

## A. The Economic Substance Regulations

### 1. Why has the UAE introduced Economic Substance Regulations?

In April 2019, the UAE issued Cabinet of Ministers Resolution No. 31 of 2019 concerning Economic Substance ("Resolution 31") as part of its commitment as a member of the OECD Inclusive Framework, and in response to an assessment of the UAE's tax framework by the European Union Code of Conduct Group on Business Taxation.

On 10 August 2020, the Cabinet of Ministers issued Resolution No.57 of 2020 Concerning Economic Substance Regulations ("Resolution 57"). Resolution 57 amends and repeals Resolution 31, Cabinet of Ministers Resolution No. 58 of 2019, and Cabinet of Ministers Resolution No. 7 of 2020. Following the issuance of Resolution 57, H.E. the Minister of Finance issued new Guidance by way of Ministerial Decision No. 100 of 2020, which also includes an updated Relevant Activities Guide appended as Schedule 1 ("Ministerial Decision 100").

The Regulations require UAE onshore and free zone companies and certain other business forms that carry out certain activities (Licensees - See Question 6) to maintain and demonstrate an adequate "economic presence" in the UAE relative to the activities they undertake. The purpose of the Regulations is to ensure that UAE entities report actual profits that are commensurate with the economic activity undertaken within the UAE.

Resolution 57 and Ministerial Decision 100 (collectively, the "Regulations") have been prepared in consultation with the Organisation for Economic Cooperation & Development ('OECD') and the European Union ('EU').

### 2. Why should a business comply with the Economic Substance requirements?

If you are within the scope of the Economic Substance Regulations (see Section B), you must submit a Notification and Economic Substance Report, and meet the Economic Substance Test. Failure to do so will result in penalties (see Question 71).

### 3. When do the Regulations enter into force?

The Regulations apply to financial years starting on or after 1 January 2019.

Example 1: A UAE company with 1 January 2019 - 31 December 2019 financial year:

First assessable period would be 1 January 2019 - 31 December 2019.

Example 2: A UAE company with 1 April 2019 - 31 March 2020 financial year:

First assessable period would be 1 April 2019 - 31 March 2020.

No need to comply with the Regulations for the period 1 January 2019 - 31 March 2019.

Example 3: A UAE company with 1 July 2018 - 30 June 2019 financial year:

First assessable period would be 1 July 2019 - 30 June 2020.

No need to comply with the Regulations for the period 1 July 2018 - 30 June 2019.

#### **4. Who are the “Regulatory Authorities”?**

The Regulations are administered by the Regulatory Authorities listed in Article 4 of the Regulations, and set out below:

##### **A. Federal Entities:**

- Ministry of Economy
- Central Bank
- Insurance Sector of the Central Bank
- Security and Commodities Authority

##### **B. Abu Dhabi Free Zones:**

- Abu Dhabi Global Market
- Abu Dhabi Airports Free Zone
- Abu Dhabi Ports
- MASDAR City

##### **C. Dubai Free Zones:**

- Dubai Airport Free Zone
- Dubai Healthcare City Authority
- Dubai International Financial Center
- Meydan
- Dubai Aviation City Corporation/ Dubai South
- Jebel Ali Free Zone Authority
- Dubai World Trade Center
- International Humanitarian City
- Dubai Development Authority
- Dubai Silicon Oasis
- Dubai Multi Commodities Centre
- Dubai Maritime City

##### **D. Sharjah Free Zones:**

- Sharjah Airport International Free Zone Authority
- Hamriyah Free Zone Authority
- Sharjah Media City (Shams)
- Sharjah Publishing City
- Sharjah Research Technology and Innovation Park
- Sharjah Healthcare City

##### **E. Ajman Free Zones:**

- Ajman Free Zone Authority
- Ajman Media Free Zone Authority

#### **F. Ras Al-Khaimah Free Zones:**

- RAK International Corporate Centre
- Ras Al Khaimah Economic Zone
- RAK Maritime City

#### **G. Um Al-Quwain Free Zones:**

- UAQ Free Trade Zone

#### **H. Fujairah Free Zones:**

- Fujairah Free Zone
- International Free Zone Authority
- Fujairah Creative City

The Regulatory Authorities are responsible for monitoring compliance with the Notification and reporting obligations under the Regulations, identifying possible Licensees, validating information submitted, determining whether a relevant entity meets the requirements to be treated as exempt, and sharing information with the UAE Federal Tax Authority and the UAE Ministry of Finance.

#### **5. Who is the “National Assessing Authority” and what is their role?**

The assessment and determination on whether a Licensee has economic substance in the UAE is made by the Federal Tax Authority (“FTA”), in its capacity as the “National Assessing Authority” under the Regulations.

The FTA will also be responsible for enforcing compliance of UAE businesses with the Economic Substance Regulations, including issuing penalties and hearing appeals.

For further information on penalties and appeals under the Economic Substance Regulations, please refer to the FTA’s Economic Substance webpage here [[link to FTA ESR page](#)].

## **B. Scope of application**

#### **6. Who is subject to the Regulations?**

The Regulations apply to Licensees that carry out any of the following Relevant Activities.

- Banking Businesses
- Insurance Businesses
- Investment Fund Management Businesses
- Lease-Finance Businesses
- Headquarter Businesses
- Shipping Businesses
- Holding Company Businesses

- Intellectual Property Businesses
- Distribution and Service center Businesses

Please refer to Schedule 1 of Ministerial Decision 100 for an explanation and examples of each activity.

## **7. What is a Licensee?**

A Licensee is a juridical person or an unincorporated partnership that is registered in the UAE and that undertakes a Relevant Activity.

By way of example, a Licensee can be:

- A limited liability company
- A private shareholding company
- A public shareholding company
- A joint venture company
- A partnership (e.g. a limited liability partnership, a limited partnership, a general partnership, etc.)

