



18 May 2020

BELIZE ECONOMIC SUBSTANCE ACT OVERVIEW

Under pressure from the OECD Forum on Harmful Tax Practices (FHTP), and in particular the European Union, Belize passed the Economic Substance Act (ESA). Most offshore jurisdictions, including BVI, Cayman and Seychelles, have adopted similar laws under similar pressures.

We attach a copy of the ESA, together with the Economic Substance Guidance Notes provided by the Belize IFSC. The Guidance Notes include a variety of deadline dates for various filings. The COVID-19 crisis may see some of these dates change, but for the moment these are the dates in effect.

The ESA sets out the rules for determining whether a Belize IBC has substantial economic presence in Belize, reduced presence, or no presence.¹ This includes determining whether a company is considered an included entity or a non-included entity, based on the business's "relevant activities". These activities are detailed in Section 4 of the ESA, identifying nine principal areas, including headquarters, distribution centre and shipping², that define an "included entity" for ESA purposes. An included entity must have economic substance in Belize and will be regarded as Belize tax resident.

Entities that are "non-included entities", have tax residences elsewhere, and are not managed or controlled in Belize, will not be deemed or required to have substance in Belize. However, evidence of tax residence outside Belize must be presented from the relevant taxing authority to confirm.³

Whether or not an entity is classified as a tax resident in Belize, all International Business Companies must register for a Tax Identification Number (TIN). The TIN does not by itself impose tax liability, but may be simply used as a regulatory oversight to facilitate the sharing of taxation information. Failure to register for a TIN will cause the company to be deemed an included entity, with all of the substance and Belize tax liability that that includes.

¹ Please refer to Section 8 of the ESA Guidance Notes and Section 9 of the ESA regarding reduced substance requirements for Pure Equity Holding Companies.

² See Section 4 of the ESA Guidance Notes that extends the series of relevant activities.

³ Section 5(d) of the Economic Substance Guideline states that there is a prohibition for any jurisdiction placed on the EU Annex 1 list. Note that the EU Annex 1 list is dynamic, and it must be periodically observed.

Section 6 of the ESA requires any included entity to execute the bulk of its core income-generating activities (CIGA) in Belize. What determines CIGA is not set out in the ESA, but rather is a matter of fact.⁴ The factors considered when determining where CIGA is generated will include the presence of qualified full-time employees and the use of a physical office.

The ESA permits a company to meet its substance requirements by outsourcing some or all of its CIGA to a licensed Managing Agent⁵ resident in Belize. When a Managing Agent (MA) is employed, the employing company's principal(s) must conduct adequate supervision and control of the MA's activities in Belize.

All Belize IBCs are required to have a reporting period (called the "fiscal year" for purposes of the ESA).

- For all IBCs incorporated before 1 January 2020, the default end of the fiscal year end is 30 April 2020, unless otherwise selected by the IBC.⁶
- For IBCs formed on or after 1 January 2020, the fiscal year ends on the anniversary of the date of incorporation unless it selects an earlier fiscal year end.⁷

Annual reporting is required under the ESA within nine months after the close of the fiscal year end as defined above.⁸

The ESA contains the draft forms for such reporting, as Forms B, C and D. The IFSC will publish updated forms at a later date, but we assume they will closely resemble the draft forms provided in the ESA.

We hope that this package of documents helps clarify Belize Economic Substance requirements and the related rules and reporting requirements.

We ask that you review the documents in detail, and we stand ready to address any questions or clarifications so that all companies can remain compliant with Belize laws.

With best regards,

Mitchell O'Brien

For and on behalf of CCS Trust Limited

⁴ See Section 6 of the ESA Guidance Notes.

⁵ See Section 11 of the ESA Guidance Notes. Also note that the legislation to create a Managing Agent does not currently exist, but is currently being prepared by the Belize IFSC.

⁶ An earlier fiscal year end may be selected, but it cannot be before October 11, 2019, per G-CD-No.7. 2 of 2020. (Copy provided)

⁷ The entity must then provide the Commission with a notice to request an earlier date within three months of the date of incorporation, per G-CD-No.7. 2 of 2020. ***(Since three months has already expired for companies incorporated early in 2020, but much of the governing legislation and Guidance was not available for some time, we assume there will be some leeway in providing a different fiscal year end for such companies. However, where a different fiscal year end is preferred, action should be taken without delay.)***

⁸ See Section 14 of the ESA Guidance Notes.