

Overview

The Economic Substance Act (ESA) has been passed into law in Belize in October 2019 and takes effect as of 1st January 2019. Further amendments to the IBC Act were also passed essentially repealing substance requirements for all IBCs since these are now covered under the ESA. The requirements of the ESA now apply, and the ESA makes provisions for certain “relevant activities”. While the ESA is law and has been approved and accepted by the EU, there may still be further developments as implementation and enforcement commences.

Like other substance laws, the ESA aims to capture IBCs that carry on one or more specific types of business (called “relevant activities”). Any IBC carrying on a relevant activity that is potentially within the scope of the legislation has three options:

- Ensure that the substance of the relevant activity is carried on within Belize
- Discontinue the activity, or modify it so it no longer falls within the scope of a relevant activity
- Demonstrate tax residence in a jurisdiction outside Belize.

An entity that does not take steps either to take its relevant activity outside the scope of the legislation, or to bring it into compliance with the legislation, can expect to be the subject of enforcement proceedings by the International Financial Services Commission (IFSC) of Belize, which is responsible for administering and enforcing the ESA.

Scope

Included entities under the ESA comprises “commercial entities” carrying on relevant activities as well as entities regulated by the IFSC. Entities not engaging in relevant activities, or not regulated by the IFSC are out of the scope of the ESA. The act does not apply to a commercial entity controlled and managed outside of Belize and is tax resident in a jurisdiction other than Belize. Entities incorporated under an act other than the IBC Act are also out of scope of the requirements of the ESA. IBCs that are not included entities are only required to file with the IFSC information on the type of business activities it carries out.

Shipping business is included as a relevant activity, but certain exemptions are provided for. Fishing vessels, as defined in the Belize High Seas Fishing Act, and pleasure yachts as defined in the ESA are not included in the scope of the definition of Shipping Business in the ESA.

What is a “commercial entity”?

The ESA defines commercial entity as an entity incorporated, registered or continued under the IBC Act.

What is a “regulated entity”?

A regulated entity includes entities holding a license from the IFSC and being regulated by the IFSC.

What is a “relevant activity”?

An included entity is engaged in a relevant activity if it carries out any of the following activities:

- a) banking business;
- b) insurance business;
- c) fund management business;

- d) financing and leasing business;
- e) headquarters business;
- f) distribution and service centre business (only if engaging **foreign related** parties);
- g) shipping business;
- h) as a holding company, engaged, or where one or more of its subsidiaries is engaged in one of the activities listed under paragraphs a) to g).

Where a holding company engages in any relevant activity, that entity shall be required to satisfy substantial economic presence requirements in respect of the relevant activity conducted.

Reporting Obligation

Reporting under the ESA is to be carried out annually and within nine months of the end of a fiscal year. The Act prescribes Forms B-D which are to be completed by the appropriate entity and filed with the IFSC. Form A is to be completed by a Managing Agent for each company to which it is providing services.

Fiscal Year Reporting Period

The first fiscal year reporting period for entities incorporated before January 1, 2020 shall commence on April 30, 2020 unless the entity gives notice to the IFSC that it wishes to elect an earlier commencement date (but not before October 11, 2019). Entities will be required to file annually within 9 months after the end of the fiscal year reporting period. Please see attached Appendix 1 for timeline examples.

Tax Residency

The ESA requires every Belize IBC to report its jurisdiction of tax residence. Where an entity chooses Belize as its jurisdiction of tax residence it will need to register for income and business tax and obtain a tax identification number.

There is the presumption of residency for all entities registered in Belize. Where an entity states that they are tax resident in a jurisdiction outside Belize, the entity will need to be able to provide a letter or certificate –

- a) From or issued by the tax authority of its jurisdiction of residence, stating that the commercial entity is considered to be resident for tax purposes in that jurisdiction;
- b) Showing a clear and specific period of validity; and
- c) Showing an assessment of tax on the entity, a confirmation of self-assessment of tax, a tax demand, evidence of payment of tax, or any other equivalent document issued by the tax authority for the jurisdiction in question;
- d) There will be a prohibition for tax residency if the jurisdiction is listed in the EU Annex 1 jurisdictions.

The Authority will exchange all information received from an entity claiming foreign tax residence with the relevant jurisdiction(s) in accordance with article 4 and 7 of the OECD convention on Mutual Administrative Assistance in Tax Matters.

All IBC`s need to obtain a TIN (Tax identification number) from the registry as the liability for tax remain with the IBC until they can satisfactorily prove non-resident status. Having a TIN number does not mean that the IBC will pay taxes. The purpose for this initiative is strictly for regulatory and tax authorities to efficiently monitor the status of IBC.

In the absence of such evidence the entity will be regarded as an included entity that is subject to the substance requirements of the ESA and will be subjected to tax requirements in Belize.