The following persons are not considered "Licensees" under the Regulations:

- A natural person
- A sole proprietorship
- A Trust\*
- A Foundation\*

*\* Generally, Trusts and Foundations are not permitted to undertake commercial activities and therefore cannot undertake a "Relevant Activity". However, if a Trust or Foundation does undertake a "Relevant Activity" it will be considered as a Licensee and must comply with the Regulations.*

8. The business activities that I undertake do not meet the requirements of any of the Relevant Activities listed, am I subject to the Economic Substance Regulations?

No, only businesses that undertake a Relevant Activity are subject to the Economic Substance Regulations and are required to file a Notification and Economic Substance Report.

## **9. Are branches subject to the Regulations?**

Branches registered in the UAE are an extension of their "parent" or "head office" and do not have separate legal personality.

As such, the "parent" or "head office" registered in the UAE must file as a single Licensee, reporting the Relevant Activities of itself and all its branches in one composite Notification and / or Economic Substance Report.

A UAE branch of a foreign entity that carries out a Relevant Activity would be required to comply with the Regulations as if it was a separate legal person, unless the Relevant Income of the branch is within the scope of taxation in the jurisdiction of the foreign parent / head office. The "subject to tax" test is met where the income of the UAE branch is taken into account when calculating the taxable income of the foreign parent / head office or other relevant group entity reporting the Relevant Income of the UAE branch for corporate income tax purposes, irrespective of whether the income of the UAE branch can benefit from an exemption or other form of corporate tax relief in the foreign jurisdiction under domestic tax law or a double tax agreement.

Where a UAE entity carries on a Relevant Activity through a branch registered outside the UAE, the UAE entity is not required to consolidate the activities and income of the foreign branch for purposes of the Regulations, provided the Relevant Income of the foreign branch is subject to tax in the foreign jurisdiction where the branch is located. In this context, a branch can include a permanent establishment or any other form of taxable presence for corporate income tax purposes which is not a separate legal entity.

#### **10. Where do I report the details of my branch?**

When completing the Notification and Economic Substance Report on the Economic Substance Filing Portal, you will be able to include details of your branches that carry out a Relevant Activity in Section B of each form.

#### **11. Will the Regulatory Authorities tell businesses if they are subject to the Regulations?**

No, businesses are responsible to self-assess whether they undertake a Relevant Activity and have a filing requirement under the Economic Substance Regulations and cannot rely on Regulatory Authorities to inform them of their requirements under the Economic Substance regulations.

Please refer to Schedule 1 of Ministerial Decision 100 for an explanation and examples of each Relevant Activity.

#### **12. What does it mean to be subject to the Regulations?**

##### **Administration (For additional information refer to Section K)**

Licensees that undertake a Relevant Activity are required to file an annual Notification within six months from the end of the relevant financial period (see Administration).

In addition, Licensees that earn income from their Relevant Activity(ies) are also required to file an Economic Substance Report within 12 months from the end of the relevant financial period (see Administration).

##### **Demonstrating substance**

For each financial period in which a Licensee earns income from a Relevant Activity, it will need to meet an Economic Substance Test in relation to that activity.

The Economic Substance Test requires a Licensee to demonstrate that:

- the Licensee and Relevant Activity are being directed and managed in the UAE;

- the relevant Core Income Generating Activities (CIGAs) are being conducted in the UAE; and
- the Licensee has adequate people, premises and expenditure in the UAE.

**13. Do the Regulations only apply to UAE entities that are part of a foreign multinational group?**

No. The Regulations impose economic substance requirements on any UAE entity which carries on a Relevant Activity, regardless of whether the UAE entity belongs to a foreign multinational group.

However, a UAE based Distribution Business, Service center Business, Headquarter Business or High-Risk IP Business would only be within the scope of the Regulations if the UAE entity transacts with foreign group companies. Distribution, Service center, Headquarter and High-Risk IP activities and transactions between UAE entities are not subject to Regulations.

**14. Is a company registered under an 'offshore' free zone company regime subject to the Regulations?**

Yes, if the 'offshore' company undertakes a Relevant Activity.

**15. If the Ultimate Beneficial Owner of the Licensee is a UAE national or UAE resident individual, does the company still need to file a Notification?**

Yes, a business that undertakes a Relevant Activity will be required to file a Notification, irrespective of the nationality or residency of its direct or ultimate owners.

**16. Do the activities listed on the commercial license determine whether a Licensee undertakes a Relevant Activity?**

No. Whilst the commercial license may indeed state the Relevant Activity, a 'substance over form' approach must be used to determine whether a Licensee undertakes a Relevant Activity and is within the scope of the Regulations. This means looking beyond what is stated on the commercial licence to the activities actually undertaken by the Licensee during a financial period.

If the business carried on a Relevant Activity, it will be required to comply with the Regulations, irrespective of the activities stated on the commercial License.

**17. When should a Licensee assess whether it undertakes a Relevant Activity?**

This assessment needs to be done for each financial period, and should take into account the activities undertaken by the Licensee at any time throughout the relevant financial period.

## **18. How should a Licensee determine its financial period for Economic substance purposes?**

A Licensee's financial period should correspond to the period for which financial statements (if any) are prepared to.

Newly incorporated Licensees may have either a short or long first financial period. More information and examples are available in the Economic Substance Notification and Report guidance.

## **19. Who is exempt from the Regulations?**

The following Exempted Licensees are exempt from filing an Economic Substance Report and the requirement to demonstrate substance in the UAE:

- A Licensee that is tax resident outside the UAE;
- An Investment fund and its underlying SPVs / investment holding entities;
- A wholly UAE resident-owned business that is not part of a multinational group and that only carries on business in the UAE;
- A branch of a foreign entity that is subject to tax on all of its Relevant Income in a foreign jurisdiction.

