

<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 when they file their Annual Returns (ARs).</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 the General 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 DITC's website which include: ESN Decision Tree (Linked here) and ESN Reference Document (Linked here).</p>
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 correctly with no 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) before it becomes deactivated in CAP (e.g. before the date of dissolution in the case of a strike off or liquidation). Entities which became deactivated in CAP prior to 26 November 2020 were permitted to make manual submissions of ESNs via e-mail. This is no longer permitted. Agents for entities which became/become deactivated in CAP after that date should read the next paragraph.

The TIA is aware that it is not currently possible to submit ESNs for entities which are pending strike off or liquidation. A solution for this will be provided in due course. In the meantime agents who act for such entities should provide details of the affected entity (i.e. the name of the entity and the scheduled strike off/liquidation date) by e-mail to CaymanESportal@gov.ky. Instructions will be given to those agents once the solution in question is in place.

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 submit the ESN?

The entity should follow the appropriate steps per the user guide 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 i.e. financing and leasing will submit the ESN on that 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 Act.

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

The TIA recommends that where the RO changes after the ESN is submitted, the new RO should resubmit the ESN as soon as practicable thereafter. This will ensure that the correct Responsible Person will be assigned to the entity in the DITC Portal.

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 the RO used at registration.

If an update to this email address is required, please contact the General Registry via email at Corishelpdesk@gov.ky. Please ensure that the subject line of the email states the following: Email Address – DITC Economic Substance Filing. Please note that only a general email address will be allowed (i.e. ROLtd@xx.com is permitted whilst John.Doe@xx.com is not permitted). Please copy CaymanESportal@gov.ky on this correspondence.

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 (where applicable)?

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.

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 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 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 (TRO 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 / TRO 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 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. 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

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 ESN Practice Point 13). For example, the ESN Year 2020 remains open for amendment until 31 December 2021.

22 – When will “ESN Year 2019” be available until?

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.

23 – When will “ESN Year 2020” be available?

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).

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.

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.

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”) will facilitate the electronic reporting of the ES Return and the TRO Form to the TIA.

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 (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).

Once the Responsible Person has activated their account, they may then add additional secondary users.

2 - If an entity which was required to file 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 ([Linked here](#)) 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 (unless the TIA directs otherwise in any particular case).

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. See PDF samples of the ES Return and TRO Form on the DITC’s website - <https://www.ditc.ky/es/es-legislation-resources/>

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 pp. 46 – 54 of the [DITC Portal – User Guide](#) for guidance on how to register as an OSP and activate the OSP user account.

7 - When is the first submission deadline for TRO Forms?

For entities reporting on a financial year (Period) ending any time between 31 December 2019 and 29 February 2020 (both dates inclusive) which are claiming to be tax resident in another jurisdiction in respect of the financial year, the submission deadline is 28 February 2021.

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 the 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 up to three 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 latest ESN 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?

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

1. Submit a corrected ESN (detailing the new Responsible Person). See ESN Practice Point 13 for information on how to correct an ESN.
2. Submit the ESN for latest year, the Responsible Person designated in the latest ESN is the Responsible Person of record.

Please refer to ESN Practice Point 16 for details on how to amend the email address associated with the Registered Office selected as the 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 CaymanESportal@gov.ky. If a registered office needs to change its email address, please follow the steps outlined in ESN Practice Point 16.

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 ES Return/TRO Form Practice Point 11).

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?

No, only individuals 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?

No, any attempt to submit a TRO Form for a successive reporting Period (i.e. a Period following any Period that has already been reported on) will currently result in the TRO Form for the successive reporting Period being rejected (after it has been submitted).

Functionality to allow TRO Forms to be submitted for successive reporting Periods is in the process of being added to the DITC Portal. The submission process will be simplified where no changes have taken place since the last reporting Period.