Economic Substance Requirements

An included entity shall satisfy economic substance requirements in relation to the relevant activity that it carries out. It demonstrates substantial economic presence in Belize if the following criteria are satisfied:

- 1) Core Income Generating Activities (CIGA) conducted in Belize;
- 2) Board management and control conducted in Belize;
- 3) Having regard to the nature and scale of the relevant activity:
 - i. There is an adequate amount of annual operating expenditure.
 - ii. There is an adequate number of qualified full-time employees
 - iii. There are adequate physical offices.

CIGA

The CIGA of each relevant activity are listed in the ESA (ESA s.6(4)). The CIGA listed are not exhaustive. What constitutes the CIGA of a particular activity is fact sensitive and can be peculiar to a particular business.

Board Management and Control

An included entity demonstrates substantial economic presence in Belize if the following criteria relating to Board management and control are satisfied (ESA s.8) -

- a. An adequate number of meetings of the Board of Directors are conducted in Belize given the level of decision making required;
- b. There is a quorum of the Board of Directors present for meetings in Belize;
- c. Strategic decisions of the included entity made at the meetings specified in paragraph (a) must be recorded in the minutes of the meetings;
- d. All records and minutes of the included entity are kept in Belize; and
- e. The Board of Directors has the necessary knowledge and expertise to discharge its duties.

Nature and Scale of Relevant Activity

It is the primary responsibility of the included entity to demonstrate that it conducts CIGA in Belize proportionate to its business activities.

This shall include adequate (ESA s.6):

- a) amounts of annual operating expenditure;
- b) number of qualified full-time employees; and
- c) physical offices.

The word “adequate” does not have a special definition in the ESA and should be understood by its ordinary English meaning.

Outsourcing

An included entity may satisfy its substance requirements by outsourcing its CIGA in relation to that relevant activity to persons in Belize licensed by the IFSC as a Managing Agent. The included entity must monitor and control the execution of the CIGA performed by the Managing Agent. The outsourced CIGA must take place in Belize, and the supervision of the outsourced activities by the outsourcing entity must also take place in Belize.

Reduced Economic Substance Requirements for Pure Equity Holding Company

An IBC which only holds equity participations and earns only dividends and capital gains or related incidental income is subject to reduced substance requirements by complying with all applicable laws and regulations in Belize and having adequate human resources and premises in Belize for holding such equity participation in other entities. Where the PEHC manages those equity participations, it shall have adequate human resources and premises in Belize for carrying out such management.

The definition of PEHC is to be narrowly construed. If a company that holds equity participations (e.g., shares in another legal entity) also owns any other form of asset, the company will be out of scope of the ESA. In addition, companies that hold assets that are not equity participations (e.g., real estate, bank accounts) are not pure equity holding entities. If such entities do not carry on any other relevant activity, they will not be subject to economic substance requirements.

Determination of Failure to meet substantial economic presence

The IFSC, as the Competent Authority, has the power to conduct an on-site inspection of an included entity for the purpose of verifying the information affirmed to in the reporting forms. Records relating to the information required to be reported must be retained for a period of no less than five years from the date the relevant business or transaction was completed. Provisions are included for the IFSC to allow an on-site audit by an independent auditor who must report to the IFSC his findings.

Failure to satisfy economic substance requirements

If the IFSC has determined that an included entity has failed to meet the substantial economic presence requirement, that entity shall have a period of ninety days to comply with such requirements. Thereafter, the entity may be directed to conduct a formal audit at its own expense. This formal audit must commence within sixty days or the entity may be subject to an administrative penalty of US\$75,000. If an audit reveals deficiencies, the entity will be issued a notice of non-compliance with a deadline of not more than thirty days in which it must comply.

Failure to comply after a notice of non-compliance has been issued may subject the entity to a suspension or revocation of licence if a licensed entity, an administrative penalty of US\$150,000 and/or strike off from the IBC Register.

Where there is found to be any non-compliance with the substantial economic presence requirements of the ESA, the IFSC will spontaneously exchange the reporting form filed by an included entity with the competent authority of the tax jurisdiction of the legal or beneficial owner.