Sufficient evidence must be submitted along with the Notification form to claim any of the above exemptions. Please refer to the Notification guide for details on the evidential documents that must be submitted,

## **20. What if a Licensee does not undertake a Relevant Activity during a financial period?**

If a Licensee does not undertake a Relevant Activity during a financial period, it does not need to meet the Economic Substance Test.

The Licensee would not be required to submit a Notification (see Question 60) or submit an Economic Substance Report (see Question 65) for the relevant financial period.

## **21. My business was just set up, if I undertake a Relevant Activity (or plan to) by when should I file?**

- Notifications must be filed within six months from the end of the relevant financial period in which you carried on a Relevant Activity; and
- Economic Substance Reports must be filed within 12 months from the end of the relevant financial period in which you carried on a Relevant Activity.

If you have just set up a business and did not carry on a Relevant Activity in your first financial period, you are not in the scope of the Regulations.

**22. I currently do not undertake a Relevant Activity, but this may change in 6 or 10 months' time. Am I required to file a Notification now?**

No, you should wait until the end of your financial period and then assess if you carried out a Relevant Activity. You will need to submit a Notification for the Reportable Period during which a Relevant Activity was undertaken. Notifications must be filed within six months after the relevant Financial Year end, and Economic Substance Reports must be filed twelve months after the end of the relevant financial period.

**23. What if the Licensee undertook a Relevant Activity for only part of a financial period?**

If the Licensee undertook a Relevant Activity for only part of a financial period, it will be required to submit a Notification and Economic Substance Report (if applicable) in respect of the entire financial period.

If the Licensee undertook different Relevant Activities during the financial period, the Licensee is required to report all their Relevant Activities in a single Notification and Economic Substance Report (if applicable).

**24. What if the Licensee carried on a Relevant Activity historically but no longer does, is the Licensee required to submit a Notification and Economic Substance Report every year until liquidation?**

No, a Licensee is only required to file a Notification and Economic Substance Report in respect of financial periods where a Relevant Activity was carried on. There may be instances where a Licensee may be required to file for one year but not the following year.

**25. What if a Licensee undertakes a Relevant Activity, but does not earn any income from that activity during a financial period?**

A Licensee that undertakes a Relevant Activity but that does not earn income from this activity in a financial period, is required to submit a Notification on the Ministry of Finance filing portal.

The Licensee will not be required to meet the Economic Substance Test or file an Economic Substance Report for that period.

**26. Is there a minimum level of income that must be met for the Economic Substance Regulations to apply?**

No, there is no minimum income requirement or threshold. If you carry out a Relevant Activity you are required to submit a Notification.

If you generate revenue from a Relevant Activity - even if that was just a single dirham - you are required to file an Economic Substance Report and demonstrate economic substance in the UAE, unless you qualify for one of the exemptions.

**27. What if all income from the Relevant Activity is earned from outside the UAE, is the Licensee exempt from the Regulations?**

No. Income from a Relevant Activity for which the Licensee needs to demonstrate economic substance in the UAE includes all income, including income that is generated by the Licensee outside of the UAE. However, please refer to Question 9 for the treatment of a foreign branch of a UAE entity that earns income from a Relevant Activity.

**28. What if the Licensee is in liquidation (or otherwise ceases to exist), is the Licensee required to comply with the Regulations?**

Yes, the Licensee must comply with the Regulations for any financial period during which it carries on a Relevant Activity. This would include submitting a Notification and Economic Substance Report (if applicable).

**29. What if the Licensee changed its legal form in respect of a historical Reportable Period?**

The Licensee should report on the basis of the information that was valid at the time the Reportable Period ended. This means, the Licensee should report the legal form that was applicable at the end of that Reportable Period.

### C. Demonstrating economic substance in the UAE

**30. What is “adequate” or “appropriate” economic substance?**

The UAE acknowledges that businesses vary in size and nature, and what is adequate and appropriate will depend on the nature and level of activities carried out, and the level of income earned by the Licensee. The Regulations therefore do not provide a “minimum” standard for what is considered “adequate” or “appropriate”.

The FTA is expected to take a pragmatic approach when assessing whether a Licensee has met the Economic Substance Test, recognizing that the type and level of activity of a Licensee may fluctuate during the course of a financial period and from year to year.

**31. Will economic substance be assessed on a Licensee by Licensee basis, or can Licensees that are part of the same group elect to be assessed on a ‘consolidated’ basis?**

No. The Regulations do not allow Licensees that are part of the same group to be aggregated for economic substance purposes. Each Licensee will need to comply with the Regulations, and demonstrate economic substance on an individual basis. That being said, relevant economic substance (staff, functions, assets, etc.) maintained in the UAE by other group companies can be taken into

account if that economic substance is made available to the Licensee under a service / outsourcing type arrangement (see Question 37).

### **32. Does a Licensee need to hold board meetings in the UAE?**

Yes, an adequate number of board meetings (or equivalent) should be held in the UAE. What is considered an adequate number of board meetings will depend on the nature of the Relevant Activity being undertaken by the Licensee, but for each board meeting held in the UAE:

- A quorum of directors must be physically present in the UAE; and
- Meeting minutes must be maintained and signed in the UAE; and
- Directors attending the board meeting must have the necessary skills and expertise to discharge their fiduciary duties.

A Holding Company Business is not required to be directed and managed in the UAE, except where this is a requirement of the relevant licensing authority.

### **33. Do employees who perform the CIGAs need to be resident in the UAE?**

Employees who perform the CIGAs of a Licensee would in principle need to be resident in the UAE. Non-resident employees or other persons would count towards the economic substance of a Licensee in the UAE only if (i) the relevant activities are performed while the individual is physically present in the UAE and under the direction of the Licensee, and (ii) the Licensee bears the relevant costs of the non-resident individual.

### **34. Do the directors of the Licensee need to be resident in the UAE?**

No, but the directors (or equivalent) do need to be physically present in the UAE to attend the relevant board meetings of the Licensee.

