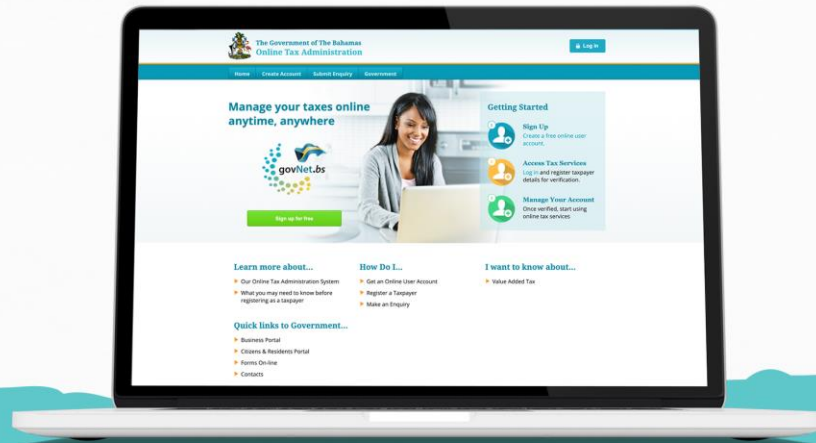




CESRA | Commercial
Entities
Substance
Requirements
Act

INFORMATIONAL WEBINAR

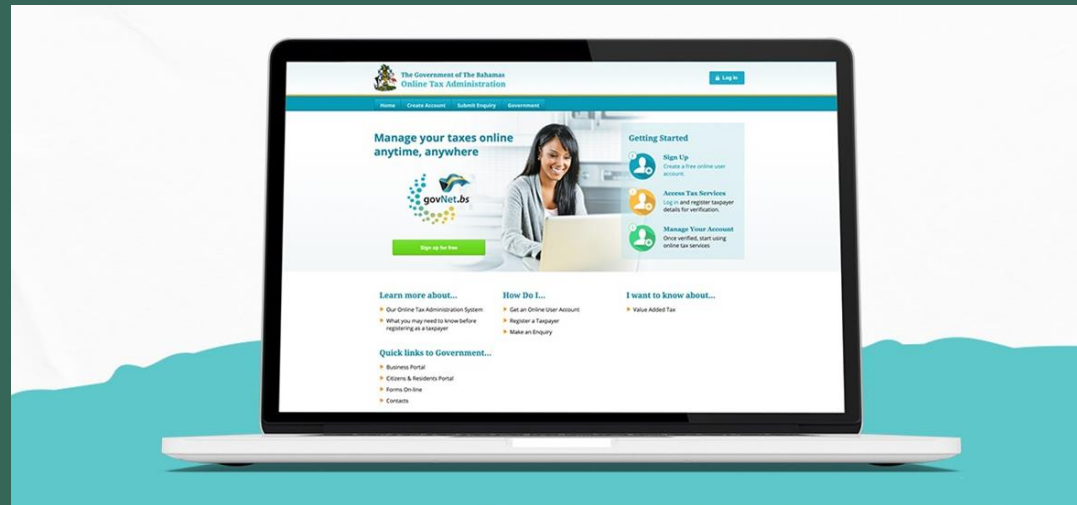
HOW TO COMPLY



WITH CESRA REPORTING

PART I: CESRA BASICS

CESRA REPORTING OVERVIEW



WHAT IS CESRA?



□ Commercial Entities (Substance Requirements) Act, 2018

□ The adoption of a global regulatory standard to ensure that income streams from certain activities are based on actual local activity to substantiate the use of a low tax jurisdiction.

□ Purpose:

To protect the reputation of The Bahamas by ensuring that certain entities operating in the country, that earn income from certain activities have:

- a. Significant economic presence
- b. Engage in real economic activity

WHO DOES CESRA APPLY TO?



