**

DIRECTION: The Authority’s direction as to the action to be taken by the relevant entity to satisfy the ES test are as follows:

-
-

Tax Information Authority



CAYMAN ISLANDS

PAYMENT: Payment of this penalty must be made in accordance with the payment details outlined in Appendix A and the ES Enforcement Guidelines.

APPEAL RIGHT: Pursuant to section 9(1), the entity may, within 28 days from the date of this Penalty Notice, appeal against the determination and penalty to the Grand Court and such appeal shall act as a stay on the enforcement of the penalty.

Tax Information Authority

- END -

APPENDIX A: Payment Information

All correspondence must be sent by email to: DITC.Payment@gov.ky

All emails **must** include:

- Penalty Reference
- Entity Name
- Entity Number

The Penalty Reference and Entity Name/Number must also be included when making a payment.

Payment must be made in accordance with the instructions below, and the amount being paid must be exactly in accordance with the instructions. Failure to do so will result in the payment being rejected by the Cayman Islands Government or the bank, and the penalty being treated as unpaid.

The Entity must confirm the amount paid, the date the amount was paid, and provide evidence that the payment was successful (E.g. a copy of the wire transfer confirmation).

Tax Information Authority



CAYMAN ISLANDS

WIRE TRANSFER

Please include **\$7.50 KYD (\$9.15 USD)** for bank charges.

Intermediary Bank: J.P. Morgan Chase

Intermediary Bank Address: 1 Chase Manhattan Plaza New York, N.Y. 10081 U.S.A.

Swift Code: CHASUS33

ABA Number: 021 0000 21

Beneficiary Bank: RBC Royal Bank (Cayman) Limited

Beneficiary Bank Address: 24 Shedden Road, Royal Bank House, P.O. Box 245 Grand Cayman KY1-1104
CAYMAN ISLANDS

Telephone: 345-949-4600

Swift Code: ROYCKYKY

Account Number: 001 1153 103

Beneficiary Account Name: Cayman Islands Government, Ministry of Financial Services & Commerce.

Beneficiary Account Number (KYD) : 06975-115-226-3

Beneficiary Account Number (USD) : 06975-264-241-1

Tax Information Authority



CAYMAN ISLANDS

9.2 Penalty Notice – Failure to Report

International Tax Co-operation (Economic Substance) Act

ES PENALTY NOTICE

Penalty Reference: **[Insert]**

This Penalty Reference must be included in all correspondence.

By email: [Responsible Person Name] (“RP”) – [\[RP email address\]](#)

Date: [Insert]

Entity Name: [Insert]

Entity Number: [Insert]

TAKE NOTICE: The Tax Information Authority (“the Authority”) issues this Penalty Notice to [Entity Name] (“Relevant Entity”) in accordance with Section 7(8A) of the [International Tax Co-operation \(Economic Substance\) Act \(2021 Revision\)](#) (“ES Act”) for a failure prepare and submit the ES Return for the 2020 financial year as required under Section 7(3).

REASONS:

The reasons which constitute the failure are as follows:

- The Relevant Entity’s [YEAR] financial year for the purpose of the ES Act ended on [DATE]
- The Act requires the Relevant Entity to submit an ES Return within twelve months after the last day of the end its financial year (“statutory deadline”).
- The Relevant Entity failed to submit the [YEAR] ES Return by the statutory deadline.

PENALTY AMOUNT: \$ ____ KYD (\$ ____ USD)

An additional penalty will be applied to the Relevant Entity if it fails to submit the ES Return by [DATE]. The amount of the additional penalty increases until the ES Return is submitted to the DITC Portal. The amount of the additional penalties and corresponding dates are as follows:

- \$50 (KYD) for each day during which the failure to comply continues, starting on [DATE].
- \$100 (KYD) for each day during which the failure to comply continues past [DATE].
- \$250 (KYD) for each day during which the failure to comply continues past [DATE].

In addition to the above daily penalty under S.7(8A), if the Relevant Entity fails to complete the ES Return by [DATE] it will be deemed to have not satisfied the ES Test and will be issued a Penalty Notice for a failure to satisfy the ES Test under Section 8(1).

Tax Information Authority



CAYMAN ISLANDS

PAYMENT DUE DATE: [DATE]

PAYMENT: Payment of this penalty must be made in accordance with the payment details outlined in Appendix A and the [ES Enforcement Guidelines](#).

APPEAL RIGHT: Pursuant to section 7(8F) of the ES Act, the entity may, within 30 days from the date of this Penalty Notice, appeal against the penalty to the Grand Court and such appeal shall act as a stay on the enforcement of the penalty.

Tax Information Authority

- END -

APPENDIX A: Payment Information

All correspondence must be sent by email to: DITC.Payment@gov.ky

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- Entity Name
- Entity Number

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CAYMAN ISLANDS

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CAYMAN ISLANDS

Telephone: 345-949-4600

Swift Code: ROYCKYKY

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