### **35. Can directors be counted as employees?**

Yes, directors who in addition to performing their fiduciary duties also perform CIGAs can be counted as employees of the Licensee for purposes of meeting the Economic Substance Test.

### **36. Is having a UAE Tax Residency Certificate for a financial period proof of meeting the Economic Substance Test for that relevant period?**

No, whilst obtaining a UAE Tax Residency Certificate requires certain minimum presence in the UAE, a UAE Tax Residency Certificate in itself is not proof of a Licensee having adequate economic substance in the UAE in relation to its Relevant Activity and the income earned from this activity.

## D. Demonstrating economic substance in the UAE - outsourcing

### 37. What can a Licensee outsource?

A Licensee can outsource any or all of its CIGAs so long as the outsourced activities are performed in the UAE. This means that a Licensee can use UAE based (i) employees and (ii) physical assets (including premises) of third parties or related entities to satisfy the Economic Substance Test.

A Licensee cannot outsource "directed and managed", as the Licensee is required to demonstrate oversight and control of its Relevant Activity in the UAE.

### 38. To whom can a Licensee outsource?

A Licensee can outsource, contract or delegate CIGAs to related parties or to third party service providers, as long as the Licensee monitors and retains the ability to control the outsourced activities.

### 39. What should a Licensee do under an outsourcing arrangement?

A Licensee should:

- Have adequate supervision of the outsourced activity; and
- Ensure the outsourced activity is conducted in the UAE; and
- Ensure the outsourcing provider has adequate substance in the UAE; and
- Ensure there is no double counting of the outsourcing provider's resources.

The above can be evidenced through the contractual agreements that govern the relationship and responsibilities of each party and the correspondence with the outsourcing provider.

### 40. Can a Licensee outsource any of its activities to a foreign person?

Activities that are not CIGAs (e.g. back office functions or specialist advice that cannot be obtained in the UAE) can be outsourced to related parties or third party service providers that are located outside the UAE without adversely impacting the economic substance of the Licensee in the UAE.

## E. Distribution and Service Centre Business

### 41. What is a "Distribution and Service Centre" Business?

A "Distribution and Service Centre" Business refers to two distinct activities that are covered under one "Relevant Activity" heading.

A UAE entity is considered engaged in a Distribution Business if it:

- Purchases goods from a Foreign Connected Person; and

- Distributes those goods

A UAE entity is considered engaged in a Service Centre Business if it:

- Provides services to a Foreign Connected Person

The economic substance requirements for a Distribution and Service Centre Business are applicable to UAE entities whose main activity is distribution and/or service centre operations. Licensees that are mainly engaged in Banking, Insurance, Investment Fund Management, Lease-Finance, Shipping, Intellectual Property or Headquarter Business may also purchase goods for, and/or provide services to foreign group companies as a normal part of their business operations. To prevent duplicate reporting, such Licensees are not also considered engaged in a Distribution and Service Centre Business.

UAE entities that only purchase goods from third parties, or that only provide services to third parties, are not subject to the Regulations (as a Distribution and Service Centre Business).

**42. Does a business that purchases goods from a foreign group company and sells such goods (in or outside the UAE) fall within the scope of a Distribution and Service Centre Business, if the goods are directly dispatched to the customer by the foreign group company?**

Yes, the amended definition of a Distribution and Service Centre Business would apply in such cases, as the goods are no longer required to be imported into the UAE, meaning “bill-to-ship” transactions may fall within the scope of the Regulations as a Distribution and Service Centre Business.

Further, the removal of the requirement for the goods to be resold outside the UAE, means that the local distribution of goods (purchased from a foreign group company) would also be within the scope of the Regulations as a Distribution and Service Centre Business.

## **F. Holding Company Business**

**43. What is a Holding Company Business?**

A UAE entity is considered engaged in a Holding Company Business if it:

- Only holds equity interest(s) in juridical person(s); and
- Only earns dividend and capital gains from its equity interest(s)

A UAE entity that holds other assets or earns other forms of income will not be considered a Holding Company Business. Where the holding of such other assets or the performance of other commercial activities constitute a different “Relevant Activity” (e.g. a Lease-Finance Business), the UAE entity would be subject to the Regulations in respect of that other Relevant Activity.

**44. Are investment funds subject to the Regulations as a Holding Company Business?**

No, an investment fund is not considered a Holding Company Business.

#### **45. Does a Holding Company Business need to demonstrate economic substance?**

Yes, although a Holding Company Business is subject to reduced substance requirements as follows:

- Comply with existing reporting / compliance requirements under the regulations applicable to the Licensee; and
- Have adequate employees and physical assets (e.g. premises)

A Holding Company Business does not require:

- to be “directed and managed” in the UAE (subject to each Regulatory Authority's own regulations); or
- To have / demonstrate adequate expenditure in the UAE

### **G. “High Risk” IP Business**

#### **46. What are the conditions for an IP Business to be considered as “High Risk”?**

All of the following conditions must be met for an IP Business to be considered as “High Risk”:

- 1) The Licensee did not create the IP asset which it holds for the purposes of its business;
- 2) The Licensee acquired the IP asset either from:
  - a Connected Person, or
  - in consideration for funding research and development by another person situated in a country other than the UAE;
- 3) The Licensee:
  - licenses the IP asset to one or more Connected Persons, or
  - otherwise generates income from the asset in consequence of activities performed by Foreign Connected Persons

#### **47. What does it mean if a Licensee has a “High Risk” IP Business?**

- 1) Information is automatically shared with the foreign competent authority of the parent company, ultimate company and ultimate beneficial owner; and
- 2) The Licensee is presumed to not have met the Economic Substance Test, unless the Licensee rebuts this presumption and meets the increased substance requirements.

