

提示简报

Economic Substance – Preparing for Filing the First Economic Substance Returns

经济实质 – 准备提交第一份经济实质申报表

The Cayman International Tax Co-Operation (Economic Substance) Law (“ES Law”) requires every company, limited liability company and limited liability partnership with separate legal personality (other than a domestic company, investment fund or entity that is tax resident outside the Cayman Islands) (“Relevant Entity”) which is carrying on a “relevant activity”¹ to satisfy the economic substance test (“ES Test”) in relation to that relevant activity and to file an economic substance return (“ES Return”) via the Department for International Tax Co-operation Portal (the “DITC Portal”). All entities that confirmed on their Economic Substance Notification (“ESN”) earlier this year that they are a Relevant Entity which carried on a relevant activity in 2019 are required to complete the ES Return.

The ES Return must be submitted to the Tax Information Authority (“Authority”) within twelve months of the last day of the end of each financial year (“Period”) commencing on or after 1 January 2019. However, for the first Period (FYE 31 December 2019), the deadlines have been extended to **28 February 2021** for the first ES Returns (and for the submission of forms supporting tax residence outside the Cayman Islands). Based on the information submitted, the Authority will make a determination as to whether the ES Test has been satisfied in relation to the relevant activity or relevant activities undertaken during the Period.

Please note:

- The DITC Portal is open and functionality for the filing of ES Returns will be launched in the coming weeks. You will receive either directly

开曼群岛《国际税务合作（经济实质）法》（下称“《经济实质法》”）要求所有从事“相关活动”¹的公司、有限责任公司和具有独立法人资格的有限合伙企业（内资公司、投资基金或在开曼群岛境外具有纳税居民身份的实体除外）（下称“相关实体”）必须通过与该相关活动有关的经济实质测试，并从国际税务合作部（DITC）门户网站（下称“DITC Portal”）提交经济实质申报表。所有在今年早些时候在其经济实质通知中确认其为 2019 年进行了相关活动的实体都必须填写经济实质申报表。

经济实质申报表必须从 2019 年 1 月 1 日或之后开始的每个财政年度（下称“财务期”）结束的最后一天起计的十二个月内提交给税务信息管理局（下称“管理局”）。但是，对于第一个财务期（财政年度截止 2019 年 12 月 31 日），首份经济实质申报表（以及提交证明为开曼群岛境外纳税居民的表格）的截止日期已延至 **2021 年 2 月 28 日**。管理局将根据提交的信息，判定在相关的财务期内是否通过了相关活动的经济实质测试。

敬请注意：

- DITC Portal 已经启用，在接下来的几周内将启动用于提交经济实质申报表的功能。您将直接从

¹ “Relevant activity” means carrying on as a business any one or more of the following: banking, distribution and service centre, financing and leasing, fund management, headquarters, holding company, insurance, intellectual property, shipping (as each term is defined in the ES Law). “相关活动”是指从事以下任何一项或多项业务：银行、分销和服务中心、融资和租赁、基金管理、总部、控股公司、保险、知识产权、船运（各术语在《经济实质法》中均有定义）。

from the DITC or from your Registered Office a link to access your profile.

- Domestic outsourcing is permitted under the ES Law. In order to verify claims of domestic outsourcing, confirmation will need to be provided by your outsourced service provider (“OSP”). OSPs will be required to register via the DITC Portal.
- We have attached:
 - an example ES Return [Economic Substance Return \(Sample\)](#) that contains some guidance in respect of the information required in order for you to complete your filing in respect of each Relevant Entity;
 - a schedule of definitions which are used in the ES Return; and
 - a form [Form for Entity Tax Resident in another Jurisdiction \(Sample\)](#) which will be required if the Relevant Entity has a foreign branch that is tax resident outside the Islands which is carrying on a relevant activity or is a segregated portfolio company with a segregated portfolio that is tax resident outside the Islands which is carrying on a relevant activity.

It is important to also note that the ES Return can only be filed via the DITC Portal. We recognise that a number of clients will need advice in connection with the filing process. Conyers has a dedicated team of attorneys who will be available to assist. Once we receive notice that ES Return filings may commence on the DITC Portal, we will circulate further instructions and guidance as appropriate.

In the meantime, should you have any queries in connection with the filing process or require legal advice with respect to the economic substance requirements generally, please email SubstanceInfoHK@conyers.com.

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information. The Chinese translation of this article has been adapted from the English original, please refer to the original in case of ambiguity.

DITC 或从您的注册机构收到链接来访问您的资料。

- 《经济实质法》允许国内外包。为了核实国内外包的声明，需要由您的外包服务提供商（下称“**外包服务提供商**”）提供确认。外包服务提供商需要通过 DITC Portal 进行注册。
- 我们附上了以下文件：
 - 一份[经济实质申报表（样本）](#)，其中包含有关需填信息的一些指导说明，让您填妥对每个相关实体的申报；
 - 经济实质申报表中使用的定义一览表；以及
 - 一份[另一司法管辖区的实体纳税居民表格（样本）](#)，此表格在以下情况下需要提交：相关实体有一个外国分支机构，该分支机构是从事相关活动的开曼群岛境外的纳税居民，或者，该分支机构是一个独立投资组合公司，而其独立投资组合是从事相关活动的开曼群岛境外的纳税居民。

还必须要注意的是，经济实质申报表只能从 DITC Portal 中提交。我们意识到，许多客户会需要提交流程方面的建议。康德明律师事务所有一支专门的律师团队，我们将竭诚为您提供协助。我们一收到可在 DITC Portal 上提交经济实质申报表的通知，就会视情况发布进一步的说明和指导意见。

