

ECONOMIC SUBSTANCE – PRACTICE POINTS

Section I - Economic Substance Notification (ESN)

1 - How do I submit the ESN?

The ESN is submitted via the General Registry system CAP (Corporate Administration Platform). Entities which file on CBP (Cayman Business Portal) will be required to confirm if they are carrying on a relevant activity when they file their Annual Returns (ARs). Please also refer to Practice Point 12 of Section I below.

2 - How do I reset my CAP password?

The DITC cannot assist with passwords for accessing CAP. Please send your request to the CORIS help desk: Corishelpdesk@gov.ky. Please note that password reset requests must be submitted by your CORIS Administrator.

3 - How do I get access to CAP?

The DITC cannot assist with any queries on accessing CAP. Please visit the General Registry's website for details ([Linked here](#)). Please note that access to CAP is only available to locally licensed service providers.

4 - Where can I find the ESN once I am logged into CAP?

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](#)).

5 - Is there a PDF version of the ESN available?

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. There are many useful reference documents on the DITC's website ([Linked here](#)).

6 - Is there a fee to submit 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 ESN submission deadline is the same as the AR filing deadline.

9 – Is there a penalty for submitting the ESN late?

The Tax Information Authority (TIA) will not impose a separate penalty for the late submission of the ESN. The entity will be penalized through the AR process.

10 – Is there a delay or approval process after the ESN is submitted before the AR can be filed?

No, once the ESN is submitted successfully without triggering validation errors, the AR can immediately be filed.

11 – How do I know the ESN was successfully submitted? 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 ESN?

Yes, as outlined in the guidance notes an entity will continue to have any obligations which the ES Act imposes on it until such time as these are fulfilled.

An ESN should be submitted by the entity (for each outstanding ESN Year) via CAP before it becomes deactivated in CAP (e.g. before applying for a strike off or deregistration or before being placed in liquidation).

TIA is aware that certain entities which are pending strike off, deregistration or liquidation (or which have already been struck off, deregistered or liquidated) have ESNs outstanding for ESN Years in which they were in existence and are now not able to submit those via CAP due to being deactivated in CAP. Those entities, or the agents who act for them, should provide details of the affected entity

(i.e. the name of the entity and the scheduled strike off/deregistration date/liquidation date) by e-mail to DITC.EScompliance@gov.ky. Instructions will then be provided on what is required.

13 – How do I correct an error in 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](#)).

Errors in ESNs can usually be corrected by the submission of a corrected ESN by the registered office (RO) via CAP until such time as the corresponding ESN Year closes in CAP. Please see below for details on when certain ESN Years will remain open in CAP.

- Where the ESN Year is closed in CAP (and so it is no longer possible to correct the ESN in CAP) and the error relates to a misclassification of activity – specifically where a relevant activity was stated in the ESN but no relevant activity was actually conducted in the ESN Year in question – then it will be necessary for the entity to submit an ES Return or TRO Form (as the case may be) via the DITC Portal. However it will be possible to change the activity in the ES Return or TRO Form to ‘None’ in such circumstances.
- All ES Returns must include the submission of financial statements (including but not limited to a Balance Sheet and Income Statement with corresponding notes if applicable). Please note that Section 59 of the Companies Act (2023 Revision) requires an entity to maintain proper books of account and is therefore a requirement for the ES Return, particularly in circumstances where an entity had initially claimed that it carried on a relevant activity and has since changed this assertion.

Where the ESN Year is closed in CAP (and so it is no longer possible to correct the ESN in CAP) and the error relates to an incorrect Period End Date provided on an ESN, this can be updated in the ES Return or TRO Form by answering ‘No’ to the question ‘The Entity provided correct Period End Date information on the ESN?’ and providing the correct date.

Where the error is of a different type, then the DITC should be contacted at DITC.EScompliance@gov.ky for instructions.

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

The entity should follow the appropriate steps to classify itself 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 conducting a relevant activity (e.g. financing and leasing business) will submit the ESN on that basis. Please refer to Practice Point 20 of Section II below for information on ES Returns where the entity stated on its ESN that it conducted a relevant activity and has zero relevant income for the relevant financial year.

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

TIA recommends that where the RO changes after the ESN is submitted, the new RO should submit an ESN for the entity as soon as practicable thereafter. This will ensure that the correct Responsible Person will be assigned to any entity that has reporting obligations under the ES Act in the DITC Portal.