The increased substance requirements (in addition to those set out under Question 12) require a High Risk IP Licensee to demonstrate that it has (and historically had) a high degree of control over the development, exploitation, maintenance, protection, and enhancement of the IP Asset, and to submit proof that:

- It has adequate full-time employees with the necessary qualifications that permanently reside and perform their activities in the UAE - relevant employee information (e.g. experience, contracts, qualifications etc.) would need to be provided; and
- It has a business plan showing the reasons for holding the IP in the UAE; and
- Relevant decision making has and continues to take place in the UAE

## H. Investment Fund Management Business

### 48. What is a UAE Investment Management Business?

A UAE entity that provides discretionary investment management services to Investment Funds located in the UAE or in a different jurisdiction.

An Investment Fund Management Business includes making discretionary investment, divestment and risk related decisions on behalf of an investment fund. UAE entities providing other types of investment fund related services such as fund administration, investment advisory and custodian services are not considered engaged in an Investment Fund Management Business.

The Investment Fund itself is not considered an Investment Fund Management Business, unless it is a self-managed fund (the Investment Manager and the Investment Fund are part of the same entity).

## I. Lease-Finance Business

### 49. What is a Lease-Finance Business?

A UAE entity is considered engaged in a Lease-Finance Business if it offers credit or financing for any kind of consideration.

Providing credit includes making loans and entering into other financing arrangements such as hire purchase agreements and finance leases.

Licensees engaged in Banking, Insurance, Headquarters and Investment Fund Management Business may also perform lease or financing activities as a normal part of their business operations. To prevent duplicate reporting, such Licensees are not also considered engaged in a Lease-Finance Business and will not need to separately demonstrate economic substance in respect of any ancillary Lease-Finance activities.

### 50. What does it mean to offer credit or financing?

Offering credit or financing includes making loans to related or unrelated parties, entering into finance leases in relation to assets other than land, and providing credit in the form of hire purchase agreements, long term credit plans, and other types of financing arrangements (including cash pool arrangements).

**51. Is lending to another group entity considered a “Lease-Finance Business”?**

Yes, a UAE entity that makes a loan or provides any other form of credit to a UAE or foreign group company for consideration (e.g. interest) will be considered engaged in a Lease-Finance Business.

**52. Is investing and trading in debt securities considered undertaking a Lease-Finance Business?**

No, UAE entities that invest and hold bonds and other debt securities that are traded on a regulated exchange are not considered engaged in a Lease-Finance Business.

**53. What does consideration for the purposes of a Lease-Finance Business include?**

Consideration includes interest, origination and processing fees, gains upon conversion of a loan into the share capital of the debtor, and late payments penalties. The grant of security in favor of the lender would not constitute consideration.

## **J. Headquarter Business**

**54. What is a Headquarter Business?**

A UAE entity that provides services to other foreign group entities, and through the provision of such services:

- has taken on the responsibility for the overall success of the group; or
- is responsible for an important aspect of the group's performance.

**55. Does an entity need to be the ‘parent’ company to be considered a Headquarter Business?**

No, a group's corporate structure is not relevant in determining whether a UAE entity within the group is engaged in a Headquarter Business. Whether an entity is engaged in a Headquarter Business is entirely dependent on the nature of the services provided to foreign group companies.

**56. Can an entity be considered engaged in a Headquarter Business in addition to carrying on another Relevant Activity?**

Possibly, if the Relevant Activities form two or more distinct business activities. However, if an activity that might otherwise fall within the definition of a Headquarters Business forms part of another main Relevant Activity of the Licensee, the Licensee would not be considered to also be engaged in a Headquarter Business. For example, a UAE entity that undertakes captive insurance activities will not be considered to carry on a “Headquarter Business” simply because it assumes material risk on behalf of the group.

## K. Administration

### **57. Who can assist me with my questions and issues??**

For questions regarding MoF account registration or login issues, please contact [insert email for MoF call Center].

For any Economic Substance filing portal related technical issues (e.g. the Notification filed does not appear on the Licensee dashboard, etc.) please contact [ESRsupport@cbrain.com](mailto:ESRsupport@cbrain.com).

For questions relating to penalties or appeals under the Economic Substance Regulations, please contact [FTAESR@tax.gov.ae](mailto:FTAESR@tax.gov.ae).

For questions regarding the scope and application of the Economic Substance Regulations, please review the information on this webpage, or obtain professional advice.

### **58. I called a Regulatory Authority and was told they are unable to support me with my Economic Substance query, what should I do?**

Please send an email to [ESinfo@mof.gov.ae](mailto:ESinfo@mof.gov.ae) and include the following information:

- Details of your businesses (name, legal form, main activity)
- Nature of your query / reason for contacting the Regulatory Authority
- Name of Regulatory Authority
- Name of representative at the Regulatory Authority

We note that your Regulatory Authority and the Ministry of Finance cannot assist you in determining if and how the Economic Substance Regulations apply to your business. For such questions, you should seek professional advice.

### **59. I have made a request to amend my Notification (or Economic Substance Report), when will the request be approved?**

Your Regulatory Authority is responsible for approving your request for amendment, please contact them for an update on when your request will be processed, you can find the contact details for the Regulatory Authority's below.

### **60. Who needs to submit a Notification and by when?**

Licensees and Exempted Licensees that undertake a Relevant Activity (irrespective of whether the Licensee or exempt Licensee has earned income from the Relevant Activity during the financial period) are required to file a Notification within six months from the end of the relevant financial period. All Notifications must be submitted on the Ministry of Finance filing portal.

### **61. If my business carries out multiple Relevant Activities should I submit individual Notifications and Economic Substance Reports for each Relevant Activity?**

No, businesses that have more than one Relevant Activity during a financial period should submit a single Notification and Economic Substance Report and report all their Relevant Activities in that single Notification and Economic Substance Report.