Applies to:

Companies Act
International Business
Companies Act
Partnership Act
Partnership Limited
Liability Act
Exempted Limited
Partnership Act

Sole Proprietorships
Individuals “trading as”
Non-incorporated entities (including
associations and non-incorporated
NPOs)
Non-registered/Informal
Partnerships
Professional Partnerships
(e.g. Law firms)
Trusts
Collective Investment Vehicles

Does Not Apply to:

WHAT IS THE REPORTING PROCESS UNDER CESRA?



- All relevant entities must submit an annual substance report within 9-months following the end of their financial year.
- A TIN (*Tax Identification Number*) or an EIN (*Entity Identification Number*) is required to submit a substance report.
- Entities that are have no business licence reporting requirements or need for a TIN can apply for an EIN.
- Registration for an EIN and economic substance reporting are done via an electronic portal which can be accessed at:

<https://substancereporting.revenue.gov.bs>

KEY CONCEPTS TO UNDERSTAND CESRA REPORTING



CESRA regulations vary depending on whether you are an included or non-included entity.

Included Entities

- Entities engaged in ***“relevant activities”*** are required to demonstrate **“economic substance”** and are referred to as ***“Included”*** entities.

Non-Included Entities

- Those that are not, are referred to as ***“Non-Included”*** entities

WHAT ARE “RELEVANT ACTIVITIES”?



- Banking Business
- Insurance Business
- Fund Management Business
- Financing and Leasing Business
- Headquarters Business
- Distribution and Service Center Business
- Shipping Business
- Intellectual Property Business
- Holding Company engaged, or where its subsidiary is engaged in relevant activities

WHAT IS ECONOMIC SUBSTANCE?



- Economic substance is demonstrated if an entity:
 - Is directed and managed in The Bahamas
 - Has adequate qualified employees commensurate with the level of activity that it is engaged in
 - Has adequate expenditure commensurate with the level of activity that it is engaged in
 - Has adequate physical presence in The Bahamas

WHO IS REQUIRED TO HAVE “ECONOMIC SUBSTANCE?”



All “Included Entities”

Exceptions:

- Any entity that is 100% owned by one or more natural person(s) who are ordinarily resident and domiciled in The Bahamas either as:
 - a citizen of The Bahamas
 - a person holding a certificate of annual or permanent residence who physically resides in The Bahamas for a cumulative period of at least 3 months in every calendar year, or
- Any entity that is centrally managed and controlled outside of The Bahamas which is tax resident in a jurisdiction other than The Bahamas.

REPORTING REQUIREMENTS FOR “NON-INCLUDED” ENTITIES?



- An account on the substance reporting portal along with a TIN or EIN
- All entities with TIN use their existing login for the Online Tax Administration Portal (OTAS).
- *“Non included”* entities, and passive holding companies, have to demonstrate that they are in good standing by uploading proof of payment of Registrar General’s Department fees for the relevant year during the reporting process.

REPORTING REQUIREMENTS FOR “INCLUDED” ENTITIES?



- An account on the substance reporting portal along with a TIN or EIN
- All entities registering for an EIN must provide a copy of the Certificate of Incorporation
- “Included”* entities, in addition, must provide:
 - A financial statement for the relevant year that demonstrates the entities GROSS income and expenditure during the accounting period
 - Details of Full Time Employees
 - Qualifications of Directors and Employees to satisfy the Direction and Management requirements
 - Where outsourcing core income generating activity, evidence of ability to monitor activity of service provider

OFFENCES UNDER THE ACT



- ❑ Failure to submit an economic substance report by an included entity
- ❑ Obstructing the Competent Authority in performing its functions
- ❑ Altering, destroying, mutilating, defacing, hiding or removing information in a way that causes a contravention of the Act or if a person authorizes, advises or counsels another person to do the same
- ❑ Providing incorrect information where the person knows of the inaccuracy or later discovers the inaccuracy and fails to take reasonable steps to inform the Competent Authority of the inaccuracy

UNDERSTANDING CESRA PENALTIES



- The importance of compliance with the substance requirements cannot be understated given the potential liability for extensive penalties
- The Competent Authority may request additional information in relation to any substance information provided on or with the annual economic substance report
- Penalties for failure to comply with CESRA range from an audit (at the entity's expense), increasing fines and striking off from the Companies Register

WHAT ARE THE ADMINISTRATIVE PENALTIES?