In circumstances where the submission of an ESN by the new RO does not result in a change of Responsible Person (i.e. where no relevant activity has been stated in the ESN being submitted) and the entity still has outstanding reporting obligations in respect of prior ESN Years then the entity

will require change its Responsible Person by other means (so that it can fulfill those reporting obligations). Those entities, or the agents who act for them, should provide details of the affected entity by sending an e-mail to DITC.EScompliance@gov.ky. Instructions will then be provided on what is required.

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

The email address that is assigned to the RO in CAP for the purposes of ES.

If the RO wishes to update its email address for ES purposes in CAP then it should do so in accordance with the section headed “Changing a Registered Office’s DITC Email Address in CAP (for the purposes of the Registered Office/Responsible Person fields in the ESN)” in the smart form version of the [ESN User Guide](#). Please note that any such change will only be applied to entities that ESNs are subsequently submitted for by the RO. As such it may be necessary for the RO to re-submit ESNs for the entities they provide registered office for to ensure that those entities appear in the correct DITC Portal Account.

To help ensure that changes of personnel at the RO do not result in its DITC Portal account becoming inaccessible by the RO, a general email addresses should be used by the RO for ES purposes (e.g. ROLtd@xx.com should be used rather than John.Doe@xx.com).

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

The FI number is a unique number which is allocated when the FI registers with TIA. The number does not change for the lifetime of that FI. 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 TIA. The FI number can also be obtained, by persons with access to the FI, on the DITC Portal.

Not every entity will have an FI number.

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

The entity should disclose if it is conducting a relevant activity, from the date the ES Act came into force, on its ESN. If the entity changes its activity from one relevant activity to another relevant activity during the year, then both (or all if more than two) should be disclosed on the ESN.

19 – How do I submit 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 Act e.g. an entity which is required to submit the ES Return or to provide information to prove the tax resident outside the Islands exemption.

On the ES Return or TRO Form which are both submitted through the DITC Portal, the SPC will be required to specify the SP on whose behalf it is submitting the ES Return or TRO Form. A separate ES Return/TRO Form must be submitted by the SPC for each SP that is required to report.

For example an SPC has 10 SPs, nine are out of scope for the ES Act 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 Act, during the year? Yes.

Is this a confirmed Relevant Entity as defined in the ES Act? 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 TRO Form 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 (providing they do not already have access to the DITC Portal in another capacity (e.g. as a Principal Point of Contact for the purposes of CRS/FATCA reporting) in which case the entities that they are assigned to for the purposes of ES reporting will automatically be visible in their user account 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 TIA that the foreign branch is tax resident outside the Islands. The TIA 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 TRO 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. For avoidance of doubt, the financial period cannot exceed a period of 18 months. 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
1 Sept 2021	28 Feb 2023	2021	1 Sept 2021-28 Feb 2023
1 Dec 2022	31 May 2024	2022	1 Dec 2022-31 May 2024

For details on when the first ESNs will be due for general partnerships, limited partnerships, exempted limited partnerships and foreign limited partnerships please see Practice Point 25 of Section I below.

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 ESN User Guides ([Bulk](#) and [Manual](#)) available on the DITC website (links to which are provided in Practice Point 13 of Section I above). Please see Practice Point 23 of Section I below for details on when certain ESN Years will remain open in CAP.

22 – When were “ESN Year 2019”, “ESN Year 2020”, “ESN Year 2021” and “ESN Year 2022” available in CAP until?

ESN Year 2019 was available in CAP until 31 January 2021.

ESN Year 2020 was available in CAP until 31 December 2022.

ESN Year 2021 was available in CAP until 31 December 2022.

ESN Year 2022 was available in CAP until 31 December 2023.

Entities that were required to submit an ESN for ESN Years 2019, 2020, 2021 or 2022 but which failed to do so should contact the DITC at DITC.EScompliance@gov.ky for instructions.

23 – When will “ESN Year 2023” and “ESN Year 2024” be available in CAP until?

ESN Year 2023 will remain open in CAP until 31 December 2024.

ESN Year 2024 will remain open in CAP until 31 December 2025.

24 – When did “ESN Year 2023” and “ESN Year 2024” become available in CAP?

ESN Year 2023 became available in CAP at the beginning of 2023.

ESN Year 2024 became available in CAP at the beginning of 2024.

25 – When will the first ESNs be due for general partnerships, limited partnerships, exempted limited partnerships and foreign limited partnerships?