**62. Should I file a Notification even if I did not earn any income during this financial period?**

Yes, Businesses that carry out a Relevant Activity during a financial period are required to submit a Notification irrespective of whether they earned income from that Relevant Activity.

**63. Can a single Notification be submitted for multiple Licensees?**

No, each Licensee must submit a single Notification.

**64. Will the Economic Substance Portal issue a reminder to submit a Notification for future financial periods?**

No, a Licensee must assess whether it is subject to the Regulations on a year on year basis and is solely responsible for undertaking the necessary filings through the Economic Substance Portal.

**65. Who needs to file an Economic Substance Report and by when?**

Only Licensees that earn income from a Relevant Activity during the relevant financial period and that are not exempt from the Regulations are required to demonstrate economic substance in the UAE and file an Economic Substance Report. Economic Substance Reports must be filed within 12 months from the end of the relevant financial period.

**66. Are there cases where a business is only required to submit a Notification and not file an Economic Substance Report?**

Yes, if the Licensee is an Exempted Licensee or does not earn income from its Relevant Activity. In these cases, there is no requirement to file an Economic Substance Report.

The Economic Substance Filing Portal will automatically assess whether you need to file an Economic Substance Report based on your Notification, and only create a Report if you are required to submit one.

**67. Will a Licensee be required to comply with the filing requirements every year?**

Yes, a Licensee will be required to submit a Notification and Economic Substance Report (if applicable) for each financial period in which it undertook a Relevant Activity

**68. Will a Licensee receive a confirmation after submitting a Notification or Economic Substance Report?**

Yes, an email confirmation will be sent to the email address used to submit the Notification or Economic Substance Report. If a confirmation email is not received within 24 hours please contact ESRsupport@cbrain.com.

**69. Can a Licensee change the email address used to receive email correspondence relating to Economic Substance?**

Yes, please contact ESRsupport@cbrain.com and provide a list of the cases IDs linked to the old email address and provide details of the new correspondence email address.

**70. Are copies of the updated Notification and Economic Substance Report forms available?**

Yes, you can find the template Notification form and Economic Substance Report and associated guidance on the Ministry of Finance website.

**71. What are the penalties for non-compliance?**

Failure to submit a Notification: AED 20k

Failure to submit an Economic Substance Report:

- Penalty of AED 50k; and
- Deemed failure to demonstrate economic substance in the UAE

Failure to provide accurate or complete information:

- Penalty of AED 50k; and
- Deemed failure to demonstrate economic substance in the UAE

**Failure to demonstrate sufficient economic substance in the UAE for the relevant Financial Year:**

First failure

- Penalty of AED 50k; and
- Information exchange with foreign competent authority of:
  - 1) parent company,
  - 2) ultimate parent company, and
  - 3) ultimate beneficial owner

Second consecutive instance of failure

- Information exchange with foreign competent authority of:
  - 1) parent company,
  - 2) ultimate parent company, and
  - 3) ultimate beneficial owner; and

- Penalty of AED 400k; and
- Trade / commercial licence could be; suspended, withdrawn or not renewed

**72. Will a business face a late filing penalty if its Exempted Status is denied after the original Economic Substance Report filing deadline for the relevant financial period?**

No, if you submit a Notification claiming an exemption from the Economic Substance Regulations and this exemption is denied, you will be given 30 business days to submit your Economic Substance Report from the date the exemption claim was denied. Businesses that willfully, knowingly and intentionally submit improper exemption claims may face penalties.

**73. If a Licensee has paid a penalty but was subsequently granted an appeal by the FTA for that penalty, how can the Licensee request a refund?**

A Licensee that was granted an appeal by the FTA for a penalty that was already paid can request a refund through the e-refund portal on the MoF website using the following link (<https://www.mof.gov.ae/en/mservices/government/govrevenue/pages/revenue-refund.aspx>).

As part of the refund request, the Licensee will be required to provide the following information:

Information	Where can the Licensee find this
Licensee name	Licensee dashboard
RRN no.	eDirham receipt
Transaction date	eDirham receipt
Transaction amount (AED)	eDirham receipt
MoF department	eDirham Call Centre
Dispute type (duplicate payment / excess payment)	Licensee to select
Duplicate RRN (if applicable)	eDirham receipt
Case ID of penalty case	Licensee dashboard
Case ID of appeal case (if applicable)	Licensee dashboard

Dispute remarks	Licensee to provide
Emirates ID, name, mobile number, and email	Licensee to provide
IBAN and bank name	Licensee to provide

#### **74. What should a Licensee consider before the end of a financial period?**

The following is meant as a non-exhaustive list of matters a Licensee should consider (and action, where relevant) before the end of a financial period:

- Assess what (if any) Relevant Activities it has performed during the financial period (applying a “substance over form” approach);
- Assess the amount and type of income earned (if any) from the Relevant Activity during the financial period;
- Hold board meetings with a quorum of directors physically present in the UAE;
- Ensure board meeting minutes are signed and maintained in the UAE;
- Identify the amount and type of expenses and UAE based assets (incl. premises) in respect of the Relevant Activity, and ensure access to assets (incl. premises) can be demonstrated (through agreements and financial records)
- Identify the number of UAE based full-time employees or other personnel (and their qualifications) responsible for carrying on the Licensee's Relevant Activity; and
- Ensure control and supervision over any outsourcing arrangements can be demonstrated, e.g. through contractual agreements.

Additional actions may be required to ensure a Licensee can demonstrate sufficient economic substance in the UAE for a relevant financial period, and the considerations above may differ where a Licensee has either a Holding Company or a High Risk IP Business.

### **L. Additional Information**

#### **75. Can the Ministry of Finance recommend a company to help us with Economic Substance?**

No, the Ministry of Finance cannot recommend a company to assist you with Economic Substance. There are numerous professional services firms in the UAE that should be able to support you.

#### **76. If my business is subject to Country by Country Reporting, will I also be required to comply with the Economic Substance Regulations?**

If your business carries out a Relevant Activity you are also required to comply with the Economic Substance Regulations.