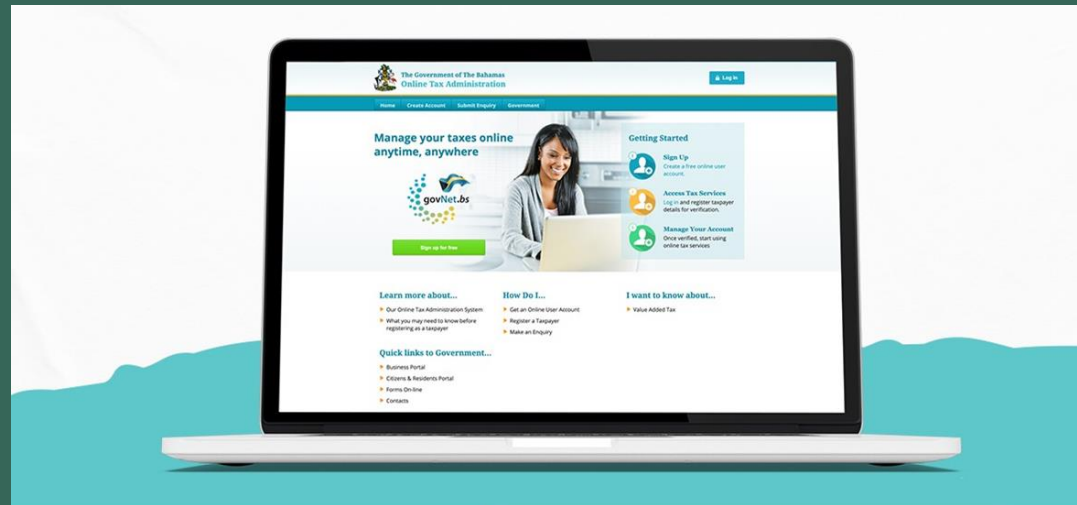
The Competent Authority may impose the following administrative penalties:

Penalty	Offence
\$150,000	Where a person commits an offence under the Act, which is payable within 30 days
\$1,000	For each day the offense continues
\$1,000	Failure To Pay - For each day the administrative penalty of \$150,000 remains unpaid
\$300,000	Failure to comply with subsection 15, the entity shall be subject to an administrative penalty of \$300,000 and where the entity willfully refuses to comply with the Act.
Striking Off	Where the entity willfully refuses to comply with the Act

A person who commits an offence under the Act is also liable on summary conviction to a fine of \$10,000 or imprisonment for a term of 6 months, or both.

PART 2: CESRA BASICS

CESRA REPORTING PROCESS & TROUBLESHOOTING



I DO NOT SEE THE REPORTING TAB



If the substance reporting tab does not appear:

- *Navigate to the “Other Services” Menu*
- *Click the “Submit Enquiry” Tab*
- *Request the Substance Tab by completing the form, indicating the reporting period and your financial year end*

The screenshot shows the 'The Government of The Bahamas Online Tax Administration' website. The navigation menu includes 'Home', 'Tracker', 'Change of Circumstance', 'Returns', 'Account', 'Business Licence', and 'Other Services'. The 'Other Services' dropdown menu is open, showing 'Submit Enquiry' and 'Objections and Appeals'. Below the navigation is a 'New Message' section with the instruction: 'Enter the details of your enquiry below and submit it to Ministry of Finance.' The 'MESSAGE DETAILS' form contains the following fields:

Subject: *	Nothing selected
Tax Type:	Not Selected
Year:	Not Selected
Period:	Select a valid year
Reference: *	New Enquiry
Message: *	

I HAVE THE TAB BUT CAN'T REPORT FOR 2019



If you do not see the option for 2019 reporting or if the entity's financial year end is incorrect, you submit an enquiry to request activation of substance reporting for the 2019 reporting period.