In terms of the [International Tax Co-operation \(Economic Substance\) \(Amendment of Schedule\) Regulations, 2021](#), general partnerships, limited partnerships, exempted limited partnerships and foreign limited partnerships all now require to submit ESNs on an annual basis.

For any general partnership, limited partnership, exempted limited partnership or foreign limited partnership that existed prior to 30 June 2021 (when the Regulations referred to above came into force) the first ESN that will require to be submitted by them will be for ESN Year 2022. This is due to the transitional nature of the Regulations as far as pre-existing general partnerships, limited partnerships, exempted limited partnerships and foreign limited partnerships are concerned. Their ESNs for ESN Year 2022 will be due by 31 March 2023.

Whereas for any general partnership, limited partnership, exempted limited partnership or foreign limited partnership that came/comes into existence on or after 30 June 2021 the first ESN that will require to be submitted by them will be determined by the date on which their first financial year commences.

For example:

- if an exempted limited partnership was formed on 1 July 2021 and its first financial year covers the period commencing on 1 July 2021 and ending on 30 June 2022 then its first ESN Year will be ESN Year 2021 (and its ESN for that ESN Year will be due by 31 March 2022).
- if a limited partnership was formed on 1 August 2021 and its first financial year covers the period commencing on 1 August 2021 and ending on 31 December 2021 then its first ESN Year will be ESN Year 2021 (and its ESN for that ESN Year will be due by 31 March 2022).
- if a foreign limited partnership was formed on 1 April 2021 and its first financial year covers the period commencing on 1 April 2021 and ending on 31 March 2022 then its first ESN Year will be ESN Year 2022 (and its ESN for that ESN Year will be due by 31 March 2023).
- if an exempted limited partnership was formed on 1 May 2021 and its first financial year covers the period commencing on 1 May 2021 and ending on 31 December 2021 then its first ESN Year will be ESN Year 2022 (and its ESN for that ESN Year will be due by 31 March 2023).

26 – Aside from adding general partnerships, limited partnerships, exempted limited partnerships and foreign limited partnerships, were other changes made to the ESN for ESN Year 2021 (and beyond)?

Please see the [Updates Bulletin](#) for an outline of the key changes on the ESN for ESN Year 2021 (and beyond).

The start and end dates of the entity's financial year are now required. Partnerships also are required to provide at least one General Partner. In the event that a Partnership has carried on a relevant activity, it will be required to confirm whether or not the General Partner's relevant income was only derived from the relevant income it received for the entity.

27 – A Responsible Person or Secondary User already has an activated DITC Portal Account. Will they receive an activation email on an annual basis in order to use this?

No, the activation process for a DITC Portal Account is a once off procedure. Therefore, once a DITC Portal Account has been activated it will remain open and accessible by the Responsible Person or Secondary User (using their login credentials). They will be able to submit outstanding ES reports via their DITC Portal Account.

If the Responsible Person or Secondary User has forgotten their password for their DITC Portal Account then they should use the forgotten password feature. For guidance on how to use the forgotten password feature please refer to the section of the [DITC Portal - User Guide](#) headed "Forgotten Password".

28 – A new Responsible Person or Secondary User (without a DITC Portal Account) has received an activation e-mail but has failed to action it on time. The link contained in the email has expired as a result. What should they do?

Links in activation emails are only valid for 14 days. Therefore if an activation email was received more than 14 days ago and has not been actioned then the link contained in this will no longer work. A fresh activation email would therefore require to be requested by the Responsible Person or Secondary Person using the forgotten password feature. For guidance on how to use the forgotten password feature please refer to the section of the [DITC Portal - User Guide](#) headed "Forgotten Password".

29 - What is the required format for a CIMA Number in an ESN?

If a CIMA number needs to be inputted into an ESN then it requires to have a total of 10 digits. Where the CIMA number has fewer than 10 digits then zeros (0s) should be placed in front of the CIMA number to bring the number of digits up to ten.

For example:

- if the CIMA number is "111111" then it should be inputted as "0000111111".

30 – If an entity has been struck off and then reinstated does it require to submit an ESN for any financial year (ESN Year) that it has not yet submitted an ESN for?

Yes, entities that have been struck off and then reinstated (restored to the register) are deemed to have continued in existence as if they had not been struck off. As such they require to comply with any outstanding obligations under the ES Act upon reinstatement (including submitting ESNs for any financial years that they have not yet submitted an ESN for).