**77. If my business is subject to Ultimate Beneficial Owner Reporting, will I also be required to comply with the Economic Substance Regulations?**

If your business carries out a Relevant Activity you are also required to comply with the Economic Substance Regulations.

**78. Can you file an Economic Substance Report immediately after filing a Notification?**

Yes, the Economic Substance Filing Portal allows businesses to file an Economic Substance Report immediately after having filed their Notification.

Please note that in some cases there may be a delay in the generation of the Economic Substance Report following submission of the Notification due to high demand. Where your Economic Substance Report is not generated immediately, please do not submit another Notification. The Economic Substance Report will be generated in due course and you will be notified when it is available on your dashboard. If the Economic Substance Report does not appear within 24 hours, please can you contact [ESRsupport@cbrain.com](mailto:ESRsupport@cbrain.com).

**79. Do the Financial Statements to be submitted along with the Economic Substance Report need to be audited?**

No. In the absence of audited financial statements, you can submit unaudited financial statements or management accounts.

**80. The Economic Substance Report does not require me to provide evidence regarding assets, expenditure, board meetings held in the UAE and other questions asked. Do I need to keep this information on file and if so for how long?**

Yes, all businesses should keep relevant supporting information and documentary evidence on file and be ready to provide this information if and when asked by their Regulatory Authority or the FTA.

At a minimum, information should be kept on file for a period of six years.

**81. Is a company that is registered as an offshore free zone company considered tax resident outside of the UAE for ESR purposes?**

No, offshore free zone companies are subject to the Economic Substance Regulations in the same way as regular free zone companies or as a company established in mainland UAE.

**82. Do the supporting documents for an exemption have to be notarized / certified by a public notary or relevant government authority?**

No, there is no need for documents to be certified or notarized, but documents to support tax residency in a foreign country or documents to evidence that the income of the UAE branch of foreign company is taxed outside the UAE will need to be issued by the relevant foreign tax authority.

**83. Will I be required to answer all the questions included in the Economic Substance Report template available on the Ministry of Finance website?**

No, the Economic Substance Report is a smart form that automatically selects the relevant questions that must be completed by a Licensee based on the previous responses and information provided.

**84. If my licensing authority is a DED, which Regulatory Authority should I select?**

This depends on your Relevant Activity, but in most cases, this will be the Ministry of Economy.

If your main Relevant Activity is Banking or Lease-Finance, you will need to select the Central Bank.

If your main activity is Insurance, you will need to select the Insurance Authority, and for Investment Fund Management activities you will need to select the Securities and Commodities Authority.

**85. Why can't I select a Holding Company Business and another Relevant Activity?**

A business is only considered a Holding Company Business if it does not undertake any other Relevant Activity. If you are a Holding Company Business but also undertake another Relevant Activity, you should select the other Relevant Activity when filing your Notification

**86. I can't log in because I haven't received my activation email after creating my MoF account**

Please check your junk or spam email folder as sometimes the activation email ends up being blocked by spam filters. Otherwise, please send an email to [info@mof.gov.ae](mailto:info@mof.gov.ae)

**87. Will my Regulatory Authority receive my Notification and Economic Substance Report through the Economic Substance Filing Portal**

Yes, your Regulatory Authority will have access to all your submissions made on the Economic Substance Filing Portal.

## M. Regulatory Authority designated contacts for ESR enquiries

Regulatory Authority	Email	Phone Number	Website Link
<b>Federal Entities</b>			
Ministry of Economy	moeesr@economy.ae	-	<a href="https://www.economy.gov.ae/arabic/economic-substance/Pages/default.aspx">https://www.economy.gov.ae/arabic/economic-substance/Pages/default.aspx</a>
Central Bank	ESR@cbuae.gov.ae	02-6915555	<a href="https://cbasp.cbuae.gov.ae/">https://cbasp.cbuae.gov.ae/</a>
Insurance Sector of the Central Bank	hamdi.balbisi@cbuae.gov.ae	02-4990183	Not Available
Security and Commodities Authority	esr@sca.ae	04-2900864	<a href="https://www.sca.gov.ae/ar/regulations/economic-substance-regulations.aspx">https://www.sca.gov.ae/ar/regulations/economic-substance-regulations.aspx</a>
Federal Tax Authority	FTAESR@tax.gov.ae	-	<a href="https://tax.gov.ae/ar/legislation">https://tax.gov.ae/ar/legislation</a>
<b>Free Zones</b>			
<b>Abu Dhabi</b>			
Abu Dhabi Global Market	economicsubstance@adgm.com	02-3338888	<a href="https://www.adgm.com/operating-in-adgm/obligations-of-adgm-registered-entities/economic-substance">https://www.adgm.com/operating-in-adgm/obligations-of-adgm-registered-entities/economic-substance</a>
Media Zone Authority	ESR@mzaabudhabi.ae	-	The Media Zone Authority's ESR Notification Guidance Note: <a href="https://www.mzaabudhabi.ae/en/">https://www.mzaabudhabi.ae/en/</a>  Online webinar:

Abu Dhabi Airports Free Zone	esr@adafz.ae	-	<a href="https://www.adafz.ae/english/one-stop-shop/registration-and-licensing/Economic%20Substance">https://www.adafz.ae/english/one-stop-shop/registration-and-licensing/Economic Substance</a>
Abu Dhabi Ports	esr@adports.ae	800 10 20 308	<a href="https://www.kizad.ae/regulations/">https://www.kizad.ae/regulations/</a>
MASDAR	esr@masdar.ae	02-6531147	Not Available
Dubai			
Dubai Airport Free zone	compliancesection@dafz.ae	-	Not Available
Dubai Healthcare City Authority	Economic.Substance@dhcr.gov.ae	04-3838300	<a href="https://dhcr.gov.ae/en/economic-substance-regulations">https://dhcr.gov.ae/en/economic-substance-regulations</a>
Dubai International Financial Center	roc.helpdesk@difc.ae info@difc.ae	04-3622222	DIFC LinkedIn <a href="https://www.linkedin.com/company/difc/">https://www.linkedin.com/company/difc/</a> <a href="https://www.youtube.com/watch?v=h_6OBX9FKT8">https://www.youtube.com/watch?v=h_6OBX9FKT8</a> 14 May outreach session
DP World (JAFZA)	customercare@dubaitrade.ae ESR@jafza.ae	04-4339333	<a href="http://www.jafza.ae/">http://www.jafza.ae/</a>
Dubai World Trade Center	info@dwtcauthority.com	-	<a href="https://www.dwtc.com/ar/free-zone-economic-substance">https://www.dwtc.com/ar/free-zone-economic-substance</a>
International Humanitarian City	reg@ihc.ae	04-5776308 Extn: 211	<a href="https://www.ihc.ae/economic-substance-regulations/">https://www.ihc.ae/economic-substance-regulations/</a>
Dubai Development Authority	info@dda.gov.ae ESR@dda.gov.ae	800-4-(332)	<a href="https://dda.gov.ae/laws-regulations/circulars-and-announcements/">https://dda.gov.ae/laws-regulations/circulars-and-announcements/</a>
Authority Dubai Silicon Oasis	salbattashi@dso.ae	04-5015302	<a href="https://www.dsoa.ae/">https://www.dsoa.ae/</a>

Dubai Multi Commodities Centre	DMCC Case Management System and online portal, available to all member companies.	04-4249600 600 54 3622	Member Companies can also call the call center who will create the case in the case management system <a href="https://www.dmcc.ae/free-zone/support/compliance-and-regulations">https://www.dmcc.ae/free-zone/support/compliance-and-regulations</a>
Dubai South/ Dubai Aviation City Corporation	Economic.substance@dacc.ae	-	<a href="https://www.dubaisouth.ae/en/Laws-and-Regulations/Laws-and-Regulations/Circulars-and-Announcements">https://www.dubaisouth.ae/en/Laws-and-Regulations/Laws-and-Regulations/Circulars-and-Announcements</a>
Dubai Maritime City	ESR@jafza.ae	04-4339333	<a href="https://www.dmca.ae/">https://www.dmca.ae/</a>
Meydan Free zone	Freezone@meydan.ae	-	<a href="http://www.meydanfreezone.com/news">http://www.meydanfreezone.com/news</a>
Sharjah			
SAIF Zone	compliance@saif-zone.com Manal.buzinjal@saif-zone.com	06-5178154	<a href="https://www.saif-zone.com/en/freezone/esr/forms">https://www.saif-zone.com/en/freezone/esr/</a> forms page:
Hamriya Free Zone Authority	ESRsupport@hfza.ae	06-5133451 06-5133404 06-5263333	<a href="http://www.hfza.ae/faq-esr">http://www.hfza.ae/faq-esr</a>
Sharjah Media City (Shams)	economicsubstances@shams.ae	-	<a href="https://www.shams.ae/ESR">https://www.shams.ae/ESR</a>
Sharjah Publishing City	services@spcfz.com	-	section SPC Website - Download
Research Technology and Sharjah Innovation Park	aalbitar@srtip.ae	06-5022020	<a href="http://www.srtip.ae">www.srtip.ae</a>
Sharjah Healthcare City	saeed.mohamed@sha.gov.ae	050-9992848	Not Available

Ajman			
Ajman Free Zone Authority	ESR@afz.ae	06-7011683	ECONOMIC SUBSTANCE REGULATIONS
Authority Ajman Media Free Zone	esr.notification@amcfz.ae	06-7406660	<a href="http://www.amc.ae/">http://www.amc.ae/</a>
Ras Al-Khaimah			
RAK International Corporate Centre	esr@rakicc.com	07-2017177	<a href="https://www.rakicc.com/guidance/">https://www.rakicc.com/guidance/</a>
RAK Economic Zone	rakezesr@rakez.com	07-2041111	<p>RAKEZ Ras Al Khaimah Economic Zone Economic Substance Regulations Guidance</p> <p><a href="https://rakez.com/en/About/Rules-Regulations">https://rakez.com/en/About/Rules-Regulations</a></p> <p><a href="https://rakez.com/en/Media-Centre/Announcements-Detail/ArticleID/223/faq-on-economic-substance-regulations-esr-return-submission">https://rakez.com/en/Media-Centre/Announcements-Detail/ArticleID/223/faq-on-economic-substance-regulations-esr-return-submission</a></p>
RAK Maritime City	-	07-2056000	<p>RAKEZ Ras Al Khaimah Economic Zone Economic Substance Regulations Guidance</p> <p><a href="https://rakez.com/en/About/Rules-Regulations">https://rakez.com/en/About/Rules-Regulations</a></p> <p><a href="https://rakez.com/en/Media-Centre/Announcements-Detail/ArticleID/223/faq-on-economic-substance-regulations-esr-return-submission">https://rakez.com/en/Media-Centre/Announcements-Detail/ArticleID/223/faq-on-economic-substance-regulations-esr-return-submission</a></p>
Um Al-Quwain			
UAQ Free Trade Zone	s.magdi@uaqftz.com	-	<a href="https://uaqftz.com/support/">https://uaqftz.com/support/</a>
Fujairah			

Fujairah Freezone	Licensing@fujairahfreezone.ae	092228000 :Extn Amal - 122 Mayada - 125 Fayza - 126 Khloud - 127	Not Available
International Free Zone Authority	est@ifza.ae	-	Not Available
Fujairah Creative City	esn@ccfz.ae	09-2077611 09-2077609	<a href="https://creativecity.ae/">https://creativecity.ae/</a>