Offences

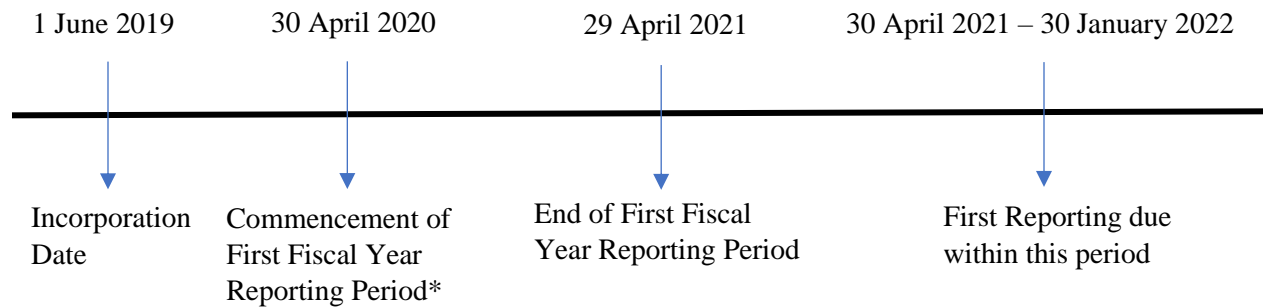
Offences under the ESA include:

- a) Failure to meet the substantial economic presence;
- b) Not complying with reporting requirements
- c) Failure to retain relevant records;
- d) Obstructing the IFSC in performing its functions;
- e) Altering, destroying, mutilating, defacing, hiding or removing information causing a person contravene the ESA in regards to that information;
- f) Authorizing, advising or counseling another person to carry out the actions listed in e) above;
- g) Providing inaccurate information when reporting

APPENDIX 1

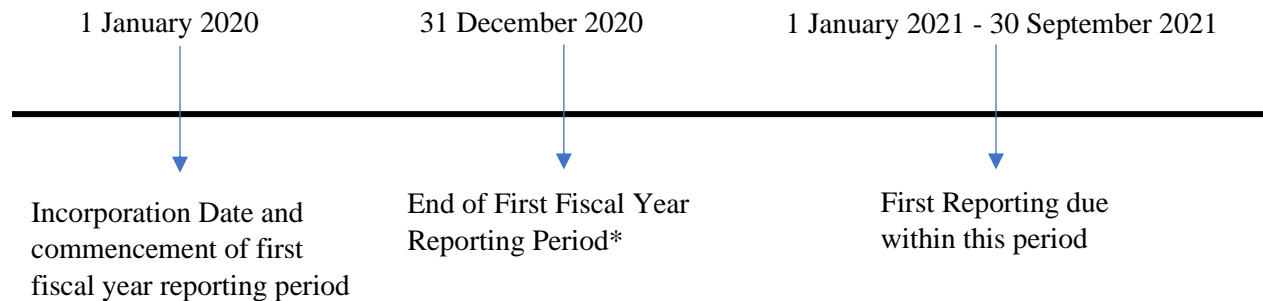
REPORTING TIMELINE

E.g. 1.- Reporting timeline for a company incorporated before 1 January 2020.



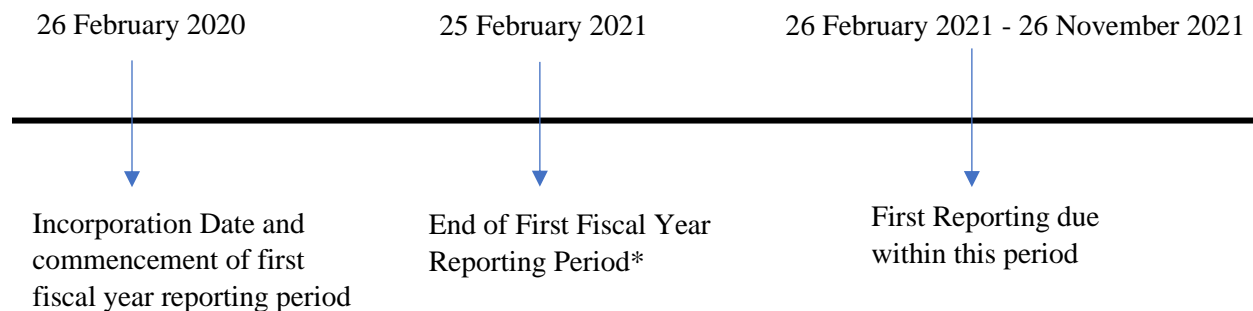
* 30 April 2020 is the prescribed date unless the company gives notice that it has chosen an earlier commencement date (but that date cannot be prior to 11 October 2019) and advises IFSC of such decision before 30 April 2020. The year-end and period when report is due would then be adjusted accordingly.

E.g. 2. - Reporting timeline for a company incorporated on 1 January 2020



* Unless the company gives notice of an earlier fiscal year-end date, in which case, notice should be given within three months after date of incorporation (in this e.g., within 1 January 2020 and 31 March 2020). The year-end and period when report is due would then be adjusted accordingly.

E.g. 3. - Reporting timeline for a company incorporated after 1 January 2020



* Unless the company gives notice of an earlier fiscal year-end date, in which case, notice should be given within three months after date of incorporation (in this e.g., within 26 February 2020 and 25 May 2020). The year-end and period when report is due would then be adjusted accordingly.