For example:

- if an entity submitted ESNs for ESN Year 2019 and ESN Year 2020, was struck off during ESN Year 2021 (and had not submitted an ESN for ESN Year 2021) and was reinstated during ESN Year 2022, then it would require to submit an ESN for ESN Year 2021 upon reinstatement and an ESN for ESN Year 2022 by the applicable notification deadline.

Where an ESN Year is no longer available in CAP and it is not possible to submit an ESN via CAP for that ESN Year as a result then the DITC should be contacted at DITC.EScompliance@gov.ky for instructions.

31 – Can entities claim to be tax resident in Barbados and the United Arab Emirates?

Yes, entities can claim to be tax resident in Barbados and the United Arab Emirates. Entities must produce satisfactory evidence to substantiate this claim as outlined on page 11 of the [ES Guidance Notes](#).

Section II - Economic Substance Return & TRO Form

1 – Where will the ES Return and the Form for an entity Tax Resident in another Jurisdiction (TRO Form) be filed?

The Cayman Islands DITC Portal (“DITC Portal”) facilitates the electronic reporting of the ES Return and the TRO Form to the TIA.

If a Responsible Person already has a DITC Portal Account (e.g. as a Responsible Person of another entity or as a Principal Point of Contact of the entity for the purposes of CRS/FATCA reporting) then the entity will automatically be assigned to their DITC Portal Account (and will be visible there) provided they are designated as the Responsible Person in the ESN submitted for the entity.

Whereas if a Responsible Person does not already have a DITC Portal Account then an activation email will be sent to them to enable them to set up a DITC Portal Account. Once the Responsible Person has activated their DITC Portal Account, they may then assign Secondary Users.

2 - If an entity which was required to submit either the ES Return or the TRO Form 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?

Yes, as outlined in the [Guidance Notes](#) an entity will continue to have any obligations which the ES Act imposes on it until such time as these are fulfilled. Reporting requires to be done via the DITC Portal.

3 – When an entity uses a service provider to meet the requirements of the ES Act 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.

5 – Will a bulk upload option be available for submission of the ES Return or the TRO Form?

No, there will not be a bulk upload option available at launch. The required reporting must be filed on the DITC Portal via a smart form.

6 – How can an agent verify whether they have successfully registered as an OSP?

An OSP will be able to view a dashboard page on the DITC Portal once they have successfully completed the registration process. The dashboard page of their OSP user account can be accessed by the OSP at any time after registration by logging into the DITC Portal.

To successfully complete the registration process the contact person nominated by the OSP requires to activate the OSP user account. Please refer to the section of the [DITC Portal – User Guide](#) headed “Outsource Service Provider (OSP) Registration & Account Activation” for guidance on how to register as an OSP and activate the OSP user account.

To help ensure that changes of personnel at the OSP do not result in its DITC Portal account becoming inaccessible by the OSP, a general email addresses should be used by the OSP for ES purposes (e.g. [ROLtd@xx.com](#) should be used rather than [John.Doe@xx.com](#)). The DITC does have the ability to amend an email address associated with an OSP registration that does not meet this requirement.

7 - When is the submission deadline for ES Returns and TRO Forms?

Except as has been advised otherwise previously, ES Returns and/or TRO Forms (as the case may be) for entities that are required to report under the ES Act require to be submitted within 12 months of the applicable financial year end (for the financial year being reported on). Entities may be liable for penalties under the ES Act if they fail to comply with any submission deadline.

Notwithstanding this, it will still be possible to submit ES Returns or TRO Forms after the applicable submission deadline (providing the entity has not already been deemed to have failed to satisfy the ES test by virtue of not having submitted an ES report).

Please refer to the [ES Enforcement Guidelines](#) for more information.

8 - How will a registered OSP know when they have a claim of outsourcing to verify?

Registered OSPs (via their nominated contact person) will be notified by email each time there is a claim of outsourcing to be verified by them. They should check their OSP Dashboard upon receipt of those e-mails and either confirm or deny each claim made as appropriate. For good measure, they should regularly check their OSP Dashboard in any event (to check whether any claims are still pending verification by them).

Claims of outsourcing required to be verified by the OSP within 30 days of the date of notification. Failure by the OSP to verify the claim within that time period will result in the claim not being taken into account by TIA.