WHAT TO DO IF I HAVE A CHANGE OF CIRCUMSTANCE?



If the entity changes its name or filing period it has to submit a Change of Circumstance Request.

- This also applies where the entity is being transferred to another administrator. The name and TIN/EIN of that new administrator must be provided.
- Select the ***“Change of Circumstance”*** option in the top menu
- Choose the option ***“I wish to update my existing details”***
- Follow question prompts*** to completion

I DON'T UNDERSTAND HOW TO ANSWER QUESTION #3



It is important to answer question #3 correctly because it is a key filtering question used to determine whether your entity fits within the exception for demonstrating economic substance.

Question #3:

Are you an Entity: i. resident owned in The Bahamas; ii. centrally managed and controlled outside The Bahamas and tax resident in a jurisdiction other than The Bahamas?

Answer:

- As long as any part of the answer is “yes” – your answer should be YES
- If neither part of question 3 are relevant/applicable – your answer should be NO

WHAT IS REQUIRED IF I AM TAX RESIDENT IN ANOTHER JURISDICTION?



- An included entity that is centrally managed and controlled outside of The Bahamas and that asserts tax residency outside of The Bahamas can report as a non-included entity (Form D) and is not required to demonstrate economic substance in The Bahamas.
- It must upload evidence of foreign tax residency
- The Competent Authority will report to the tax authority of jurisdiction that the entity declares
- The entity cannot be tax resident in a jurisdiction which is on the EU's list of non-cooperative jurisdictions for tax purposes

WHAT ARE FORMS A-E?



The responses provided in the question wizard, will be used to determine the type of reporting that an Entity will submit and may generate one or more of the following substance reporting forms:

FORM A

- OUTSOURCED SERVICE PROVIDER

FORM B

- INCLUDED ENTITIES & REGULATED ENTITIES

FORM C

- HOLDING COMPANIES

FORM D

- NON INCLUDED ENTITIES

FORM E

- OUTSOURCING SERVICE PROVIDER

WHAT IF AN ENTITY IS IN LIQUIDATION?



- If an entity in liquidation is still carrying on relevant activity and continues to generate income, it is subject to the economic substance requirements
- If a liquidator is appointed, it is the liquidators of the entity that must demonstrate that economic substance has been met

Part 3

CESRA deep dive (FOR INCLUDED ENTITIES)

- CESRA Reporting Deep Dive: Forms A-E
- Q & A

What are the rules governing Outsourcing?



- Outsourcing is not prohibited BUT for included entities, outsourced core income generating activities must be performed in The Bahamas.
- Where core income generating activity is outsourced, the entity must be able to prove the ability to monitor and control the outsourced activity
- Where core income generating activity is outsourced, the resources of the service provider will be taken into consideration in determining whether substance has been satisfied
- The entity is responsible for ensuring that accurate information is reported on its economic substance report and this will include the precise details of the resources provided by the service provider

Overview of “Direction and Management” for included entities



- Included entities are required to be directed and managed in The Bahamas in addition to undertaking core income generating activities in The Bahamas
- Direction and Management in The Bahamas presumes:
 - Board meetings at an adequate frequency commensurate with the level of decision making required, but at least once a year
 - A quorum of Directors must be physically present in The Bahamas during the meetings
 - Strategic decisions must be set at the Board meetings and the minutes must reflect those decisions
 - The Board as a whole must have the necessary knowledge and expertise to discharge their duties as a board
 - All minutes and entity records must be maintained in The Bahamas

Specific Rules for Intellectual Property



- Where an entity receives income from IP, it will have to consider if it is a “low” or “high” risk IP entity.
- There is a rebuttable presumption that a high risk entity has failed the substance requirements as the risks of artificial profit shifting are considered to be greater
- The Competent Authority will exchange all of the information provided by the entity with the tax authority where the immediate parent company, ultimate parent company and/or ultimate beneficial owner is resident.
- To rebut the presumption, a high risk IP entity will have to produce evidence of how the DEMPE (development, enhancement, maintenance, protection and exploitation) of the IP is conducted
- This requires a business plan (including details on employees, their qualifications and length of service) and decision making taking place in The Bahamas.