同时，如果您对申报流程有任何疑问，或者就一般经济实质要求需要法律建议，请发送电子邮件至 SubstanceInfoHK@conyers.com。

本文的内容并非详尽无遗，旨在提供简要概述和一般资料，而不应用于替代法律建议或法律意见。中文译本仅供参考，如有歧义，请以英文原文为准。

Definitions

“Constituent Entity” means:

- (a) a separate business unit of a Group that is included in the Consolidated Financial Statements of the Group for financial reporting purposes, or would be so included if equity interests in such business unit of a Group were traded on a public securities exchange;
- (b) any such business unit that is excluded from the Group’s Consolidated Financial Statements solely on size or materiality grounds; and
- (c) any permanent establishment of any separate business unit of the Group included in (a) or (b) provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes;

“Core Income Generating Activities” (“CIGA”) are 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. *The CIGA listed in guidance to the ES Law are neither exhaustive nor mandatory. It is a question of fact in each case which elements are actually undertaken to generate relevant income.

“Immediate Parent” in relation to an entity, means a person that owns directly twenty-five percent or more of the ownership interests or voting rights in the entity.

“Ultimate Beneficial Owner” means²:

- (3) An individual (“X”) is a beneficial owner of a company (“company Y”) if the individual meets one or more of the following conditions in relation to the company -
 - (a) X must hold, directly or indirectly, twenty-five per cent or more of the shares in company Y;
 - (b) X must hold, directly or indirectly, twenty-five per cent or more of the voting rights in company Y;
 - (c) X must hold the right, directly or indirectly, to appoint or remove a majority of the board of directors of company Y.
- (4) If no individual meets the conditions in subsection (3), X is a beneficial owner of company Y if X has the absolute and unconditional legal right to exercise, or actually exercises, significant influence or control over

定义

“构成实体”是指：

- (a) 某个集团的独立业务部门，出于财务报告目的而包含在该集团的合并财务报表中；或者，如果该集团的此业务部门的股权在公共证券交易所交易，就会包含在该集团的合并财务报表中；
- (b) 仅出于规模或重要性方面的原因，被排除在该集团的合并财务报表之外的任何此类业务部门；以及
- (c) (a) 或 (b) 中包括的该集团内任何独立业务部门的任何常设机构，只要该业务部门对此常设机构为财务报告、监管、税务报告或内部管理控制的目的准备了单独的财务报表。

“核心创收活动”是相关实体在创造相关收入方面至关重要的活动，必须在开曼群岛进行。*《经济实质法》指导说明中列出的核心创收活动既非详尽无遗也非强制性的。每种情况都只是要展现一个事实，即实际上采取了哪些要素来创造相关收入。

“直接母公司”（相对于某个实体而言）是指直接拥有该实体 25% 或以上的所有权或投票权的人。

“最终实益拥有人”是指²：

- (3) 如果某个人（下称“X”）符合与公司（下称“Y公司”）有关的以下一项或多项条件，则该个人就是此公司的实益拥有人：
 - (a) X 必须直接或间接持有 Y 公司 25% 或以上的股份；
 - (b) X 必须直接或间接持有 Y 公司 25% 或以上的投票权；
 - (c) X 必须直接或间接拥有任命或罢免 Y 公司董事会多数董事的权利。
- (4) 如果没有人符合第(3)条的条件，则 X 在以下情况下可为 Y 公司的实益拥有人：X 拥有绝对、无条件的法律权利通过第(3)条所述的所有权结构或权益（而不是仅以董事、专业顾问或专业管理人员的身份）对 Y 公司施加或实际上在施加重大

² Section 247(3), (4) and (5) of the Companies Law (2020 Revision) (as amended).
《公司法》（2020年修订本）第247(3)、(4)和(5)条（经修正）。

company Y through the ownership structure or interests described in subsection (3), other than solely in the capacity of a director, professional advisor or professional manager.

- (5) If no individual meets the conditions in subsections (3) and (4) but the trustees of a trust (or the members of a partnership or other entity that, under the law by which it is governed is not a legal person) meet one of those conditions in relation to company Y in their capacity as such, X is a beneficial owner of company Y if X has the absolute and unconditional legal right to exercise, or actually exercises, significant influence or control over the activities of that trust (or partnership or other entity), other than solely in the capacity of a director, professional advisor or professional manager.

“Ultimate Parent” means a Constituent Entity of a Group that meets the following criteria –

- (a) it owns directly or indirectly a sufficient interest in one or more other Constituent Entities of the Group such that it is required to prepare Consolidated Financial Statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on public securities exchange in its jurisdiction of tax residence; and
- (b) there is no other Constituent Entity of the Group that owns directly or indirectly an interest described in paragraph (a) in the first mentioned Constituent Entity.

影响或控制权。

- (5) 如果没有人符合第(3)条和第(4)条的条件，但信托的受托人（或根据其受规限的法律的规定并非法人的合伙企业或其他实体的成员）以 Y 公司的此等身份符合其中一项条件，则 X 在以下情况下可为 Y 公司的实益拥有人：X 拥有绝对、无条件的法律权利（而不是仅以董事、专业顾问或专业管理人员的身份）对该信托（或合伙企业或其他实体）的活动施加或实际上在施加重大影响或控制权。

“最终母公司” 是指符合以下标准的某个集团的构成实体

- (a) 其直接或间接拥有该集团的一个或多个其他构成实体的足够权益，以致于需要根据其纳税居民管辖区普遍采用的会计原则来编制合并财务报表，或者，如果其股权在其纳税居民管辖区的公共证券交易所进行交易，则需要如此编制合并财务报表；以及
- (b) 该集团没有其他构成实体直接或间接拥有 (a) 中所述的、在第一个提及的构成实体中的权益。