9 - Which entities will a designated Responsible Person be able see in their user account on the DITC Portal?

The designated Responsible Person will only be able to see the entities which they are assigned to in their user account on the DITC Portal. Only entities which are required to report under the ES Act will be visible in their user account (consequently entities which have not conducted any relevant activities or which are availing of the “domestic company” exception will not be visible).

The designated Responsible Person will be able to submit ES reports on behalf of the entities they are assigned to and will be able to assign Secondary Users to assist them with the ES reporting process.

10 - Which entities will an assigned Secondary User be able see in their user account on the DITC Portal?

An assigned Secondary User will only see the entities which they are assigned to in their user account on the DITC Portal. A Secondary User assigned for ES reporting purposes will be able to submit ES reports on behalf of the entities they are assigned to.

11 - Is it possible for a registered OSP and a designated Responsible Person to share the same user account on the DITC Portal?

No, where the same party functions as both a registered OSP and a designated Responsible Person they must use two separate user accounts (one per function) on the DITC Portal. Different entities will therefore be visible in their user accounts (depending on the function performed).

12 - How many Responsible Persons can an entity have at any given time and which ES Reports are they responsible for submitting?

An entity can only have one Responsible Person at any given time. For administrative reasons, the Responsible Person currently requires to be either the Registered Office or a Director (or equivalent fiduciary).

The Responsible Person designated in the ESN submitted for the latest ESN Year already submitted for is the Responsible Person of record.

The current Responsible Person takes responsibility (on behalf of the entity) for the submission of any ES reports which are currently outstanding.

13 - How can a Responsible Person be changed?

The Responsible Person designated in the ESN submitted for the latest ESN Year already submitted for is the Responsible Person of record.

Where an entity wishes to change its Responsible Person then the entity can either:

1. Submit a corrected ESN (detailing the new Responsible Person) for the latest ESN Year already submitted for. See Practice Point 13 of Section I above for information on how to correct an ESN.
2. Submit the ESN (detailing the new Responsible Person) for latest year not yet submitted for.

Please refer to Practice Point 16 of Section I above for details on how to amend the email address associated with the Registered Office selected as the Responsible Person.

Please refer to Practice Point 15 of Section I above for details on how to change the Responsible Person in circumstances where an ESN being submitted does not result in a change of Responsible Person.

14 - Do entities which have become permanently inactive on CAP and which have reporting obligations under the ES Act still require to report for ES purposes?

Yes, the Responsible Person at the time the entity became permanently inactive on CAP would be responsible for submitting any ES Reports which are currently outstanding for that entity.

15 - What is the significance of an e-mail address on the DITC Portal?

Each designated Responsible Person accesses the DITC Portal using an e-mail address as their user name. This e-mail address is used to identify the user in the system.

In the case of a Responsible Person of the director (or equivalent fiduciary) type, their e-mail address (user name) is the same as that provided for them in the latest ESNs to be submitted on behalf of the entities they are assigned to as Responsible Persons. This email address is registered in the system and is attached to that director name. In the case of a Responsible Person of the registered office type, their e-mail address (user name) is that held for them by the General Registry. If a registered office needs confirmation of the email address registered, please email DITC.EScompliance@gov.ky. If a registered office needs to change its email address, please follow the steps outlined in Practice Point 16 of Section I above.

A Responsible Person can also function as an Authorising Person, a Principal Point of Contact and/or a Secondary User on the DITC Portal (and can use the same e-mail address in each such capacity). All entities they are assigned to in each such capacity will be visible in their user account (provided they have used the same e-mail address for each function). However where a Responsible Person also functions as a registered OSP, a different e-mail address must be used (please refer to Practice Point 11 of Section II above).

It should be noted that a Responsible Person of the director (or equivalent fiduciary) type should provide an e-mail address (in an ESN) that is not already in use by another registered user on the DITC Portal. The same e-mail address cannot be used by two different persons.

When a Secondary User who already has an account on the DITC Portal is being assigned, an exact match of name and e-mail address for the Secondary User requires to be inputted into the system by the Responsible Person. A failure to do this will result in an error message being generated. The name and e-mail address of a registered user of the DITC Portal can be ascertained by the use of the “manage account” feature in their user account.

16 - Can an OSP assign Secondary Users?

That is currently not possible. Functionality of that type may, however, be added at a later date.

17 - Can a Secondary User be another entity?

Yes, entities can be assigned as Secondary Users.