CESRA Question wizard

The responses provided in the question wizard will be used to determine the type of reporting that an entity will submit and may generate one of several forms.

Filing Details

SUB Filing | January - December 2019

Filing Information

Entity		Emu Association	
Filing No	300863	Date Received	May 5 2020
Filing Due Date	Sep 30 2020	Payment Due Date	Sep 30 2020

Filing Summary

Please find below a summary of your filing including the appropriate calculations to confirm your payment or refund.

1	Are you incorporated, registered or continued under any of the Acts (see section 2 of the Act)	Yes
2	Do you conduct activities on behalf of other Entities?	No
3	Are you an Entity: i. resident owned in The Bahamas; ii. centrally managed and controlled outside The Bahamas and is tax resident in a jurisdiction other than The Bahamas?	No
4	Are you engaged in relevant activity?	No
5	Are you a Regulated Entity, except a CIV?	No
6	Are you a holding company?	Yes
7	Are one or more of your subsidiaries engaged in any relevant activity?	Yes
8	Do you outsource any of your core income generating activity?	No
9	Low or High risk Intellectual Property Activities?	Yes

Form B - Included Entities and Regulated Included Entities

Name of Entity	Emu Association
Registration Number	123456789
Type	General Partnership

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ECONOMIC SUBSTANCE REPORTING FORMS



It is important to note that the system is intuitive and may provide a number of forms for reporting based on the responses you provide in the question wizard.

FORM A

- OUTSOURCED SERVICE PROVIDER

FORM B

- INCLUDED & REGULATED ENTITIES

FORM C

- HOLDING COMPANIES

FORM D

- NON-INCLUDED ENTITIES

FORM E

- OUTSOURCING SERVICE PROVIDER

“Form B” - Included & Regulated Entities



- Entities that engage in relevant activity will be prompted to complete Form B
- **MUST** demonstrate economic substance and provide details on:
 - Gross Income
 - Amount of expenditure
 - Number of employees
 - Premises
 - Names and address of directors and shareholders (up to ultimate beneficial owner). Directors must be qualified.

“FORM B” – INCLUDED & REGULATED ENTITIES



It is important to note that the system is intuitive and may provide a number of forms for reporting based on the responses you provide in the question wizard

Examples of questions where answering “*Yes*” will generate “*Form B*”:

- Are you a holding company?
- Are you engaged in relevant activity?
- Low or High Risk Intellectual Property Activities?

“FORM C” – HOLDING COMPANY



It is important to note that the system is intuitive and may provide a number of forms for reporting based on the responses you provide in the question wizard

Examples of questions and responses that may lead to *“Form C”*:

- Answering *“Yes”* to the question, “Are you a holding company?” will automatically generate Form B and Form C.
- Only answer *“Yes”* to this question if the holding company is engaged in another relevant activity or has a subsidiary engaged in relevant activity

“FORM D” – Non-Included Entities



It is important to note that the system is intuitive and may provide a number of forms for reporting based on the responses you provide in the question wizard.

- Examples of questions and responses that may lead to *“Form D”*:
 1. Are you an Entity. i. resident owned in The Bahamas; ii centrally managed and controlled outside The Bahamas and tax resident in a jurisdiction other than The Bahamas? (YES)
 2. Are you engaged in relevant activity? (NO)
 3. Are you a Regulated Entity, except a CIV? (NO)

IMPORTANT REMINDERS



TO COMPLY VISIT:

substancereporting.revenue.gov.bs

For LEGISLATIVE QUERIES Email:

competentauthoritymof@bahamas.gov.bs