18 – Do Secondary Users automatically lose their access rights to the entities they are assigned to upon a change of the Responsible Person?

No, Secondary Users do not automatically lose their access rights to the entities they are assigned to upon a change of the Responsible Person.

If a newly designated Responsible Person does not wish for any (previously) assigned Secondary User to continue to have access to any entity then the Responsible Person should remove them as such in accordance with the instructions contained in the [DITC Portal - User Guide](#). Please note that Secondary Users are assigned on a per framework basis and so may require to be removed more than once.

19 – Are TRO Forms for successive reporting Periods currently being accepted?

Yes, TRO Forms for successive reporting Periods (i.e. a Period following any Period that has already been reported on) are now being accepted by the DITC Portal.

Where a TRO Form is being submitted for a financial year (“Subsequent Period”) and a TRO Form has already been submitted for a prior financial year (“Prior Period”), the TRO Form for the Subsequent Period will be populated with the information contained in the TRO Form for the Prior Period. It will then be possible to change information contained in the TRO Form for the Subsequent Period where required (e.g. where there has been a change in the details of an ultimate beneficial owner).

It is important that TRO Forms be submitted in the correct sequence (based on the financial year of the entity) to avoid any submissions being rejected. For example, a TRO Form for ESN Year 2020 (i.e. the Prior Period as per the above) should be submitted before a TRO Form for ESN Year 2021 (i.e. the Subsequent Period as per the above). If the TRO Form for ESN Year 2021 were to be submitted before the TRO Form for ESN Year 2020 then that would result in an initial rejection of the TRO Form for ESN Year 2020 (requiring the deletion of the original TRO Form for ESN Year 2021 followed by the re-submission of the rejected TRO Form for ESN Year 2020 followed by the submission of a fresh TRO Form for ESN Year 2021).

For guidance on how to retrieve and delete a submitted TRO Form (where required) please refer to the section of the [DITC Portal - User Guide](#) headed “Viewing/retrieving a submitted ES Return or TRO Form”. Where the submission deadline for the TRO Form in question has passed (and it is no longer possible to retrieve and delete the TRO Form as a result) then please contact the DITC at DITC.EScompliance@gov.ky for instructions.

20 – How should an entity with zero relevant income submit the ES Return?

As mentioned in Practice Point 14 of Section I above, the entity should follow the appropriate steps to classify itself 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 conducting a relevant activity (e.g. financing and leasing business) will submit the ESN on that basis. When submitting the ES Return, the entity will report zero relevant income. The entity will still be required to complete the Directed and Managed in the Islands section of the ES Return which applies to all relevant activities except for Holding Company Business. High Risk IP business will still be subject to exchange as outlined in s.10 of the ES Act.

Where a relevant activity has been conducted in a financial year (Period) but no relevant income has been generated through the relevant activity in that financial year, the relevant activity field in

the ES Return should not be changed to 'None'. For the avoidance of doubt, such an entity will nevertheless still be required to upload its financial statements or books of accounts for its financial year.

21 – Should a Realized Gain or Loss be taken into account when determining Annual Income or Gross Income for the purposes of the Relevant Income section of an ES Return?

Yes.

22 – Should an Unrealized Gain or Loss be taken into account when determining Annual Income or Gross Income for the purposes of the Relevant Income section of an ES Return?

No.

23 - Can the current Responsible Person access ES Reports submitted by a former Responsible Person or a Secondary User?

Yes, the current Responsible Person can access any ES Return or TRO Form submitted by an entity they are assigned to (for the purposes of viewing its content or editing it).

Where an ES Return or TRO Form was submitted by the current Responsible Person this will be accessible under the "Reporting" tab of their DITC Portal Account. Whereas if the ES Return or TRO Form was submitted by a former Responsible Person or a Secondary User this will be accessible under the "View Activity" tab of the current Responsible Person's DITC Portal Account.

For guidance on how to view a submitted ES Return or TRO Form please refer to the section of the [DITC Portal - User Guide](#) headed "Viewing/retrieving a submitted ES Return or TRO Form".

24 - Can a Secondary User access ES Reports submitted by a Responsible Person or another Secondary User?

No, the Secondary User will not be able to access any ES Return or TRO Form submitted by an entity by another user (for the purposes of viewing its content or editing it). However they will be able to ascertain whether an ES Return or TRO Form has been submitted (under the "View Activity" tab of their DITC Portal Account).